
(2006) 09 GAU CK 0027
In the Gauhati High Court

Marthon J. Sangma

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 26-09-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 1 GLR 433 : (2007) 1 GLT 103

Hon'ble Judges : B. Sudershan Reddy, C.J;B.P. Katakey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.P. Katakey, J.—The Community and Rural Development Department, Government of Meghalaya issued an advertisement dated 31st July, 2001 inviting applications from the interested persons serving in the State Government of Meghalaya in developmental line departments such as Agriculture, Animal Husbandry and Veterinary, Education, Social Welfare, Soil Conservation, Forest and the like, for preparation of a panel towards filling up of various posts including the post of Block Development Officer (in short BDO) in the Block Offices of Community and Rural Development, by temporary transfer, in their own grade/scale of pay, initially for a period of one year, to be extended by the terms of one year, depending upon their performance and records. Pursuant to such advertisement, the appellant, who at the relevant point of time was serving as Extension Officer in Agricultural Department under Government of Meghalaya, filed an application for the post of Block Development Officer. A selection was thereafter held wherein the appellant was selected for inclusion of his name in the panel for filling up of the post of BDO, pursuant to which a notification dated 5.6.2002 was issued by the Secretary to the Government of Meghalaya, Agriculture, etc., Department, temporarily transferring and placing the services of the appellant along with 11 other persons, who were also empanelled for appointment as BDO, at the disposal of the Community and Rural Development Department. The said department vide notification dated 10.6.2002 appointed the appellant as BDO, at his own grade/scale of pay, initially for a period of

l(one) year. The period of such appointment was thereafter extended up to 31.3.2005 by issuing the notification dated 30.3.2005.

2. While the appellant was serving as BDO in Community and Rural Development Department, order of promotion dated 22.12.2004 was issued promoting him to officiate in the Grade II of Meghalaya Agricultural Service, i.e., in the parent department. The appellant on receipt of such order of promotion submitted a representation dated 28.2.2005 for treating the said promotion, in his parent department, as pro forma promotion so that he may be able to continue in the said department without any break or affecting his service in near future and expressing his willingness to continue to serve in Community and Rural Development Department as BDO. A further representation dated 15.4.2005 was also filed by the appellant, along with others, before the Director, Community and Rural Development Department, requesting recommendation for permanent placement of their services in the said department. The Commissioner and Secretary to the Government of Meghalaya, Community and Rural Development Department thereafter vide notification dated 20.6.2005 repatriated the appellant to his parent department, i.e., Agricultural Department, with effect from the date of his handing over of charge, by allowing another BDO to take over the charge from the appellant. However, in the said notification, in place of "repatriation", the word "reverted" was used. The said notification has been challenged by the appellant by filing W.P.(C) No. 240(SH) of 2005 in Shillong Bench of this court, which was dismissed by the learned Single Judge vide judgment and order dated 1.8.2006 and hence the present appeal before this court.

3. We have heard Mr. A. Mazumdar, learned senior counsel appearing on behalf of the appellant and the learned Advocate General Meghalaya appearing on behalf of the respondents

4. Mr. Mazurndar, learned senior counsel for the appellant, referring to the advertisement dated 31.7.2001 as well as the orders dated 5.6.2002 and 10.6.2002 whereby the service of the appellant was placed at the disposal of the Community and Rural Development Department and thereafter he was appointed as BDO pursuant to the selection has submitted that the same has all the characteristic of fresh appointment as BDO and therefore, he cannot be "reverted" to his parent department, i.e., to his earlier department, namely Agricultural Department, he having been appointed in Community and Rural Development Department as BDO. It has been submitted by the learned senior counsel that in any stretch of imagination such appointment cannot be treated as deputation. An alternative argument has also been made to the effect that even assuming the appellant was deputed to community and Rural Development Department, the notification dated 20.6.2005 by which he was repatriated to his parent department cannot stand the scrutiny of law, the same being discriminatory, as other similarly placed person have been retained in the borrowing department, by single out the appellant for repatriation and also on

the ground of mala fide, as the same has been issued to accommodate the blue eye Person of the respondent-authorities.

