
(2012) 07 SC CK 0077

In the Supreme Court Of India

Case No : Civil Appeal No. 5225 of 2012 (Arising out of SLP (C) No. 10577 of 2011)

Ashok Kumar Ratilal Patel

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 16-07-2012

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16

Citation : (2012) AIRSCW 4145 : (2012) 6 AWC 5936 Supp : (2012) 6 AWC 5936 : (2012) 134 FLR 755 : (2013) 1 GLR 126 : (2012) 4 JCR 64 : (2012) 6 JT 498 : (2013) LabIC 357 : (2013) 1 MhLj 22 : (2013) MPLJ 3 : (2012) 6 SCALE 448 : (2012) 7 SCC 757 : (2012) 3 SLJ 283 :

Hon'ble Judges : Sudhansu Jyoti Mukhopadhyaya, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Nikhil Goel, for the Appellant; Amitesh Kumar and Navin Prakash, for the Respondent

Final Decision : Disposed Of

Judgement

Sudhansu Jyoti Mukhopadhyaya, J.—Leave granted. This appeal has been preferred against the order dated 23rd March, 2011 passed by the Gujarat High Court whereby the High Court dismissed the writ petition and affirmed the order of cancellation of offer of appointment as was issued to the Appellant.

2. The Appellant who was initially appointed on 25th August, 2000 as Director, Computer Department in the Hemchandracharya North Gujarat University (hereinafter referred to as the 'North Gujarat University') in the scale of pay of Rs. 12,000-420-18,300, applied for the appointment to the post of Director on deputation pursuant to an advertisement No. Estt.09-(01)2009 dated 13th September, 2009 published in the Newspaper (Times of India) by the 2nd Respondent. By the said advertisement the candidates were informed that the pre-revised scale of pay of the post of Director is Rs. 14,300-400-18,300 with further intimation that the said scale of pay will be revised to the pay band +

Grade Pay of PB-4 Rs. 37,000-67,000 + 8,700. Applications were called for from amongst suitable and eligible persons having Master Degree with 12 years' experience in Teaching or Research in Central or State Government or University.

3. The Appellant in his application dated 24th September, 2009 shown details of his qualifications in the prescribed proforma, including the scale of pay as he was receiving, as shown below:

11. Employment Record (details in reverse chronological order, starting with the last job)

Sl. No.

Name & address of the employer

Period of service in each post From to

Designation of Post held & Scale of pay

Nature of work and level of responsibilities

1.

H. North Gujarat University, PATAN Gujarat State State University

Since August 2000

Director Computer Department Rs. 12000-18300

Research, Teaching & Administration of department conducting UG, PG & Ph.D Prog.

In the Part-B of the said application, apart from the last pay scale he was receiving, the Appellant also mentioned the pay he was expecting, as mentioned below:

PART-B

1. (a) Present Pay Scale: Rs. 12000-420-18300

(University/State Govt.) (Pay likely to revise as per 6th pay)

(i) Basic Pay

Rs. 15,780.00

(ii) Dearness Pay+DA

Rs. 19,015.00

(iii) Others

Rs. 03,559.00

Total

Rs. 38,354.00

(b) Basic Pay expected: as per AICTE norms.

4. The case of the Appellant was considered along with others and after due selection the 2nd Respondent issued an offer of appointment on 15th February, 2010 and the letter was forwarded to the Registrar, North Gujarat University requesting the University to obtain acceptance of the above offer from the Appellant and forward it to the Council (AICTE) by 26th February, 2010. In the said letter, it was further requested that in the event of the acceptance of the above offer, the Appellant may be relieved as early as possible so as to enable him to join the Council latest by 13th March, 2010. The relevant terms and conditions for deputation attached with the offer letter dated 15th February, 2010 are quoted hereunder:

TERMS & CONDITIONS FOR DEPUTATION

1. Period of deputation: The deputation shall be for a period of one year and extendable for a total period of not exceeding three years on yearly basis w.e.f. the date, the offer assumes the charge of the post.

