
(2016) 02 RAJ CK 0030

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 1080/2015 and Stay Application No. 15097/2015 in Civil Writ Petition No. 5737/2015

I.K. Mansoori

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-02-2016

Acts Referred:

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

Citation : (2016) LIC 2861 : (2016) 2 WLC 769

Hon'ble Judges : Ajit Singh, Actg. C.J. and Mohammad Rafiq, J.

Bench : Division Bench

Advocate : Anoop Chaudhary, Ashok Gaur, Senior Advocates, June Chaudhary and Ajay Chaudhary, for the Appellant; Ashish Kumar on behalf of R.D. Rastogi, Additional Solicitor General, for the Respondent

Final Decision : Partly Allowed

Judgement

Mohammad Rafiq, J.—1. This special appeal seeks to challenge judgment of the Single Bench dated 5th of November, 2015, by which writ petition filed by appellant has been allowed in part and order placing him under suspension dated 17.04.2015 has been set aside, however, challenge to order dated 25.03.2015, whereby the appellant was directed to join the post of Deputy Registrar in Jiwaji University, Gwalior, repatriating him from deputation, passed by the Deputy Secretary to the Government of Madhya Pradesh, in its Higher Education Department, has been repelled.

2. The facts which are requisite to be stated are that respondent No. 2 - National Council for Teacher Education (for short, "the NCTE") by issuance of vacancy circular dated 15.11.2012 (Annexure-9 to writ petition) invited applications from eligible officers under the Central/State Governments/PSUs/Statutory, Semi Govt. or Autonomous under the Central/State Government, for filling up the posts of Deputy Secretary/Regional Director on deputation (including short term contract) at its Headquarters, New Delhi and Regional Committees at Jaipur,

Bhopal, Bhubaneshwar and Bangalore, on foreign service terms subject to fulfilling the eligibility criteria as mentioned therein. The general instructions appended to the said vacancy circular provided that the period of deputation (including short term contract) shall not ordinarily exceed three years, which can be extended maximum up to five years with the concurrence of the lending organization. Only short listed candidates will be called for interview and/or any further selection process. Appellant Dr. I.K. Mansoori, who was working as Deputy Registrar, Jiwaji University, Gwalior, also applied for that post in response to aforesaid vacancy circular, and submitted application through the Registrar, Jiwaji University, Gwalior, for his recruitment by deputation with the NCTE. The Registrar of the said University vide letter dated 10.04.2013 forwarded his application to the Government of Madhya Pradesh for their consent. The Under Secretary to the Government of Madhya Pradesh, Higher Education Department, vide letter dated 28.05.2013, addressed to the Member Secretary of the NCTE, New Delhi, conveyed their "no objection" for deputation of the appellant as Deputy Secretary/Regional Director with the NCTE. It was thereafter that the said University with their letter dated 31.08.2013 forwarded the application of the appellant to the NCTE. The Member Secretary, NCTE, New Delhi, vide letter dated 27.02.2014, conveyed to the Registrar, Jiwaji University, Gwalior that the appellant has been selected for appointment as Deputy Secretary/Regional Director in the PB-III - Pay Scale: Rs. 15600-39100 along-with Grade Pay: Rs. 7600/- in the National Council for Teacher Education on deputation/short term contract basis, initially for a period of one year, extendable up to three years, on year to year basis. The said letter also conveyed that the terms and conditions for the deputation will be governed by the provisions contained in the Department of Personnel & Training OM No. 6/8/2009-Estt (Pay-II) dated 17.06.2010, as amended from time to time, a copy whereof was enclosed therewith. It was requested that appellant Dr. I.K. Mansoori may be relieved so as to enable him to join the above mentioned post and he may be advised to report to the Member Secretary, NCTE, Wing-II, New Delhi. Copies of the letters were endorsed to the appellant as also to the Under Secretary to the Government of Madhya Pradesh in its Higher Education Department.

3. The appellant thereupon submitted an application on 04.03.2014 to the Principal Secretary, Department of Higher Education, Government of Madhya Pradesh, Bhopal, through the Registrar, Jiwaji University, Gwalior, for relieving him to join the post as early as possible but before 10.03.2014, as per offer aforesaid. The Deputy Secretary to the Government of Madhya Pradesh, sent a communication on 04.03.2014 to the Registrar, Jiwaji University, Gwalior, conveying approval of the Department for deputation of the appellant with the NCTE for a period of one year, and required the latter to relieve the appellant under intimation to the Department. The Deputy Registrar (Administration) of the Jiwaji University, Gwalior, by order dated 04.03.2014, which was addressed to the Secretary, NCTE, New Delhi, relieved the appellant in the afternoon of that date to join there. Accordingly, the appellant joined the services with the NCTE

on 06.03.2014. The Deputy Secretary to the NCTE, vide office order dated 18.03.2014, posted the appellant in NCTE as Deputy Secretary/Regional Director at NRC, Jaipur, on deputation basis (in terms of foreign service), initially for a period of one year, extendable up to three years, on year to year basis, until further orders, as per Department of Personnel & Training Rules, with effect from 06.03.2014, the date when the appellant joined the NCTE Headquarters. The appellant, in this manner, satisfactorily completed the tenure of one year on 04.03.2014. However, the NCTE sent a letter dated 24.02.2015 to the Deputy Secretary, Department of Higher Education, Government of Madhya Pradesh, conveying that the deputation of the appellant working with them as Regional Director, NCTE, NRC, Jaipur, for a period of one year, which was extendable up to three years, was about to complete on 04.03.2015 and that, in continuation of the above term and period of his recruitment/appointment as well as keeping in view the inevitability of the services of the appellant and also his willingness to continue his service for another one year, the competent authority has decided to extend the term of his appointment/deputation period for another one year beyond 05.03.2015. It was therefore requested to convey the approval of the competent authority of the lending Department for another period of one year beyond 05.03.2015.

