
(2015) 11 RAJ CK 0031
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5737/2015

I.K. Mansoori

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-11-2015

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16

Citation : (2015) 11 RAJ CK 0031

Hon'ble Judges : M.N. Bhandari, J.

Bench : Single Bench

Advocate : Ashok Gaur, Senior Advocate, M.S. Raghav and Vishwas Saini, for the Appellant

Final Decision : Disposed Off

Judgement

M.N. Bhandari, J.—By this petition, a challenge is made to the order dated 25th March, 2015, whereby the petitioner was directed to join the post of Deputy Registrar in Jivaji University, Gwalior. It was in view of completion of period of deputation. A further challenge is made to the order dated 17.04.2015, by which the petitioner was placed under suspension on account of non-compliance of the direction for joining the post.

2. Learned counsel for petitioner submits that in pursuance to the invitation of the application for selection/appointment on the post of Deputy Secretary/Regional Director in National Council of Teachers Education (in short "NCTE"), the petitioner applied for the post. After selection through interview, the petitioner was appointed on the post of Deputy Secretary/Regional Director, NCTE on deputation. The petitioner was accordingly relieved by his parent organization. He thereupon rendered his services to the utmost satisfaction of the authority concerned. On completion of the period of one year, the NCTE decided on 24.02.2015 to extend the term of deputation beyond one year. The petitioner was shocked to notice that period of deputation was not extended though it is provided for a period of three years. The period of deputation was curtailed

without any reason. The vacancy circular issued by the NCTE for invitation of application and general instruction appended thereto provide ordinarily period of deputation of three years. The general instruction provides for extension of period which would not be beyond five years. To support his argument, a further reference of Office Memorandum (in short "OM") dated 17th June, 2010 was given because appointment on deputation makes reference of the said OM. As per Para 8.1 of OM, the period of deputation is for a period of three years extendable upto five years. The impugned order dated 25.03.2015 was passed contrary to the vacancy circular as well as OM thus, it deserves to be set aside.

3. A further challenge is made to the order of suspension. The said order was passed without contemplation of inquiry but for the reason that petitioner did "not join service" after revocation of deputation. The said order was stayed by this court. The prayer is accordingly to set aside the order of suspension as well.

4. Learned counsel for petitioner made a reference of the judgments of Hon''ble Apex Court in the case of Union of India (UOI) Vs. S.N. Maity and in the case of Ashok Kumar Ratilal Patel Vs. Union of India (UOI) and Another, . A further reference of judgment of this court in the case of Anil Shukla Vs. National Council for Teacher Education, has been given.

5. Shri Shyam Arya, AAG appearing for respondent Nos. 3 & 4 has opposed the petition. He submits that petitioner is a permanent employee of the State Government. The permission was however given for deputation but it was kept limited to the period of one year. The order of appointment makes a mention about the period of deputation thus on completion of the said period, order dated 25.03.2015 was passed for posting of the petitioner in the parent organization. The challenge to the said order has been made presuming it to be a case of tenure deputation and that too for minimum period of three years. The plea taken by learned counsel for petitioner is without basis and contrary to the order passed by the respondent Nos. 3 & 4 so as the NCTE. The petitioner has no right to claim his continuation on deputation for minimum period of three years. The prayer is accordingly to dismiss the petition in reference to the order dated 25.03.2015. The suspension order was passed by the respondents when petitioner did not join the service.

6. Shri R.P. Singh, Sr. Advocate along with Mrs. Sumati Bishnoi appearing for NCTE submits that period of deputation of the petitioner was only of one year. It was however extendable upto three years by yearly extension. It was not for minimum three years. The State of M.P. permitted deputation for a period of one year. In view of above, while issuing order of appointment on deputation, it was kept limited to one year. The petitioner has no right to continue on deputation beyond the period of one year. This court while hearing the case at the interim stage, directed the petitioner to join the post but despite of the interim order of this court, he has not joined service. So far as NCTE is concerned, they have already filled the post on which the petitioner was working. In view of above, the NCTE is not in need of services of the petitioner. Learned counsel for NCTE has

made a reference of judgment of Hon''ble Supreme Court in the case of Union of India (UOI) through Govt. of Pondicherry and Another Vs. V. Ramakrishnan and Others, and also relied on the judgment of Apex Court in the case of Union of India & Anr. Vs. S.N. Maity (supra).