2. Post and scale of pay: Director PB-4 Rs. 37,400-67,000 + Rs. 8700 (Grade Pay).

3. Pay: During the period of deputation Dr. PATEL ASHOK RATILAL will have the either to get his/her pay fixed in the deputation post under the operation of normal rules or to draw pay of the post held by him in the parent Department plus a deputation (duty) allowance in accordance with and subject to the conditions, as modified from time to time and such other general or special orders issued by the Ministry of Finance.

5. The Appellant by his letter dated 20th February, 2010 informed the 2nd Respondent his readiness and acceptance to join the post of Director, AICTE, New Delhi. He also informed his parent University to relieve him to join AICTE on deputation within the joining date suggested by the Council, as evident from the letter dated 20th February, 2010 and is quoted hereunder:

Hemchandracharya North Gujarat University P.B. No. 21, University Road Patan - 384265(N.G)

Dated 20th February, 2010

NAAC Accredited "B" (CGPA) State University

To Chief Administrative Officer All India Council for the Technical Education, New Delhi.

Subject: An Application for the post of "DIRECTOR" on Deputation (Dr. A.R. Patel)

Ref. An advertisement letter from your office dated 15th February, 2010, with Ref. No.: FNo. 2-4/07/AICTE/

Rectt./Estt/2009/815.

Sir,

With respect to above subject, I am thankful to Council for opportunity given to me for work as a Director on deputation basis at AICTE. I am a Director at Computer Department of H. North Gujarat University in Pay Scale of Rs. 16400-450-20900-500-22400, with present basic pay Rs. 19100/-. (To be revised, very shortly, as per the 6th Pay UGC Pay Scale of PB-1, Rs. 37400-67000 + Rs. 10,000 (Academic grade pay)).

I hereby accept the offer of post of Director at AICTE, with my present pay as described above, I have requested my University to relieve me to join AICTE on deputation within joining date suggested by Council. Hence, I will join the Council as soon as HNG University relieve me.

Thanking you

Yours sincerely

(Dr. Ashok R. Patel)

6. The North Gujarat University in turn by letter dated 5th March, 2010 informed the 2nd Respondent the approval of deputation given by the Executive Council of the North Gujarat University with further information that the Appellant will be relieved on 17th March, 2010. The 2nd Respondent was further informed that the present basic pay of the Appellant is Rs. 19,100 in the pay scale of Rs. 16,400-450-20,900-500-22,400 and very shortly the same will be revised as per the 6th Pay Commission and will be fixed in Revised Pay Band + Academic Grade Pay of Rs. 37,400 - 67,000 + Rs. 10,000. The 2nd Respondent on receipt of the said letter issued the impugned letter dated 11th March, 2010 and withdrew the offer of appointment of the Appellant on the ground that deputation from higher post to lower post is not admissible under rules. The relevant portion of the ground given in the impugned letter dated 11th March, 2010 is extracted hereunder:

I am directed to inform you that your office vide their letter No. Estt/1572/2010 dated 5th March, 2010 has informed that your present basic pay is Rs. 19,100 in the pay scale of Rs. 16400-450-22400 and very shortly it will be revised as per the UGC 6th Pay Commission and will be fixed in the revised pay band+Academic Grade Pay of Rs. 37400-67000+Rs. 10,000/-. The post of Director, in AICTE, offered to you is in the revised bay band of Rs. 37400-67000+Rs. 8700/-, which is a lower grade. Deputation from higher post to lower post is not admissible under rules, the aforesaid offer letter dated 15-2-2010 issued to you, hereby stands withdrawn with immediate effect.

7. The cancellation of offer of appointment was followed by another advertisement which was challenged by the Appellant initially by filing a representation dated 20th January, 2011 but having not received any information

he preferred a writ petition before the Gujarat High Court.

8. The Division Bench of the Gujarat High Court by the impugned judgment dated 23rd March, 2011, dismissed the writ petition on the ground that the Appellant has no right to claim entitlement to the post of Director and cannot compel the Respondent to take him on deputation.

9. Learned Counsel appearing on behalf of the Appellant submitted that the case of the Appellant was not a case of transfer on deputation but was a case of appointment on deputation after following all due procedures for appointment and selection. In absence of any illegality in selection, it was not open to the Respondents to cancel the offer of appointment. Such action is arbitrary and violative of Article 14 of the Constitution of India.

