
(2014) 08 RAJ CK 0034

In the Rajasthan High Court

Case No : DB Special Appeal (W) No. 1274/2012

Rajeev Virana

APPELLANT

Vs

R.R.V.P. Nigam Ltd.

RESPONDENT

Date of Decision : 25-08-2014

Acts Referred:

Citation : (2014) 08 RAJ CK 0034

Hon'ble Judges : J.K. Ranka, J;Ajay Rastogi, J

Bench : Division Bench

Advocate : Sudhir Gupta, OIC, RVPNL, Advocate for the Respondent

Final Decision : Allowed

Judgement

1. Instant intra court appeal has been filed against the order of Id. Single Judge dt. 9.7.2012.

2. The brief facts that culled out from the record and relevant for our purpose and disposal of the instant appeal are that the appellant initially joined service after his regular selection on the post of Junior Engineer-I (Electrical) as Probationer Trainee in Rajasthan Rajya Vidyut Prasaran Nigam Ltd. vide order dt. 7.4.2007 and under the terms & conditions appended thereto and Clause-4 & 5 in particular, at the time of joining duties, by the probationary trainee, he was supposed to execute bond (proforma enclosed with the appointment order as Ann. A) on non-judicial stamp of Rs. 100/- and to furnish undertaking that he/she will not leave his/her training/service or resign or take-up another employment during the period of Probation Training within one year after completion of Probation-Training and also during any other training period as well as after completion of such training.

3. Condition (4) & (5) of the order of appointment relevant for the purpose reads ad infra-

4. At the time of joining duties, the above Probationer-Trainees shall have to

execute a Bond (proforma enclosed as Appendix-A) on Non-Judicial stamp of Rs. 100/- issued in the name of incumbent with the specific purpose of executing Bond in favour of RVPN, for giving an undertaking that he/she will not leave his/her training/service or resign or take-up another employment during the period of Probation Training as well as within one year after completion of Probation-Training and also during any other training period as well as after completion of such training, within a minimum period of 1 year if such training period is for a period exceeding 3 months but up to 6 months, and within 2 years, if it exceeds 6 month; but in case he/she violates these provisions, he/she will refund to RVPN, all emoluments paid to him/her, including the expenses incurred by RVPN on such training (s), subject to maximum of Rs. 1,50,000/-(Rupee One lac fifty thousand) only (excluding the amount paid to him/her by way of traveling and daily allowance under the relevant regulations) and any other amount that may be due to RVPN, together with interest @ 12% per annum from the date of demand to the date of payment in lump-sum.

5. After completion of 3 years" period, the above candidates may resign from Nigam"s services by giving three month"s notice in writing to the Competent Authority. However, in case of breach of this provision by any employee, he/she shall be liable to pay the amount of salary for the notice period falling short of 3 months" as compensation to the RVPN. In case of any default, the amount may be deducted from any money due to him/her"

4. Indisputably, the probation trainee is supposed to furnish proforma Appendix-A in compliance of terms & conditions of offer of appointment indicated above but this fact cannot be ruled out that every employee/applicant for his better future will certainly apply for other employment as well.

5. It can be noticed by this Court that after unbundling of RSEB, 5 companies were created including RRVN & Jaipur Vidyut Vitran Nigam Ltd.

6. While working as a Probationer Trainee, the post of Feeder Manager came to be advertised by the Jaipur Vidyut Vitran Nigam Ltd. and the present appellant after going through the selection process was found suitable and offered appointment vide order dt. 12.9.2008 and after taking no dues from earlier company, he reported to duty on 2.12.2008 but as he was shifted from one company to other company, according to the respondent, he violated the condition no. 4 & 5 of the terms & conditions of the offer of appointment dt. 7.4.2007 and when proceedings were initiated for recovery in reference to execution of bond, the appellant approached this Court by filing writ petition and that came to be dismissed by the Id. Single Judge vide order dt. 9.7.2012 primarily on the premise that once bond was furnished by the appellant seeking transfer to either of the company or to accept employment elsewhere he has to comply in terms of bond executed, which is the subject matter of challenge in the instant appeal.

7. During the pendency of appeal, the respondent also realized and issued

clarification dt. 16.1.2013 whereby the Co-ordination Committee in its 153rd meeting held on 16.12.2011 decided to relax the condition of depositing bond amount provided employee leaves one Power Sector Company before completion of the Bond period on account of his/her fresh selection and appointment given/offered in another Power Sector Company in such a case, no recovery of any kind in this respect shall be made from him/her. But, as there was still confusion as to whether it remain confined to three distributing power sector company or it will cover other generation company also and to meet out such situation further clarification was made by the Rajasthan Rajya Vidyut Prasaran Nigam Limited vide clarification dt. 6.3.2013 and the Board of Directors, RVPN, in its meeting held on 28.2.2013 clarified that in case an employee leaves one Power Sector Company before completion of the Bond period on account of his/her fresh selection and appointment given/offered in another Power Sector Company, then in such a case, the employee concerned shall also be entitled to seek exemption from depositing any amount under the Bond and no recovery of any kind in this respect shall be made from him/her.

8. It is not in dispute that clarification has been made by all the five companies in regard to exemption from depositing the bond amount if an employee leaves one Power Sector Company before completion of the Bond period on account of his/her fresh selection and appointment given/offered in another Power Sector Company and the bone of contention of the respondent is that clarification being prospective it may not cover the case of the appellant who will be governed as per terms and conditions of the order of appointment and will not be entitled to exemption as prayed for.

9. Both the clarification orders dt. 16.1.2013 & 6.3.2013 made by the respondent at later stage but the clarification always relate back to initial decision of the authority and once the decision has been taken by the power sector companies in granting exemption from depositing the bond amount from shifting from one power sector to other power sector company, in our considered view, the present appellant who has joined another power sector company will not be under obligation on execution of bond pursuant to the order of appointment dt. 7.4.2007.

10. Consequently, the special appeal stands allowed and the order of the Id. Single Judge impugned herein is quashed and set aside and the appellant is entitled to seek exemption from executing bond which he furnished in terms of condition 4 & 5 of the offer of appointment dt. 7.4.2007. No costs.