
(2009) 11 RAJ CK 0011

In the Rajasthan High Court

Case No : Civil Writ Petition No. 14259 of 2009

Kumar Sambhav Avasthi

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 19-11-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2009) 11 RAJ CK 0011

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Petitioner, who is substantively holding the post of Junior Engineer in the department of Water Resources, Govt. of Rajasthan, Jaipur, was sent on deputation to Urban Improvement Trust, Alwar initially for a period of one year vide order Anx. 1 dt. 17/11/2006 which was further extended from year to year and vide Anx. 5 dt. 20/01/2009 it was extended for a further period of one year.

2. From the material which has come on record, it appears that the matter was initiated for his permanent absorption in Urban Improvement Trust, Alwar where he is on deputation and the Chief Engineer, Water Resources vide letter dt. 01/06/2009 sent its comments to the Government for necessary action. However, the State Government finally declined to consider his application for permanent absorption in Urban Improvement Trust, Alwar vide order Anx. 12 dt. 11/06/2009 on the premise that the posts of Junior Engineer are lying vacant in the parent department i.e. Water Resources and the petitioner, on being repatriated while he was on deputation under the orders of Chief Engineer, Water Resources, Rajasthan, Jaipur, posted in the parent department vide order dated 16/09/2009.

3. It may be relevant to mention that not only the petitioner but most of the

Junior Engineers, who were on deputation either in Jaipur Development Authority or in Municipal Corporation/Council or Urban Improvement Trusts or in other Government organizations, who are in all 71 in number, on being repatriated, were posted in the parent department vide order dated 16/09/2009.

4. Counsel submits that the Chief Engineer, Water Resources, being appointing authority, once has given its consent vide letter Anx. 7 dt. 01/06/2009, the State Government was not an authority competent to decline and it was beyond its competence and the petitioner is entitled to be absorbed in the department of Urban Improvement Trust.

5. Counsel further submits that under Rule 158 of the Rajasthan Service Rules, if an employee has completed five years service in permanent capacity and has submitted his option, can be considered for absorption and both the two conditions referred to being fulfilled by him, in such circumstances, once he became eligible, the action of the respondents in declining for his final absorption is wholly arbitrary and violative of Article 14 of the Constitution of India.

6. Counsel further submits that his repatriation during the period of deputation is arbitrary since as per Rule 144 of the Rajasthan Service Rules, the total period for which one can continue on deputation is five years and once the deputation was extended for a period of further one year vide order dated 20/01/2009, repatriating him during the period of deputation, is violative of Article 14 of the Constitution of India.

7. None of the submissions made by counsel for petitioner deserves merit for the reason that one can continue on deputation only with the consent of parent and borrowing department. The petitioner's parent department being Water Resources, if has not given its consent to continue the petitioner on deputation and he can certainly be repatriated during or at the end of the period of deputation and an employee has no right to seek continuation on deputation for the period provided under Rule 144 of the Rules.

8. So far as the submissions made with respect to competence of the State Government is concerned, the submission is totally misconceived. The Chief Engineer is the appointing authority of the petitioner being working in Subordinate Service but the ultimate decision so far as the continuation of an employee on deputation or its repatriation is concerned, the same has to be taken by the State Government and the State Government has decline to continue to the petitioner on deputation and repatriated him to his parent department and, as such, no right of the petitioner can be said to be infringed which may require interference.

9. So far as submission made with respect to complying with the conditions referred to under Rule 158 of the Rajasthan Service Rules is concerned, suffice it to say that there are certain eligibility conditions for one to seek his absorption but as already observed, it does not confer right. In the instant case, his parent department i.e. Water Resources finally declined to grant its acceptance

permitting the petitioner for his absorption in Urban Improvement Trust. If the parent department itself has not granted permission, there was no occasion arose of seeking any permission or approval by the borrowing department i.e. Urban Improvement Trust, Alwar for permanent absorption and in the opinion of this Court, it is always open for the department to consider the claim of an employee for absorption in the facts of each case. It is not a case where the petitioner has alleged any malice against the authority who has taken decision declining him to grant permission for his permanent absorption under order Anx. 12 dt. 11/06/2009 and in the opinion of this Court, such action of the authority cannot be said to be arbitrary which may call for interference of this Court.

10. Consequently, this Court finds no substance in the instant petition and it is accordingly dismissed.