

(2004) 04 AHC CK 0086

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 20661 of 1999

Devendra Kumar

APPELLANT

Vs

Rajya Krishi Utpadan Mandi Parishad and Others

RESPONDENT

Date of Decision : 22-04-2004

Acts Referred:

Constitution of India, 1950 — Article 12, 14
Contract Act, 1872 — Section 23

Citation : (2004) 5 AWC 3861 : (2004) 3 UPLBEC 2318

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : V.B. Upadhyay, for the Appellant; V.K. Birla, B.D. Mandhyan, O.P. Lohia and Satish Mandhyan, for the Respondent

Judgement

R.B. Misra, J.—The present writ petition has been preferred to quash the order dated 18.3.1999 passed by the Additional Director (Administration) of Rajya Krishi Utpadan Mandi Parishad,, (inshort called "Mandi Parishad"), U.P. Lucknow (Annexure-18 to the writ petition) and the order dated 10.3.1999 passed by the Director, "Mandi Parishad", as referred in the order dated 18.9.1999. The petitioner has inter alia prayed for other relief including for quashing the unreasonable terms and conditions incorporated in the letter dated 5.7.1995 of the Managing Director, Sugar Corporation (Annexure-10 to the writ petition) so much so saying that the service of the petitioner had automatically come to an end after expiry of period of one year from the date of joining at "Mandi Parishad".

2. Heard Sri V.B., Upadhaya, learned Senior Counsel along with Sri Vidya Bhushan Upadhaya, for the petitioner and Sri V.K. Birla, learned Counsel for respondents No. 4 and 5 and Sri Satish Mandhyan, learned Counsel for "Mandi Parishad".

3. The facts giving rise to the present writ petition in brief are that the petitioner applied to the post of Junior Engineer (Civil) in respondent U.P. State Sugar

Corporation Limited (hereinafter called "Sugar Corporation") being fully eligible to the said post, was invited by Managing Director of "Corporation" by its letter 17.4.1985 (Annexure-1) for interview to be held on 3.5.1985, and was duly selected and appointed to the post of Junior Engineer (Civil). The select list dated 30.1.1986 is (Annexure-2 to the writ petition).

4. The petitioner reported for duty on 13.2.1986, and was kept on probation for a period of two years thereafter was confirmed to the said post. The petitioner has discharged his duties in different units of "Corporation" after being transferred from time to time under the orders of the superior officers. The different orders of the transfer and certificates are enclosed (Annexures 4, 5, 6 and 7 to the writ petition).

5. The petitioner came to know that in "Mandi Parishad", Junior Engineer was being taken on deputation. Consequently, the petitioner also applied for deputation by his application dated 10.2.1995 (Annexure-8 to the writ petition). The petitioner vide his letter dated 18.5.1995 informed the Corporation that he has given an undertaking that in case he was sent to "Mandi Parishad" on deputation, he would come back to the Corporation when recalled for being posted in any unit. Copy of the said letter is (Annexure-9 to the writ petition).

6. The Sugar Corporation allowed the petitioner to join the "Mandi Parishad" on deputation subject to the condition contained in the letter dated 5.7.1995 (Annexure-10 to the writ petition). The contents of the letter dated 5.7.1995 are given here as below:-

Uttar Pradesh State Sugar Corporation Limited.

Par/As . As C/3 (Av. Av.(C)/2260 Dinank 5th July, 1995 Adesh

Rajya Krishi Utpadan Mandi Parishad, Uttar Pradesh, Lucknow Ke Patrank Arth. (Ka)-2 (252/11)795-568, Dinank 13.6.1995 Ke Sandarbh Mein Sri Davendra Kumar, Avar Abhiyanta (Civil), Jo Vartman Samay Main Nigam Ki Vatalpur Ekai Main Tainat Hai, Ki Seva Mein Tatkalik Prabhav Se Rajya Krishi Utpadan Mandi Parishad Ko Eted Dwara Pratiniykti Par Ek Varsh Ke LiyeIsh Shart Ke Sath Uplabdh Kariyee Jati Hai Ki Parishad Mein Karya Grahan Karney Ki Tithi Se Ek Varsh Ki Ukt Nirdharit Pratiniyukiti Avadhi Purna Hote Hee Sri Davendra Kumar Ki Sevayen Nigam Se Swatah Hee Samapt Man Lee Jayagee. Vahya Sewa Ki Avadhi Mein Sri Davendra Kumar Ko Nigam Mein Anumanya Vatenman Avem Ush Par Anumanya Sabhi Bhatta Jo Samay Samay Par Dei Hai, Anumanya Honge. Jiska Sampurn Bhar Pratinukti Ki Sewa Avadhi Mein Rajya Krishi Utpadan Mandi Parishad Ko Vahan Kama Hoga.

