

(2011) 03 UK CK 0037

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 1228 of 2010

Lokesh Kumar

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 03-03-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 1 UPLBEC 14

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Judgement

Sudhanshu Dhulia, J.—Heard Sri Parikshit Saini, Advocate for the Petitioner, Sri Dinesh Gahtori Standing Counsel for the State of Uttarakhand, Sri Rajendra Dobhal, Senior Advocate assisted by Sri Manoj Sah, Advocate for Respondent Nos. 2 and 3 and Sri Subhash Upadhyay, Advocate for Respondent No. 4.

2. The Petitioner has filed this writ petition challenging the order dated 24.12.2010 passed by the Registrar, Uttarakhand Sanskrit University, Haridwar (annexure No. 11 to the writ petition), whereby the deputation of the Petitioner has been cancelled and Petitioner has been repatriated to his parent department. According to the Petitioner, he was appointed as store keeper in Govind Ballabh Pant Engineering College, Ghuddaudi, Pauri Garhwal on 30.12.1991 and was working as such since then. Thereafter in pursuance of an advertisement dated 3.9.2009 issued by Uttarakhand Sanskrit University, calling for eligible persons for appointment to the post of Administrative Officer Grade -II on deputation basis, Petitioner applied and was subsequently selected and appointed by letter dated 22.9.2010 for a period of five years. According to the Petitioner, he was duly discharging his duties as Administrative Officer Grade-II. He was totally taken by surprise when the relieving order dated 24.12.2010 was served upon the Petitioner by the borrowing department, by which the deputation of the Petitioner has been cancelled and he has been repatriated to his parent department. The validity of the impugned order has been challenged by the

Petitioner on the ground that since the deputation was for a fixed period of five years, cutting short this period for no valid reasons is in fact arbitrary and violative of Article 14 of the Constitution of India. He has further stated that though he does not have any right to be absorbed on the post as his appointment is merely by way of deputation, yet a deputationist has certain rights and cutting short a fixed period of deputation without assigning any reasons is a bad order in the eyes of law and is, therefore, liable to be set aside.

3. Sri Rajendra Dobhal, Senior Advocate appearing for Respondent Nos. 2 and 3 has argued that Petitioner does not have any right to be absorbed on the post of Administrative Officer Grade II. The order which has been impugned does not cause any stigma on the Petitioner and the order is perfectly valid and legal. Moreover, it is also stated by the above Respondents that Petitioner was not qualified for the post for which he was appointed and this was the reason why he is being repatriated after cutting short the fixed period of deputation.

4. The order impugned dated 24.12.2010, which is in pursuance of the resolution of the Executive Council of the University, where again no reasons have been assigned for cutting short the period of deputation of the Petitioner. The impugned order only says that in compliance of resolution No. 10 of executive council meeting held on 23.12.2010 Sri Lokesh Kumar, who was appointed on deputation as Administrative Officer Grade II in this University is relieved to his parent department Govind Ballabh Pant Engineering College, Pauri Garhwal. Even resolution No. 10 of Executive Council meeting, on the basis of which the impugned order has been passed only says that Council has approved to repatriate Sri Lokesh Kumar to his parent department, who was posted in the University as Administrative Officer on deputation basis. What has been the compelling reasons for cutting short the period of deputation of the Petitioner has not been stated either in the executive council meeting or in the subsequent impugned order. All the same, in the counter affidavit, for the first time, reasons have been assigned by the Respondents wherein it has been stated that his deputation period has been cut short because it was subsequently known that the Petitioner was in fact not qualified for the post of Administrative Officer, Grade - II, in as much as only those candidates could apply for the post who were working as Upper Division Clerk/Assistant in a Degree College or State University on a pay-scale of ` 4000 - 6000 for the last five years and though the Petitioner was having a pay-scale of ` 4000 - 6000 as required, he was not a Upper Division Clerk but a "store keeper". This argument of the Respondents cannot be accepted. The Petitioner had applied for appointment on the post of Administrative Officer Grade II on deputation basis in pursuance of the advertisement given by the Uttarakhand Sanskrit University Haridwar by giving his bio-data and the documents. He has nowhere stated in the application form that he is a clerk. He has stated that he is a store keeper and has not made any misrepresentation or fraud. Cutting short the period of deputation after a period of about two years, is too late in the day on the ground of non-qualification or ineligibility, where there is no misrepresentation or fraud on the part of the

Petitioner. Moreover, there is not much difference between a clerk and a store keeper in the same that the nature of work in both cases is clerical in nature and merely cancelling the deputation on this ground is in fact not proper and the impugned order for this reason also appears to be rather arbitrary.

5. It is true that deputationist has not a right to be absorbed on the post. Moreover, his deputation period which is for a fixed period can also be cut short if the borrowing department has just and valid reasons in doing so. The just and valid reasons can be unsuitability or unsatisfactory performance of the deputationist, amongst other valid reasons. This is so, because merely if the order of deputation prescribes a time period it does not mean that the deputationist has an indefeasible right on the post or even that some kind of a contract has come into force between the parties, as has been held by a Full Bench of Punjab and Haryana High Court (In Sohan Singh Vs. The State of Punjab and Others,).

6. Nevertheless in the present case no reasons have been assigned for cutting short the period of five years of deputation and in the counter affidavit, the reasons assigned are wholly unreasonable. In the present case, there are no such reasons, for cutting short the period of deputation, none in fact have been assigned in the impugned order. The reasons assigned in the counter affidavit, as already referred above, are not valid reasons.

7. Learned Counsel for the Petitioner has relied upon Union of India through Govt. of Union of India (UOI) through Govt. of Pondicherry and Another Vs. V. Ramakrishnan and Others, , wherein the Hon"ble Supreme Court has held as under:

"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. (See Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia and Others,).

8. This Court feels that the facts of the above case cited before the Court are fully covered with the case in hand as in the present case as well no reasons have been assigned for cutting short the period of deputation which was for five years.

9. On the other hand, learned Counsel for the Respondents have relied upon

Chandra Prakash Srivastava v. State of U.P. and Anr. (2006)3 UPLBEC 2844. In the above case the Petitioner was formally sent on deputation to Prison Administration and Correctional Service where he remained as Director, Jail Industries from 6.1.2000 to 19.3.2000 and during that period of his deputation certain illegalities and irregularities were detected in respect of purchase of raw material and for this reason the deputationist was repatriated to his parent department. The facts of the case law cited by the Respondents are not applicable in the present case, as it has already been stated above just and valid reasons must be assigned before cutting short the period of deputation.

10. Learned Counsel for the Respondents further states that in the advertisement (against which the Petitioner had applied for the post) no period for deputation was prescribed and, therefore, merely because in the appointment letter period of five years is mentioned it cannot be said that the period of deputation is for five years. This argument of the Respondents is wholly misconceived in as much as it is undisputed that the appointing authority of the Petitioner is the Registrar. The letter of appointment has been issued by the Registrar which clearly states that the period of deputation is for five years. Merely because the period of deputation has not been prescribed in the advertisement, it would not make any effect nor can it be said that the appointment by way of deputation was not a time bound period since it was not one of the conditions given in the advertisement.

11. In view of the aforesaid, this Court is of clear opinion that impugned order dated 24.12.2010 passed by the Registrar, Uttarakhand Sanskrit University, Haridwar is absolutely arbitrary and in view of the law laid down by the Hon''ble Apex Court in Union of India (UOI) through Govt. of Pondicherry and Another Vs. V. Ramakrishnan and Others, , the writ petition is being allowed and the order dated 24.12.2010 is being set aside.

12. No order as to costs.