

WA 54/2011

BEFORE

THE HON'BLE MR. JUSTICE AMITAVA ROY

THE HON'BLE MR. JUSTICE C.R. SARMA

(Amitava Roy,J)

The judgment and order dtd. 22.09.2010 rendered in WP(C) No.349(AP)/2010 and the order dtd. 12.01.2011 in Review Application No.16(AP)/2010 constitute the subject matter of the instant appeal.

We have heard Mr. R.P. Sarmah, Senior counsel assisted by Ms. R. Devi, learned counsel for the appellant and Ms. M. Bora, learned Govt. Advocate, Arunachal Pradesh for the respondents.

The disposal of the appeal warrants a brief statement of the facts leading to the filing thereof.

The appellant who is presently serving as Asstt. Audit Officer in the Directorate of Audit and Pension, Govt. of Arunachal Pradesh, Naharlagun, had joined as Assistant Auditor in the concerned department on 04.09.1989. He was granted study leave with effect from 24.07.2007 to 23.07.2009 by the departmental authority in connection with which he had executed a personal bond of Rs.4,00,000.00 on 20.07.2007 incorporating inter alia the following stipulations:

NOW THEY CONDITION THE ABOVE WRITTEN OBLIGATION, even in the event of my failing to resume duty or resigning or retiring from service or otherwise quitting service without returning to duty after the expiry or termination of the period of study leave or failing to complete the course of study or at any time within a period of three years after my return in duty, I shall forthwith pay to the Govt. of A.P. or as may be directed by the Govt. of A.P. on demand the said Sum of Rs.4,00,000/- (Rupees Four lakhs only) together with interest thereon from the date of demand at Government rates for the time being in force on Government loans.

Even before the completion of the period of study leave the appellant having come across the advertisement dtd. 07.02.2009 issued by the Labour and Employment, Govt. of India, inviting candidature for the post of Asstt. Director (Audit), Employees Provident Fund Organisation, New Delhi to be filled up on deputation for a period of three years, he applied therefor through proper channel. The Regional Employees Provident Fund Organisation Commissioner II (HRM), New Delhi by his order dtd. 22.04.2010 informed the appellant about his appointment in the above post on deputation for a period of three years. The Directorate of Audit and Pension, Arunachal Pradesh, Naharlagun by his letter dtd. 13.07.2010 intimated the acceptance report in connection with appellant's appointment on deputation.

Meanwhile, he had joined the Directorate of Audit and pension at Arunachal Pradesh, Naharlagun on 23.07.2009 after availing the said leave. In spite of the above, the said respondents without releasing him to join on deputation sought to transfer him vide order dtd. 05.09.2010. He, therefore, approached this Court with WP(C) No.349(AP)/2010 seeking a direction to the respondents to release him to join the new organisation on deputation. By the judgment and order dtd. 22.09.2010, the respondents were directed to release the appellant subject to clearance of his dues to the State government as per the terms and conditions contained in the personal bond executed by him. Further direction was issued to realise the amount due from him either in cash or by adjustment against his VRS benefits. Being still dissatisfied, the appellant instituted the Review Petition No.16 (AP)/2010 for a modification/alteration of the judgment and order dtd. 22.09.2010. By the impugned order dtd. 12.01.2011, the direction contained in the judgment and order dtd. 22.09.2010 was partially modified. However, the dues from him under the bond was still directed to be realised from his salary. It is in this background that the appellant is before us.

Mr. Sarmah, while drawing the attention of this Court to the order dtd. 22.04.2010 of the Regional Provident Fund Commissioner II (HRM), New Delhi has argued that as would be evident therefrom the appellant has been offered appointment as A

ssstt. Director (Audit) on deputation basis initially for a period of three years and that therefore the direction of the learned Single Judge to realize the dues from his salary as a condition precedent for his release is untenable in law.

As in terms of the arrangement revealed by the office order dtd. 22.04.2010, till the appellant is absorbed in the Employees Provident Fund Organisation he would hold a permanent loan in the post of Asstt. Audit Officer in the Directorate of Audit and Pension, Arunachal Pradesh, the said direction is presently unwarranted and ought to be interfered with, he urged.

In the alternative, Mr. Sarmah also sought to impress upon us that the appellant having resumed his duties after availing the study leave, even in strict interpretation of the stipulations contained in the bond he is not liable to pay the amount of Rs.4,00,000/- as contemplated therein.

Ms. Bora, on the other hand, has urged that the covenants in the personal bond being binding of the appellant, the amount mentioned therein is realisable from his service dues. According to her, as the appellant was selected for deputation, there is every possibility that he would be absorbed in the Employees Provident Organisation and thus the direction of the learned Single Judge being in the interest of the State exchequer, ought not to be interfered with.

Upon hearing the learned counsel for the parties and on a consideration of the pleadings available, we are of the view on a close scrutiny of the office order dtd. 22.04.2010, in particular that the realisation of the amount of Rs.4,00,000/- as envisaged in the personal bond at this stage ought not to be insisted upon as a condition precedent for his release. As he is supposed to proceed on deputation initially for a period of three years, we are of the considered view that it would appropriately secure the interest of public revenue if he is released subject to the condition that realisation of the above amount under the personal bond would be an essential and inflexible precondition for his abandonment/relinquishment of the parent service as the case may be, in future.

With the above modification in the impugned judgment and order dtd. 22.09.2010 and 12.01.2011 passed in WP(C) No.349(AP)/2010 and Review Petition No.16(AP)/2010, this appeal is disposed of. No costs.