4. Not acceding to the request of the NCTE, the Deputy Secretary, Department of Higher Education, Government of Madhya Pradesh, vide order dated 25.03.2015, while recalling the services of the appellant, ordered his posting as Deputy Registrar, Barkatullah University, Bhopal. A copy of that order was endorsed to the Member Secretary, NCTE, New Delhi. The Member Secretary, NCET, New Delhi, then wrote a D.O. Letter dated 09.04.2015 to the Principal Secretary, Higher Education Department, Government of Madhya Pradesh, Bhopal, stating that the Department of Higher Education, Government of Madhya Pradesh, vide order dated 25.03.2015, has ordered internal posting of the appellant even without sending a formal reply to their request. It was further stated that appellant was selected for a period of three years, of course, extendable on year to year basis. There was an acute shortage of officers in the NCTE and it would be difficult for them to spare his services at this juncture. The appellant, being the Regional Director of Northern Regional Committee, Jaipur, is responsible for examining and processing the applications in respect of eight States under its jurisdiction, and the process is to be completed, as per direction of the Supreme Court, within the fixed time frame. The request was made to look into the matter and allow the NCTE to retain his services for another one year. Since the appellant was not yet relieved by the NCTE, he did not join the parent department. When the appellant failed to join, the Government vide order dated 17.04.2015, issued under the signature of the Deputy Secretary(I), Department of Higher Education, Government of Madhya Pradesh, placed him under suspension. The NCTE thereafter issued order dated 29.04.2015 reverting the appellant from deputation and repatriating him to the Department of Higher Education, Government of M.P., and by another order passed on the same date

i.e. 29.04.2015, Dr. S.K. Chauhan, Under Secretary, NCTE Headquarters, was posted at NRC, Jaipur, to look after the duties of Regional Director, NRC, NCTE, Jaipur, with immediate effect and until further orders without any additional remuneration.

5. The appellant, feeling aggrieved thereby, approached this court by filing Writ Petition, challenging the order dated 17.04.2015 placing him under suspension as also the order dated 25.03.2015 of his posting as Deputy Registrar, Barkatullah University, Bhopal, and praying for a direction to the Government/his parent department to issue "no objection" for extension of the term of his deputation. Learned Single Judge has, by the impugned judgment, partly allowed the writ petition, by setting aside the order of suspension of the appellant dated 17.04.2015 but upheld the order dated 25.03.2015, expecting him to join the post immediately.

6. We have heard learned counsel for the parties and perused the material on record.

7. Shri Anoop Chaudhary, learned senior counsel for appellant, has argued that learned Single Judge failed to consider that it was not an ordinary deputation but was "recruitment by deputation", which was for a period of three years and not for one year. The vacancy circular stated that the period of deputation shall not ordinarily exceed three years, but can be extended maximum up to five years. The terms and conditions of the deputation, as were clearly conveyed by the NCTE to the respondents parent department, vide letter dated 27.02.2014, were to be governed by the provisions contained in the Department of Personnel & Training OM No. 6/8/2009-Estt (Pay-II) dated 17.06.2010. Clause 8 of the Office Memorandum dated 17.06.2010 provides for tenure of deputation/foreign service. Clause-8 stipulates that the period of deputation/foreign service shall be three years. It is settled law proposition of law that any appointment should be governed either by the relevant rules or in case rules are silent, terms and conditions of the advertisement. The appointment of the appellant was to be governed by the vacancy circular and the Office Memorandum and not by the appointment order or the relieving order, which are of no significance. Relying on judgment of the Constitution Bench of the Supreme Court in *Mohinder Singh Gills and Another Vs. The Chief Election Commissioner, New Delhi and Others* - , (1978) 1 SCC 405, learned senior counsel argued that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit, or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. Submission therefore is that what is stated in the relieving order subsequently would be of no significance.

8. Learned senior counsel argued that had the appellant known that his tenure of recruitment by deputation would be confined only to one year, he or the borrowing department i.e. NCTE, would not have agreed for such a proposition,

and that neither the appellant would have applied nor the NCTE would have selected him in a recruitment by deputation for such a short duration of one year. Referring to Clause 8.1 of the Office Memorandum dated 17.06.2010, he argued that according thereto, the period of deputation/foreign service shall be as per the Recruitment Rules of the ex-cadre post or three years, in case no tenure regulations exist for the ex-cadre post. Clause 8.2 thereof further provides that in case where the period of deputation/foreign service prescribed in the recruitment rules of the ex-cadre post is three years or less, the Administrative Ministry/borrowing organization may grant extension up to 4th year after obtaining orders of their Secretary (in the Central Government)/Chief Secretary (in the State Government)/equivalent officer (in respect of other cases) and for the fifth year with the approval of the Minister of the borrowing Ministry/Department and in respect of other organizations with the approval of the Minister of the borrowing Ministry/Department with which they are administratively concerned. It is only in the case of fifth year that Clause 8.3.1 has provided that this should be done only where it is absolutely necessary in public interest, subject to prior approval of the lending organization, with the consent of the official concerned. However, no further extension beyond fifth year shall be considered. Learned senior counsel cited the notification dated 09.12.1964, issued by Government of Madhya Pradesh, according to which the period of deputation should not normally exceed four years, where-after the officers should be recalled. Clause (3)(i)(3) of the Guidelines of Deputation on Foreign Service clearly states that an officer shall be sent on deputation for minimum period of two years; however, Clause (6)(A) stipulates that period of deputation ordinarily should not exceed four years and after completion of four years the officer concerned must be repatriated to his parent department. While in the case of the appellant, the Government decided to recall his services on completion of only one year, the appellant in his rejoinder to the reply to second stay application, has given example of number of officers of the same status, who are working on deputation basis for the period of more than one year. Reference is made to the case of one Dr. Ajeet Shrivastava, Deputy Registrar of the University, who has been allowed to continue on deputation even for more than four years. No rebuttal has been made to this assertion of the appellant.