5. Mr: Mazumdar, further submits that though the State authorities in the affidavit in opposition filed in the writ petition has contended that the post of BDO is the cadre post of Meghalaya Civil service (MCS), for which the order of repatriation has to be passed, it is evident from the impugned order dated 20.6.2005 that the appellant was directed to handover the charge of the BDO to another BDO who is not a MCS officer but an officer deputed to the post of BDO. Mr. Mazumdar, has further submitted that even in case of repatriation of an employee, to his parent department, who was sent on deputation, no order of repatriation can be passed except on the ground of unsuitability or unsatisfactory performance and the appellant having never been found unsuitable and his performance being excellent in the borrowing department, he cannot be repatriated to his parent department. Mr. Mazumdar in support of his contention has placed reliance on the decisions of the Apex Court in Mahesh Kumar K. Parmar and Others Vs. S.I.G. of Police and Others, and in Union of India (UOI) through Govt. of Pondicherry and Another Vs. V. Ramakrishnan and Others,

6. The learned advocate General, per contra, has submitted that the advertisement dated 31.7.2001 was issued only for the purpose of selecting suitable persons, who are willing to go to another department on deputation, as it is evident from the said advertisement that the same was issued for preparation of penal for filling up of certain posts including the post of BDO, by temporary transfer of officers, in their own grades/scale of pay, initially for a period of one year extendable by terms of one year, depending upon their performance and records. The learned Advocate General has further submitted that it is evident from the notifications dated 5.6.2002 and 10.6.2002 that the services of the appellant was temporarily transferred and placed at the disposal of the Community and Rural Development Department and as such in any stretch of imagination it cannot be termed as fresh appointment in Community and Rural Development Department and in fact it is a deputation. Referring to the representation submitted by the appellant dated 28.2.2005 before the Director of Agricultural, i.e., the parent department of the appellant, it has further been submitted that the appellant also accepted the position that he has been sent on deputation to the borrowing department, as he requested the Director of Agricultural Department to consider his promotion to Grade II Meghalaya Agricultural Service in his department as pro forma promotion, so that he may be able to continue to serve in the said department without any break or affecting his service in near future. The learned Advocate General has also submitted that by filing the representation dated 15.2.2005, the appellant and other similarly placed persons have also accepted the position of deputation, by requesting the Director of Community and Rural Development Department, to placement in the borrowing department.

7. Controverting the submission of the appellant relating to discrimination, it has

been submitted that it is for the concerned State authority to decide who are to be kept on deputation, as the deputationist has no right to continue in the borrowing department and the authority, at any time, can repatriate an employee to his parent department. It has further been submitted that though in the notification dated 20.6.2005 the words "reverted back" have been used, it is only the repatriation of the appellant from the borrowing department to the parent department. The learned Advocate General submits that there is no mela fide exercise of power as contended by the appellant and another BDO was allowed to hold the charge from the appellant on his repatriation, as a temporary measure only. The learned Advocate General in support of his contention has placed reliance on the decision of the Apex Court in *Ratilal B. Soni v. state of Gujarat* reported in 1990 (Suppl) SSC 243 and is *State of Punjab and Ors. v. Inder Singh and Ors.* reported in (1997) 8 SSC 372.

