
(2008) 09 BOM CK 0144

In the Bombay High Court

Case No : Writ Petition No's. 259 and 454 of 2008

M. Arumugam

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-09-2008

Acts Referred:

Citation : (2008) 6 ALLMR 765 : (2008) 6 BomCR 271 : (2009) 121 FLR 1160 : (2008) 6 MhLj 415

Hon'ble Judges : P.B. Varale, J;D.D. Sinha, J

Bench : Division Bench

Advocate : G. Venkatraman, in W.P. No. 259 of 2008 and R.S. Sundaram, in W.P. No. 454 of 2008, for the Appellant; R.S. Sundaram, for Respondent Nos. 1, 2, 8, 9 and 10 in W.P. No. 259 of 2008, P.H. Gulhane, for Respondent Nos. 3 and 4 in W.P. No. 259 of 2008 and for Respondent Nos. 2 and 3 in W.P. No. 454 of 2008, M.A. Sable, in W.P. No. 259 of 2008 and for Respondent No. 4 in W.P. No. 454 of 2008, S.A. Pathak, in W.P. No. 259 of 2008 and for Respondent No. 1 in W.P. No. 454 of 2008 and G. Venkatraman, in W.P. No. 454 of 2008, for the Respondent

Judgement

D.D. Sinha, J.—Rule returnable forthwith. Heard finally by consent of the learned Counsel for the respective parties.

2. Both these petitions are directed against the judgment and order dated 22-10-2007 passed by the Central Administrative Tribunal whereby original application filed by respondent No. 6 in Writ Petition No. 259/2008 came to be allowed.

3. We have considered the contentions of the learned Counsel for the parties. The following facts are not in dispute:

The petitioner in Writ Petition No. 259/2008 was appointed as Financial Adviser with respondent No. 2 vide order dated 12-9-1995 and his appointment was confirmed with effect from 13-10-1999. Vide order dated 22-9-2005, the petitioner was sent on deputation to respondent No. 5 Department for a period of three years with effect from 22-9-2005. The respondent No. 6 was sent on

deputation to respondent No. 2 vide order dated 16-3-2006 for a period of three years. By order dated 30-11-2006, the respondent No. 5 repatriated the petitioner to his parent Department, i.e. respondent No. 2 as Financial Adviser. The petitioner wanted to join duties on 1-12-2006, however, he was not permitted to do so till 3-5-2007. Vide communication dated 2-3-2007 issued by the respondent No. 2 to respondent No. 3, request was made to repatriate respondent No. 6 to his parent Department, i.e. respondent Nos. 3 and 4. Vide order dated 3-5-2007 issued by the respondent No. 2, the respondent No. 6 was repatriated to respondent No. 3 Department and, therefore, petitioner was permitted to join duties as Financial Adviser with respondent No. 2 with effect from 3-5-2007. The respondent No. 6 challenged the order of repatriation dated 3-5-2007 passed by the respondent No. 2 before the Central Administrative Tribunal. The Tribunal allowed the original application vide judgment and order dated 22-10-2007, which is impugned in the present petitions.

4. The short question, which falls for our consideration, is-

Whether the employee, who is sent on deputation for a stipulated period can be repatriated before expiry of the period of deputation?

Rule 9 of the Fundamental Rules is relevant, which reads thus:

9. Premature reversion of deputationist to parent cadre:

Normally, when an employee is appointed on deputation/foreign service, his services are placed at the disposal of the parent Ministry/Department at the end of the tenure. However, as and when a situation arises for premature reversion to the parent cadre of the deputationist, his services could be so returned after giving advance intimation of reasonable period to the lending Ministry/Department and the employee concerned.

It is well settled that the employee, who is sent on deputation, does not have a legal right to remain on deputation or to get absorbed in the Department where he is sent on deputation. Similarly, the parent Department can curtail the period of deputation before expiry in certain contingencies. In the instant case, there is a specific rule, which entitles the Authorities to repatriate the employee sent on deputation before expiry of period of deputation. If that is so, we see no reason why the concerned Departments cannot repatriate the petitioner and respondent No. 6 to their parent Departments by curtailing the period of deputation.

5. It is no doubt true that petitioner as well as respondent No. 6 were sent on deputation for a period of three years and in the normal course, they could have continued on deputation for a period of three years. However, in the instant case, the petitioner made a request to the concerned Department in view of health problem of his wife and daughter to repatriate him to his parent Department. The said request of the petitioner was accepted and the petitioner was repatriated to his parent Department before expiry of deputation period. The respondent No. 6 was occupying the post held by the petitioner in the parent

Department since he was sent to the respondent No. 2 Department on deputation for a period of three years. The petitioner was repatriated to his parent Department in view of his request. The respondent No. 6 was also repatriated to his parent Department before expiry of period of three years.

6. Since we have already observed that the deputationist has no legal right to continue in the post, both the aforesaid orders of repatriation, according to us, are just and proper and sustainable in law. Our view is fortified by the decision of the Apex Court in Union of India (UOI) through Govt. of Pondicherry and Another Vs. V. Ramakrishnan and Others, . The relevant observations of the Apex Court are in para (32) of the judgment, which read thus:

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.

For the reasons stated hereinabove, we answer the question in affirmation and, therefore, quash and set aside the order dated 22-10-2007 passed by the Central Administrative Tribunal. The orders of repatriation dated 30-11-2006 and 3-5-2007 issued by the respondent Nos. 5 and 2 respectively are just and proper and are sustainable in law.

7. The rule is made absolute in the above terms. No order as to costs.