9. Shri Anoop Chaudhary, learned senior counsel for appellant, further argued that the plea set up by the respondents that there was shortage of officers in the parent department, is palpably false. He cited the copy of the Gazette Notification dated 27.08.2015 issued by the Ministry of Higher Education Department, Government of Madhya Pradesh, by which amendment was made to the Madhya Pradesh Vishwavidhyalaya Act, 1973, according to which the total cadre strength of the post of Deputy Registrar was 24, which fact was pleaded by the appellant in his rejoinder with additional assertion that as against 24 sanctioned post, there are presently 26 Deputy Registrars working. Reference was made to document Annexure RJ-2, filed with the rejoinder, which was the list of present position of posting as on 01.04.2014 containing the names of 26

officers. One Shri Sunil Khare was promoted as Deputy Registrar from the post of Assistant Registrar, and was sent on deputation to Medical University assuming the post of Deputy Registrar and the said post is lying vacant, whereas he was working on deputation. There is in fact no sanctioned post of Deputy Registrar with Atal Bihari Vajpayee Hindi Vishwavidhyalaya, Bhopal. No rebuttal to even this fact was made by the Government before the Single Bench. The impugned order passed by the respondent Government of Madhya Pradesh suffers from malice in law and facts both, inasmuch as it has set up a false plea. Their action is discriminatory and arbitrary, thus violative of Articles 14 and 16 of the Constitution of India.

10. Shri Anoop Chaudhary, learned senior counsel, argued that learned Single Judge has erred in concluding that the appointment order as well as the relieving order clearly mentions that the period of deputation was one year and deputation was never challenged/objected to by the appellant. There was no occasion for the appellant to challenge the said order as the vacancy circular as well as the Office Memorandum nowhere stated that the period of deputation was confined to one year. They rather clearly stated that the period of deputation would be three years. Learned Single Judge failed to consider that the "no objection" granted by the Government in the first instance in their letter dated 28.05.2013 sent to NCTE, did not prescribe any time limit of one year for deputation. Even if the communication dated 27.02.2014 sent by NCTE mentioned appointment on deputation initially for a period of one year, extendable up to three years, and on which basis the Government, vide order dated 04.03.2014 also taken tenure of deputation as one year, the vacancy circular, with reference to which, the initial "no objection" granted by the Government, the Office Memorandum would not thereby be rendered redundant. Learned Single Judge has failed to consider that the Member Secretary, NCTE, New Delhi, still again vide DO letter dated 09.04.2015 reiterated their request for retaining the services of the appellant as he was selected for a period of three years, though extendable on year to year basis, stating that there was acute shortage of officers with them. The appellant, submitted that the appellant filed an additional affidavit before the Single Bench asserting that at the time of his recruitment on deputation, three posts of Deputy Secretary/Regional Director in NCTE were filled. While the term of the appellant was curtailed to one year, other incumbents were allowed to continue for three years. Mrs. P. Pevethy Reddy was allowed to continue in NCTE as Regional Director on South Regional Committee, NCTE, Bangalore. Two other Regional Directors, namely, Shri C. Neelapa, Regional Director, ERC, Bhuvneshwar and Shri Sunil Shrivastava, Regional Director, WRC, Bhopal have completed three years tenure in the month of July and August, 2015. This fact also remained uncontroverted by the respondents. It is argued that learned Single Judge has erred in law in recording finding that the post of Regional Director held by the appellant has already been filled, which is not factually correct. The NCTE has given additional charge of this post to one Dr. S.K. Chauhan, holding the lower post of Under Secretary, by way of stop gap arrangement, without any additional

remuneration. In fact, applications have again been invited for filling up the three posts of Deputy Secretary/Regional Director on deputation, by issuance of vacancy circular dated 04.01.2016. The very basis for passing of the relieving order dated 29.04.2015 by the NCTE was the order of his suspension and now when the order of suspension has been set-aside, the basis of relieving/repatriating the appellant goes, thus making him entitled to be retained in the service on deputation.

11. Learned senior counsel argued that Clause 9 of the Office Memorandum 17.06.2010 provides that as and when a situation arises for premature reversion to the parent cadre of the deputationist, his services could be so returned after giving an advance notice of at least three months to the lending Ministry/Department and the employee concerned. In the present case, no such notice was ever given to the appellant for his repatriation to the parent department. The action of the respondents suffers from both malice in law and fact, which is evident from the fact that they acted mechanically in post haste manner by abruptly placing him under suspension for the reason of not joining the parent department. The Government could not have straightaway given posting to the appellant without formally recalling his services from borrowing department. So long as the appellant was not relieved from the borrowing department, it was not possible for him to join the place of posting. Learned counsel for appellant, has referred to relevant note-sheet, copy whereof was obtained by the appellant under the Right to Information Act. Referring to note bearing Reg. No. 1007/2015, it is argued that this note was written when the letter of Member Secretary dated 09.04.2015 was received by the Government. The Section Officer, while dealing with that letter, put up the matter to the Under Secretary for appropriate orders in a typed out note, but two hand written lines were later inserted in a different ink to the effect that as per discussion with the Deputy Secretary (I), the draft of suspension order was being proposed. Thereafter, file was marked to the Under Secretary-III and then Deputy Secretary-I, who thereupon noted that despite direction at the appropriate level, the draft of suspension order was not proposed. And the original record has also been produced by Shri Shyam Arya, learned counsel for the State of Madhya Pradesh. He in fact then proposed the suspension of the appellant. The whole action of the respondents thus smacks of malice in law and fact both.