Sri Davendra Kumar Ki Vahya Sewa Ki Anney Shertey Sanlagn Parishist Ke Anusar Hogi.

Sudhir Kumar, Prabandh Nirdeshak.

Subsequently, he was transferred in the "Mandi Parishad" at Ghaziabad on

5.7.1996. The petitioner was never recalled back to the parent department of "Sugar Corporation" but surprisingly the petitioner was reverted back to the parent department by the "Mandi Parishad" by an order dated 20.12.1996. (Annexure-15 of the writ petition). Subsequently, the said order was recalled by order dated 8.1.1997 (Annexure-16) and the petitioner was transferred to Bulanshahr. When the period of deputation had come to an end as per order dated 5.7.1995, the "Mandi Parishad" by its letter dated 21.7.1988 requested the "Sugar Corporation" to extend the period of deputation. In response to the said letter the "Sugar Corporation" wrote to the "Mandi Parishad" by its letter dated 17.2.1999 that the service of the petitioner had come to an end on expiry of the period of deputation as per terms and conditions contained in the letter dated 5.7.1995 as such there is no occasion for extension of service any more. The said letter dated 17.2.1999 is (Annexure-17 to the writ petition). The "Mandi Parishad" thereafter by its order dated 18.3.1999 (Annexure-18 to the writ petition) reverted the petitioner to the parent department, which is the main impugned order challenged in writ petition moreso, without affording the petitioner opportunity of hearing against the principle of natural Justice.

7. The main controversy involved in the present writ petition is as to whether the petitioner's lien in the parent department, i.e., Sugar Corporation could come to an end automatically on expiry of the period of one year as contained in the letter dated 5.7.1995 although he was continuing in service in the "Mandi Parishad" and as to whether the Sugar Corporation could legally prescribed a condition stipulating therein that the service of petitioner would come to an end in the parent department on expiry of period of deputation granted by said letter and as to whether such a condition was unreasonable, arbitrary, and violative of Article 14 of the Constitution of India and in derogation to the provisions of Section 23 of the Indian Contract Act.

8. The petitioner in Paragraphs 20 and 21 of the writ petition has clearly stated that the condition incorporated in the letter granting permission to work on deputation in the "Mandi Parishad" was unreasonable, arbitrary and in clear violation of law as well as principles of natural justice. The relevant paragraphs are referred as below :-

"20. That the general terms and conditions in regard to deputation does not contain any condition that services of the petitioner would come to an end after a period of one year and this particular condition has been added at the whims and fancies of the Managing Director by their letter dated 5.7.1995 and as such, no reliance has been placed on the disputed terms and conditions and the services of the petitioner could not be dispensed with in such an arbitrary and whimsical manner."

"21. That the aforementioned terms and conditions are totally unreasonable and arbitrary inasmuch as when the petitioner was going on deputation, the said terms and conditions could not have been attached and the said terms on the face of it appears to be unreasonable and liable to be struck down."

9. The petitioner being a permanent employee in the "Sugar Corporation" and having joined the "Mandi Parishad" on deputation, his lien in the parent department was automatically to come to an end after one year. In case the Sugar Corporation was not inclined to extend the period of deputation, it ought to have recalled the petitioner from the "Mandi Parishad". The petitioner had already given an undertaking to return to the parent department without any objection when called upon to come back. The "Sugar Corporation" never informed or asked the petitioner to return to his parent department and as such the service of the petitioner could not be dispensed with on the basis of conditions as contained in the letter dated 5.7.1995, (Annexure-10 to the writ petition) which turns out to be arbitrary and illegal inasmuch as the said condition was violative of Article 14 of the Constitution of India and Section 23 of the Indian Contract Act.

10. The following contentions were raised for and on behalf of the respondent "Sugar Corporation" :

(i) In view of a specific condition given in the order dated 6.6.1995 [the correct date is 6.6.1995 not 6.7.1995 as stated in writ petition, Para 9 of counter affidavit of "Sugar Corporation" (Annexure-CA-1 to the counter affidavit)] the petitioner was sent on deputation for a period of one year only with the condition that on completion of the period of deputation the service of the petitioner was to come to an end in the "Sugar Corporation".

(ii) In the facts and circumstances the petitioner himself had accepted the terms in writing, through his letter dated 29.6.1995 (Annexure 9-A to the writ petition).

