
(2009) 01 GAU CK 0065
In the Gauhati High Court

Gitanjali S. Bhattacharyya

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-01-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (2009) 4 GLR 739 : (2009) 4 GLT 420

Hon'ble Judges : B.P. Katakey, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.P. Katakey, J.—The writ petitioner, who is on deputation to Council for Advancement of Peoples' Action and Rural Technology (CAPART), under aegis of Ministry of Rural Development, Government India and appointed as Regional Representative and Member Convenor, Regional Centre, Guwahati, has by the present petition challenged the order dated 1.9.2008 issued by the Chief Administrative Officer, CAPART repatriating her to the parent Department of Personnel (A), Government of Assam.

2. The petitioner, who is a member of Assam Civil Services (ACS) and at the relevant point of time was serving as Extra Assistant Commissioner in the Department of Personnel (A), Government of Assam, was sent on deputation to CAPART vide order dated 22.11.2006 issued by the Commissioner and Secretary to the Government of Assam, for appointment as Regional Representative and Member Convenor, Regional Centre, Guwahati for a period of 1 (one) year with effect from the date of handing over the charge in the parent Department. The petitioner was accordingly appointed as Regional Representative and Member Convenor, Regional Centre at Guwahati, CAPART, vide order dated 23.11.2006 issued by the Deputy Director General of CAPART, on deputation basis on foreign service terms and conditions for a period of 1 (one) year, on her services being placed at the disposal of CAPART. The petitioner accordingly joined her services in CAPART. The Deputy Secretary to the Government of Assam, Personnel (A)

Department, vide communication dated 11.4.2007 has also informed the Accountant General (A&E), Assam about the deputation of the petitioner to CAPART intimating the said authority that the period of deputation will be for 1 (one) year for the present with effect from 28.11.2006. The tenure of deputation of the petitioner was, however, extended by 2 (two) more years with effect from 28.11.2007, i.e., the date when the 1 (one) year period of deputation came to an end, by notification dated 21.11.2007 issued by the Deputy Secretary, Government of Assam, Personnel (A) Department, on the basis of the request made by the CAPART for that purpose. The Chief Administrative Officer, CAPART, vide office order dated 30.11.2007, consequently conveyed the approval of the competent authority for extension of deputation period in respect of the petitioner for a period of 2 (two) years with effect from 28.11.2007 on the existing terms and conditions to work as Regional Representative and Member Convenor, Regional Centre, Guwahati. By such order of extension, the tenure of deputation of the petitioner was to end on 28.11.2009. The Chief Administrative Officer of CAPART, however, by the impugned order dated 1.9.2008 has repatriated the petitioner to the parent department, i.e., the Department of Personnel (A), Government of Assam, and placed her Services at the disposal of the Government of Assam with immediate effect, which gives rise to the present writ petition.

3. A Single Bench of this Court while issuing notice of motion vide order dated 5.9.2008, keeping in view the pleaded facts and documents annexed to the writ petition and also the proposition as propounded by the Apex Court in Union of India (UOI) through Govt. of Pondicherry and Another Vs. V. Ramakrishnan and Others, passed an interim order keeping the order of repatriation dated 1.9.2008 in abeyance. The said interim order has subsequently been extended by various orders passed including order dated 20.11.2008, by which order it has been observed that an endeavour shall be made to dispose of the writ petition at the admission stage itself. Accordingly, the writ petition has been taken up for final hearing and disposal at the admission stage.

4. I have heard Mr. U. Bhuyan, Learned Counsel for the petitioner as well as Mr. S.K. Rungta, Learned Counsel appearing on behalf of the respondent Nos. 1 and 2 and Mrs. H.M. Phookan, learned State Counsel appearing on behalf of the respondent No. 3.