7. I have considered the rival submissions made by the parties and perused the record of the case.

8. In pursuance to the application invited by the NCTE, the petitioner applied and appointed on the post of Deputy Secretary/Regional Director on deputation for a period of one year. The order of appointment dated 27.02.2014 provides initial tenure of deputation of one year. It was extendable upto three years on year to year basis. A reference of the OM dated 17th June, 2010 has also been given in the order of appointment. The period of deputation given in the order of appointment was only of one year. The respondent Nos. 3 & 4 relieved the petitioner to join the post on deputation vide their letter dated 04.03.2014. Therein period of deputation was mentioned and is only of one year. The petitioner joined the post without any protest to the tenure of deputation. In the order of appointment, it has not been provided that deputation would be of three years but a discretion has been kept by the NCTE to extend the period of deputation upto three years. The perusal of vacancy circular shows that period of deputation cannot ordinarily exceed to three years but it can be extended upto five years. The general instruction does not provide that minimum period of deputation is of three years rather it provides maximum period of three years in ordinary circumstances and in exception, upto five years. Para 8.1 of the OM dated 17th June, 2010 no doubt refers period of deputation to be for a period of three years in case no tenure regulations exist for the ex-cadre post otherwise it has to be as per Recruitment Rules. Sub-para (i) of Para 8.3 of the OM provides that extension of period would be subject to prior approval of the lending organization. According to the learned counsel for petitioner, it is as and when the period of deputation is to be extended beyond three years.

9. In my opinion, what will prevail is the order by which the petitioner was taken on deputation. If intention of the respondents would have been to keep minimum period of deputation of three years, could have been mentioned accordingly in the order of appointment itself. Before joining post, the petitioner was knowing it well that period of deputation is of one year only though it can be extended on yearly basis maximum to the period of three years. The petitioner did not make a protest to the said order by referring to the OM. The protest was not made even when petitioner was relieved by the pattern organization for a period of one year thus the petitioner had accepted the appointment order for tenure of one year. The word "extendable" does not refer to the minimum period but give liberty to the loner and lonee departments to extend the period at their discretion. In the present case, lonee and loner departments are not inclined or intend to extend the period of deputation. It is true that at one point of time, NCTE sent a letter to seek extension of period of deputation but now they are not inclined to continue

the petitioner on deputation beyond the period of one year rather they have already filled the post by their own arrangements. The aforesaid is a factual position of the case. Now I need to discuss the judgments cited by both the parties.

10. In the case of Ashok Kumar Ratilal Patel (supra), Hon"ble Apex Court held that deputation can be of two types. One "appointment on deputation" and other is "transfer on deputation". It was held that whenever deputation is by way of transfer, it remains on the equivalent post creating no legal right either for absorption or even for deputation on the post. It is for the reason that deputation does not result in recruitment. However whenever deputation is by way of appointment, it creates a right in favour of the incumbent. In the aforesaid case, after appointment on deputation, the order was cancelled and not given effect to. Hon"ble Apex Court interfered in the said case and held that since deputation is by way of appointment, the right is created in favour of the petitioner. The cancellation of order of appointment was thus held to be illegal and set aside. Para 14 & 15 of the said judgment has been referred and are quoted hereunder for ready reference:

"14. However, the aforesaid principle cannot be made applicable in the matter of appointment (recruitment) on deputation. In such case, for appointment on deputation in the services of the State or organization or State within the meaning of Article 12 of the Constitution of India, the provisions of Article 14 and Article 16 are to be followed. No person can be discriminated nor it is open to the appointing authority to act arbitrarily or to pass any order in violation of Article 14 of the Constitution of India. A person, who applies for appointment on deputation has indefeasible right to be treated fairly and equally and once such person is selected and offered with the letter of appointment on deputation, the same cannot be cancelled except on the ground of non-suitability or unsatisfactory work.

15. The present case is not a case of transfer on deputation. It is a case of appointment on deputation for which advertisement was issued and after due selection, the offer of appointment was issued in favour of the appellant. In such circumstances, it was not open for the respondent to argue that the appellant has no right to claim deputation and the respondent cannot refuse to accept the joining of most eligible selected candidate except for ground of unsuitability or unsatisfactory performance."

11. The aforesaid judgment was referred by the Hon"ble Apex Court in its subsequent judgment in the case of Union of India & Anr. Vs. S.N. Maity (supra). Therein issue of curtailment of the period of deputation was considered and decided. Para 14 to 16 are quoted hereunder:

"14. In the above backdrop, this Court made a distinction between "transfer on deputation" and "appointment on deputation" and proceeded to lay down thus:

"14. However, the aforesaid principle cannot be made applicable in the matter of

appointment (recruitment) on deputation. In such case, for appointment on deputation in the services of the State or organization or State within the meaning of Article 12 of the Constitution of India, the provisions of Article 14 and Article 16 are to be followed. No person can be discriminated nor is it open to the appointing authority to act arbitrarily or to pass any order in violation of Article 14 of the Constitution of India. A person who applies for appointment on deputation has an indefeasible right to be treated fairly and equally and once such person is selected and offered with the letter of appointment on deputation, the same cannot be cancelled except on the ground of non-suitability or unsatisfactory work.

