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**(2000) 05 GAU CK 0022**  
**In the Gauhati High Court**  
**Case No : Writ Petition (C) No. 1565 of 2000**

Pankaj Phukan

APPELLANT

Vs

State of Assam and Others

RESPONDENT

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**Date of Decision :** 23-05-2000

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 19, 21

**Citation :** (2000) 2 GLT 737

**Hon'ble Judges :** B. Biswas, J

**Bench :** Single Bench

**Advocate :** N. Dutta, R. Baruah and K. Devi, for the Appellant; Govt. Advocate, for the Respondent

**Final Decision :** Dismissed

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## Judgement

D. Biswas, J.—By this common order Writ Petition (C) No. 1565/2000, Writ Petition (C) No. 2217/2000 and Misc. Case No. 481/2000 are proposed to be disposed of as submitted by the learned Counsel for both the parties.

2. I have heard Mr. N. Dutta, learned senior counsel for the writ Petitioner and Mr. P.G. Baruah, learned Advocate General, Assam.

3. The dispute relates to repatriation of the writ Petitioner Shri Pankaj Phukan from the Border Areas Department to his parent Department, namely, the Planning and Development Departments. It would be of convenience to refer to the factual background which has prompted the writ Petitioner to approach this Court for issue of directions preventing the State Government from releasing him from the borrowing Department.

4. The Petitioner was appointed as Statistical Officer in the Planning and Development Department in the year 1992 and was disputed to the Border Areas Department vide notification dated 30.10.1992. The Petitioner accordingly joined the Border Areas Department and discharged his duties where he was promoted to the post of Research Officer, Planning, vide order dated 9.2.1996. His case

was processed for permanent absorption in the Border Areas Department and consent was also obtained from the Planning and Development Department. When the matter was at the final stage, suddenly an order was issued on 2.2.2000 releasing the Petitioner with a direction to join his parent Department. For administrative exigency this order was partially modified and the writ Petitioner was allowed to continue in the Border Areas Department upto 31st March, 2000. This order of release was challenged by the writ Petitioner in Writ Petition (C) No. 648/2000. The learned Single Judge of this Court vide order dated 28.3.2000 disposed of the said writ petition. Certain excerpts from the said judgment is quoted below:

. . .

The legitimacy of the said order is under attack as being arbitrary, discriminatory and thus violative of the rights guaranteed under Article 14 of the Constitution. I have heard Mr. Niloy Dutta, the learned senior counsel appearing on behalf of the Petitioner as well as Mr. Hasibur Rahman, the learned Additional Senior Government Advocate and also Mr. Bishwa Goswami, the learned Junior Government Advocate at length. In my considered opinion it is genuinely an issue pertaining to good administration which is to be resolved by the executive authority within the parameter of administrative exigency of public service justly and fairly balancing the public interest.

In the circumstances I am of the view that ends of justice will be met if a direction is issued to the Petitioner to make appropriate representation before the appropriate authority narrating all the aspects of the matter within 10(ten) days from today. Accordingly I do so. If such a representation is made by the Petitioner the appropriate authority shall undoubtedly consider the matter and pass necessary order thereon in accordance with law taking into consideration the observations made above.

With this the writ petition is disposed of. Let the appropriate authority take its decision in this case as expeditiously as possible, it is expected that till a decision is taken by the authority the present arrangement may go on and the Petitioner may be allowed to continue in the present department.

5. It would appear that the writ petition was disposed of calling upon the appropriate authority to take a decision as expeditiously as possible and till then the Petitioner was allowed to continue in the borrowing Department.

6. The Petitioner, thereafter, filed a Writ Petition (C) No. 1565/2000. The learned Single Judge vide order dated 12.4.2000 ordered that the representation filed by the Petitioner may be disposed of by the authorities and the Petitioner was prevented from being released till disposal of the representation or till 25.4.2000, whichever is later. Thereafter, by an order dated 26.4.2000, the interim order dated 12.4.2000 was continued and the Respondents were directed to dispose of the representation.

7. The Respondents vide order dated 28.4.2000 disposed of the representation whereby it has been decided to release the writ Petitioner to enable him to join his parent department in the interest of public service. This order dated 28.4.2000 has been challenged in Writ Petition (C) No. 2217/2000.

8. Shri N. Dutta, learned senior counsel attacked the decision of the State Government on the ground that the order is malafide and has been influenced by consideration other than public interest. According to the learned Counsel, there is no element of public interest which necessitated immediate repatriation of the writ Petitioner to his parent Department especially when the borrowing Department agreed to absorb him permanently and the lending Department accorded its consent for such absorption.