(iii) The petitioner had accepted the terms in writing that he is being sent on deputation for a period of one year only and his services will come to an end in the Corporation after completion of the period of deputation as such by his own conviction petitioner relinquished his lien with parent department.

(iv) In view of the fact that the petitioner had accepted the terms and conditions of deputation that his lien and service shall come to an end in the parent department after completion of the period of one year but the petitioner has filed the present petition after a lapse of more than three years as such no relief can be granted to the petitioner as against the "Sugar Corporation".

11. The U.P. Fundamental Rules as contained in Financial Handbook, Vol. II-IV Chapter III, Rule-14-A contemplates as under :

"14-A (a) A Government Servant's lien on a post may in no circumstances be terminated, even with his consent, if the result will be to leave him without a lien or suspended lien upon a permanent post.

(b) In a case covered by Sub-clause (2) of Clause (a) of Rule 14, the suspended lien may not, except on the written request of the Government servant who is not performing the duties of the post to which the lien relates, even if that lien has been suspended."

12. The concept of deputation is an assignment of an employee of one department or organisation to another department or organisation. It arises in public interest to meet the exigencies of public service. Concept of deputation is consensual and involves a voluntary decision of employer to lend service of his employee corresponding to acceptance by borrowing employer and consent of the employee to go on deputation to [C.B.I. Anti-Corruption Branch, Mumbai Vs. Narayan Diwakar,

13. A person on deputation does not get any right to be absorbed in the deputation post. They can be reverted to parent cadre at any time in view of the Supreme Court in Ratilal B. Soni and others Vs. State of Gujarat and others,

14. Normally vacancies should be filled up from the cadre and taking persons on deputation is an exception in utter exigencies likewise :

"filling up of higher posts by inducting deputationists should be an exception and not the Rule, if suitable juniors are eligible and available for promotion but in no case abnormal, irrelevant stipulations shall mar the sanctity of Reputation."

15. The service on deputation is equivalent to and is deemed to have been rendered in the parent department. When increments and promotion can be earned, there is no reason why he should not be treated as being on probation also in the post held by him in the parent department even while he is on deputation, in view of R.L. Gupta v. Union of India AIR 1989 SC 986. In this case the services of the petitioner while on deputation as Secretary to the Commission of Inquiry under the Chairmanship of Shri Ranganath Misra, a Sitting Judge of the Supreme Court, was held to satisfy the requirements of probation in his parent department in terms of Rule 12 (2) of the Delhi Higher Judicial Service Rules, 1970.

16. The benefits can not be denied on the only ground that he had given his consent to go on deputation. It is well known that many officers have to be sent on deputation in the public interest to other departments in order to meet the exigencies of public service and that before sending them on deputation their consent to go on deputations they should not be allowed to suffer unless there is a specific Rule to the contrary or other good reasons for it. That is the ratio of the decision in State of Mysore Vs. M.H. Bellary, and of the decision in State of Mysore v. P.N. Nanjundiah, (1969) 3 SCC 633

17. The parent department does not lose administrative control over the employee sent on deputation. Where an employee of the Punjab Government was on deputation to the Government of Himanchal Pradesh, it was held by the Supreme Court that the former could place him under suspension and cancelled his leave preparatory to retirement granted by the borrowing authority in view of Khemi Ram Vs. The State of Punjab,

18. A Government servant sent on deputation retains right of promotion in his parent department. The service on deputation is treated as equivalent to the

service in the parent department and hence for the purpose of promotion in the parent department it will be deemed to have been rendered in that department itself. The Government servant on deputation has, therefore, to be considered for promotion in his turn in the parent department. This principle has been embodied in the "Next Below Rule". (State of Mysore v. M.H. Bellary AIR 1965 SC 8681)

19. The period of deputation originally fixed can be cut short, if considered necessary. A deputationist has no right to continue in the deputation post. It depends upon several factors like aptitude for different type of work, ability to pick up quickly the intricacies of new work etc. If found inadequate, a deputationist can be recovered to his parent department. There is no stigma attached to it. [L. Jason Dayavanthappa v. G.M. Southern Railway (1988) 1 ATC 275; Shambhunath Lal Srivastava v. State of U.P. 1984 LabIC. 135].

