
(2010) 10 RAJ CK 0074

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5137 of 2010

Anada Ram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 22-10-2010

Acts Referred:

Constitution of India, 1950 — Article 21A

Citation : (2011) 1 RLW 885

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—Heard the learned Counsel s for the parties.

2. The batch of these writ Petitioners have been filed by the Cluster Resource Centre Facilitators (CRCF for short). The Cluster Resource Centre Facilitators (CRCF) who were so designated under the "Sarva Shiksha Abhiyan" run by the Rajasthan Council for Elementary Education ("Council" for short) in a Scheme funded by the Central Government, are Grade III Teachers originally appointed in parent Education Department of the State Government, who upon deputation under the Council were so designated as CRCF to undertake the work of coordination of various schools working in rural areas under the Panchayati Samities and their duties were enumerated in the Scheme formulated by the said Council under the Sarva Shiksha Abhiyan-; a country-wide programmed funded by the Central Government.

3. The challenge by the present writ Petitioners in this set of writ petitions is against the order passed by the Dy. Secretary (Planning) Elementary Education of Government of Rajasthan on 3.9.2010 whereby all such deputations of Grade III Teachers as CRCF with the Council was cancelled and they were repatriated as Grade III teachers to their parent Education Department with the State Government.

4. The Petitioners approached this Court challenging the said order dtd. 3.9.2010 mainly on the following grounds:

(i) That few of the Petitioners were sent on deputation as CRCF only recently in the month of July, 2010 after holding a regular screening/selection by the Council for a period of two years and therefore, just after two months, there was no reason to cancel their deputation and such cancellation of deputation is arbitrary and illegal. Reliance for this purpose was placed by the learned Counsel for the Petitioner on para 32 of a decision of Hon"ble Supreme Court in the case of Union of India (UOI) through Govt. of Pondicherry and Another Vs. V. Ramakrishnan and Others,

(ii) With the cancellation of deputation of present Petitioners of CRCF, work of coordination of various school under the Sarva Shiksha Abhiyan which was being done by the Petitioners, which work was transferred to the Head Master of Nodal School within the Panchayat Samiti, is bound to suffer and that will defeat the very Scheme of "Sarva Shiksha Abhiyan". The Petitioners also urged that the Headmaster of such nodal schools cannot be expected to additionally undertake this kind of work of coordination which was being done by the CRCF in view of their already existing responsibilities of working as Grade I or Grade II teachers in such nodal schools and that will further prejudice the interest of the students of such schools.

(iii) The Petitioners also urged that for achievement of objectives of universalization of elementary education (UEE for short) in time bound manner as mandated by 86th amendment to the Constitution of India making free and compulsory education to the children of 6-14 years of age group for which the said "Sarva Shiksha Abhiyan" was being financed by the Central Government, the post of CRCF in organizational hierarchy formulated by the Respondent-Council was an important component in the same and in view of hard duties of CRCF assigned to them, with the cancellation of their deputation, the aforesaid objectives of UEE, cannot be achieved by the Respondents.

(iv) The Petitioners also urged that the Scheme of "Sarva Shiksha Abhiyan" is not yet over and therefore, there is no justification of cancelling deputation of the Petitioners as CRCF in the midst of implementation of the said Scheme, which as aforesaid, is a time bound plan and therefore, the impugned order dtd. 3.9.2010 is illegal and deserves to be quashed by this Court.

(v) The learned Counsel for the Petitioners on the basis of aforesaid contentions relying upon the decision of the Hon"ble Supreme Court in the case of UOI v. Ramakrishnan (supra), which is reproduced below, urged that the present writ petition deserves to be allowed and the impugned order dtd. 3.9.2010 deserves to be quashed:

32. Ordinarily, a deputationist has no legal right to continue in the post. A deputationist indisputably has no right to be absorbed in the post to which he is deputed. However, there is no bar thereto as well. It may be true that when

deputation does not result in absorption in the service to which an officer is deputed, no recruitment in its true import and significance takes place as he is continued to be a member of the parent service. When the tenure of deputation is specified, despite a deputationist not having an indefeasible right to hold the said post, ordinarily the term of deputation should not be curtailed except on such just grounds as, for example, unsuitably or unsatisfactory performance. But, even where the tenure is not specified an order of reversion can be questioned when the same is mala fide. An action taken in a post haste manner also indicates malice.