5. Mr. Bhuyan, Learned Counsel for the petitioner has submitted that she has been repatriated to the parent department vide the impugned order dated 1.9.2008 on the basis of certain allegations, which are stigmatic and amounts to casting aspersion on the character and integrity of the petitioner and as such, a reasonable opportunity has to be given to the petitioner before taking a decision for repatriation, which has not been done. Referring to the provisions contained in FR 110 of the Fundamental Rules, it has further been submitted by Mr. Bhuyan, that the deputation being result of an agreement amongst the parent department, borrowing department and the officer concerned, before passing the

order of repatriation, the parent department has to be consulted, which having admittedly not been done, the order of repatriation cannot stand the scrutiny of law. It has further been submitted by Mr. Bhuyan that in any case there is no basis on the allegation made against the petitioner, based on which the order of repatriation has been passed by the borrowing department. According to the Learned Counsel, the CAPART, i.e., the borrowing department, without first ascertaining the genuineness of the complain as well as the existence of the voluntary organization and identity of the signatories, who allegedly made the complain against the petitioner, has unilaterally decided to repatriate the petitioner to the parent department though the organization called "Development Initiative of Peoples in Rural Area, Dimapur, Nagaland" is non-existent. The complain of Assam Schedule Caste Workers' Council, which is also the basis for passing the order of repatriation is also false and baseless, as, such allegations have been levelled against the petitioner as she turned down the proposal submitted by them being not in terms of the guideline of the CAPART, submits Mr. Bhuyan. According to the Learned Counsel, the other organization, namely Assam Centre for Rural Development, who also levelled certain allegations against the petitioner, is a doubtful organization being managed by the family members of a particular family having considerable influence and power in Assam and the said organization has levelled allegations against the petitioner as she having found certain anomalies in the said organization subjected it to scrutiny and verification. It has further been submitted by the Learned Counsel that the allegation of taking financial benefit by her husband is out and out false and baseless. According to the Learned Counsel, though the borrowing department can repatriate an officer to the parent department, such power cannot be exercised arbitrarily, as has been done in the instant case and without having prior consultation with the parent department. According to Mr. Bhuyan, the fact that purported allegations, which are the basis for the order of repatriation are nothing but created for the purpose of passing such an order, is evident from the fact that the management of CAPART having satisfied with the performance of the petitioner has requested the parent department for extension of the period of deputation by 2 (two) years after the initial period of deputation came to an end, i.e., on 28.11.2007. Mr. Bhuyan, therefore, submits that there is no basis for passing the order of repatriation, during the continuation of the deputation period and such order can only be passed for good and sufficient reason, which are lacking in the instant case. Mr. Bhuyan in support of his contention has placed reliance on the decision of the Apex Court in K.H. Phadnis Vs. State of Maharashtra, ; Umapati Choudhary Vs. State of Bihar and Another, and Union of India (UOI) through Govt. of Pondicherry and Another Vs. V. Ramakrishnan and Others, .

6. Mr. Rungta, Learned Counsel for the respondent Nos. 1 and 2 in reply to the submission of the Learned Counsel for the petitioner, has submitted that though the law requires the consent of the parent department as well as of the officer concerned before sending an officer on deputation to a foreign department,

under FR 110 of the Fundamental Rules, at the time of repatriation neither consultation with the parent department nor consent of the officer concerned is required. According to Mr. Rungta, the borrowing department can at anytime even before the end of the period of deputation for good and sufficient reason repatriate an officer to the parent department, as observed by the Apex Court in V. Ramakrishnan case. In the instant case, according to Mr. Rungta, the management of CAPART upon receipt of certain allegations against the petitioner has made an enquiry to ascertain the truth or otherwise of such allegation, wherein the petitioner was also given opportunity to present her case and having satisfied that the services of the petitioner is no longer required, keeping in view the interest of the CAPART, has passed the order of repatriation. Mr. Rungta further submits that it is evident from the order of repatriation that there is no stigma attached to it, as contended by the petitioner and the enquiry, made by the CAPART, was for the purpose of satisfying itself as to whether the allegations are prima facie true, and if so, whether the petitioner should be repatriated to the parent department. It has further been submitted that the sufficiency or otherwise of the materials, which are taken into consideration by the CAPART for satisfying itself about the desirability of keeping the petitioner on deputation cannot be gone into by this Court in a petition under Article 226 of the Constitution of India, more so, when there is no allegation of mala fide against the management of CAPART, who has taken a decision of repatriation. Mr. Rungta submits that a deputationist has no right to continue on deputation and the borrowing department for good and sufficient reason can even during the continuance of the period of deputation repatriate the officer to the parent department. Mr. Rungta has placed reliance on the decision of the Apex Court in Ratilal B. Soni and others Vs. State of Gujarat and others, as well as in Union of India (UOI) through Govt. of Pondicherry and Another Vs. V. Ramakrishnan and Others, .

