
EMPLOYMENT BOND - NEED AND ENFORCEABILITY

The increasing rate of attrition subjects the employers not only to financial losses but also delays in completing the on-going projects. In order to safeguard their interests, the employers have of late started to obtain an employment bond from their employees. The question that arises is, whether such a method to retain employees is enforceable under the law. The simple answer is yes. Such employment agreements with negative a covenant is valid and legally enforceable. In order to execute a valid employment bond, the parties have to ensure that the following requisites have been complied: a) it is signed with free consent of the employee; b) the conditions stipulated must be reasonable; and c) the conditions imposed on the employee must be proved to be necessary to safeguard the interests of the employer.

Courts in India have held in its various judgments that in the event of breach of bond by the employee, employer shall be entitled to recover damages if a considerable amount of money was spent on providing training or incurring other expenses of the employee. An employment bond however will not be enforceable if it is either one sided in favor of the employer. Therefore it is pertinent to be cautious while drafting an employment bond. In general, conditions stipulated in the bond should justify that it is necessary to safeguard the interest of the employer and to compensate the loss in the event of its breach. Further, the penalty or compulsory employment period stipulated in the contract should not be exorbitant to be considered as valid. Further, the employment bond stipulating conditions such as to serve the employer compulsorily for a specific time period or penalty for incurring the expenses is in the nature of the indemnity bond must to be executed on a stamp paper of appropriate value in order to be valid and enforceable.¹

Remedies Available to Employer and Employee

In the event of breach of employment bond, the employer might incur a loss and, therefore, may be entitled for compensation. However, the compensation stipulated should be reasonable to compensate the loss incurred and should not exceed the penalty, if any, stipulated in the bond.⁵ Usually, the court determines the reasonable compensation amount by computing the actual loss incurred by the employer having regard to all circumstances of the case. Even if the bond stipulates payment of any penalty amount in the event of breach, it does not mean that the

¹ IBS Software Services Group vs. Leo Thomas, 2009 (4)KLT 797

employer shall be entitled to receive the stipulated amount in full as compensation on the occurrence of such default; rather the employer shall be entitled only for reasonable compensation as determined by the court. Courts normally consider the actual expense incurred by the employer, the period of service by employee, conditions stipulated in the bond to determine the loss incurred by the employer to arrive at the reasonable compensation amount. For instance, in the case of *Sicpa India Limited v Shri Manas Pratim Deb*², the plaintiff had incurred expenses of Rs 67,595 (sixty seven thousand five hundred ninety five) towards imparting training to the defendant for which an employment bond was executed under which the defendant had agreed to serve the plaintiff company for a period of three years or to make a payment of Rs 2,00,000 (two lakh). The employee left the employment within a period of two years. To enforce the agreement the employer went to the court, which awarded a sum of Rs 22,532 (twenty two thousand five hundred thirty two) as compensation for breach of contract by the employee. It is crucial to note that though the bond stipulates a payment of Rs 2,00,000 (two lakh) as compensation for breach of contract, the court had considered the total expenses incurred by the employer and the employee's period of service while deciding the compensation amount. Since the defendant had already completed two years of service out of the agreed three year period, the court divided the total expenses of Rs 67,595 (sixty seven thousand five hundred ninety five) incurred by the plaintiff into three equal parts for three years period and awarded a sum of Rs 22,532 (twenty two thousand five hundred thirty two) as reasonable compensation for leaving the employment a year before the agreed time period.

The compensation amount awarded shall be based upon the actual loss incurred by the employer by such breach.

Raghav Seth.

About the author:

The author is a corporate lawyer empaneled with Evaluator. Views expressed are personal.

² MANU/DE/6554/2011