
(2007) 06 MAD CK 0109

In the Madras High Court

Case No : Writ Petition No. 5427 of 2005

M. Jayaraman

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 26-06-2007

Acts Referred:

Citation : (2007) 06 MAD CK 0109

Hon'ble Judges : A. Kulasekaran, J

Bench : Single Bench

Advocate : M. Jayaraman, Party in Person, for the Appellant; C. Ramesh Addl. Govt. Pleader for RR1, 3 and 4 udharsana Sundar, for R2, Ravi, for Sudha Ravi Associates and R. Kannan, for R6, for the Respondent

Final Decision : Dismissed

Judgement

A. Kulasekaran, J.—The petitioner has come forward with this writ petition praying for a Writ of Certiorarified Mandamus to set aside the

impugned proceedings of the second respondent herein dated 11.02.2005 of No. C2/110/EE/12092/2005-1 and the consequential order of the

fourth respondent herein in ROC No. 13395/2005/RD4 dated 14.02.2005 since they were issued without jurisdiction and competence

respectively and may be pleased to direct the fourth respondent herein to restore the petitioner in the post which he held prior to relief on

14.02.2005 and may be pleased to direct the second respondent herein to pass order or orders as deemed fit to comply with D.O. Letter No.

6282/E1/05-12 dated 21.05.2007 of the Secretary to Government/Rural Development (E1) Department -Secretariat, Chennai - 9 submitted to

Hon"ble High Court through Government Pleader so as to protect the petitioner"s accrued service right in Rural Development (second service) as

per Tamil Nadu Subordinate Service Rule 9 and 9B.

2. The facts which are relevant for the disposal of the case is as follows:

The petitioner joined as Assistant Engineer on 10.11.1980 in the second respondent Board and on 10.05.1999 he was deputed to third

respondent department, subsequently, the third respondent; in his letter dated 07.01.2002 requested the second respondent to send a panel of 10

Assistant Executive Engineers of the second respondent board with their service particulars for selection and appointment as Assistant Executive

Engineer in rural development department on deputation basis. Accordingly, the second respondent, by his letter dated 05.02.2002 sent a panel

and the third respondent, in his proceedings dated 16.02.2002 selected six Assistant Engineers/ Special Grade Draughting Officers, including the

petitioner, for appointment to the post of Assistant Executive Engineer and posted them to various Districts on deputation basis. Thereafter, the

second respondent, by his proceedings dated 25.02.2002, promoted those six persons as Assistant Executive Engineers and deputed them to

Directorate of Rural Department as per the terms and conditions laid down in Board's proceedings MS No. 342 dated 06.11.1996. The

petitioner joined as Assistant Divisional Engineer at District Rural Development Agency, Theni on 02.03.2002 under the control of Project Officer

in Theni District Collectorate. The third respondent, during the month of November 2004 intimated the second respondent that out of 52 Assistant

Engineers and 29 Assistant Executive Engineers, who were on deputation with rural development department, 31 Assistant Engineers and 22

Assistant Executive Engineers have given their option for permanent absorption in rural development department and sought its concurrence. The

petitioner is also one among those 22 Assistant Executive Engineers. The second respondent, taking into consideration of the dearth of hands in the

category of Assistant Engineers/Assistant Executive Engineers in the Board wrote a letter dated 27.12.2004 to the third respondent thereby

refused to give concurrence. While things are such as stated above, fourth respondent requested the second respondent to repatriate the petitioner

to the parent department as he allegedly received complaint against him. The second respondent passed the impugned order dated 11.02.2005

wherein it was stated thus:

Due to administrative reasons", Thiru. M. Jayaraman, Assistant Executive Engineer (E. Code No. 7088/Native Taluk Virudhunagar) TWAD

Board now on deputation with D.R.D.A. Madurai District is reverted back to TWAD Board and posted to TWAD Board, Northern Region,

Vellore against the existing vacancy.

He is directed to contact the Chief Engineer, TWAD Board, Northern Region, Vellore for further reposting orders and to join duty in the new

station forthwith after getting proper relief from the present station.

Thereafter, the fourth respondent has passed a consequential order relieving the petitioner from the third respondent department by order dated

14.02.2005, which is repeated as below:

Thiru. M. Jayaraman, Assistant Executive Engineer (RD) Madurai who has been reverted back to TWAD Board and posted to TWAD Board,

Northern Region, Vellore on administrative reasons is relieved from his duties in this District on the AN of 14.02.2005.

He is directed to contact the Chief Engineer, TWAD Board, Northern Region, Vellore for further re-postings.

Consequent of his relief, Thiru. N. Pandi, Assistant Executive Engineer, PMGSY, Madurai is posted to hold full additional charge of the post of

Assistant Executive Engineer (RD), Madurai until a substitute joins in this post and he is instructed to assume office immediately.