20. Absorption of deputationist in the department where he is on deputation. The appellant working in the U.P. Small Scale Industries Corporation Ltd. joined U.P. Rajkiya Nigam Ltd., on deputation. The Nigam wrote a letter to him that if he is willing for permanent absorption in the Nigam, he can send his option. The appellant, after completion of three years, submitted his option letter for permanent absorption. The deputationist was absorbed after he completed statutory period of five years on deputation whereupon, he became entitled to be absorbed as per the relevant Rules. The Nigam did not repatriate him to his parent department his deputation allowance was also stopped on completion of five years. It was held that the appellant stood absorbed on completing five years and the order relieving the appellant from the post on which he was on deputation was quashed.

21. In Rameshwar Prasad Vs. Managing Director U.P. Rajkiya Nirman Nigam Limited and Others, . The power of absorption though discretionary, cannot be exercised arbitrarily or at his or caprice of any individual. There must be a justifiable reason before selecting the application for absorption.

22. The appellant, a lecturer in the University was sent on deputation to the Bihar Sanskrit Board, he was authorised to discharge there all duties and responsibilities of Controller of Examination of the Board. The Government of Bihar confirmed the appellant as Controller of Examination Registrar of the University also gave consent. It was held that the appellant was a permanent employee of the Board on the date of his retirement from the post of Controller of Examination of the Board, and therefore the retirement benefits should be calculated on that basis. Acknowledging and conferring over deputationist by the borrowing department to authorities to discharge all duties and responsibilities of a post entitled him the status of permanent employee of borrowing department for all purpose in view of Umapati Choudhary Vs. State of Bihar and Another,

23. If the employee is transferred from one department to another it is not necessary that he should be re-appointed to the department to which he is transferred. As soon as he is transferred permanently, he begins to hold the

permanent post which he starts holding in he transferee department. Further, whether a person has lien in one department or in other department the Government is entitled subject to the provision of Article 311(i) of the Constitution, to delegated the power of dismissal to my offer. The state of U.P. and Others Vs. Ram Naresh Lal,

24. The power vested in a public body to transfer on deputation, any official must be exercised honesty, bonafide and reasonably. It should be used in the interest of public purpose. If the power is used on extraneous consideration or for achieving an alien purpose or on oblique motives, its use would be mala fide and any colourable exercise of that power would, therefore, be struck down by the Court in the light of the observation made in S. Pratap Singh Vs. The State of Punjab,

25. If transfer by way of deputation is motivated by a desire to victimize any person the specific deputation could always be tested in a cannon of law. No person can, however, be struck down on the ground that although it was for the good of employee but likely to be used for an unauthorised purpose in view of Sukumar Mukherjee v. State of West Bengal 1993 (2) UJ 654 (SC).

26. The deputationist cannot be put to prejudice in so far as their service . career in their parent department is concerned. The deputationist are entitled to all the benefits in the parent department as were granted to the juniors or these who were similarly situated. Block Development Officers Assn and Ors. v. State of M.P. and Ors., (1996) 7 SCC 260

27. Temporary promotion granted to an employee on deputation does not entitle him to hold his or two substantive posts at the same time as in his parent department as well as borrowing department, however the grant of promotion to such candidate by the parent department is proper. Balkrishna Pandey Vs. State of Bihar and others,

28. The Supreme Court of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, laid down the Principal that unreasonable terms and conditions cannot be imposed by the employer on its empolyees, in view of doctrine of equality contained in Article 14 of the Constitution of India.

29. The Supreme Court in Central Inland Water Transport Corporation Ltd. (supra) and in the Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, as well as in the case of Hindustan Times and Others Vs. State of U.P. and Another, has held as under :-

"39. The respondents being a State, cannot in view of the equality doctrine ontained in Article 14 of the Constitution of India, resort to the theory of "take it or leave it" The bargaining power of the State and the newspapers in matters of release of advertisements is unequal. Any unjust condition thrust upon the petitioners by the State in such matters, in our considered opinion, would attract

the wrath of Article 14 of the Constitution of India as also Section 23 of the Indian Contract Act. (See Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly and Delhi Transport Corporation v. DTC Mazdoor Congress). It is trite that the State in all its activities must not act arbitrarily. Equity and good conscience should be at the core of all overnmental functions. It is now well settled that every executive action which operates to the prejudice of any person must have the sanction of law. The executive cannot interfere with the rights and liabilities of any person unless the legality thereof is supportable in any Court of Law. The impugned action of the State does not fulfil the aforementioned criteria."

30. The Supreme Court of India in Satya Narain Pareek Vs. State of Rajasthan and another, has held that the permanent employee in Technical Education Department during his deputation in the Transport department shall retain his lien in the parent department.