10. On the other hand, according to the Respondents, they having realised that the pay of the parent department of the Appellant could not be paid as he was getting higher pay as Director in the North Gujarat University, the offer of deputation was withdrawn. It was further contended that a person getting higher scale of pay cannot be deputed against a lower scale of pay and the Appellant has no right to claim his entitlement to the post of Director, AICTE.

11. Ordinarily transfers on deputations are made as against equivalent post from one cadre to another, one department to another, one organisation to another, or one Government to another; in such case a deputationist has no legal right in the post. Such deputationist has no right to be absorbed in the post to which he is deputed. In such case, deputation does not result into recruitment, as no recruitment in its true import and significance takes place as the person is continued to be a member of the parent service.

12. However, the aforesaid principle cannot be made applicable in the matter of appointment (recruitment) on deputation. In such case, for appointment on deputation in the services of the State or organisation or State within the meaning of Article 12 of the Constitution of India, the provisions of Article 14 and Article 16 are to be followed. No person can be discriminated nor it is open to the appointing authority to act arbitrarily or to pass any order in violation of Article 14 of the Constitution of India. A person, who applies for appointment on deputation has indefeasible right to be treated fairly and equally and once such person is selected and offered with the letter of appointment on deputation, the same cannot be cancelled except on the ground of non-suitability or unsatisfactory work.

13. The present case is not a case of transfer on deputation. It is a case of appointment on deputation for which advertisement was issued and after due selection, the offer of appointment was issued in favour of the Appellant. In such circumstances, it was not open for the Respondent to argue that the Appellant has no right to claim deputation and the Respondent cannot refuse to accept the joining of most eligible selected candidate except for ground of unsuitability or unsatisfactory performance.

14. In the advertisement dated 13th September, 2009, the pre-revised scale of pay of the post of Director was shown at Rs. 14,300-400-18,300. It was mentioned that the said pay scale will be revised to the pay band + grade pay of Rs. 37,000-67,000 + 8700. No stipulation was made therein that a person receiving higher pay of scale or higher qualification is ineligible for appointment on deputation. On the contrary, in the offer of appointment, "the terms and conditions for deputation" it was specifically mentioned that the scale of pay of Director is PB-4 Rs. 37,400-67,000 + 8700 (Grade Pay) with following stipulation at Clause 3:

3. Pay: During the period of deputation Dr. PATEL ASHOK RATILAL will have the either to get his/her pay fixed in the deputation post under the operation of normal rules or to draw pay of the post held by him in the parent Department plus a deputation (duty) allowance in accordance with and subject to the conditions, as modified from time to time and such other general or special orders issued by the Ministry of Finance.

(Emphasis added)

Once such terms and conditions for deputation was intimated by the 2nd Respondent to the North Gujarat University, it was for the Appellant to decide whether he will accept the scale of pay as was offered or will continue to receive his fixed pay on deputation as per Clause 3. The Appellant by his letter dated 20th February, 2010, accepted the offer and had shown his desire to join the post of Director, AICTE with the pay as mentioned in the said letter; such acceptance being in consonance with the terms and conditions of deputation and the offer of appointment dated 15th February, 2010, it was not open for the 2nd Respondent to cancel and withdraw the offer of appointment. Going by the principles as referred above, we are constraint to state that the High Court failed to appreciate the difference between "transfer on deputation" and "appointment on deputation" and erred in holding that the Appellant has no right to claim entitlement to the post of Director. As the Appellant was selected after due selection and was offered appointment on deputation, and, in absence of any valid ground shown by the Respondents, we hold that the Appellant has a right to join the post and the Respondents were bound to accept his joining.

15. For the reasons aforesaid, the impugned order of withdrawal of appointment dated 11th March, 2010 and the order of the Division Bench of Gujarat High Court cannot be sustained and they are accordingly set aside. As the post of Director is vacant, in view of the interim order of this Court dated 9th May, 2011, we direct the 2nd Respondent to accept the joining of the Appellant for a period of one year on deputation which is to be counted from the date of his joining and other terms and conditions of deputation will remain same. The North Gujarat University is directed to relieve the Appellant with further direction to 2nd Respondent to accept the joining of the Appellant within one week from the date of reporting by the Appellant. The appeal is allowed with the aforesaid observations and directions. There shall be no order as to costs.