

(2000) 05 GAU CK 0031
In the Gauhati High Court
Case No : Writ Petition (C) No. 105 of 1999

Ajit Kumar Burman

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 05-05-2000

Acts Referred:

Citation : (2001) 1 GLT 108

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : George Raju, for the Appellant; T. Vaiphei, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

D. Biswas, J.—This petition is for quashing the order dated 16.8.1999 passed by the Govt. of Mizoram and for issue of a direction for confirmation of the writ Petitioner in his grade as U.D.C. with effect from the date of his appointment and also to include his name in the inter-se-seniority list of the Upper Division Clerks under the Secretariat Administration Department. The impugned order reads as follows:

Dated Aizawl, the 16th Aug. 1999

In supersession of this departments order of even No. dt. 1.6.1989 and in the interest of public service, Pu A.K. Burman, LDC, Public Works Department is appointed as UDC on deputation and posted in the Personal Branch of the Minister of State, A.H. & Vety. Department.

The terms of deputation will be coterminus with that of the Minister of State concerned and that the appointment will not bestow any special consideration in the rank nor retention to the rank nor for further promotion.

Sd/- Illegible Addl. Secretary to the Govt. of Mizoram.

2. It would appear from the impugned order quoted above that the Govt. has

clarified the position of the writ Petitioner in the department of Animal Husbandry and Veterinary. The Petitioner is aggrieved by this order since he is apprehending repatriation to his parent department i.e. Public Works Department where he was working as a LDC before attachment with the Minister-in-charge of Animal Husbandry and Veterinary Department.

3. I have heard Mr. George Raju, learned Counsel for the writ Petitioner and Mr. T. Vaiphei, learned A.A.G.

4. Mr. Raju, learned Counsel submitted that while the writ Petitioner was working as a LDC under the Public Works Department as a confirmed employee, he was temporarily attached to the Personal Branch of the Minister of State, Animal Husbandry and Veterinary Department by order dated 30.1.1989. According to Mr. Raju, this is an order of attachment and not deputation and, therefore, the question of his repatriation to his parent department does not arise. Mr. Raju further pointed out that while working as personal assistant to the Minister-in-charge, the State Government by an order dated 1.6.1989 appointed him as UDC and, as such, the writ Petitioner cannot now after lapse of more than 10 years be directed to go back to his parent department.

5. Mr. Vaiphei, learned Counsel for the Respondents, however, argued that the order of attachment is nothing but deputation from Public Works Department to the Department of Animal Husbandry and Veterinary; and being deputationist, the writ Petitioner does not have any right for permanent absorption. The appointment given by the Government as UDC during his tenure on deputation has been made specifically co-terminus with that of the office of the Minister concerned and, as such, there is no alternative but to send him back to the Public Works Department.

6. It is, therefore, necessary first to resolve the question whether the order of attachment dated 30.1.1989 is in effect an order of deputation and whether his appointment as UDC made vide order dated 1.6.1989 has any relevance so far his claim for permanent retention in the Secretariat Administration Department is concerned.

7. It is a fact that the Public Works Department and the Department of Animal Husbandry and Veterinary are two independent departments of the Govt. of Mizoram. The Secretariat Administration Department is also of independent entity. Therefore, the writ Petitioner being a permanent and confirmed employee of the Public Works Department could not be attached to Animal Husbandry and Veterinary Department except on deputation. The order of attachment dated 30.1.1989 is deficient in its language and this deficiency has created confusion about the nature of his posting in the Department of Animal Husbandry and Veterinary. It is well settled that an employee can be attached with any officer or with any branch or wing of the department where he is working. If the employee is sent to a foreign service, irrespective of the language used in the order, it will have to be construed as deputation. In the order of attachment, the word

deputation is not there. The law as on today do not permit any interpretation Ors. than that it was a case of pure and simple deputation from the Public Works Department to the Department of Animal Husbandry and Veterinary. The Department of Animal Husbandry and Veterinary is not a branch or wing of the Public Works Department and, as such, the attachment of the writ Petitioner with the former department is nothing else but deputation.

8. The above position has been clarified by the Deputy Secretary to the Govt. of Mizoram in the Department of Personal and Administrative Reforms by a note dated 10.2.1995 given to the Secretary, Public Works Department. In this note it has been clarified that the term of deputation of the writ Petitioner being co-terminus with that of the office of the Minister-in-Charge, the Petitioner has no option but to be repatriated to the public works Deptt. as the term of the office of the Minister-in-charge expired in 1994. If we have a look at the appointment order dated 1.6.1989, we find that the Petitioner was appointed as a UDC and posted in the Personal Branch of the Minister on deputation and it was clarified that the term of deputation will be co-terminus with that of the minister concerned.