5. Per contra, the learned Counsel appearing for the Respondent-Council, Mr. P.R. Singh, submitted emphatically as under:

(i) This Court has already dismissed one such writ petition in the case of Shiv Shankar Shrimali v. State of Rajasthan and Ors. - SBCWP No. 9138/2010 vide order dtd. 6.10.2010 with the following extracted observations and therefore, the present set of writ petitions also deserves to be dismissed for the same reasons. He relied upon para 6 to 10 of the aforesaid judgment, which are extracted below:

6. Mr. P.R. Singh learned Counsel appearing for Rajasthan Elementary Education Council in other matters including the aforesaid case, in which the interim order was granted by this Court, was called upon to explain the matter from the side of Respondents. He submitted that in some of the writ petitions he has already filed reply to the writ petition and a copy of one such reply in the case of Anada Ram and Ors. v. State of Rajasthan (S.B. Civil Writ Petition No. 5137/2010) was placed before the Court for perusal. Mr. P.R. Singh also explained before the Court that on account of paucity of funds to run "Sarva Siksha Abhiyan" funded by the Central Government, the said Rajasthan Elementary Education Council has taken a decision to do away with the positions of CRCF (Gr. II Teachers) and the work of CRC Fs viz., coordination of various Government schools in various panchayat samities in one cluster comprising about 40-45 schools is sought to be now handed over to the concerned Headmaster of Nodal School within one Panchayat Samiti, who coordinates programmes of Sarva Shiksha Abhiyan within the Panchayat Samiti comprising of 5 to 10 schools and since that work is being efficiently handled by the Headmaster of such Nodal School, in order to save money on the payment of pay and allowances, the Respondent Rajasthan Elementary Education Council has taken a decision to cancel such deputations as CRCF and repatriate Gr. III Teachers to their parent department for working as Gr. III Teacher in other Government Schools where their services may be required for teaching the students in the Government schools. He submitted that even the deputation of the persons who were sent on deputation for- two years in the beginning of the year 2010 was cancelled after a period of two months or so in which cases this Court has issued notices to the Respondents and has passed the aforesaid interim order and even such cancellation of deputation in those cases is justified. He, however, submitted that under the garb of such

interim order even those persons working as Gr. III Teachers whose deputation with the Rajasthan Elementary Education Council for a period of more than two years have obtained interim orders from this Court and thus the very purpose of cancelling the deputation is frustrated and such teachers of Gr. III are not being allowed to be repatriated to their parent department. He submits that no legal right vests in the Petitioners who are Gr.III Teacher, to continue their deputation with the Rajasthan Elementary Education Council which is already short of funds and unable to run Sarva Shiksha Abhiyan Properly whereas the work of CRCF is being efficiently handled by the Headmasters of the Nodal Schools within the same Panchayat Samiti. He also submitted that policy decision vide Annex. 4 dated 27.8.2008 relied upon by the Petitioner no more survives as this was the position of 2008 and in the year 2010 only Block Resources Centre Facilitators which are manned by one Gr. I Teachers of the State-Government are required by Respondent Rajasthan Elementary Education Council to run this Sarva Shiksha Abhiyan and CRCF persons are no more required in view of the aforesaid position and therefore cancelling of their deputation by the orders passed by the Deputy Secretary of the Elementary Education (Planning) School and Sanskrit Education Department vide order Annex. 5 dated 3.9.2010 is justified.

7. Having heard learned Counsel s, this Court is of the view that the statement of the learned Counsel for the Petitioner that the present case is identical to the case of Hotu Khan and Ors. v. State of Rajasthan (S.B. Civil Writ Petition No. 8493/2010, is a wrong statement made by the counsel on the face of it. While noticing the contentions of the learned Counsel for the Petitioners in that case also, as reproduced above, it was clearly noted by this Court that deputation for two years was made of the persons selected in pursuance of the fresh advertisement issued by the Respondent council on 28.1.2010 and such deputation of two years was revoked after a period of two months only and therefore the Court was inclined to invoke its extraordinary jurisdiction and notices were issued to the Respondents while granting the interim order.