12. Learned Single Judge has wrongly relied on judgment of the Supreme Court in Union of India Vs. V. Ramakrishnan and Others - , (2005) 8 SCC 394. While coming to the conclusion that no right is accrued in favour the deputationist in view of the period of deputation, in Para 32 of the same judgment, it has been stated that an action taken in a post haste manner also indicates malice. The NCTE itself, in letter dated 09.04.2015, requested the Government of Madhya Pradesh for allowing the appellant to continue on deputation for three years. It has merely after a span of twenty days, vide order dated 29.04.2015, taken a u-turn by relieving the appellant in most arbitrary and illegal manner. Learned Single Judge failed to appreciate that the case of the appellant is squarely

covered by the principle of law enunciated by the Supreme Court in *Union of India and Another Vs. S.N. Maity and Another* - , 2015 AIR SCW 579 and *Ashok Kumar Ratilal Patel Vs. Union of India and Another* - , (2012) 7 SCC 757, in both of which it was held that appointment on deputation is different from transfer on deputation and it creates legal right in favour of deputationist. Use of wordings "until further orders" in the Notification regarding deputation, would not confer no undue advantage to the employer. Any curtailment of such period without any cogent reason would be violative of Articles 14 and 16 of the Constitution as no person can be discriminated and it is not open to the appointing authority to pass any arbitrary order, held the Supreme Court. The learned Single Judge has failed to appreciate that before curtailing the period of deputation of the appellant, neither the Government gave him opportunity of hearing nor any reason for such repatriation. The alleged shortage of officers being factually incorrect assertion, is not a valid reason. The impugned order therefore cannot withstand on the test of principle of natural justice.

13. Shri Shyam Arya, learned counsel for the respondent Government of Madhya Pradesh, argued that the appellant was permitted to join on deputation on the post of Deputy Secretary/Regional Director, NCTE, New Delhi, only for one year, which is evident from order dated 04.03.2014. Neither the borrowing department nor appellant can compel the lending department to extend the period of deputation for further one year. Respondent - lending department is competent to recall the appellant and it vide order dated 25.03.2015 rightly repatriated and posted him as Deputy Registrar, Barkatullah University, Bhopal. Even the NCTE also appointed the appellant on deputation for one year, extendable on year to year basis up to three years. On expiry of the period of deputation of one year, when the lending department, in its discretion, decided not to concur for extension of deputation, the appellant was required to join the duty to his parent department. The appellant himself in para 4 of the appeal has stated that in the advertisement, it was clearly mentioned that period of deputation cannot exceed three years. The NCTE appointed him only for one year, extendable by three years on year to year basis. The appointment of appellant on deputation was only for one year and the lending department also permitted him to go on deputation only for one year and now he cannot claim his deputation to continue for three years. Respondent may or may not at their sweet will extend the term of deputation. The order dated 04.03.2014 issued by the Deputy Secretary, Higher Education Department, Government of MP, copy of which was sent to the Registrar, Jiwaji University, Gwalior, permitted the appellant to join on deputation only for a period of one year.

14. Shri Shyam Arya, learned counsel, argued that the respondent - State of M.P. has started four new Universities in the State of Madhya Pradesh, namely, Maharaja Chhatrashal Bundelkhand University, Chhatarpur, Dr. B.R. Ambedkar Samajik Vigyan Vishwavidhyalaya, Mhow, Madhya Pradesh Ayurvigyan Vishwavidhyalaya, Jabalpur, and Atal Bihari Vajpayee Hindi Vishwavidhyalaya, Bhopal. Looking to the scarcity of the staff, it was not possible for the respondent

to further extend the period of deputation of the appellant. The clauses 3 and 6 referred to by the appellant, are not part of any rules and they are part of the Circular dated 09.12.1964 and 29.02.2008, which are simply guidelines with regard to sending an employee on deputation, from one department to another. These guidelines are not for an employee, who wishes to go on deputation outside the Government Department, for which sanction of the State Government is necessary.

15. Shri Shyam Arya, learned counsel, argued that it is wrong to say that the respondents curtailed the tenure of deputation of the appellant, whereas the fact is that the tenure of deputation of appellant was only for one year and after completion of that period, the term of deputation was not extended. Although the borrowing department may be bound by the provisions contained in the Department of Personnel & Training OM No. 6/8/2009-Estt (Pay-II) dated 17.06.2010, they are not binding upon the respondent - Government of Madhya Pradesh. Once the appellant accepted the terms and conditions of sanction of tenure of deputation, he cannot claim as a matter of right extension of that term. The principle of estoppel is applicable in the matter against the appellant. Learned Single Judge has rightly held that deputation of the appellants was of one year and it was never challenged and objected by the appellant. Issuance of "no objection" and permission to extend the term of deputation are two distinct things. The respondent granted permission to send the appellant on deputation only for a period of one year. It is well settled principle of service jurisprudence that appointment should be governed by the terms and conditions of the order of appointment and also by order of grant of tenure of deputation. Assertion of appellant in appeal that in commutation order dated 27.02.2014 it was erroneously mentioned that initial appointment of appellant was for one year, extendable on year to year basis, is absolutely wrong. When he was aware about erroneous order, why did he not challenge the same. Learned Single Judge has rightly observed that observations of the Supreme Court in *Union of India Vs. V. Ramkrishnan*, supra, in para 32 of the report, are not applicable to the facts of present case. When the respondent - State of Madhya Pradesh permitted the term of deputation only for one year and the NCTE also appointed the appellant initially for one year, there was no need of giving him any opportunity of hearing. The allegation of appellant regarding violation of principle of natural justice is emphatically denied. Keeping in view the necessity of services of the appellant in the University, the respondent - State of Madhya Pradesh did not think it appropriate to extend the term of deputation. The term of deputation cannot be extended on the sweet will of appellant or borrowing department.

