

GAHC010004342014



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/69/2014

PREM SINGH
S/O LT. MINU RAM, 2ND A.P. TASK FORCE APTF BN. LUMDING, P.O.
LUMDING, DIST- NAGAON, ASSAM, PIN-782447

VERSUS

OIL AND NATURAL GAS CORPORATION LTD. and 5 ORS
REPRESENTED BY EXECUTIVE DIRECTOR SECURITY 3RD FLOOR, B.S.
NEGI BHAVAN, DEHRADUN, UTTARAKHAND, PIN-248003

2:THE CHIEF MANAGER HR
OIL AND NATURAL GAS CORPORATION LTD
CORPORATE ESTTB.
TEL BHAWAN
DEHRADUN
UTTARKHAND
PIN-248003

3:THE GENERAL MANAGER HEAD HR-ER
OIL AND NATURAL GAS CORPORATION LTD.
O/O THE G M-HEAD HR-ER
ASSAM ASSET
NAZIRA
DIST- SIVASAGAR

4:THE STATE OF ASSAM
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GHY-6

5:THE DIRECTOR GENERAL OF POLICE

ASSAM
ASSAM POLICE H.Q.
B.K. KAKATI ROAD
ULUBARI
GHY-7

6:THE COMMANDANT
2ND A.P. TASK FORCE APTF BN. LUMDING
P.O. LUMDING
DIST- NAGAON
ASSAM
PIN-78244

Advocate for the Petitioner : MR. N C DAS

Advocate for the Respondent : MR.P K ROY

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Judgment & Order(Oral)

Date : 04.04.2024

Heard Mr. N. C. Das, learned Senior Counsel assisted by Ms. M. Bora, learned counsel for the petitioner. Also heard Mr. P. K. Roy, learned counsel for the respondents no. 1, 2 & 3 and Mr. B. Deori, learned Government Advocate appearing for the respondents no. 4, 5 & 6.

2. The petitioners, by way of instituting the present proceeding has raised a grievance with regard to the deduction made from his pay as received by him during the period of his deputation with the respondent no. 1, ONGC as a Security Officer.

3. The petitioner, who was working as a Sub-Inspector in the 2nd APTF Bn, Lumding in response to a notice circulated by the ONGC inviting applications

from the persons desirable to join the organization on deputation basis, the petitioner submitted his application for joining the ONGC as a Security Officer. The petitioner in terms of the options circulated vide the notice from the ONGC had opted that in the event he is appointed as the Security Officer he would opt for the pay as prescribed for the post by the ONGC. Thereafter, the case of the petitioner was duly considered by the authorities of the ONGC and he having found to have satisfied the requisite eligibility criteria, vide a communication dated 09.06.2008 the authorities of the ONGC requested the Director General of Police, Assam to inform the persons so selected for appointment on deputation basis the terms and conditions that was so applicable to them and in the event the terms and conditions so prescribed were acceptable by the persons, whose names were included in the said communication dated 09.06.2008, including that of the petitioner, to direct them to join the respective work centres mentioned against them. In respect of the petitioner, it was mentioned that he was being proposed to be appointed on deputation as a Security Officer in the scale of pay of Rs. 12000-17500 and to be posted under the In-charge Guwahati (Liaison Office), ONGC. The petitioner having accepted the terms and conditions has circulated including the pay as mandated for the post in question, the petitioner accepted the same and accordingly, he was released from the 2nd APTF Bn, Lumding vide the communication dated 16.01.2009 issued by the Deputy Secretary to the Government of Assam, Home (A) Department. Accordingly, the petitioner on his such release joined against the post of Security Officer under the ONGC on deputation basis on 01.02.2009. The petitioner, thereafter continued in his services and on completion of one year of services against the deputation post, the Government of Assam having

approved the period of extension in respect of the deputation of the petitioner, the services of the petitioner as a Security Officer in the ONGC was extended for a further period of one year w.e.f. 02.02.2010. Likewise, on completion of second year of deputation, the services of the petitioner was again extended for a further period of one year w.e.f. 02.02.2011.

