
(2004) 07 MP CK 0051

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No"s. 421 and 422 of 2004

Dr. S.M.P. Sharma and Another

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 30-07-2004

Acts Referred:

Citation : (2004) ILR (MP) 1129 : (2005) 1 JLJ 7 : (2005) 1 MPHT 380 : (2004) 2 MPJR 89 : (2005) 1 MPLJ 398

Hon'ble Judges : R.V. Raveendran, C.J;K.K. Lahoti, J

Bench : Division Bench

Advocate : Rajendra Tiwari and Udayan Tiwari, for the Appellant; P.N. Dubey, Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

R.V. Raveendran, C.J.

These two appeals involving common questions are heard and disposed of by this common order.

Appellants are Veterinary Assistant Surgeons belonging to the Veterinary Department. It is stated that they were deputed to the Rural Development Department and were working as Chief Executive Officers of Janpad Panchayats of Sirmour (District Rewa) and Amarpatan (District Satna) respectively. It is stated that they are on deputation from 1996 and 2003 respectively.

By orders dated 24-5-2004 and 4-6-2004 respectively, the Veterinary Department recalled their services along with several others. The said order were challenged by the appellants in W.P. Nos. 4069/2004 and 4049/2004. The learned Single Judge, dismissed the petitions by orders dated 12-7-2004, which are challenged in these Letters Patent Appeals.

The appellants have urged the following contentions in these appeals:-

(i) The consent of the borrowing department and the deputationists is necessary

before recalling the services of the deputationists. In the cases of appellants, such consent was not obtained.

(ii) As there was a proposal to consider their cases for absorption in the borrower department, they could not be recalled to the parent department;

(iii) The services of the appellants were recalled not because of any need of the parent department, but as an illogical reaction to starred question No. 272, dated 24-2-2004 in the M.P. Vidhan Sabha;

(iv) While several other similarly situated deputationists, whose services were recalled under the same orders were subsequently permitted to continue on deputation, by Notification dated 30-6-2004, they have not been permitted to continue, thereby leading to hostile discrimination;

(v) As another similar writ petition filed before the Gwalior Bench was already admitted, the learned Single Judge also ought to have admitted the writ petition instead of rejecting the petition at the stage of admission.

Re: Contention (i):

While deputation requires the consent of the employee, in addition to the consent of the lending and borrowing departments, recalling the service of the employee by the parent department does not require the consent of the employee. The parent department has always the right to recall the services of its employees sent on deputation, in the absence of any specific contract assuring the employee of a particular tenure in respect of the deputation post. The Supreme Court in *Kunal Nanda v. Union of India* (AIR 2000 SC 2076), held thus:-

"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 on deputation....."

A Full Bench of the Punjab & Haryana High Court considered the question whether the lending authority can recall the service of the deputationist unilaterally even before the expiry of the period of deputation, in *Sohan Singh v. The State of Punjab* [ILR 1970 (1) P&H. 468]. It held :-

"That an officer of the State Government, while on deputation to foreign service for a specified period, continues to be an employees of the State Government during his period on deputation and remains subject to the control of the Government. He is also entitled to be considered for any promotion etc., that way become available in his parent department. The fact that for all purposes he is considered to remain on the cadre in which he was included before his transfer and that he is entitled to be considered for promotion even during the period of his deputation indicates clearly that the period, if specified, is only tentative and may primarily be for the benefit of the foreign employer to have an idea of the

period during which his services will be available. No contract comes into being between the State Government and its employee when he sent on deputation Virtually he remains under the effective control of the Central Government and his legal position continues to be more one of status than of contract. He can not be said to have any indefeasible right to insist that he should not be recalled before the expiry of the specified period. Hence, the State Government having lent the services of its officer on deputation to foreign service for a specified period can, before the expiry of the aforesaid period, legally recall the officer unilaterally without the consent of the officer concerned."

The appellant relied on a State Government Circular dated 5-6-1995 indicating how deputation of a Government servant should be put to an end. It is of no assistance, Firstly, the said circular does not stipulate that the consent of the employee is required for the parent department to recall the services of its employee. Secondly, the said Circular, though no doubt contemplates consultation with the borrower department is a mere guideline and has no statutory force. Non-compliance with the requirements of the said Circular dated. 5-6-1995 is at best an inter-departmental matter and will not give any cause of action to an employee to enforce the said Circular.

Re: Point No. (ii):

Unless an employee on deputation has already been absorbed in the borrower department, he can always be recalled or repatriated to the parent department. in Kunal Nanda (supra), the Supreme Court held that an employee on deputation has no vested right to get absorbed in the borrower department. The Supreme Court further observed :-

"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 can not assert and succeed in any such claim for absorption."

Admittedly, in this case, the appellants were not absorbed in the borrower department. Mere proposal for absorption, even if true, can not come in the way of parent department recalling the services of its any employee, at any time before absorption.

Re: Point No. (iii):

It is not the case of the appellants that the orders recalling their services is the result of any malafides. Nor is it the case of the appellants that it is by way punishment. If on account of a starred question posed in the Legislature, the parent department had a rethinking on the matter and decided to recall the services of its employees deputed to Panchayat Raj Department, that is a matter of policy. We have already noticed that appellants have no vested right to continue on deputation. We fail to see the logic in Veterinary Surgeons insisting that they should be continued forever as Chief Executive Officers of Panchayats.