8. Be that as it may, the facts of the present case are clearly distinguishable from the facts obtaining in that writ petition. In the present case, the deputation of the Petitioner as CRCF took place vide order Annex. 2 dated 5.6.2007 about three years back. Though no specific extension order has been passed in favour of the Petitioner continuing such deputation, for the reasons best known to the Petitioner and Respondents, it continued until now as alleged in the writ petition. The apparent grievance of the Petitioner is against the general order passed by the Deputy Secretary of the Elementary Education (Planning), School and Sanskrit Education Department vide Annex. 5 dated 3.9.2010 cancelling all such deputations by one stroke. Since law is well settled in this regard that deputationist cannot claim a continuation in the deputed department as a matter of right and it lies in the discretion of the concerned department only, the Petitioner is not entitled to invoke jurisdiction of this Court claiming any sort of protection against cancellation of such deputation. The reliance placed by the learned Counsel for the Petitioner on Annex. 4 communication dated 27.8.2008

that deputation was to continue for a period of five years is also misplaced. That position and stand of the Rajasthan Elementary Education Council obviously stands changed in view of the reply of the Respondent council, as explained by learned Counsel Mr. P.R. Singh that on account of paucity of funds all deputations of CRCF have been cancelled and only deputation of Gr. I Teachers on the position of BRCF and one post of Resource Person is continued.

9. In view of above stand of the Respondents and the facts of the present case being distinguishable and legal position is to be settled against the Petitioner, this Court is not inclined to interfere in the present matter at the instance of the Petitioner.

10. The petition being meritless is bound to be dismissed and same is hereby dismissed. No costs.

Sd/-

(Dr. Vineet Kothari), J.

(ii) That the Petitioners were taken on deputation with the Council for the purpose of rendering the services in the Cluster Resource Centers made in accordance with the State Mission Authority and these Cluster Resource Centers are consisting of 40 to 60 schools of one area. Prior to issuance of the order dtd. 3.9.2010 the work of these Cluster Resource Centre was being performed by the CRCF. However, the State Government and the Council after having taken a policy decision cancelled all the deputation of CRC Fs and the said Clusters were made of the schools falling within one Gram Panchayat under which generally upto ten schools are established by the State Government and in furtherance of this decision for the Sarva Shiksha Abhiyan all the Nodal schools are being made as Cluster Resource Centers. This has been done with a view to provide better supervision and better cooperation and assistance in between the SSA and Elementary Education and therefore, all the nodal schools have been proposed and accepted to be Cluster Resource Centers. Besides better cooperation and assistance the Council and the State Government would be in a position to curtail a huge amount to the tune of Rs. 88.59 crore and the work of CRCF has to be performed by the Head Master of the Nodal Schools.

(iii) That the duties assigned to the CRCF can very well be performed by the head-masters of Nodal schools who are nodal incharge too, therefore, the Council in order to curtail the heavy expenses have decided to abolish the post of CRCF and in this way no person is being deputed as CRCF in 19 districts and therefore, no budget was provided under this head for these 19 districts from the year 2006. However, the system of CRCF was going on in only 14 districts like Jodhpur, Udaipur, Pali, Barmer, Banswara, Dungarpur, Rajsamand, Pratapgarh, Chittorgarh, Jaisalmer etc. and therefore, with a view to implement the scheme uniformly the Council proposed to repatriate the CRCF working on deputation which was accepted and approved by the State Government after thorough deliberation and therefore, the order dtd. 3.9.2010 terminating the deputation of

CRCF was passed wherein no illegality was committed. In the State of Rajasthan in all 4172 Clusters were sanctioned by the Government of India for the purpose of implementation of schemes of Sarva Shiksha Abhiyan out of which 1855 Clusters of 19 districts had been kept under the Nodal schools after completion of 1st and 2nd phase of District Primary Education Programme and therefore, now the policy decision has been taken by the State Government to assign the work of monitoring in the Clusters by the Head-master, nodal Schools which by no mean can be said to be impracticable rather the same is more beneficial.