7. The law on deputation is by now well settled. "Deputation" means service outside the cadre or outside the parent department. It means deputing an officer to another department on temporary basis. After expiry of period of deputation, the employee has to come back to his parent department to occupy the same position unless of course he has earned promotion in the parent department in the meantime as per the recruitment rules. There is no dispute that there can be no deputation without the consent of the person so deputed and unless the parent department has agreed for such deputation. Ordinarily, a deputationist has no legal right to continue in the post to which he has been deputed. A deputationist has even no right to get himself absorbed in the borrowing department and cannot claim as a matter of right for such permanent absorption. The right of the deputationist is very limited. A deputationist on completion of the tenure of deputation has to go back to the parent department, unless of course such period of deputation is extended with the consent of the deputationist as well as of the parent department. A deputationist, however, has a limited right to continue in the post to which he has been deputed till the

completion of the tenure of deputation. It, however, does not necessarily mean that a deputationist cannot be repatriated to the parent department, by the borrowing department before completion of the tenure of deputation. The borrowing department has always the right to repatriate a deputationist to the parent department in the midst of the tenure of deputation. However, for exercising such right, there must be some just and reasonable ground. A deputationist can be repatriated to the parent department if the borrowing department is of the view that continuance of such deputation is not desirable in the interest of the borrowing department or his or her performance is unsatisfactory. However, such an order of repatriation during the continuance of the tenure of deputation cannot be arbitrary.

8. The Apex Court in *K.H. Phadnis (supra)*, on which the Learned Counsel for the petitioner has placed reliance, while considering the right of a Government servant to get the protection of Article 311 of the Constitution of India in the matter of reversion from temporary to substantive post, has held that though the Government has the right to revert a Government servant from the temporary post to a substantive post, the matter has to be viewed as one of substance and all relevant factors are to be considered in ascertaining whether the order is a genuine one of "accident of service" in which a person sent from the substantive post to a temporary post has to go back to the parent post without an aspersion against his character or integrity or whether the order amounts to reduction in rank by way of punishment. It has further been observed that though reversion by itself is not a stigma, if there is evidence that the order of reversion is not "a pure accident of service" but an order in the nature of punishment, Article 311 will be attracted. The instant case being related to the deputation and the deputationist having limited right to continue in the post, the said decision of the Apex Court as such is not applicable in the case in hand. The deputationist, as discussed above, has no right to the post to which he has been deputed and has also no right for permanent absorption. A deputationists right is very limited, as discussed above. The provisions of Article 311 of the Constitution of India as such cannot be applied in the matter of repatriation of a deputationist to the parent department.

9. In *Ratilal B. Soni (supra)*, the Apex Court has observed that a deputationist can be reverted to his parent cadre at any time and he does not get any right to be absorbed in the deputation post.

10. The Apex Court in *Umapati Choudhary (supra)* has observed that the necessity for sending on deputation arises in public interest to meet the exigencies of public service and the concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not. Therefore, unless the parent department as well as the borrowing department agrees, so also the employee concerned, there cannot be a legally

valid deputation.

11. FR 110 of the Fundamental Rules provides that no Government servant be transferred to foreign service against his will. It is not the requirement of law that the consent of or prior consultation with the parent department is required before passing an order of repatriation by the borrowing department or the consent of the deputationist is required for that purpose, for the simple reason that the deputationist has no right to continue in the post to which he has been deputed and the consent of the parent department is required only when the person is sent on deputation and not at the time of repatriation. The contention of the petitioner that the impugned order of repatriation dated 1.9.2008 is not valid in the absence of the prior consultation and consent of the parent department, therefore, cannot be accepted and hence rejected.