8. The Community and Rural Development Department, Government of Meghalaya vide advertisement dated 31.7.2001 invited applications from the interested persons serving in the State of Government of Meghalaya for preparation of penal for filling up of some posts including the post of BDO, by temporary transfer, in their own grade/scale of pay, initially for a period of one year and extendable by the terms of one year. The appellant having been selected and empanelled, his service was placed at the disposal of Community and Rural Development from his parent department, i.e., agricultural Department, initially for a period of one year vide notification dated 5.6.2002 and consequently vide notification dated 10.6.2002 he was appointed as BDO, in his own grade/scale of pay, for a period of one year. However, such period was extended up 31.3.2005 by issuing notification dated 30.3.2005. Such advertisement was issued for twin purpose of getting the consent for deputation as well as for selecting the suitable persons, who consented for such deputation to Community and Rural Development Department. The stipulation contained in such notification that the person selected will be empanelled for temporary transfer in their own grade/scale of pay, reflects that it is not a fresh appointment in Community and Rural Development Department, but the deputation placement. The said position is further fortified by the fact that the appellant in fact accepted the order of promotion dated 22.12.2004 promoting him to Grade II of Meghalaya Agricultural Services, i.e., in his parent department of agriculture, as is evident from the representation dated 28.2.2005 filed before the Director of Agriculture requesting him to consider such of promotion as proforma promotion, so that he may be able to continue in the said department without any break or affecting his service in near future, as well as by the representation dated 15.5.2005 submitted along with others, to the Community and Rural Development Department, i.e., borrowing department, requesting to recommend for their permanent placement in the borrowing department. From those facts, it is evident that the appellant knew that he was sent to Community and Rural Development Department, on deputation.

9. The contention of the learned senior counsel for the appellant that even

assuming the appellant was sent to the Community and Rural Development Department on deputation, the order of repatriation dated 20.6.2005 is bad in law being discriminatory and having been passed in mala fide exercise of power, cannot be accepted, in view of the fact that the authority concerned has the right to repatriate the deputationist to the parent department and a deputationist has no right to continue in the borrowing department and has also no right to be absorbed in such borrowing department. Though the appellant in the writ petition has contended that the order of repatriation is vitiated by mala fide, no foundational fact to constitute mala fide has been pleaded in the writ petition, except by taking the plea that the order of repatriation was passed to accommodate some blue-eyed persons of the Government, even without mentioning who is such blue-eyed boy. In the absence of such foundational fact as well as the person against whom the mala fide is alleged, as party respondents in the writ petition, and also in the appeal, such vague plea cannot be accepted.

10. The contention of the appellant that though the State Government in the affidavit has contended that such repatriation is necessary, as the post of BDO is a cadre post of MCS, the Government having allowed another BDO, who was also sent on deputation, to take over the charge from the appellant, it is evident that the order of repatriation was passed mala fide, cannot also be accepted, as vide order of repatriation dated 20.6.2005 another BDO, who is also on deputation, was only allowed to takeover the charge from the appellant until further order. In any case the appellant being a deputationist does not have any right to be absorbed in the borrowing department and also he does not have right to continue in deputation in the borrowing department, as he continues to be an employee of the lending authority, with their master and servant relationship. Such deputationist can be reverted to parent department at any time.

11. The Apex court in *Ratilal B. Soni* (supra) as well as in *Inder Singh's* case (supra), cited by the learned Advocate General, has held that the deputationist has no right to claim absorption in the deputation post and the authority can revert such deputationist to the parent department at any time. In *Mahesh Kumar K. Parmar* case (supra), on which the appellant has placed reliance, the Apex Court has reiterated the said position that a deputationist has no enforceable right for being permanently absorbed in the borrowing department, however, keeping in view the facts and circumstances of the said case, it was observed that the State Government may consider the cases of the appellants therein for absorption on transfer, in accordance with the rule, while observing that no writ of mandamus can be issued to the State Government to permanently absorb in the borrowing department. In *V. Ramakrishnan and Ors.* (supra), on which the appellant has also reliance, the Apex Court has also reiterated the position of law that a deputationist has no legal right to continue in the post to which he was deputed. However, the Apex Court has observed that ordinarily the term of deputation should not be curtailed except on such just ground, as for example, unsuitability or unsatisfactory performance and where

the tenure of deputation is not specified, an order of reversion can be questioned when the same is mala fide. In the said case it has not been held that no order of repatriation can be passed repatriating an officer to the parent department. In the present case initially the period of deputation was fixed for one year, which was extended up to 31.3.2005 and thereafter no order of extension was passed and the repatriation order was not passed curtailing the period of deputation.

12. In view of the aforesaid discussions, we are of the view that the learned Single Judge has rightly dismissed the writ petition filed by the appellant. Hence, the appeal is dismissed being devoid of any merit. No costs.