

(2017) 12 J&K CK 0038
In the Jammu And Kashmir High Court
Case No : 2333 of 2017

Fayaz Ahmad Bhat & anr.

APPELLANT

Vs

State of J&K and Ors.

RESPONDENT

Date of Decision : 02-12-2017

Acts Referred:

Citation : (2017) 12 J&K CK 0038

Hon'ble Judges : Dhiraj Singh Thakur

Bench : SINGLE BENCH

Advocate : Aqib Aijaz, Irfan Andleeb

Final Decision : Dismissed

Judgement

1. The petitioners belong to the State Road Transport Corporation. They came to be brought on deputation to the Motor Vehicles Department.

The period of deputation was extended from time to time. By virtue of order dated 20th July, 2017, issued by the Secretary to Government,

Transport Department, the deputation period of petitioner no.2 was further extended by six months. However, by virtue of order impugned dated

26th October, 2017, issued by the Commissioner Secretary to the Government Transport Department, the petitioners have been repatriated back

to their parent department i.e., State Road Transport Corporation with immediate effect and were deemed to have been relieved by virtue of the

same order.

2. The petitioners challenge the order impugned, inter alia, on the ground that the petitioners had a right of absorption in the Motor Vehicles

Department on the analogy of a similar absorption having been ordered in regard to other deputationists in some other departments. It was further

urged that the order impugned was in clear violation of the order dated 20th July, 2017 inasmuch as it had granted an extension of further period of

six months which has not expired as yet. It was in those circumstances urged that the respondents could not have in supersession of the earlier

order granting extension ordered the repatriation of the petitioners back to their parent department.

3. This Court by virtue of order dated 15th November, 2017 had directed the respondents not to disturb the position of the petitioners as it existed

on the said date.

4. The official respondents instead of filing objections to the main writ petition filed an application seeking vacation of the order dated 15th

November, 2017 and urged that the same be treated as objections to the writ petition as well. It was stated that a Division Bench in the Jammu

wing of this Court in case of Sunil Cannie and others v. State of Jammu & Kashmir and others, LPASW No.148/2017, decided a similar issue

and dismissed the letter's patent appeal against the petitioners therein who were similarly claiming absorption in the Motor Vehicles Department on

the ground that they had continued as deputationists in the Motor Vehicles Department for a number of years and could not have been repatriated

to their parent department.

5. Heard counsel for the parties.

6. On a perusal of the judgment of the Division Bench supra, it is clear that the Division Bench had dismissed the appeal and upheld the view taken

by the writ court and held that a deputationist did not have any right to claim absorption in the department unless the claim for absorption was

supported by any statutory rule or regulation. It was also held that merely because a deputationist had spent several years in the department would

not create any indefeasible right of absorption or regularization and that he could be reverted back to his parent department at any point of time.

Reliance was also placed upon Ratilal B. Soni v. State of Gujarat : AIR 1990 SC 1132 and U.P. Rajkiya Nirman Nigam v. P. K. Bhatnagar :

2007(14) SCC 498.

7. The Division Bench also analyzed the statutory provisions governing appointment of Motor Vehicle Inspectors as also SRO 263 and held that

the appellants therein had no right of absorption in terms of the statutory rules.

8. The contention of the counsel for the petitioners that the petitioners could not have been repatriated inasmuch as they had got an extension for a

further period of six months by virtue of order dated 20th July, 2017 also is equally untenable in view of the observations made by the Division

Bench of this Court in the case supra which held that a deputationist can be repatriated at any point of time to his parent department.

9. In my opinion, the present writ petition is fully covered by the Division Bench judgment of this court in LPASW No.148/2017 dated

23.10.2017 (supra) which was not even interfered with by the Apex Court in the SLP no.30091/2017 dismissed vide order dated 13th

November, 2017.

10. Be that as it may, the petition is held to be without any merit and is accordingly dismissed.