12. As discussed above, the deputationist has, however, a limited right of continuing in the post to which he has been deputed till the completion of the tenure of deputation. The borrowing department, however, for good and sufficient reason can repatriate a deputationist to the parent department even during the tenure of deputation. The Apex Court in *V Ramakirshnan Case* (supra) in paragraph 32, after discussing the various earlier judgments passed and the right of the deputationist to the post, has observed as follows:

32. Ordinarily, a deputationist. has no legal right to continue in the post. A deputationist indisputably has no right to be absorbed in the post to which he is deputed. However, there is no bar thereto as well. It may be true that when deputation does not result in absorption in the service to which an officer is deputed, no recruitment in its true import and significance takes place as he is continued to be a member of the parent service. When the tenure of deputation is specified, despite a deputationist not having an indefeasible right to hold the said post, ordinarily the term of deputation should not be curtailed except on Such just grounds as, for example, unsuitability or unsatisfactory performance. But, even where the tenure is not specified, an order of reversion can be questioned when the same is mala fide. An action taken in a post-haste manner also indicates malice.

13. It appears from the records produced before this Court that the initial order of deputation was passed on 22.11.2006 by the parent department, i.e., by the Commissioner and Secretary to the Government of Assam in Personnel (A) Department, on the basis of the, request made by the CAPART for appointment of the petitioner as Regional Representative and Member Convenor, Guwahati, initially for a period for 1 (one) year. The petitioner was consequently appointed in the said post in CAPART vide order dated 23.11.2006 and his period of deputation for 1 (one) year came to an end on 28.11.2006. The tenure of deputation of the petitioner, however, extended by 2 (two) more years as requested by the management of CAPART with effect from 28.11.2007, i.e., up to 27.11.2009. During the continuation of the tenure of deputation, the management of CAPART vide impugned order dated 1.9.2008 issued by the Chief

Administrative Officer repatriated the petitioner to the parent department. For better appreciation, the said order dated 1.9.2008 is reproduced below:

1st September, 2008

ORDER

The Competent Authority has decided to repatriate Smt. Geetanjali S. Bhattacharyya, ACS, Extra Assistant Commissioner, Govt. of Assam working as Regional Representative and Member Convenor, CAPART RC, Guwahati to her parent Department. Accordingly, services of Smt. Geetanjali Bhattacharyya is hereby placed at the disposal of the Govt. of Assam with immediate effect.

(S.K. Pandey) Chief Administrative Officer.

14. After the extension of the tenure of deputation, the management of CAPART received certain allegations against the petitioner and involvements of the petitioner's husband, on the basis of which the management of CAPART made an enquiry to ascertain the truthfulness or otherwise of such allegation. 2 (two) officers of the CAPART was deputed for that purpose. It also appears from the records as well as the affidavit filed by the CAPART that the petitioner was also given the opportunity to explain her position and she accordingly replied to such allegation vide communication dated 1.8.2008 sent by e-mail to Sri R.K. Singh, R.O., who was one of the officers deputed for such enquiry (page 28 of the counter affidavit filed by the respondent Nos. 1 and 2). The management of CAPART upon consideration of entire materials placed before it has taken a decision for repatriating the petitioner to the parent department, having found that the petitioner cannot be kept as Regional Representative and Member Convenor, Regional Centre at Guwahati and accordingly passed the impugned order of repatriation. The relevant note of the Director General, CAPART dated 18.8.2008, placed before the Minister of Rural Development and Chairman, CAPART, is reproduced below:

The note of the Vigilance Division from pages 1 to 10 and the subsequent note of the Chief Vigilance Officer may please be seen. The complaint against Smt. Gitanjali Bhattacharyya, RR and MC, CAPART-RC, Guwahati received from the organization called "Development Initiative for, People in Rural Area", 4th Mile, Dimapur, Nagaland was enquired into by a team sent by Headquarters to Guwahati office.

2. It is clear from the note of Vigilance Division that Shri Samir Bhattacharyya, husband of Smt. Gitanjali Bhattacharyya, RR and MC. Guwahati received a cheque for an amount of Rs. 30,000 from Dr. Sunita Changkakati, Executive Director, "Assam Centre for Rural Development", Guwahati. As per the certificate given by the Chief Manager, State Bank of India, South Guwahati, it is clear that money on the cheque for Rs. 30,000 was withdrawn by Shri Samir Bhattacharyya, husband of Smt. Gitanjali Bhattacharyya. It has also been proved by the record that a project for organizing Gram Shree Mela was sanctioned to