16. Learned counsel further argued that the law laid down by the Supreme Court in *Ashok Kumar Ratilal Patel* (supra), is not applicable to the present case. In the present case, the appellant was appointed on deputation initially for a period of one year, extendable up to three years on year to year basis. The respondent did not withdraw or cancel the deputation of the appellant during that period. He completed his one year tenure of deputation. The appellant cannot as of right

claim extension of the period of deputation. In *Union of India Vs. S.N. Maity*, supra, also the petitioner was appointed on deputation for a period of five years or until further orders, whichever was earlier, but after 11 months, the borrowing department repatriated him to its parent department. The Supreme Court held that the post held by him on deputation was a tenure post and the tenure cannot be curtailed. In the instant case, the appellant was initially appointed on deputation for a period of one year and the lending department also permitted his appointment on deputation only for a period of one year and thereafter he was repatriated to the lending department. Learned Single Bench vide interim order dated 01.05.2015, after considering the order dated 25.03.2015, directed the appellant in writ petition to join the duty with the parent department. Aggrieved thereby, petitioner preferred Special Appeal No. 417/2015, and a Coordinate Bench of this Court declined to interfere in the order dated 01.05.2015. Learned Single Judge, vide impugned order dated 05.11.2015, rightly expected of the appellant to join the post immediately in pursuance of the order dated 25.03.2015.

17. Shri R.P. Singh, learned Senior Counsel for respondent - NCTE, argued that deputation of appellant was initially for a period of one year, which was extendable up to three years on year to year basis and his tenure came to end on 04.03.2015. He was posted at NRC, NCTE, Jaipur, with immediate effect. His deputation period was for one year and he wrote a letter dated 11.02.2015 to the Member Secretary, NCTE, New Delhi, regarding his consent to continue in NCTE on deputation, in which he specifically admitted that his initial period of deputation was for one year, which was completed on 04.03.2015, and he requested to extend term of his deputation for remaining two years. The NCTE, being the borrowing department, had no authority to extend the period of his deputation without prior consent of the parent department. Learned Single Bench of this Court vide interim order dated 01.05.2015 directed the NCTE to immediately relieve the appellant. The appellant therefore, vide order dated 29.04.2015, has already been relieved from the post of Regional Director and in his place one Dr. S.K. Chauhan has assumed the charge of the post. It is argued that in fact, the appellant was already relieved by the office of NCTE and the appellant pleaded incorrect facts. The NCTE no longer requires the services of appellant. The appellant does not have any legally enforceable right to complete the extendable period of his deputation and he could always and at any time be repatriated to his parent department to serve in his substantive position. The appellant has no vested right to continue on deputation. The order repatriating the appellant to his parent department, not being punitive/stigmatic and being simplicitor order of repatriation, does not infringe any right of or cause any prejudice to the appellant.

18. Relying on judgment of the Supreme Court in *State of Punjab and Others Vs. Inder Singh and Others* - , (1997) 8 SCC 372, Shri R.P. Singh, learned senior counsel for respondent - NCTE, argued that deputation is a tripartite agreement based on voluntary consent of the principal employer to lend the services of his

employee, which decision has to be accepted by the borrowing department/ employer and also involves consent of the employee. The deputation subsists so long as parties to tripartite agreement adhere to the same. The moment this tripartite agreement is disturbed or vitiated or repudiated, the employee would have no legally enforceable right to continue on deputation. Learned senior counsel submitted that although there was no complaint against working of the appellant, but once the lending department has refused to give further consent for extension of deputation and placed him under suspension, there was no way the NCTE could continue him on deputation. The NCTE then had been left with no option but to repatriate him to his parent department. Learned senior counsel also relied on judgment of the Supreme Court in *Union of India Vs. V. Ramakrishnan*, supra, wherein the incumbent on deputation was repatriated back from his deputation to parent department and the Supreme Court observed that the incumbent on deputation can always be sent to parent department and there is no malice in the action of the department. Learned Single Judge has rightly analyzed the law on the subject and was perfectly justified in dismissing the writ petition.

19. We have given our thoughtful consideration to rival submissions, perused material on record and also original record produced before the court. We have also respectfully studied the cited precedents.

20. Indisputably, the respondent NCTE, vide vacancy circular dated 15.11.2012, invited applications from eligible officers. That vacancy circular also contained general instructions that period of deputation shall not ordinarily exceed three years, which can be extended maximum up to five years, with concurrence of the lending organization. Registrar, Jiwaji University, Gwalior, vide letter dated 10.02.2013, forwarded the application of the appellant for deputation, to the Government for their "no objection". The Government, vide their letter dated 28.05.2013, the first and earliest communication in this behalf, conveyed to the Member Secretary, NCTE, that it had "no objection" to the deputation of the appellant as Deputy Secretary/Regional Director. Therein, no time period was stipulated. Moreover, the Member Secretary of respondent NCTE upon selection of the appellant for appointment on deputation, wrote back to the Registrar, Jiwaji University, Gwalior, that appellant has been selected for appointment as Deputy Secretary/Regional Director on deputation basis initially for a period of one year extendable for three years on year to year basis. The terms and conditions of deputation would be governed by the provisions contained in the Department of Personnel & Training OM No. 6/8/2009-Estt (Pay-II) dated 17.06.2010. Copy of the Office Memorandum aforesaid was enclosed with the letter. Contention of the Government of Madhya Pradesh that even though this Office Memorandum may be binding on the respondent NCTE, but would have no binding force as far as Government of M.P. is concerned, cannot be straightaway accepted because this Office Memorandum contained complete procedure with regard to transfer on deputation. Clause 8 of the Office Memorandum contains provision with regard to "tenure of deputation/foreign service". According to

