

(2008) 03 CHH CK 0018
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 3996 of 2007

Kameshwar Panigrahi

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 27-03-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 03 CHH CK 0018

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Mala Dubey, for the Appellant; A.S. Kachwaha, D.A.G. Mr. Alok Devangan, Advocate, For intervener, for the Respondent

Judgement

Satish K. Agnihotri, J.—By this petition, filed under Article 226 of the Constitution of India the Petitioner impugns the validity of the order dated 1.6.2007 (Annexure P/2), passed by the District Project Commissioner, Rajeev Gandhi Shiksha Mission, Jagdalpur, District - Bastar, whereby the order of deputation of the Petitioner was cancelled.

2. The brief facts, in nutshell, are that the Petitioner was working as Assistant Teacher in Middle School, Chandanpur, Block Lohandiguda in the School Education Department. He was sent on deputation to Rajeev Gandhi Primary Shiksha Mission and posted at Block Source Center, Lohandiguda vide order dated 10.12.2004 (Annexure P/1). The period of deputation was not prescribed in the order. After completion of two years of services, vide impugned order dated 1.6.2007 (Annexure P/2) the services of the Petitioner was withdrawn from deputation and the Petitioner was repatriated to the parent department.

3. Smt. Mala Dubey, learned Counsel appearing for the Petitioner submits that as per the circular dated 2.12.1988 (Annexure P/3) the services of the Petitioner cannot be repatriated without consent of both the parties and the employee concerned.

4. Shri A. S. Kachwaha, learned Counsel appearing for the Respondents submits that in accordance with the circular dated 2.12.1988, the minimum period of deputation should be two years. The circular is in the nature of guidelines to the concerned departments, applicable to the cases, where the government servants were repatriated before a period of two years, without consent of the parent department as well as the borrowing department. He further submits that since the Petitioner was sent on deputation with the consent of the parties, on completion of two years, no consent was necessary and the officer can be recalled or repatriated to the parent department.

5.1 have heard learned Counsel appearing for the parties and perused the pleadings and documents, appended thereto. Admittedly, in the present case it is evident that the Petitioner was sent on deputation by order dated 10.12.2004 and by order dated 1.6.2007 the deputation was cancelled and the Petitioner was repatriated back to the parent department after a period of two years.

6. If the contention of the Petitioner is accepted that no repatriation order can be passed after two or three years, without consent of the employee concerned, that would lead to a chaotic situation, may be an employee, who was sent on deputation to other department, may not consent to come back to the parent department. Thus, the consent at the initial stage for the limited period is necessary but not after completion of the period of deputation. In the event, the deputation is cancelled in between the specified period, the consent of the department and consent of the concerned employee may be necessary.

7. The circular dated 2.12.1988 (Annexure P/3) makes the position clear, as it was noticed in some cases that the government servants were sent on deputation for five year and thereafter they were never repatriated back. The deputation order does not indicate the period for which the Petitioner was sent on deputation. Learned Counsel appearing for the Respondents submits that in normal cases the minimum period is two years which can be extended for a period of four years as per the circular dated 2.12.1988 (Annexure P/3), which reads as under:

.....2. 8. In view of the foregoing, the contention of the Petitioner that the government servant can never be repatriated without his consent, has no merit and is noticed to be rejected.

9. Hon'ble the Supreme Court in the matter of State of Punjab and Others Vs. Inder Singh and Others, while considering the deputation and repatriation to the parent cadre/department on expiry of period of deputation held as under:

18. The concept of "deputation" is well understood in service law and has a recognized meaning. "Deputation" has a different connotation in service law and the dictionary meaning of the word "deputation" is of no help. In simple words "deputation" means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry

period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The law on deputation and repatriation is quite settled as we have also seen in various judgments which we have referred to above.....

10. Hon"ble the Supreme Court in the case of Umapati Choudhary Vs. State of Bihar and Another, has defined "deputation" in the following terms:

Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organization (commonly referred to as the parent department or lending authority) to another department or cadre or organization (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. 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 service by the borrowing employer. It also involves the consent of the employee to go on deputation or not.

11. Hon"ble the Supreme Court in the case of Prasar Bharti and Others Vs. Amarjeet Singh and Others, Held as under:

13. There exists a distinction between "transfer" and "deputation". "Deputation" connotes service outside the cadre or outside the parent department in which an employee is serving. "Transfer", however, is limited to equivalent post in the same cadre and in the same department. Whereas deputation would be a temporary phenomenon, transfer being antithesis must exhibit the opposite indications.

12. In the present case there was no transfer of service from the School Education Department to Rajeev Gandhi Primary Shiksha Mission. The Petitioner was simply sent in the same block Lohandiguda from Middle School, Chandanpur to Block Source Center, while holding the original post, as Assistant Teacher. The Petitioner has no right to remain posted on deputation in Rajeev Gandhi Primary Shiksha Mission, forever. He has completed 2 years deputation.

13. For the reasons mentioned hereinabove, this petition is dismissed. No order as to costs.