the VO viz., "Assam Centre for Rural Development", Guwahati with CAPART assistance of Rs. 8,00,000 vide sanction letter No. MKT/ASM/17/2/2006 on 21.11.2006. The entire sanctioned amount was released in three installments, i.e., Rs. 4 lakh as first installment on 20.12.2006, Rs. 2 lakh as second installment on 24.1.2007 and Rs. 2 lakhs as third and final installment on 2.3.2007. The entire grant received under the project by the VO was deposited in the bank account No. 10281987556 in State Bank of India, South Guwahati Branch at Ulubari, Guwahati. The cheque bearing No. 013599 for Rs. 30,000 issued in favour of Shri Samir Bhattacharyya husband of Smt. Gitanjali Bhattacharyya by the VO was encashed from this account by Shri Samir Bhattacharyya on 11.12.2006. A clear link has been established between sanction of the project for Gram Shree Mela to the VO viz., "Assam Centre for Rural Development", Guwahati and the money received by Shri Samir Bhattacharyya, husband of Smt. Gitanjali Bhattacharyya from the same VO.

3. Since there is a prima facie case against Smt. Gitanjali Bhattacharyya for receiving pecuniary gain through her husband Shri Samir Bhattacharyya for sanction of a project to the VO concerned, it is proposed that Smt. Gitanjali Bhattacharyya, RR and MC, CAPART-RC, Guwahati may be repatriated back to her parent Department, Govt. of Assam. However, the matter relating to Rs. 50,000 and Rs. 20,000 paid by the same VO to Shri Jayant Bhattacharya vide cheque No. 67187 and 92859 respectively will have to be enquired into in detail as to whether the payment for these cheques was also made to Shri Samir Bhattacharyya. The matter relating to "Society for Social Development Training and Research", Golaghat who is a first timer VO to CAPART for sanction of a workshop by accepting the fake and illegal terms and conditions of the said VO also needs further enquiry.

4. In view of the above, HMRD may kindly approve the repatriation of Smt. Gitanjali Bhattacharyya, RR and MC, CAPART-RC, Guwahati to her parent Department. Govt. of Assam. The disciplinary proceedings against Smt. Gitanjali Bhattacharyya will be recommended to the Govt. of Assam only after a close examination of all the relevant files by the Vigilance Division.

Sd/- illegible (V. Venkatachalam) Director General 18.8.2008

15. The record produced before the court discloses the basis on which a decision has been taken by the management of CAPART for repatriation of the petitioner to the parent department and before taking such decision, an enquiry has been made by the authority about the truthfulness or otherwise of the allegations levelled against the petitioner only for the limited purpose of satisfying itself as to whether in the interest of the CAPART the petitioner should be kept on deputation. This Court in exercise of the jurisdiction under Article 226 of the Constitution of India cannot go into the sufficiency or otherwise of the materials available before the management of CAPART for passing an order of repatriation but can definitely go into the question as to whether there are prima facie materials available before the management of CAPART to pass an order of

repatriation, during the tenure of deputation, as a deputationist has the limited right to continue in the deputed post till the end of the deputation period.

16. The materials available on records, as discussed above, discloses existence of prima facie materials before the management of CAPART for passing an order of repatriation. The management of CAPART was satisfied about the existence of such materials and thereafter, has taken a decision for repatriation. Even the petitioner was given the opportunity to explain her position. The enquiry, which was made by the authority of CAPART was only to find out the truth or otherwise of the allegation for the purpose satisfying itself whether the petitioner should be allowed to continue in the deputation post and not for any other purpose, namely the drawing of the departmental proceeding, which the borrowing department otherwise has also no authority. The borrowing department, in case finds justifiable grounds for not keeping an officer on deputation, cannot be burdened with the deputationist. If the services of a deputationist is not required by the borrowing department it can legitimately curtail the tenure of deputationist in the borrowing department, however, for good and sufficient reasons. As discussed above, the records produced by the management of CAPART discloses good and sufficient reason for curtailment of the tenure of deputation of the petitioner. The order of repatriation, therefore, cannot be termed as punitive or stigmatic or arbitrary being devoid of any basis. Moreover, there is no allegation of mala fide against the management or the officers of CAPART.

17. In view of the aforesaid discussion, I do not find any merit in the writ petition and hence the same is dismissed. No cost.