The said two orders are challenged by the petitioner on the ground that he was deputed in the year 1999 and therefore his reversion to the parent

department is illegal.

3. The petitioner appeared Party-in-person. He has filed additional affidavit/written submission dated 16.04.2007, however, he requested this

Court to permit him to argue the case and accordingly, he was permitted to make his submissions. The petitioner reiterated the contents of

additional affidavit and pleaded a different case that he was drawn on deputation in the Assistant Engineer cadre from the second respondent

Board under proceedings dated 10.05.1999 for a period of two years and on completion of the two years, he was neither recalled nor the

deputation period was extended, thus he was abandoned by the second respondent and pay was paid to him from the consolidated fund of the

State. The petitioner also contended that he was not a deputationist but he was

appointed by transfer in the post of Assistant Executive Engineer in the Rural Development Department, for which he relied on the order dated 25.02.2002 of the second respondent; that the first respondent passed an order dated 21.07.2005 to restore the petitioner in rural development department, but the same was not complied with and prayed for allowing of the writ petition.

4. Ms. Sudharsana Sundar, learned standing counsel appearing for the 2nd respondent submitted that the Board is an autonomous body and it has delegated its powers to the Managing Director/2nd respondent herein to send personnel upto the level of Executive Engineers to any other department on deputation and following the same, the petitioner was sent on deputation to the rural development department. During the tenure of the petitioner at rural development department, he was promoted as Assistant Executive Engineer and posted in the same department for a period of one year and he was allowed to continue in the said department, however, the continuation in the borrowing department by the petitioner is subject to the conditions laid down in Board's proceedings MS No. 342 dated 06.11.1996. Even when the third respondent sent a panel of personnel, including the petitioner and sought the concurrence of the second respondent for absorbing them in their department and the second respondent, after carefully examining the said request informed through his letter dated 27.12.2004 that it is not possible as there was a dearth of personnel in their department. It is not an isolated case of recalling the petitioner alone to the parent department, but there are number of personnel, who were sent on deputation to the rural development department were recalled to the parent department which was challenged by them before this Court in WP No. 19401 of 2004 etc., batch, the same was disposed of on 29.01.2007 by the division bench holding that the deputationists have no legal right to claim absorption in the borrowing department. The said order of the Division Bench is squarely applicable to the facts of this case. The averments that the petitioner was deserted by the board while he was on deputation and he was paid from the consolidated fund are incorrect and prayed for dismissal of the writ petition.

5. Mr. Ramesh, learned Additional Government Pleader appearing for the respondents 1, 3 and 4 reiterated the contents contained in the common

counter affidavit and denied specifically that the petitioner was appointed by the third respondent in the rural development department in a substantial vacancy of Assistant Executive Engineer; that the petitioner has given his willingness to absorb him in the rural development department, which was sent to the respondents 2 and 3, but the second respondent has not given its concurrence, subsequently, the second respondent, by its proceedings dated 11.02.2005, reverted the petitioner back to the TWAD Board on administrative grounds. Pursuant to the same, the fourth respondent has also issued relieving order to the petitioner by letter dated 14.02.2005. Since the petitioner refused to receive the relieving order dated 14.02.2005, it was served by means of affixture on his house by the Village Administrative Officer on 16.02.2005. A copy of the said order dated 14.02.2005 was also sent to the petitioner by speed post, but the same was returned by the petitioner. The sanctioned period of deputation of the petitioner also came to an end at that time, hence, he was reverted back to the parent department. The petitioner was not permanently absorbed in the rural development department and no specific order was passed by the competent authority, besides that no such Rules or Regulations was in force and prayed for dismissal of the writ petition.

6. Mr. Ravi, learned Counsel appearing for the 5th respondent reiterated the contents of the reply affidavit and submitted that the petitioner is only a deputationist, hence, he was rightly recalled by the second respondent to the parent department; that the petitioner cannot have any legal right to be absorbed in the rural development department. The learned Counsel also relied on the decision of the Division Bench of this Court passed in WP No. 19401 of 2004 etc., batch dated 29.01.2007 and prayed for dismissal of the writ petition.

7. The learned Counsel appearing for the sixth respondent adopted the argument of the learned standing counsel for the second respondent and prayed for dismissal of the writ petition.