9. Mr. P.G. Baruah, learned Advocate General, however, highlighted that the Petitioner's claim for permanent absorption have to be judged within the parameter of service conditions and the law applicable in this behalf. The Petitioner had no statutory right to submit any representation for consideration of his case for absorption and, therefore; it is impermissible to allow him to challenge the impugned order dated 28.4.2000 on the ground of malafide or public interest.

10. There is apparently no dispute with regard to the law relating to a deputationist. A deputationist does not have any right to enforce his absorption in the borrowing Department. This is, more or less, a matter to be decided by way of discretion based on administrative exigency. The Court has its limitations in evaluating administrative exigency behind such decision specially when the Petitioner in the given case does not have any statutory right to enforce. Situated thus, a reference to the impugned order may be made to examine whether the reasons shown therein are reasonable enough for taking a decision for release of the writ Petitioner.

11. It would appear from the order dated 28.4.2000 that the Petitioner was appointed as Assistant Research Officer on deputation in the year 1992 and, thereafter in the year 1996, two persons were appointed as Assistant Research Officer on the recommendation of the Assam Police Service Commission including the post held by the writ Petitioner. The order shows that the writ Petitioner ought to have been released on appointment of two Assistant Research Officers, but in consideration of the proposal given by the Director of Border Areas, he was accommodated temporarily in the vacant post of Research Officer by an order dated 9.2.1996 on condition that he would be repatriated to the parent Department. This condition was incorporated in the order dated 9.2.1996 itself. It has also been reflected in the impugned order that the Petitioner was temporarily accommodated in the post of Research Officer and not promoted and the State Government after examination of the proposal of the Director for regularisation of the writ Petitioner, decided to release and repatriate him to his parent department. It has further been clarified that the Petitioner cannot claim any particular rank in the Border Areas Department in view of his temporary

appointment and his reversion cannot be construed as a case of reduction in rank.

12. The reasons incorporated cannot be rejected outright as unreasonable or arbitrary since the Government has already appointed two Assistant Research Officers in the Department and his services may not be necessary in the said Department. Whether the post of Research Officer is to be filled up or not is purely a matter to be considered and decided by the Executive and the Petitioner, having been appointed to that post with no objection from his parent Department subject to the condition of repatriation, cannot insist for permanent retention. Whether an officer would be continued in a Department or no is a matter of administrative exigency and decision in this behalf has to be left with the concerned authorities. The recommendation of the Director of Border Areas Department and the consent given by the Planning Department are not conclusive and binding on the State Government. The State Government is not bound by any recommendation of the Departmental Heads, especially when the appointment of the Petitioner as Research Officer was conditional and temporary in nature made without completion of due process of selection. This position was known to him when the order of his appointment was issued on 9.2.1996 indicating therein clearly that his appointment was subject to reversion to his parent Department. The case of the Petitioner cannot be treated as an exception where the Court should exercise its discretionary powers to stall the process of repatriation. The period spent by the Petitioner in the Department is not too long a period where reversion will be highly detrimental to his interest. Knowing his position as a deputationist, he had continued to work as Research Officer on the basis of temporary appointment subject to reversion. That apart, there is also nothing to show or even to suggest as to how the public interest will suffer if the Petitioner is sent back to his parent Department. Any deficiency in this regard in the impugned order cannot give any mileage to the Petitioner to stay back in the borrowing Department specially when the representation filed by him was not under any authority of law. There cannot be any dispute that it is for the State Government to utilise the services of an officer in any manner in any post as it deem fit without offending the service condition. A deputationist obviously cannot exercise any choice unless the rules so provide.

13. In order to taint an order as malafide it has to be shown that it is contrary to the objective sought to be achieved. In the instant case I am unable to hold that an order of repatriation of a deputationist is contrary to the objective underlined behind such action. An error apparent on the face of the order can be corrected by a Court exercising writ jurisdiction. It is true that the process undertaken for absorption of the writ Petitioner suffered a reversal, but that would not alone constitute violation of the principles of natural justice or mandates of Articles 14, 16, 19 and 21 of the Constitution unless malice or vindictiveness is established beyond reasonable doubt. The order of repatriation does not appear to have been passed by way of punishment. Situated thus, it would not be appropriate to interfere with the impugned order.

14. In the result the writ petitions are dismissed. The interim order passed by this Court on 1.5.2000 stands vacated. The miscellaneous petition filed by the State accordingly stands disposed of.

No costs.