15. The present case is not a case of transfer on deputation. It is a case of appointment on deputation for which advertisement was issued and after due selection, the offer of appointment was issued in favour of the appellant. In such circumstances, it was not open for the respondent to argue that the appellant has no right to claim deputation and the respondent cannot refuse to accept the joining of most eligible selected candidate except on ground of unsuitability or unsatisfactory performance".

15. Eventually, taking note of the communications, this Court directed as follows:

"18. For the reasons aforesaid, the impugned order of withdrawal of appointment dated 11-3-2010 and the order of the Division Bench of the Gujarat High Court cannot be sustained and they are accordingly set aside. As the post of Director is vacant, in view of the interim order of this Court dated 9-5-2011, we direct the 2nd respondent to accept the joining of the appellant for a period of one year on deputation which is to be counted from the date of his joining and other terms and conditions of deputation will remain same. North Gujarat University is directed to relieve the appellant with further direction to the 2nd respondent to accept the joining of the appellant within one week from the date of reporting by the appellant."

16. The controversy that has emerged in the instant case is to be decided on the touchstone of the aforesaid principles of law. We have already opined that it is not a case of simple transfer. It is not a situation where one can say that it is a transfer on deputation as against an equivalent post from one cadre to another or one department to another. It is not a deputation from a Government Department to a Government Corporation or one Government to the other. There is no cavil over the fact that the post falls in a different category and the 1st respondent had gone through the whole gamut of selection. On a studied scrutiny, the notification of appointment makes it absolutely clear that it is a tenure posting and the fixed tenure is five years unless it is curtailed. But, a pregnant one, this curtailment cannot be done in an arbitrary or capricious manner. There has to have some rationale. Merely because the words "until further orders" are used, it would not confer allowance on the employer to act with caprice."

12. The perusal of both the judgments (supra) reveals consideration of the issue of right of the incumbent and as to when curtailment of period can be made. In the case of Union of India & Anr. Vs. S.N. Maity (supra), it was held that if period of one year deputation is extendable by another period, the official would have no right to seek continuance beyond the period of one year unless period is extended. In the said judgment, the period of deputation was only for a period of one year as is coming out from the order. The instant case is not a case of curtailment of period of deputation but asking the petitioner to join the original post on completion of period of deputation of one year as it has not been extended. It is settled law that one cannot claim extension of period of deputation as a right unless order of appointment gives the period of deputation and subsequently it is curtailed. In the case of Union of India Vs. V. Ramakrishnan (supra), it was categorically held that no right is created in favour of the deputationist to continue on the post beyond the period given therein. Para 32 and 35 of the said judgment are quoted hereunder:

"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 posthaste manner also indicates malice. [See Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia and Others,]

35. In Parshotam Lal Dhingra, it is categorically stated that when an appointment is made for a specific period, unless any disciplinary proceeding is initiated, a person will be entitled to hold the said post."

13. In view of judgments of the Hon'ble Apex Court, what comes out is that in case of appointment by deputation, a right is created in favour of the employee who would remain on deputation for a period given in the order of appointment and the period cannot be curtailed unless person is found to be unsuitable or his services are unsatisfactory. If facts of this case are considered, period of deputation given in the order of appointment is only of one year and not of three years. It is not a case of curtailment of the period of deputation. The petitioner has presumed period of deputation to be of three years. It is not reflected in the order of appointment or in the relieving order. The petitioner could have made a protest then and there for deputation minimum of three years. No such protest was made, rather the petitioner accepted relieving as well as appointment on deputation for a period of one year. The lending department has no intention to

continue the period of deputation and now even the NCTE is not inclined to continue the petitioner on deputation rather they have made alternative arrangement and thereby post is not lying vacant. In view of situation given above, I do not find any ground to quash the order dated 25.03.2015.

14. So far as order of suspension is concerned, learned counsel appearing for the State of M.P. submitted that it would not be continued, rather they are not opposing challenge to the said order. In the light of the above, order of suspension dated 17.04.2015 is set aside. It is not informed that petitioner joined the post in pursuance to the impugned order dated 25.03.2015. It is despite of the interim order of this court dated 1st May, 2015. No interference was made by the Division Bench in the said interim order. It would be thus expected from the petitioner to join the post immediately in pursuance to the order dated 25.03.2015.

15. The writ petition is disposed of with the aforesaid.