
(2013) 09 MP CK 0214
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1898 of 2013

Chhotelal Shakyawar

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 06-09-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 09 MP CK 0214

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : D.K. Katare, for the Appellant; Nidhi Patankar, Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sujoy Paul, J.—By filing this petition under Article 226 of the Constitution, the petitioner has challenged the order, Annexure P/1 dated 2.3.2013, whereby the petitioner is repatriated to his parent department. Shri D.K. Katare, learned counsel for the petitioner submits that the petitioner was taken on deputation by the respondents. Thereafter he was placed under suspension by order dated 5.10.2012 (Annexure P/4). However, suspension was revoked on 10.1.2013 (Annexure P/6). Thereafter the petitioner was sent on deputation by Annexure P/9 dated 30.1.2013. The petitioner was relieved and submitted his joining at Gwalior in obedience of Annexure P/9. However, the respondents have repatriated him by impugned order.

2. Criticizing this order, Shri Katare submits that the petitioner's suspension is revoked, which shows that nothing is found against him and, therefore, this cannot be a reason for repatriating him. He relied on Union of India (UOI) through Govt. of Pondicherry and Another Vs. V. Ramakrishnan and Others, to submit that the order of repatriation before completion of tenure of deputation is bad in law. In addition, Shri Katar submits that as per Annexure P/13 with rejoinder, for repatriation consent of both the departments is required which is

not here.

3. Per Contra, Smt. Patankar supported the order and submits that the petitioner was taken on deputation initially on 30.9.2008. He has completed the maximum period prescribed for deputation, i.e., four years as per GAD Circular dated 6.1.1986 (Annexure R/3) and, therefore, the petitioner has no enforceable right to continue on deputation. She submits that the reasons assigned in Annexure P/1 are justifiable for repatriating the petitioner. No legal right of the petitioner is infringed.

4. I have heard learned counsel for the parties and perused the record.

5. The judgment cited by Shri Katore in the case of V. Ramakrishnan (supra) has no application in the facts and circumstances of the present case. In the said case repatriation was made before completion of the tenure of deputation whereas in the present case, as per Annexure R/3 the maximum period of deputation (4 years) is already over. There is no material on record to show that any further extension is obtained for deputation through General Administration Department, as required in Annexure R/3. Even in V. Ramakrishnan (supra) it is mentioned that repatriation can be made for unsuitability and unsatisfactory performance. Annexure P-1 shows that the petitioner's work was not found satisfactory and he is subjected to disciplinary action.

6. So far the circular, Annexure P/13 is concerned, it is only an executive instruction and in view of the judgment in Kunal Nanda Vs. Union of India and Another, the said circular cannot be enforced. In Kunal Nanda (supra), the Apex Court opined as under:--

A deputationist can always and at any time be repatriated to his parent department, at the instance of either borrowing department or parent department.

The said judgment of Supreme Court is recently followed by the Division Bench in Dr. Madhubala Sharma and Others Vs. Union of India and Others,

7. There is no right to continue on deputation nor there exists any right of absorption. The borrowing department is well within its right to repatriate the petitioner for the reason mentioned in Annexure P/1. No legal, vested, statutory or constitutional right of the petitioner is infringed. Petition has no substance. It fails and is hereby dismissed. No costs.