(iv) That in the State of Rajasthan in all 80765 schools are run at Primary and Upper Primary level and for 20 to 50 schools, one cluster is formed on which one CRCF is posted who was performing the duties assigned to them. However, due to large number of schools in one cluster the monitoring, quality education and support to the school-teachers could not be performed properly by the CRC Fs, on the other hand in the Primary Education Department at every village Panchayat level, one Government Upper Primary School is made as a Nodal School, under which generally maximum 10 schools are placed of which the monitoring of enrolment, mid-day meal, betterment in the examination results, increase in the infrastructure etc. which is almost similar work of the CRCF is being done by its Headmaster.

(v) That on behalf of the Petitioners, it was argued that under the Nodal School Headmaster, at many places, more than 10 schools are under his supervision. In reply to the aforesaid contention, the Respondents submitted that in some exceptional cases where the Gram Panchayat is consisting of large number of villages of heavy population, the number of schools may be more, but this is in very exceptional circumstances and thus, it cannot be generalized. The Nodal School Headmasters would be able to efficiently supervise the schools falling in his cluster. It is further submitted that as per the SSA State Mission, the Cluster Resource Centers are the unit at ground level and practically the Nodal School Headmasters are doing well in other 19 districts, where, the CRC Fs are not posted. Otherwise also this is with a view to grant the academic support and that can be given better by a person holding higher post as well as supervisory experience of being Headmaster as comparison to teacher grade III. Further more, these Nodal Schools have been ordered to be made as Cluster Resource Centers which is definitely having much lesser number of schools in comparison of earlier Cluster Resource Centre. Another important aspect of the matter is that the Nodal schools would be specified Cluster Resource Centers. In these circumstances, the working in the Clusters would be better as well as easier, therefore, in assigning this job to the Headmaster, Nodal School, nothing wrong has been done. The learned Counsel for the Respondents further argued that the Petitioners wrongly averred that in 19 districts the aims and objects of SSA were achieved, therefore, the CRC Fs were not deputed. As a matter of fact, in all the clusters of these 19 districts, Head Master, Nodal Schools were performing well and now with a view of uniformity, resource person are going to be deputed at Block levels in these districts.

(vi) The learned Counsel for the Respondent-Council further urged that the post of resource person is entirely different to be filled in by the candidates holding the post of Teacher Grade I or II having the supervisory experience with an additional qualification of experience of taking part in the training programmes of ten years. This post is kept as it is in the 14 districts shown hereinabove and likewise in all other 19 districts where the post of CRCF was abolished in the year 2006, these Resource persons would be deputed. Thus, in order to bring the uniformity in the entire districts of the State the post of Block Resource Centre Facilitator and Resource person would be in existence whereas the CRC Fs are being repatriated as the work assigned to them can properly performed by the Head-master, Nodal School.

6. Thus, Mr. P.R. Singh, learned Counsel for the Respondent-Council urged that above writ petitions are absolutely misconceived and they deserve to be dismissed with exemplary costs. He further urged that in fact Grade III teachers who have been rightly repatriated back to their parent Department instead of doing actual teaching work are more interested in doing the work of coordination of various schools as CRCF and in fact on account of their inefficient working and in order to save huge money on payment of their salary and deputation allowances which would now be saved but the Petitioners have invoked the extraordinary jurisdiction of this Court on misconceived grounds. He further submitted that the legal position about deputation is very clear and the aforesaid judgment relied upon by the learned Counsel for the Petitioner itself helps the case of the Respondents and deputationists do not have any vested right to continue on such deputation endlessly and same can be revoked at the discretion of concerned Council or the Department in its own wisdom. No arbitrariness can be attributed to the policy decision taken in the impugned order dtd. 3.9.2010 and the same deserves to be upheld by this Court. He also submitted that in fact only a very few out of the lot of Petitioners were given such deputation in the month of July, 2010, whereas the majority of the Petitioners before this Court have already enjoyed such deputation for last 3 to 5 years and they cannot be said to have any grievance with the cancellation of their deputation when all such deputations have been cancelled by the order dtd. 3.9.2010. He, therefore, prayed for dismissal of the writ petitions and vacation of ex parte interim order granted in some of the writ petitions.

7. Having heard the learned Counsel s at length and by the consent of counsels on both the sides, these writ petitions were taken up for final disposal at admission stage and after hearing the arguments at length and taking the written submissions on record, the petitions were heard and are being disposed of by this order.

