

(2013) 02 CHH CK 0012

In the Chhattisgarh High Court

Case No : Writ Petition (S) No's. 251 and 252 of 2013

Manoj Rajput and Another

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 05-02-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 2 BLJ 442 : (2013) 4 CGLJ 383 : (2013) 3 MPHT 13 : (2013) 3 MPJR 25

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Division Bench

Advocate : Naushina Ali, for the Appellant; Yashwant Singh Thakur, Advocate for the State, for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar Mishra, J.—Both the petitioners have preferred their respective petitions under Article 226 of the Constitution of India for issuance of a direction to respondent No. 3, Transport Commissioner, Chhattisgarh, to consider and decide their representations in light of the State Government's Circular dated 2-12-1988. Petitioner-Manoj Rajput is a Company Commander and is presently posted as RTO Incharge Flying Squad, Durg, on deputation, whereas the petitioner Sunil David is an Inspector in the Police Department posted on Deputation at RTO Check Post, Kamharpali. They were sent on deputation by common order dated 19-1-2011 (Annexure P-2). In the order of Deputation no time period is fixed and it has been mentioned therein that the deputationist can be repatriated to their parent department at any point of time.

2. On the strength of Circular dated 2-12-1988 (Annexure P-3) learned Counsel for the petitioners would submit that the minimum period of deputation is two years which is extendable for a total period of 4 years and they have filed representations for such extension which is pending before the Transport Commissioner, therefore, a direction may be issued for consideration of their

representations.

3. It is to be seen that the State Government has not passed any order for repatriation of the petitioners. The representation(s) (Annexure P-1) has been submitted by the petitioners on 28-1-2013 and they have rushed to file the present writ petitions on 30-1-2013, i.e., immediately after one day of filing the representation.

4. It is settled law that if an order of deputation is for a fixed period then the employee cannot be repatriated unless there are compelling reasons. Similarly, if the order of deputation does not provide for any fixed period of deputation it is for the concerned authority to pass an order of repatriation as and when necessity arises on the ground of administrative exigency. The petitioners do not have any legal right to continue to serve on deputation in the borrowing department, therefore, no mandamus can be issued to direct either to lending department or borrowing department to continue the petitioners on deputation.

5. In the matter of A.P.S.R.T.C. and Others Vs. G. Srinivas Reddy and Others, , it has been held by Hon"ble the Supreme Court that a direction to consider and decide the representation is issued by the High Court in exercise of powers of judicial review and further that the High Court should not issue directions where unscrupulous petitioners with the connivance of the public authorities have misused the direction to "to consider" issued by the Court and also that existence of a legal right and the corresponding statutory obligation on the authorities is the precondition for exercise of judicial review to issue a direction to consider and decide the representation.

6. As stated earlier, the petitioners have no right to continue on deputation for any fixed period. The decision in this regard is always based on administrative exigency, therefore, in view of the Supreme Court judgment in APSRTC and others (supra), this Court cannot issue any direction to consider the representations filed by each of the petitioners. For the foregoing reasons, no case for entertaining these writ petitions is made out. They are accordingly dismissed.