(2018) 08 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 2539-2016 (O&M)

Lokesh Sharma APPELLANT

Vs

Punjab State Transmission Corporation Ltd. and others RESPONDENT

Date of Decision : 01-08-2018

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2018) 08 P&H CK 0010

Hon'ble Judges : JITENDRA CHAUHAN, J

Bench : Single Bench

Advocate : Pushpinder Kaushal, Vikas Chatrath

Final Decision : Disposed off

Judgement

By way of the instant petition filed under Articles 226/227 of the Constitution of India, the petitioner seeks issuance of a writ in the nature of Certiorari

quashing Clause 5 of the appointment letter (Annexure P-1) and the affidavits/ bonds (Annexure P-2) executed by the petitioner at the time of entering

into government service.

Learned counsel for the petitioner contends that the case of the petitioner is squarely covered by the judgment rendered by this Court in CWP

No.24317 of 2013 titled as Vivek Dureja Vs. The Punjab State Transmission Corporation Ltd. and others, decided on 28.01.2016. Learned counsel for

the respondents states that the case of the petitioner is covered by the ratio of law laid down in Vivek Dureja's case (supra).

The operative portion of Vivek Dureja's case (supra) reads thus:-

â??Resultantly, this Court is of the opinion that where the petitioners have deposited the amount, it is always open to them to seek the refund by filing appropriate proceedings by pleading that the amount was in violation of the bond and against its terms and conditions. The amount recovered/or

claimed was excess and that the bond was executed under duress. Similarly, it is always open for the Corporation to recover the said amount by

taking its recourse to appropriate remedies for which the petitioners can always defend by taking pleas which they are now seeking to raise. The

Corporation also cannot in an arbitrary manner, hold back the NOCs and not permit the employees to carry on further with their careers on the ground

that they are to recover the amount.

Accordingly, keeping the issue open and not commenting upon the merits of the case let it may prejudice any side, the writ petitions are disposed of

with the above noticed observations that it is open for the parties to approach the Civil Courts for their remedies. Disputed questions of fact in each

and every case would arise as to whether somebody was given the training and for what period and whether the probation period can be considered

as such. Whether the Corporation is entitled for what amount due as per the terms and conditions of the bond. Similarly, it would be also a question of

fact in each case as to whether the bond was on the basis of any threat or coercion and it was unjust or had been acted upon willingly.

In each and every case, the service of the employee would be different and the amount which the Board would be entitled to would also accordingly

vary and the right to claim the amount under Section 74 would thus be as per the facts of each case.

In CWP No. 16511 of 2013, which is part of the present bunch of cases, an interim order was passed on 22.10.2013, which reads thus:-

â??In the meantime, the Punjab State Transmission Corporation Ltd. is directed to relieve the petitioner immediately without insisting on the

formalities of release of bond and the petitioner thereafter would be permitted to join the new assignment with the Punjab State Power Corporation

Ltd.â??

The said interim order was challenged before the Division Bench by the respondent-Corporation and the order was modified on 03.12.2013 by

directing that an indemnity bond would be furnished by the employees in favour of the Corporation to the effect that in case the writ petition is

dismissed, they will comply with the terms and conditions of bond. The relevant part reads thus:-

â??Having heard learned counsel for the parties, we are of the considered view that the learned Single Judge has never intended to cause any

prejudice to the appellants' right/claim which is yet to be adjudicated on merits. Consequently, we modify the order dated 22.10.2013 to the extent that

the first respondent shall furnish an indemnity bound in favour of the appellant-Corporation to the effect that in case his writ petition is dismissed, he

shall comply with the terms and conditions of the Bond.â??

Accordingly, as per the order of the Division Bench dated 03.12.2013 whereby, the petitioners have submitted the indemnity bond the same shall be

valid during the pendency of the proceedings, if initiated by the Corporation. In cases where the NOC has not been issued, the Corporation shall issue

necessary NOCs on the furnishing of the indemnity bonds.â??

In view of the stand taken by the parties and the directions issued in Vivek Dureja's case (supra), the instant writ petition is disposed of in the same

terms.