8. This Court carefully considered the argument of the counsel for both sides and perused the material records placed. At the outset, it is necessary to point out that the averments mentioned in the additional affidavit of the petitioner, which was reiterated by him in his submission that after the period of deputation on 10.05.1999, the deputation period was neither extended

nor he was recalled, but appointed in the substantive vacancy in the third respondent department and paid from the consolidated fund of the State were pleaded for the first time. The said averments were not mentioned in the affidavit filed in support of the writ petition. Moreover, the averment that he was paid from the consolidated fund of the State is concerned, no documentary evidence is produced, however, the same is denied by the respondents 2 to 6. It is further submitted by the petitioner that the first respondent decided not to contest this writ petition and wrote a letter dated 21.07.2005 addressed to the fourth respondent, instructing to withdraw the counter filed in this writ petition, which was stated to have been filed by the fourth respondent without the permission of the first respondent and restore him in the previous post and prayed for a direction to implement the said letter. The said letter dated 21.07.2005 was issued under the impression that the status-quo order dated 18.02.2005 was in force, but the same was vacated by this Court by order dated 14.03.2005 itself, hence, it became infructuous at this stage.

9. The petitioner admitted that he was deputed by the second respondent to the rural development department as early as 1999 and he was allowed to continue there beyond the sanctioned period of deputation. The averment that the petitioner was appointed by transfer to the third respondent department by order dated 25.02.2002 is factually incorrect. In the said order dated 25.02.2002 of the second respondent; the petitioner was promoted to the post of Assistant Executive Engineer and deputed to one wing of the same rural development department, Theni.

The operative portion of the said order dated 25.02.2002, is mentioned below:

They are informed that their promotion to the post of Assistant Exe. Engineer now ordered is purely on temporary basis, without prejudice to the claims of the persons who will be regularly appointed after due consideration on their merit and seniority, subject to the ultimate result in writ petitions, pending in the High. Court relating to the panel for promotion to the post of Asst. Exe. Engineers. This temporary promotion will not confer on them any rights for future appointment as Asst. Exe. Engineers in the TWAD Board.

They are directed to join duty in the new station on promotion as Assistant Executive Engineer after getting proper relief from their present station

without waiting for reposting orders.

10. It is evident in the said order that the petitioner and other personnel mentioned therein continuing their lien with the second respondent board are promoted as Assistant Executive Engineer and deputed to the same Directorate of Rural Development Department for a period of one year as per the terms and conditions laid down in BP Ms No. 342 dated 06.11.1996 and it is also stated that they are not eligible for T.T.A. and advance of pay since these orders are issued on their own request. The said order is not challenged by the petitioner though the petitioner has claimed that he was permanently absorbed by the third respondent and pay was drawn and paid to him from the consolidated fund of the State and also no valid evidence is produced by him to show that he was paid from the consolidated fund of the State. The petitioner, having availed the benefit of promotion under the said proceedings dated 25.02.2002 of the second respondent he is estopped from claiming that he is not a deputationist and was already absorbed in the rural development department.

11. The basic principles underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation. It is well settled that unless the claim of the deputationist for permanent absorption in the department where he works on deputation is based upon any statutory rule, regulation or order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. In *Kunal Nanda v. Union of India and Anr.*

AIR 2000 SC 2076, the Honourable Supreme Court held in Para No. 6 thus:

6. On the legal submissions made also there are no merits whatsoever. It is well settled that unless the claim of deputationist for permanent absorption in the department where he works on deputation is based upon any statutory rule, regulation or order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. The basic principles underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of

the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had

gone on deputation. The reference to a decision reported in Sumedico Corporation and Another Vs. Regional Provident Fund Commr., :

Rameshwar Prasad Vs. Managing Director U.P. Rajkiya Nirman Nigam Limited and Others, is inappropriate since, the consideration herein was

in the light of the statutory rules for absorption and the scope of those rules.

No such statutory rule or regulation has been shown by the petitioner in supporting his case, hence, the petitioner cannot claim absorption as of

right in the absence of statutory rules, regulations or order having force of law, thus, the averments that he was appointed in the substantive

vacancy in the third respondent department are rejected.

12. It is argued by the petitioner that he was allowed to overstay in the borrowing department than the sanctioned period of deputation and that

some of the persons like him were allowed to continue in the rural development department at the time when the impugned order dated

11.02.2005 was passed by the second respondent. Even the overstay than the sanctioned period of deputation in the borrowing department not

terminate the lien in parent department automatically. The argument of petitioner also cannot be accepted in the absence of any evidence to show

that the lien is terminated. It is relevant to look into the decision of the Honourable Supreme Court in the decision rendered in Bihar State Water

Development Corporation Vs. Arun Kumar Mishra and others, wherein in Para-5 it was held thus:

5. It is an admitted position that when the first respondent was initially sent on deputation to the Bihar State. Water Development Corporation, he

was allowed to retain the lien in the parent Department and the same was to continue until the lien was duly terminated only on his confirmation in

the Irrigation Development Corporation. No evidence is placed before us to show that his lien in the Irrigation Department was terminated nor is

he confirmed in the Corporation....

Even if salary is paid from different fund to the petitioner, it would not automatically terminate the lien with the parent department.