Clause 8.1, the period of deputation/foreign service shall be as per the Recruitment Rules of the ex-cadre post or three years in case no tenure regulations exist for the ex-cadre post. Clause 8.2 thereof provides that in case where the period of deputation/foreign service prescribed in the recruitment rules of the ex-cadre post is three years or less, the Administrative Ministry/borrowing organization may grant extension up to 4th year after obtaining orders of their Secretary/equivalent officer and for the fifth year, with the approval of the Minister of the borrowing Ministry/Department. Clause 8.3.1 provided that borrowing Ministries/Departments/Organizations may extend the period of deputation up to the fifth year where absolutely necessary in public interest, subject to the condition that the extension would be subject to the prior approval of the lending organization, and no further extension beyond the fifth year shall be considered.

21. Argument made on behalf of the Government of Madhya Pradesh that it could refuse to extend the deputation at its sweet will cannot be therefore countenanced. The respondent NCTE when it approved the appointment of the appellant on deputation, it at the outset immediately conveyed to the Registrar, Jiwaji University, by its letter dated 27.02.2014, both the aforesaid facts that he has been selected for appointment as Deputy Secretary/Regional Director in the respondent NCTE on deputation basis initially for one year, extendable up to three years, on year to year basis and also the terms and conditions thereof would be governed by the Office Memorandum dated 17.06.2010. The letter dated 27.02.2014, the vacancy circular dated 15.11.2012, and aforesaid Office Memorandum dated 17.06.2010 will have to be therefore read conjointly to determine the period of deputation, understood by all the consenting parties as minimum, namely, the lending department, borrowing department and appointee himself. Notwithstanding therefore the initial permission granted by the Government of Madhya Pradesh for relieving the appellant to join the services of respondent NCTE on deputation basis for a period of one year vide letter dated 04.03.2014, this one year should be read within three years on year to year basis, which was the understanding between all the three parties for appointment of the appellant on deputation with respondent NCTE as Deputy Secretary/Regional Director. Although, we are not inclined to countenance the submission that extension of deputation of appellant for fourth year, even beyond three years, would not require any consent from the lending department i.e. Higher Education Department of Government of Madhya Pradesh but the appellant has certainly made out a case why he should have been allowed to complete three years' tenure of deputation. Had it not been for assured term of three years, neither the appellant would have applied for appointment on deputation for only one year nor the respondent NCTE would have entertained his application for transfer on deputation. We by this do not mean to suggest that the requirement of approval on year to year basis should be completely done away with but in view of solemn understanding given by the lending department while initially consenting to lend the services of the appellant for a

tenure appointment on deputation for three years, ordinarily the request of the borrowing department on the basis of willingnesses of the employee concerned to consent for extension of deputation for one more year should not be declined except for a very compelling valid reason on objective considerations. If the lending department were to refuse extension beyond one year, it has to convey such compelling and valid reason.

22. Significantly, even before the Government recalled the services, the respondent NCTE, with reference to their earlier letter dated 27.02.2014, sent a letter dated 24.02.2015 to the Higher Education Department of the Government of Madhya Pradesh, that the appellant was appointed on deputation basis as Deputy Secretary/Regional Director and was presently working as Regional Director, NCTE, NRC, Jaipur, for a period of one year, extendable up to three years and that he is going to complete his one year deputation on 04.03.2015, so in continuation of the above term and period of his recruitment/appointment as well as keeping in view the inevitable services of the appellant and also his willingness to continue his service for another one year, the competent authority has decided to extend the term of his appointment/deputation for another one year from 05.03.2015. The request was made to convey the approval of the competent authority of the lending department for extension of deputation period of one year. When the Government recalled the services of the appellant and posted him as Deputy Registrar in Barkatullah University, Bhopal, the Member Secretary, NCTE, again sent a DO letter dated 09.04.2015, to the Principal Secretary, Higher Education department, Government of Madhya Pradesh, stating that the appellant was appointed with effect from 06.03.2014 on deputation basis for one year extendable by three years. He has completed tenure of one year on 05.03.2015. Accordingly a request was sent vide letter dated 24.02.2015 for extension of deputation beyond 05.04.2015. However, the Department of Higher Education, Government of Madhya Pradesh, vide order dated 25.03.2015, has ordered his internal posting without sending formal reply to their request. It was further reiterated that the appellant was selected for a period of three years, of course, extendable on year to year basis, and that there is acute shortage of officers in the NCTE and it may be difficult for them to spare his services at this juncture. Further that the NCTE had brought new regulations vide its notification dated 28.11.2014, pursuant to which it has invited applications from States and Union Territories for teacher education programmes, so time schedule has been prescribed in pursuance of orders of the Supreme Court. Dr. Mansoori being the Regional Director of the Northern Regional Committee, Jaipur, is responsible for examining, processing the applications in respect of eight states under its jurisdiction, which is to be completed within the fixed time frame. Request was therefore made to allow them to retain his services for another one year.