The petitioner accordingly, continued in his services as a Security Officer in the ONGC. Thereafter, the services of the petitioner herein was approved by the Assam Police Headquarter for further extension of one year that is for the fourth year w.e.f. 01.02.2012. However, the ONGC vide the order dated 12.06.2012, proceeded to repatriate the petitioner from his services as Security Officer in the ONGC w.e.f. 12.06.2012. It is to be noted that while the petitioner was continuing in his services in the ONGC, a process was initiated for his permanent absorption in the services of the ONGC and the Government of Assam, Home (A) Department had also accorded approval to the absorption of the petitioner in the ONGC. However, the said process was not taken to its logical conclusion. While posted as Security Officer on deputation basis in the ONGC in the pay scale of Rs. 12000-17500, the authorities of the ONGC, by following the prescription as made in O.M. dated 08.06.2009, issued by the Department of Public Enterprises, Government of India by which fresh instructions relating to pay and allowances of the deputationist was circulated, required the Central Public Sector Enterprises to fix the salary of persons coming on deputation to CPSEs after 26.11.2008 at par with the salaries as drawn by them in the parent department. ONGC being public sector enterprises, it was contended that the said circular required to be implemented by it. Accordingly, the salary of the petitioner was revised and was fixed in the scale that he was so

receiving in his parent department, which resulted in a recovery from the salaries of the petitioner and for the said fact of the matter, the salaries of the petitioner from the month of October, 2010 to February, 2011 was so withheld/not paid to the petitioner. Being aggrieved, the petitioner has instituted the present proceeding.

4. Mr. N. C. Das, learned Senior Counsel for the petitioner submits that the petitioner had opted for going on deputation for the ONGC as a Security Officer being attracted by the terms and conditions as prescribed in the notice so issued by the ONGC in this connection. In the said notice, it was contended that an option was given to the deputationist to either draw his pay in the same scale as he was so drawing in his parent organization along with the deputation allowances or to draw his pay and allowances in the post against the deputation post of Security Officer in the ONGC but, without deputation allowance. The petitioner having opted to draw the pay as prescribed in the ONGC for the post of Security Officer, while approving the application of the petitioner on deputation basis as Security Officer, the ONGC authorities had vide the communication dated 09.06.2008 authorized the pay scale of Rs. 12000-17500, to the petitioner herein and accordingly, the petitioner proceeded to join against the said post. It was further contended that the scale of pay as attached to the post of Security Officer in ONGC being higher than that was drawn by the petitioner in his parent organization, the petitioner had opted to proceed on deputation to the ONGC against the post of Security Officer.

5. Mr. Das, learned Senior Counsel contends that the notification subsequently issued regulating the manner in which the pay and allowances

of persons joining the Central Public Sector Undertakings on deputations, cannot be made applicable to the petitioner herein, inasmuch as he had proceed to join on deputation as Security Officer in the ONGC, strictly, in terms of the terms and conditions as was notified in this connection by the ONGC at that relevant point of time. Mr. Das, learned Senior Counsel further submits that the respondent authorities could not have reduced the pay of the petitioner in the post of Security Officer for the period he had worked against the said post on deputation basis without issuing a notice to the petitioner herein. Accordingly, Mr. Das, learned counsel for the petitioner submits that a declaration is called for from this Court to the effect that the petitioner would be entitled to draw his salary at the scale of pay authorised for the post of Security Officer for the period he had served against the said post on deputation basis. With regard to the prayer made by the petitioner for absorption of his services as a Security Officer in the ONGC, Mr. Das, learned Senior Counsel has fairly submits that as the petitioner has since retired from his services, the said prayer as made by the petitioner in the present writ petition has become infructuous and the same may not be considered by this Court in the present proceeding.

6. Mr. P. K. Roy, learned counsel for the respondents authorities submits that the action as taken by the ONGC was so necessitated on account of the fact that there was a clear direction issued by the concerned ministry of the Government of India with regard to the manner in which the pay and allowances of the deputationist joining the services of the Central Public Sector Undertakings after 26.11.2008, the pay of the petitioner was required to be recast in the manner as projected in the writ petition. Mr. Roy, learned counsel for the respondents in his usual fairness submits that the issue as

arising in the present proceeding was already adjudicated by this Court earlier in the proceedings of WP(C) No. 5470/2011 and this Court vide an order dated 29.08.2012, proceeded to direct that persons moving on deputation would be governed by the conditions which were so offered to them at the time when they had submitted their respective application for proceeding on deputation with the ONGC. It is further submitted that the ONGC being aggrieved vide the order dated 29.08.2012, had assailed the same before the Division Bench of this Court by way of instituting WA No. 281/2012. The Writ Appellant Court, upon consideration of the issues and on drawing a conclusion that since the offer made by the ONGC in its notification issued towards inviting applications from persons for appointment on deputation basis as Senior Security Officer, which was accepted by the petitioner, a valid contract came into existence and the ONGC cannot be allow to back track from the same stating the notification aforementioned are being wrongly issued since it was not in tune with the subsequent OMs dated 26.08.2008 and 08.06.2009.