8. In the considered opinion of this Court, the legal position with regard to deputation is now clearly well settled and it does not require much of debate. The learned Counsel s for the Petitioners themselves very clearly submitted that the legal position as summarized in para 32 of the aforesaid Apex Court decision

does not give any blanket and vested right to the Petitioners to continue endlessly on such deputation. However, no cogent reason has been given for cancellation of deputation whole hog by the impugned order dtd. 3.9.2010 passed by the Dy. Secretary. Therefore, such cancellation of deputation is illegal. This Court is unable to agree with the contentions raised by the learned Counsels for the Petitioners because it is a policy decision of the State Government to cancel such deputation of Grade III Teachers on the post of CRCF with the Council to work under the "Sarva Shiksha Abhiyan" and in view of the contentions raised by the Respondents that such work of CRCF is being efficiently carried out by the Head Masters of nodal schools and they would save approximately Rs. 89 crores by cancelling such deputation of all CRC Fs and would be able to utilize the same fund for effective implementation of "Sarva Shiksha Abhiyan" in such other Schools, this Court is unable to take any exception to the stand taken by the Respondents in the matter. The policy decision as is well settled, cannot be interfered with by this Court in its extraordinary jurisdiction unless such policy decisions are shown to be demonstrably perverse or arbitrary or adversely affect the fundamental and legal right of the Petitioners. No such case of violation of any fundamental or vested right is even set up by the present writ Petitioners.

9. The contention that they were efficiently doing their work as CRCF and project of "Sarva Shiksha Abhiyan" itself would suffer, if deputation is cancelled or that the Head Masters of Nodal School cannot carry out the work which was being done by them as CRCF, is hardly a ground for this Court to quash such policy decision of the Respondent-Council by which the deputation of CRCF was cancelled by one stroke by the impugned order dtd. 3.9.2010. The said cancellation of deputation cannot be said to be illegal, arbitrary or perverse in any manner, for the aforesaid allegations.

10. This Court feels strongly concerned about the insistence of the Petitioners to work as CRCF to carry out the work of coordination, which is a kind of a managerial work, rather than actual work of teaching the students, which work as Teacher Grade III they were hitherto doing in their parent Department/schools run by the Education Department of the State of Rajasthan. The sort of inertia or culture of not doing their real duties, but insisting of doing more a work of managerial nature seems to be the back bone, though unsaid and unsung, of the present case of the Petitioners. In the considered opinion of this Court, the teachers are basically and essentially required to do teaching work, namely teaching the students in class rooms and it is indeed unfortunate that the teachers in our country are more often than not called upon to discharge the duties which are clerical or managerial in nature like Enumerators in census work, workforce for election duties and compiling various kind of data and information's, which requires lot of field work. The duties of CRCF are also more of this nature, which require field duties to be carried out by these teachers. One fails to understand as to how the teachers deviating from their real and essential work of teaching in class rooms, could feel more happy and satisfied with this

kind of managerial work and have invoked extraordinary jurisdiction of this Court raising a challenge against cancellation of deputation and seeking protection to continue as CRCF. Perhaps more money and lesser work, seems to be catching their eyes. This Court cannot become a tool to countenance this tendency, therefore, it would be appropriate to re-emphasize that real and essential work of teachers, is teaching in the class rooms for the benefit of the students for which they were appointed and are paid for and which is more befitting and suitable for them to do.

11. This Court finds considerable force in the contention raised on behalf of the Respondent-council as narrated above that in absence of any legal right with the Petitioners to continue on the deputation and saving of huge amount of money which could be utilized in more appropriate manner to implement the "Sarva Shiksha Abhiyan" for the benefit of the students and to implement the provisions of Free and Compulsory Education Act, 2009 and Article 21A of the Constitution of India. This Court is unable to uphold the challenge of the Petitioner to the cancellation of all deputations of Grade III Teachers as CRCF by the impugned order dtd. 3.9.2010. For the same reasons and in the same spirit, this Court had already expressed this view while disposing of another writ petition on 6.10.2010 of one Shiv Shankar Shrimali (supra).

12. Accordingly, these writ petitions are liable to be dismissed and the same are accordingly dismissed. No order as to costs.