23. When the aforementioned letter reached the Government of Madhya Pradesh in its Higher Education department, it was accordingly dealt with vide Note 618/15 dated 03.03.2015 where the Section Officer put up the same to Under Secretary III for consenting to extension of deputation by one year or till

05.03.2016. The Under Secretary marked the matter to the Deputy Secretary-I, who stated that earlier NOC was granted only for one year and the request for extension should be considered in view of acute shortage of officers in the rank of Deputy Registrar with the Universities. The matter was then put up before the Principal Secretary, who thereupon ordered that the officer should be recalled and posted in any University. The appellant has in this regard asserted two facts in the rejoinder to reply to the stay petition. And here we are not inclined to accept the argument made on behalf of the Government of Madhya Pradesh that this rejoinder, which was accompanied by several documents, cannot be taken as part of pleadings. Therein, the appellant has asserted that there are only 24 sanctioned posts of Deputy Registrar and that as against which 26 were already working and he also asserted that some of the officers including one Shri Ajit Shrivastava were allowed to work beyond the maximum permissible period of four years prescribed in the Rules. These facts remained uncontroverted. It is also evident from the Note 1108 dated 25.03.2015, available on the original record, that there were indeed only 24 vacant posts of Deputy Registrar, namely, five posts in Barkatullah Vishwavidhyalaya, Bhopal, three posts in Jiwaji Vishwavidhyalaya, Gwalior, four posts in Devi Ahilya Vishwavidhyalaya, Indore, four posts in Rani Durgawati Vishwavidhyalaya, Jabalpur, three posts in Avdhesh Pratap Singh Vishwavidhyalaya, Riwa, three posts in Vikram Vishwavidhyalaya, Ujjain and two posts in Maharaja Chhatrasal Bundelkhand Vishwavidhyalaya, Chhatarpur. The plea for the first time set up by the Government of Madhya Pradesh before this Court therefore will have to be seen in the light of what has been asserted by the appellant and not uncontroverted by the respondents and which finds corroboration from the original record.

24. What is contended on behalf of the Government is that the State of Madhya Pradesh has started four new universities and looking to the scarcity of staff, they require to man the posts of Deputy Registrar in Maharaja Chhatrashal Bundelkhand University, Chhatarpur, Dr. B.R. Ambedkar Samajik Vigyan Vishwavidhyalaya, Mhow, Madhya Pradesh Ayurvigyan Vishwavidhyalaya, Jabalpur, and Atal Bihari Vajpayee Hindi Vishwavidhyalaya, Bhopal. But, when we compare this assertion with their record, it becomes evident that only Maharaja Chhatrashal Bundelkhand University, Chhatarpur, has two sanctioned posts of Deputy Registrar and Atal Bihari Vajpayee Hindi Vishwavidhyalaya, Bhopal, does not have any sanctioned post of Deputy Registrar and two other universities, namely, Dr. B.R. Ambedkar Samajik Vigyan Vishwavidhyalaya, Mhow, and Madhya Pradesh Ayurvigyan Vishwavidhyalaya, Jabalpur, do not even find mention in the record. The Constitution Bench of the Supreme Court in the judgment of Mohinder Singh Gill, supra, held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. Public orders, publicly made, in exercise of a statutory

authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. If some development has taken place subsequent to recall of the appellant, the same cannot be relied to justify the impugned action.

25. In these facts, when request of the Member Secretary, NCTE, reached lending department for extension of period of deputation of appellant, the Section Officer in Note 1007/15 dated 17.04.2015 dealt with letter dated 09.04.2015 as also the earlier letter dated 24.02.2015 inviting attention towards the request contained therein for extension of deputation for one more year and also to the fact that appellant has been posted in Barkatullah Vishwavidhyalaya, Bhopal, vide order dated 25.03.2015 and no information has yet been received as to whether he has joined. This typed out note did not initially have any proposal for placing the appellant under suspension but in an already typed out Note, two lines were indeed added by hand in different ink that with reference to discussion of Deputy Secretary-I, the draft of suspension order of officer was proposed. The file was then marked to the Under Secretary-III and thereafter to Deputy Secretary-I, who though initially marked it to the Minister but then on the original note-sheet this marking has been erased by use of white fluid and thereafter it has been marked to Principal Secretary, who then noted that despite instructions at the branch level, draft of suspension order has not been produced, which was now being proposed. It was thereafter that the matter was marked to the Principal Secretary of the Department, who then noted that the order of suspension be issued and matter be placed for ex-post-facto approval of the Minister concerned and then marked the matter to the Deputy Secretary-I. Quite interestingly, all these notes were prepared and approved on 17.04.2015 i.e. on one single day and thereafter the Deputy Secretary-I Shri Lalit Daiya issued the suspension order of the appellant on the same day. The approval of the Minister concerned though has been obtained subsequently. All this was done in a post haste manner, without sending a formal reply to the respondent NCTE refusing to grant extension of the period of deputation, despite their repeated requests, which lend credence to the argument of the appellant that action of the respondent State, besides being arbitrary and capricious, suffers from the vice of malice, if not in fact, at-least in law.

26. Adverting now to the case law, which have been cited before learned Single Judge and also before us. No doubt, the deputation is a tripartite agreement based on voluntary consent to lend services of an employee, which involves consensual action on the part of three parties, namely, the lending department, the borrowing department and the employee himself. But here we may refer to the law succinctly stated by the Supreme Court in *Union of India Vs. V. Ramakrishnan*, supra, that ordinary deputation has to be distinguished from

appointment on deputation, which is what is the case in the present matter. We may in this connection usefully refer to observations of the Supreme Court in para 32 of the report, which reads as under:-

"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."