So long as the policy recalling the deputationists is not challenged on the ground of malafides or arbitrariness, it is not open to interference merely because another view is possible in regard to continuance of deputation or on the ground that the policy to recall the employees on deputation is likely to cause hardship to the employees concerned. It is, however, open to the affected employees to give a representations to the lender department and borrower department for modification in the policy on the ground that the deputations to administrative posts for a long duration had made it practically impossible for them to go back and work as Veterinary Surgeons. But it is for the concerned department to make appropriate decision if such a request is made and not for the Courts to interfere.

Re: Point No. (iv):

It is true that in the case of some other Veterinary Assistant Surgeons, whose services were recalled, an order was made on 30-6-2004, continuing their deputation until the projects in which they were engaged were completed. But we find no discrimination, as alleged by the appellant. The order dated 30-6-2004 show that those who were permitted to continue, were working in specific projects which required the service of Veterinary Doctors. Therefore, those who were working as Project Officers in specific projects, and permitted to continue on deputation, formed a distinct and separate class, when compared to those who were working purely in an administrative capacity as Chief Executive Officers of Janpad Panchayats (as in the case of appellants) and who were not working on any specific project. The appellants can have no grievance on that count.

Re : Point No. (v) :

Learned Counsel for the appellant submitted that a learned Single Judge (at Gwalior Bench) had admitted a similar petition (W.P. No. 1126/2004), on 25-6-2004 and granted interim stay; that the appellants had brought that to the notice of the learned Single Judge who decided these matters by producing a copy of the order dated 25-6-2004; and that ignoring the said order, the learned Single Judge had dismissed the petitions. The appellants submit that the orders of the learned Single Judge at Jabalpur, taking a different view, is likely to lead to contradictory judgments being rendered by the High Court and on that ground requires to be set aside. In support of the said contention reliance has placed on the following observations of the Supreme Court in *Bir Bajrang Kumar v. State of Bihar* (AIR 1987 SC 1345) :-

"..... One of the cases involving an identical point has already been admitted by the High Court but another identical petition was dismissed by the same High Court. This, therefore, creates a very anomalous position and there is a clear possibility of two contradictory judgments being rendered in the same case by the High Court."

The ratio-decidenti of a decision (statement of the legal principle upon which a legal question disclosed by facts is finally decided) of a co-ordinate Bench is a

binding precedent. An order admitting a writ petition of hearing or granting an interim order on the facts and circumstances of the case, is not a final decision. It does not lay down any principle of law which is binding as a precedent on another co-ordinate Bench. It is no doubt true that judicial discipline requires consistency and uniformity even in regard to passing of orders relating to admission and interim relief, to ensure that (a) a litigant does not feel that he has been discriminated by Courts, and (b) an anomalous position is not created by contradictory judgments of the same Court in identical matters.

But the anomaly contemplated by the Supreme Court in *Bir Bajrang* (supra) would arise only when one Bench of the Court had already admitted the matter and subsequently another Bench dismisses an identical petition at admission stage without assigning reasons. In such a situation, if the first case which was admitted, is ultimately allowed on merits, not being bound by the non-speaking order of dismissal in the second case, it would result in an anomalous position of two divergent decisions in identical matters. But such an anomalous position will not arise where one Bench passes an order of admission and grants an interim stay and another co-ordinate Bench, thereafter at the stage of admission, hears the parties and passes a considered final order assigning reasons for the dismissal. When a final order is rendered assigning reasons in the later case, the order in the earlier case admitting an identical matter will not act as a precedent nor will the rule of consistency and uniformity come in the way. If the two matters are before the same seat of the Court, the appropriate course would be for the Bench deciding the latter case, to tag it with the first case and then decide both the matters simultaneously. But where the cases are before different seats of the same High Court and it is not practical to hear the two-cases together, nothing prevents the Bench hearing the second case, proceeding to decide the matter on merits by a reasoned order. In such event, the reasoned decision in the second case will become a binding precedent on the co-ordinate Bench that may hear the first case at a later point of time.

A further elaboration by way of an illustration may be appropriate :-

Let us take a hypothetical case where the Indore Bench admits a case and grants stay. Later, when an identical matter comes up before the Gwalior Bench, that Bench also admits the matter and grants stay by taking note of the order of the Indore Bench. Thereafter, the first case before the Indore Bench is not listed for hearing for two years as service is not complete. On the other hand, the second matter at Gwalior is taken up for hearing within six months, in view of the urgency expressed.

Is there any prohibition of the Gwalior Bench to hear the matter finally and pass an order dismissing the petition, either on the principle of "precedent" or "consistency and uniformity" or "judicial discipline", because the first case (where the interim order is in force) is still pending ? The answer obviously is in the negative. This is because a tentative or temporary order in the first case (that is an order admitting a matter for hearing and granting an interim stay) can

not come in the way of final hearing and disposal of another identical case. While the "temporary" order in the first case will not be a precedent, while rendering a final decision in the second case, the final decision rendered in the second case, will be a binding precedent when the first case is subsequently taken up for hearing. Therefore, the second case, filed at a later point of time can always be dismissed by a reasoned order, even though the first case which was admitted is still be pending.

In this case, the order of the learned Single Judge under appeal is a reasoned order, though brief. The view expressed is final. On the other hand, the brief reasons assigned by the Gwalior Bench hearing the earlier case, for granting admission or interim order are tentative. The order of the learned Single Judge under appeal will not, therefore, lead to any anomalous situation.

We find no merit in these appeals. The appeals are accordingly dismissed.