31. The irregular, unscheduled and unreasonable transfer of an official on deputation by placing him in jacket of unreasonable terms and condition may cause impairable harm to the Government servant, uproot his family disrupting the education of his children and number of other complications. The Government, therefore should be reasonable and fair in implementation of its policy relating to deputation.

32. It is well settled that unless the claim of the deputationist for permanent absorption in the department where he works on deputation is based upon any statutory Rule, Regulation or order having the force of law a deputationist cannot assert and succeed in any such claim for absorption . The basic principle underlying deputation itself is that, the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position, therein at the instance of either of the departments and there is no vested right in such a person to continue for long deputation or get absorbed in the department to which he had gone on deputation, in view of Kunal Nanda Vs. Union of India and Another, .

33. Thus from the facts and law as stated above, it is abundantly clear that the service of the petitioner in the parent department where he was appointed on permanent basis and was confirmed after expiry of period of probation, could not be dispensed with by prescribing any irrelevant unreasonable and arbitrary conditions indicated in the letter dated 3.7.1995 (Annexure-10) to the effect that the service of such employee would come to an end on expiry of period of deputation. The petitioner in the case in hand was on deputation and he holds the lien in his parent department. This principle is also enshrined in Rule 14-A of Chapter III in Financial Handbook, Vol. 2-A.

34. The petitioner is permanent employee of the "Sugar Corporation" and is an instrumentality of State within the meaning of Article 12 of the Constitution of India and as such his service could not be dispensed with by placing arbitrary

and unreasonable terms and conditions in violation of Article 14 of the Constitution as well as Section 23 of the Indian Contract Act as well as Rule 14-A of the Financial Rules as contained in Financial Handbook, Vol.. 2-A, Chapter III, governing the employees of State of U.P. The actions of the respondents are in clear violation of law laid down in the cases referred to above and against the principle of natural justice. In these circumstances, the writ petition deserves to be allowed with cost and the services of the petitioner be restored forthwith.

35. By imposing irrelevant abnormal, unreasonable conditions, in the order dated 5.7.1999 (Annexure-10) while sending petitioner on deputation from the Corporation to the "Mandi Parishad" the Corporation has marred the sanctity of deputation and by putting such conditions that petitioner service shall automatically be terminated after one year is great prejudice to the inherent right of the petitioner in his parent department. The conditions imposed in the letter dated 5.7.1995 is unwarranted, legally not sustainable, therefore, these are being set aside. The deputationist absorbed with the consent of the transfer or department and transferee/borrowing department may also be given increment and promotion under the fair terms and conditions could be reverted back to the original parent department to avail his own rights with his gains legally permissible to him in the parent department but deputationist who has been absorbed in the transferee/borrowing department/Mandi Parishad if he was confirmed employee his repatriation or sending back to the parent department of Corporation could not be made without affording opportunity of hearing. Undisputedly, the petitioner herein is not confirmed in "Mandi Parishad" however, by transferring the petitioner/deputationist from "Mandi Parishad" to Corporation knowing it fully well that in the light of unreasonable terms indicated in the letter dated 5.7.1995 of the Corporation petitioner shall have no place for sustenance, the order as indicated to in the order dated 18.3.1999 in the garb of letter dated 5.7.1999 shall tantamount terminating the service of the petitioner/deputationist. The action in question "Mandi Parishad" is punitive passed without affording opportunity of hearing to the petitioner in peculiar facts and circumstances of the case. Therefore, the order dated 18.3.1999 being illegal is set aside. "Mandi Parishad" however is at liberty to consider the case of the petitioner for absorption in "Mandi Parishad" itself or may negotiate with the Corporation to keep alive the original lien and to accept his own original employee in parent department with consequential gains to be given to the petitioner in the Corporation only on consensus is arrived between the transferee Corporation and the "Mandi Parishad;" then the petitioner could be thrown away by order simplicitor dated 18.3.199 otherwise shall be punitive in nature. The "Mandi Parishad" shall have to deal with the situation by making negotiations with the Corporation and both may rectify the terms and conditions bonafidely, fairly and in public interest and if "Corporation" is willing to take back the petitioner then only the "Mandi Parishad" shall pass the order of repatriation or order of sending back the petitioner from the "Mandi Parishad" to the Corporation. Therefore, "Mandi Parishad" shall pass appropriate order within six

months from the date of production of a certified copy of this order after taking consent of the petitioner and providing opportunity of hearing and after deliberation with the Corporation. However, the petitioner shall be treated the employee of the Corporation and shall be entitled to receive his salary and increments due to him.

36. In view of the above observations the writ petition is disposed of.