9. The order of appointment as referred to above does not alter the status of the writ Petitioner for enabling him to have a permanent berth neither in the Animal Husbandry and Veterinary Department nor in the Secretariat Administration Department. An important feature of this case is that the order of appointment was issued on 1.6.1989 and the Petitioner accepted the same without any protest. By this very order he was posted in the Personal Branch of the Minister-in-charge on deputation. It was further clarified that the terms of deputation would be co-terminus with that of the Minister. Instead of this condition he had accepted the appointment and continued in the post of UDC. Now, after lapse of about 10 years, he has come to this Court to vindicate his cause as a permanent employee of the Secretariat Administration Department, which in my considered opinion, is in no way under any obligation to absorb him. The argument of Mr. Raju that a right has accrued for permanent absorption in view of the appointment as a UDC appears to be of no significance. Rather, this appointment goes the Ors. way relegating the position of the writ Petitioner as that of a deputationist, the element of which was absent in the initial order of attachment. The writ Petitioner submitted a number of representations before different authorities for his permanent absorption. It is for the authorities to take a decision on those representations. Those representations have no meaning so far the position of the writ Petitioner as deputationist is concerned.

10. Now let us refer to the decision of the Hon"ble Government referred to and relied upon by Mr. Vaiphei, the learned AAG.

11. In State of Punjab and Others Vs. Inder Singh and Others, in para 18, the Supreme Court dealt with the concept of deputation. For better appreciation, the observation of the Hon"ble Supreme Court is quoted below:

18. The concept of "deputation" is well understood in service law and has a recognised meaning. "Deputation" has a different connotation in service law and the dictionary meaning of the word "deputation" is of no help. In simple words, "deputation" means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The law on deputation and repatriation is quite settled as we have also seen in various judgments which we have referred to above, there is no escape for the Respondents now to go back to their parent departments and working there as Constables or Head Constable as the case may be.

12. The position with regard to the deputationist has been clarified by the Hon'ble Supreme Court in the judgment quoted above. When an employee is on deputation, there can be no escape for him to avoid repatriation to the parent department. But considering the hardships the Respondents in that case were likely to face, the Supreme Court permitted those Respondents who had put in 20 years of qualifying service to seek voluntary retirement with certain consequential benefits. In *Orissa Electrical Engineers' Service Association Vs. State of Orissa and Others*, the objection of the employees on deputation from being repatriated was disallowed by the Supreme Court and directions were given to act on the willingness of the Engineers on deputation for reversion to their parent department because of lapse of long time. In *C. Rangaswamaiah and Others Vs. Karnataka Lokayukta and Others*, in para 22, the Supreme Court affirmed the decision of the High Court that the police officers of the State on deputation continue to remain as public servants in the service of the State Govt. so long they are not absorbed in the borrowing department i.e. Lokayukta. The Supreme Court further held that this legal position is absolutely unassailable as the State of Karnataka had merely sent the services of the officers to the Lokayukta and the officers continue to be the employee of the State. It was further held that in spite of the deputation of the officers with the Lokayukta, the relationship of master and servant between the state and the officers does not stand terminated. This decision has reiterated the ratio laid down in *State of Punjab and Others Vs. Inder Singh and Others*, referred to hereinbefore.

13. The ratio laid down by the Supreme Court repeatedly makes it abundantly clear that a deputationist has no legal right to enforce permanent absorption in the borrowing department. The mistake or deficiency that crept in the initial order of placement of the services of the writ Petitioner with the Animal Husbandry and Veterinary Department stands corrected by the subsequent order

dated 1.6.1989. The writ Petitioner cannot take advantage of the mistake committed by the State Govt. in the initial order of attachment/deputation. Here, it may be relevant to refer to the judgment of the Hon'ble Supreme Court in A.K. Sarma and Another Vs. Union of India Another, The Supreme Court affirmed the observation of the Central Administrative Tribunal, Guwahati Bench made in Original Application No. 54 of 1991 to the effect that the mistake committed by the Respondents of that case could not confer any right contrary to the Recruitment Rules and, therefore, such a mistake could be rectified. This ratio in its broader perspective is applicable in the instant case as well, and it meets the objection raised on the ground of mistake committed in the initial order of attachment/deputation. The impugned order dated 16.8.1999 passed by the authority clarifying the position of the writ Petitioner, therefore, needs no interference by this Court.

14. It would appear that the State has committed mistakes on three counts. Firstly, there was gross deficiency in the order of attachment/deputation. Next, they have not repatriated the Petitioner to the parent department immediate after cessation of the office by the Minister-in-charge. Lastly, as it appears, the Petitioner has not been given proforma promotion in the parent department. It is hoped that the respective departments will take note of the mistakes committed by them not to repeat the same in future.

15. It is further made clear that in the event the appropriate authority decides to revert the writ Petitioner to the Public Works Department, due care should be taken simultaneously to protect his rank, status, pay and allowances as may be permissible on the basis of his erstwhile seniority in the Public Works Department, it is desired that no order of reparation will be passed arbitrarily without taking care of the matters aforesaid, thereby forcing the employee concerned to initiate another round of litigation.

16. In the result, the petition is dismissed.

No order as to costs.