13. It is categorically stated by the second respondent that the third respondent sought the concurrence of the second respondent for absorption of

some of the employees including the petitioner for which the second respondent replied that there was dearth of hands in the category of Assistant

Engineers/Assistant Executive Engineers in the second respondent board, hence, it is not in a position to accept any permanent absorption of

Assistant Engineers/Assistant Executive Engineers in the rural development department. It is further stated by THE second respondent that about

16 persons like the petitioners, who were sought to repatriated have filed WP NO. 19401 of 2004 etc., batch which was dismissed by a Division

Bench of this Court by order dated 29.01.2007 holding that

After all, whenever their services are required by the parent department, they have to leave the borrowing department where they are posted on

deputation/ contract basis only on public interest. Inasmuch as the Constitution clearly circumscribes the areas of legislative power and judicial

power, none can encroach or dominate upon the field occupied by the other. As repeatedly pointed out, this Court has its own self-imposed limits

and any deviation would amount to transgressing into the domain of the executive....

...the concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employees and a

corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not.

Here, the chain of consent is broken and not complete amongst the TWAD Board, R.D. Department/ Government and petitioners, in that, the

TWAD Board declined to give consent; R.D. Department withdrew its earlier proposal for absorption; and the ad hoc rules expelled the

petitioners from the zone of consideration for absorption/appointment; hence, with the mere aspirations of the deputationists, nothing can be done,

for, legitimate expectation can be justified if its edifice is built with the sanction of law.

The said decision of the Division Bench is squarely applicable to the facts and circumstance of the case, hence, the said plea of the petitioner is also

untenable in law.

14. In the grounds of writ petition, the petitioner has alleged that the impugned order dated 11.02.2005 has been passed by the second respondent

with malafide intention, but he has not specifically averred anything. The second

respondent in his counter denied the allegation of malafide however pointed out that the fourth respondent received certain complaint against the petitioner, discreet enquiry was ordered by him and found the allegations were true, thereafter, the fourth requested the second respondent to recall the petitioner at an earlier date. It is further alleged in the counter of the second respondent that it, after examining the proposal of the fourth respondent independently came to a conclusion that in the interest of administration and public interest the petitioner has to be reverted and accordingly, he was reverted by the impugned order dated 11.02.2005. When there is no specific allegation of malafide pleaded and proved, at the same time the second respondent pleaded that notwithstanding the said incident pointed out by the fourth respondent, he independently examined the matter and in the interest of administration, to remove hassles and as well as public interest, it was warranted to recall the petitioner and he was recalled accordingly, which is also reflected in the impugned order dated 11.02.2005 and even before the said incident the second respondent wrote a letter dated 27.12.2004 refusing to give concurrence for absorption of its personnel, suggested by the third respondent on the ground of dearth of personnel in the board, hence, it is not difficult for this Court to come to a conclusion that the said impugned order dated 11.02.2005 of the second respondent do not suffer malafide. In this context, it is useful to refer to the decision of the Honourable Supreme Court reported in State of Madhya Pradesh and Others Vs. Ashok Deshmukh and Another, wherein in Para-11, it was held thus:

11. With respect to the High Court it has to be stated that having observed that there was no material to support the allegation of any bias and mala fide on the part of the Secretary to the Government it committed an error in assuming that the bias of impugned order of repatriation could only be the displeasure of his superiors which the 1st respondent had incurred by reason of the wrong complaints of a Member of the Legislative Assembly. It is significant that the order is silent about the names of those superiors whose were displeased on account of the allegations said to have been made by the Member of the Legislative Assembly. This part of the order of the High Court is based on mere surmise. The High Court overlooked that the allegations of bias and mala fides are easily made but when

it comes to the question of proof of such allegations, very often there will be no material in support of them. This is one such case. If mere existence of some allegations against an officer which on inquiry had been found to be untrue is to be treated as the basis for quashing any order of transfer or repatriation made in respect of any officer then almost every such order of transfer or repatriation would have to be quashed because there would always be some complaint by some party or other against every officer. Unless the Court is sure that the impugned order is really based upon such allegations, it should not proceed to quash administrative orders which are made in the exigencies of the administration.

15. The other part of the prayer is to implement the directions issued by the first respondent under letter dated 21.07.2005 is concerned, it was issued under the impression that status-quo ordered on 18.02.2005 was in force, but the same was vacated on 14.03.2005 itself, hence, at this stage it become infructuous, besides that not having any impact in the merits of the case, thus, the said prayer is also rejected.

16. In view of the above said discussion, the order dated 11.02.2005 of the first respondent and the consequential order dated 14.02.2005 of the fourth respondent relieving the petitioner from rural development department are upheld as valid.

17. In view of the above said discussions, the writ petition is dismissed. No costs.