
(2009) 07 SHI CK 0019
In the High Court Of Himachal Pradesh

Dev Raj Bansal

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 16-07-2009

Acts Referred:

Citation : (2009) 2 ShimLC 390

Hon'ble Judges : Surinder Singh, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—By means of this writ petition, the petitioner has challenged the order dated 5th August, 2005 whereby he has been repatriated to his parent department i.e. the HPPWD.

2. The admitted facts are that the petitioner was working as Junior Engineer in the HPPWD. The Director (Transport) to the Government of Himachal Pradesh wanted to fill-up two posts of Motor Vehicle Inspector by way of secondment basis from the employees of the State Government who possessed the requisite qualifications on secondment basis. The terms and conditions were that the post was to be initially filled up for only two years. No deputation or foreign allowance was payable. The petitioner was appointed as Motor Vehicle Inspector on secondment basis on 3rd June, 2003. Thereafter, it appears that his services were repatriated to his parent department in 2003 itself but on a representation being made by the petitioner he was allowed to continue as Motor Vehicle Inspector on secondment basis vide order dated 29th August, 2003.

3. The petitioner was finally repatriated to his parent department vide impugned order, which reads as follows:

OFFICE ORDER

Sh. Dev Raj Bansal, J.E. (Mechanical) working in this department on secondment basis as MVI Bilaspur Distt. Bilaspur, H.P. is hereby repatriated to his parent

department i.e. HPPWD with the direction to report for duties to the Engineer in Chief, HPPWD, Shimla - 171001. He will stand relieved with immediate effect.

-By Order -

Director Transport H.P.Shimla -171004.

4. The petitioner admittedly was also relieved pursuant to the said order on 5.10.2005.

5. He filed the original application before the learned Tribunal on 27th October, 2005 and on the same date interim order was passed in favour of the petitioner, which reads as follows:

Sh. B.S.Parmar, learned Additional Advocate General waives service of notice on behalf of respondent No. 1. Reply be filed within six weeks. List thereafter.

Issue notice to respondent No. 2 with direction to file the reply within the same period.

In the meantime, the respondents are directed to allow the applicant to work at the present place of posting.

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6. The main ground raised by the petitioner in his original application was that he has a right to be permanently absorbed in the post of Motor Vehicle Inspector and the respondents have no right to repatriate him. In para 6.7 of his application, the petitioner made reference to some complaint filed by one Shri Kanwar Singh against the State of Himachal Pradesh wherein some allegations had been levelled against the petitioner. It was alleged that all of a sudden the impugned order had been issued illegally and arbitrarily and since the petitioner has acquired the status of permanency he should not be repatriated to his parent department. It was also clearly stated in the application that the petitioner has been relieved but reliance was placed on a judgement of this Court and it was urged that the relieving is immaterial if the transfer was arbitrary.

7. Reply was filed by the State. In the reply it is stated that the petitioner has no right to continue on secondment basis and it was the prerogative of the department whether to continue with him or not. It was also urged that the petitioner had already spent four years in the department as against the initial appointment on secondment for two years. In reply to para 6.6 the averments made by the petitioner were denied and it was stated that the lapse on behalf of the petitioner could not be considered as a routine one and raised a doubt about the integrity of the "person involved".

8. Shri P.P.Chauhan, learned Counsel for the petitioner, has strenuously contended before us that the order Annexure A-1 is a punitive order and being a punitive order even if it is worded in innocuous language the same is illegal and liable to be set-aside.

9. We have gone through the entire records and find that the petitioner has no right what-so-ever to stay in the Transport Department. He is a permanent employee of the Public Works Department. He was sent on secondment basis for a period of two years only to the Transport Department. Just because he has continued to serve there for four years does not make him an employee of the Transport Department and the Transport Department has full right to repatriate the petitioner to his parent department. In absence of any statutory rules no employee who is sent on deputation or on secondment to some other department can claim a right to be absorbed permanently in that department. We also fail to understand how the petitioner is adversely affected by his repatriation.

10. As far as the plea that the order is punitive in nature is concerned, we are not in agreement with the submissions made. We have already quoted the order in-extenso here-in-above. The order is an order of repatriation simplicitor and does not cast any stigma on the petitioner. Even in the reply, the respondents have not stated that the petitioner was repatriated because his work and conduct was not found unsatisfactory. The averments made in para 6.6. of the reply are in specific reference to the allegations made by the petitioner himself who raked up the issue of some consumer complaint. These averments made cannot be termed to be the foundation or the motive of the order in question.

11. Shri P.P.Chauhan, learned Counsel has placed reliance on a judgement of the Kerala High Court, delivered in C. Thiraviam Pillai v. The State of Kerala and Ors. 1976 (2) SLR 395. This judgement has no application to the facts of the case. In the case before the Kerala High Court, the employee was posted as BDO on deputation and the terms of the appointment clearly indicated that this deputation would be for a period of five years. However, a right was given to the Development Commissioner to repatriate an employee earlier if the work of the employee was found to be unsatisfactory. Thus when an employee was repatriated before five years, a presumption would have arisen that his work has been found unsatisfactory. The Kerala High Court in an earlier judgement had indicated that in case the competent officer files an affidavit that on an honest appraisal of the work of the employee his work had been found unsatisfactory no relief could be given to the employee. But in the case quoted before us there was no material to show that any appraisal of the work of the employee was ever made. It is in these circumstances that the order was held to be punitive in nature.

12. In view of the above discussion, we find no merit in the petition, which is rejected.

13. Before parting with this case, we must observe that the stay order was granted in favour of the petitioner in a very cursory manner. No doubt, the petitioner has cited a judgement of this High Court, which has held that in case the transfer order of an employee is patently illegal the same can be stayed even if the employee has been relieved but before granting such a relief the Court

granting the stay must clearly indicate how it has come to the conclusion that the order is illegal or perverse. In the order dated 27.10.2005 which we have quoted in-extenso here-in-above, there is no indication to this effect. Even otherwise the principles laid down in transfer cases have no application in the case of repatriation.

14. In view of the above discussion, the petition is dismissed. The petitioner is directed to forthwith join his duties in the Public Works Department.