27. This situation was also dealt with by the Supreme Court in *Ashok Kumar Ratilal Patel*, supra. The officer concerned in that case was working as Director, Computer Department in the Hemchandracharya North Gujarat University and he applied for appointment to the post of Director on deputation pursuant to an advertisement issued by AICTE. Therein also the terms and conditions provided that the deputation shall be for a period of one year and extendable for a total period not exceeding three years, on yearly basis, with effect from the date the officer assumed the charge of the post. The appellant before the Supreme Court in that case, on being selected, informed the AICTE of his readiness and willingness to join the post as Director on deputation. The University conveyed to the AICTE the approval of deputation given by the Executive Council of the North Gujarat University with further information that the appellant will be relieved on 17th March, 2010. The AICTE was also informed that the present basic pay of the appellant is Rs. 19,100 in the pay scale of Rs. 16,400-450-20,900-500-22,400 and very shortly the same will be revised as per the 6th Pay Commission and will be fixed in Revised Pay Band + Academic Grade Pay of Rs. 37,400 - 67,000 + Rs. 10,000. The AICTE on receipt of the said letter issued the impugned letter dated 11th March, 2010 and withdrew the offer of appointment of the appellant on the ground that deputation from higher post to lower post was not admissible. The appellant, in those facts, approached the Gujarat High Court, which dismissed the writ petition and then the appellant approached the Supreme Court. The argument that was made before the Supreme Court was that case of the appellant was not a case of transfer on deputation simplicitor but was a case for appointment on deputation, after following due procedure for appointment and selection. In absence of any illegality in selection, it was not open to the respondent to cancel the offer of appointment. Such action was arbitrary and violative of Article 14 of the Constitution of India. The AICTE, however, maintained that a person getting higher pay scale cannot be deputed on a post carrying lower pay scale and that the appellant therein had no right to claim

entitlement to the post. In those facts the Supreme Court, in para 11, 12 and 13 of the report, held as under,

"11. Ordinarily transfers on deputations are made as against equivalent post from one cadre to another, one department to another, one organisation to another, or one Government to another; in such case a deputationist has no legal right in the post. Such deputationist has no right to be absorbed in the post to which he is deputed. In such case, deputation does not result into recruitment, as no recruitment in its true import and significance takes place as the person is continued to be a member of the parent service.

12. 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 organisation 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.

13. 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."

28. The Supreme Court in a recent judgment in Union of India and Another Vs. S.N. Maity and Another, supra, while relying upon judgment in Ashok Kumar Ratilal Patel, supra, observed in para 16 thus,

"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."

29. In our considered view, the matter has not been approached by the learned Single Judge from correct perspective as appellant's was neither a case of deputation simplicitor nor that of simple transfer. It was rather a case of his appointment/recruitment on deputation. The respondent NCTE duly issued the vacancy circular inviting applications from eligible candidates, made the lending department aware with the conditions contained in the Office Memorandum that would be applicable to such appointment by deputation, that this appointment would be for a period of three years, though extendable on year to year basis and duly selected appellant and then informed the lending department, who relieved the appellant to join the borrowing department. The lending department, while initially forwarding the application of the appellant, did not put any restriction in the letter of consent that the deputation would be confined to only one year and not for three years. Therefore, even if formal request to extend the period of deputation on year to year basis was sent to the parent department, it could not mechanically, capriciously and arbitrarily refuse to concur the same without any justifiable reason. The tenure appointment on deputation could have been curtailed on the ground of non-suitability and unsatisfactory work as held by the Supreme Court in Ashok Kumar Ratilal Patel, supra, and not otherwise. Despite use of wordings "one year, extendable up to three years on year to year basis", the department could not have acted at its "sweet will" on subjective consideration. Its decision has to be informed of objectivity and rationale. The lending department, rather than replying to the repeated request of the borrowing department for extending the term of deputation of the appellant and even when appellant was not formally relieved by the NCTE, not only unilaterally gave him posting in a University but also placed him under suspension in a post haste manner. The plea of the lending department that it was short of officers in its establishment, has not been found to be substantiated. Besides, two other officers, who were appointed on deputation along-with the appellant for three years in the services of the NCTE, have been allowed to continue and complete the tenure of three years and the appellant has been abruptly relieved by the borrowing department, because of the order of suspension, which is the only reason given in his relieving order. Now that the order of suspension, as it is, has been set aside by learned Single Judge, the relieving order cannot be sustained. Besides, the finding recorded by learned Single Judge that the respondent NCTE has also filled in the post, is also found to be factually incorrect because NCTE has merely given an additional charge, as stop gap arrangement, to a lower ranking official and post has again been advertised by recent vacancy circular dated 04.01.2016. The action of the respondent - Government of Madhya Pradesh is thus held to be violative of Articles 14 and 16 of the Constitution of India.

30. In view of above discussion, we are not inclined to uphold the impugned judgment of learned Single Judge and also do not agree with the view expressed

therein, in so far as it upholds the order dated 25.03.2015 and the consequential order dated 29.04.2015. While setting aside the impugned judgment to that extent, we allow the appeal and quash and set aside the orders dated 25.03.2015 and 29.04.2015 relieving the appellant, with direction to respondent NCTE to forthwith allow the appellant to resume the duties on the post of Regional Director, NCTE, NRC, Jaipur, to complete the remainder of the tenure of three years. Period between date of relieving of the appellant and till he rejoins shall have to be treated dies-non, not entitling the appellant to any monetary benefits therefor, although this period would count towards the total tenure of three years on deputation. We however make it clear that it would be open to the respondent NCTE to again approach the Government of Madhya Pradesh for their formal consent at the time of extension of deputation for third year, which shall be considered by the Government of Madhya Pradesh in view of the observations made herein-above, especially para 21, supra.

31. Appeal is accordingly allowed in part in the terms indicated above. The parties are left to bear their own costs.