7. And accordingly, the Judgment and Order dated 29.08.2012, passed in WP(C) No. 5740/2011 was upheld. The relevant observations made by the Division Bench of this Court vide the order dated 18.02.2014 passed in WA No. 281/2012, being relevant to the issues arising in the present proceedings is extracted herein below:-

“14. The notification dated 09.06.09, among other things, clearly stated that an officer of Assam Police in the rank of Inspector (AB), if selected as Senior Security Officer would be drawing his salary in the scale of Rs. 13750-18750/- and only on such offer, the petitioner opted to join ONGC. Being so, once he joined the aforesaid post, the respondents cannot

refused to pay him salary in the aforesaid scale citing O.M which speaks otherwise, more so, when petitioner is no way responsible for the alleged mistake, committed by the respondent authority.

15. We have considered the rival submissions having regard to the pleaded case of the parties. On making such an exercise, we have found that the petitioner opted to join ONGC in the rank of Senior Security Officer on the basis of information, furnished in the notification dated 09.06.2009. We have also found that said notification amongst other things states that in the event of posting of Inspector (AB) in Assam Police as Senior Security Officer in ONGC, he would be allowed to draw Rs. 13750-18700/-.

16. Since the offer, made by ONGC in the notification dated 09.06.09 was duly accepted by the petitioner, in our opinion, a valid contract came into existence and the respondents cannot be allowed to backtrack from the same stating that the notification aforementioned had been wrongly issued since it is not in tune with O.M. dated 26.08.2008 and O.M. dated 08.06.2009.

17. It may be stated that under the Law of Contract, a contract may be rescinded by a party thereto or by both the parties on the ground of mistake only under certain eventualities mentioned in the Law of Contract itself. However, in our instant case, none of those eventualities exists to make the contract voidable at the instant of one of the party thereto.

18. That being so, in our considered opinion, the appellants/respondents cannot be allowed to take shelter under the Office Memoranda aforementioned to deprive the petitioner of his salary for the period from October, 2010 to March, 2011, more so, when the petitioner

was no way responsible for issuance of such notification in pursuance to which he offered his candidature and got selected to serve the ONGC in the pay scale of Rs. 13750-18700/-.

19. We may note here that the learned counsel for the petitioner has submitted that the facts and circumstance of the present case are fundamentally different from the facts and circumstances of the case referred to above. On perusal of the decision, aforementioned, in the light of facts and circumstance of the case at hand, we have found reasons to concur with the submissions, advanced by the learned counsel for the petitioner on this count.”

8. Applying the decision of this Court in WA No. 281/2012, to the issues arising in the present proceeding, it is seen that the persons involved in the said proceedings had also joined the ONGC during the period when the petitioner had also so joined as a Security Officer therein. Accordingly, the petitioner in WP(C) No. 5470/2011 being similarly situated like that of the petitioner and he having joined the organization as a Senior Security Officer with a pay scale of Rs. 13750-18700, and the same being held by this Court to be the salary that would be drawn by the said petitioner during the period he had served in the ONGC as a Security Officer on deputation basis, the petitioner herein also having joined the ONGC under similar terms and conditions, is also required to be extended with the same relief. Accordingly, the following directions are passed by this Court in the matter:-

- i) The petitioner herein is hereby declared to be eligible to draw the scale of pay of Rs. 12000-17500, along with the permissible allowances during the period he had served the ONGC as a

Security Officer w.e.f. 01.02.2009 till 12.06.2012 on deputation basis.

- ii) The petitioner having been declared to be eligible to draw the pay scale of Rs. 12000-17500, the ONGC authorities would now release to the petitioner herein the arrears of his pay and allowances in the said scale of pay for the period he had so served as the Security Officer on deputation basis in the ONGC.
- iii) The amount as withheld from the pay of the petitioner on account of the same being revised in accordance with the OMs dated 26.11.2008 and 08.06.2009, in view of the directions passed herein above would now to be released to the petitioner along with an interest @ 6% per annum w.e.f. the date the same was so withheld till date of actual release of the said amount.

9. This Court, further grants liberty to the petitioner herein to approach the ONGC with an appropriate application in the event it is found that the pay scale of the post of Security Officer was revised and fixed at a higher stage during the period he had held the said post on deputation basis. In the event of filing of such application by the petitioner, the ONGC shall duly consider the same and dispose of the same by way of issuing a speaking order.

10. The arrears as now due to the petitioner be released to the petitioner within a period of one month from the date of receipt of the certified copy of this order.

11. Further, in the event the petitioner prefers an application in terms of the liberty as granted by this Court vide this order, the ONGC shall duly consider

the same and dispose it of within a period of 3(three) months from the date of receipt of such application.

12. With the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant