
(2016) 03 P&H CK 0065
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 15654 of 2013

Dr. Bhavar Tushar Dattatraya and others	APPELLANT
Vs	
State of Punjab and others	RESPONDENT

Date of Decision : 30-03-2016

Acts Referred:

Contract Act, 1872 — Section 74

Citation : (2016) 03 P&H CK 0065

Hon'ble Judges : G.S. Sandhawalia, J.

Bench : Single Bench

Advocate : R.K. Malik, Sr. Advocate with Tejpal Singh Dhull, Advocates, Mr. D.S. Patwalia, Sr. Advocate with Kannan Malik, Advocates, Naveen Mandhan, Deepak Sharma, Advocates, J.P. Sharma, Jagjit Singh Dahiya, Advocates, Kapil Sharma, Advocate, Lalit Rishi, for Anur

Final Decision : Disposed Off

Judgement

G.S. Sandhawalia , J. (Oral) - The present order shall dispose of 14 writ petitions i.e CWP Nos.15654, 16605, 17748, 12850, 15625 and 21394 of 2013 and 22635 of 2014 and 12972, 14612, 15213, 16525, 17890, and 25651 of 2015 and 815 of 2016. The facts are being taken from CWP No. 15654 of 2013 titled as "Dr. Bhavar Tushar Dattatraya and others v. State of Punjab and others".

2. In the present bunch of cases, the grievance of the petitioners is for quashing the bonds which were got executed by the respondents from them and for quashing the orders issued in July, 2013, whereby they were directed to serve with the Punjab Government for a minimum period of five years on contract basis, failing which RS. 10 lac was to be recovered from their sureties.

3. It is not disputed that the petitioners while taking admission in Post-Graduate Courses in the State of Punjab were required to serve the Government of Punjab for a prescribed period of five years. In CWP No.15654 of 2013, the bond was executed on 08.03.2010 (Annexure P-1) and as per Clause (i), the petitioner was to deposit the said amount in case there was a refusal to serve the Government

for the said period. On completion of the Post-Graduate Courses, the appointment letter was issued on 10.07.2013 (Annexure P-2), whereby the petitioner was required to serve the Government.

4. Accordingly, this Court was thereafter approached on the ground that while granting admission, there was no condition regarding the execution of bonds, in the prospectus. The same could not be enforced. The enforcement of the impugned bonds was, accordingly, put in abeyance by an interim order.

5. Director National Rural Health Mission, Punjab, who has issued the appointment letters has taken various pleas that considerable amount of money was spent on subsidizing medical education. The condition to serve for a period of five years which has been imposed by the State is in larger public interest. There was no difference between in service or non-service candidates and neither there was any difference between the resident of Punjab and non-resident of Punjab and all categories of candidates seeking admissions had to be treated equally.

6. Respondent No.1 in its reply has taken the plea of the execution of the bonds to serve after completion of the Post- Graduate Courses is a contract enforceable under the law.

7. Thus, the whole issue arises as to whether the contract inter se was entered between the parties with open eyes or otherwise and how the bond is to be enforced.

8. On the last date of hearing, Counsel for the State had been asked as to how the State proposes to execute and enforce the bonds, in case the petitioner refuse to serve the Government for the requisite period of time.

9. Counsel for the State, on instructions dated 29.03.2016, received from Director Medical Education and Research Punjab submits that the bonds will only be enforced by filing civil suit.

10. This Court in CWP No.24317 of 2013 "Vivek Dureja v. The Punjab State Transmission Corporation Ltd. and others" decided on 28.01.2016 also decided a similar issue as to the enforcement of the surety bonds, which had been executed between the employee and the respondent-Corporation. Challenge in those cases had been raised to the demands for deposit of various amounts. This Court, accordingly, came to the conclusion that it is open to the parties to approach the Civil Court for their remedies, since disputed questions of fact would arise in each and every case regarding to the entitlement of the respondent-Corporation. Reliance was placed upon Section 74 of the Contract Act, 1872 and the observations of the Apex Court on the said issue.

11. Accordingly, this Court is of the view that the same principle would apply in the present set of cases, specially in view of the undertaking now given by the State. Accordingly, the present writ petitions are disposed of with liberty to the State to avail alternative remedy of recovery by resorting to file civil

proceedings. It is, however, made clear that merely because of filing of the suits or a decision to file a suit would not be a ground to withhold any original documents of the petitioners. Similarly, any retiral benefits of the sureties, who have signed on the bonds, would not be withheld on the same principle, as the State would also have the same right of recovery against those sureties also.

12. In case, any retiral benefits of any surety have been withheld, the same will be disbursed within 3 months from the receipt of the certified copy of this order.