

(2018) 02 MP CK 0197
In the Madhya Pradesh High Court
Case No : 20857 of 2016

Prabhu Shankar Shukla & Ors

APPELLANT

Vs

State of M.P. And Ors.

RESPONDENT

Date of Decision : 16-02-2018

Acts Referred:

Citation : (2018) 02 MP CK 0197

Hon'ble Judges : Sujoy Paul

Bench : Single Bench

Advocate : Sanjay K. Agrawal, Darshan Soni, Siddharth Sharma, R.K. Rao, K.S. Chouhan, G.P. Singh

Final Decision : Allowed

Judgement

1. Regard being had to the similitude of the question involved, on the joint request of the parties, the matters were analogously heard and decided by this common order. The facts are taken from W.P.No.21311/2016.

2. Briefly stated, the case of the petitioner is that he was initially appointed as Assistant Teacher in School Education Department (parent department) by the Government of M.P. in the year 2007. An advertisement was issued by the respondent no.3 whereby the applications were invited from eligible government servants for appointment on deputation in the M.P. State Employment Guarantee Council (Council). In response to the said advertisement, the petitioner submitted his candidature. In turn, the petitioner was interviewed by the duly constituted divisional committee. On the basis of recommendation of said committee, he was appointed on deputation by order dated 30.6.2017. Furthermore, he was posted at Janpad Panchayat, Amarpatan District Satna. Copy of posting of order

dated 28.7.2007 is filed as Annexure P-2. Admittedly, the petitioner in obedience of the said order joined the said Janpad Panchayat on 6.2.2008. The petitioner has categorically pleaded that he performed his duties in the Council to the best of his ability, sincerity and honesty.

3. The petitioner is aggrieved by the order dated 16.12.2016 Annexure P-4 whereby the petitioner's services were repatriated to the parent

department by the Council. This order is assailed on the singular ground that the nature of deputation in the present case is different than the normal

deputation. Since, it is a case of "appointment on deputation", the petitioner cannot be repatriated unceremoniously. The repatriation is permissible,

if the petitioner's services were unsatisfactory or he was found to be not suitable to perform his duties on deputation. Reliance is placed on (2012)

7 SCC 757 (Ashok Kumar Ratilal Patel Vs. Union of India & Another).

4. Per contra, Shri G.P. Singh, learned G.A. Supported the impugned order on the basis of return filed. It is urged that deputationist has no legal

right whatsoever to remain on deputation for unlimited period. The judgment of Ashok Kumar Ratilal Patel (supra) nowhere prohibits the employer

to repatriate an employee from deputation if valid and plausible reasons are available. He relied on (2000) 5 SCC 362 (Kunal Nanda Vs. Union of

India and another). In nutshell, Shri Singh submits that petitioner has already completed more than 5 years on deputation. As per the circular dated

9.7.2017 Annexure R-1, all the employees working on deputation were directed to be repatriated. Hence, no fault can be found in the action of

repatriating the petitioner.

5. No other point is pressed by counsel for the parties.

6. I have heard counsel for the parties and perused the record.

7. This is trite law that in ordinary sense, the deputationist has no legal, vested or constitutional right to remain on deputation. The parent or

borrowing department has a right to repatriate him at any time unless there exists any bar in any statutory rules. This view was taken by the Supreme

Court in the case of Kunal Nanda (supra). However, in the case of Ashok Kumar Ratilal Patel (supra), the Apex Court opined that there is a

difference between "appointment on deputation" and "transfer on deputation". The Court poignantly held as under:

13. Ordinarily transfers on deputations are made as against equivalent post from one cadre to another, one department to another, one organisation to another, or one Government to another; in such case a deputationist has no legal right in the post. Such deputationist has no right to be absorbed in the post to which he is deputed. In such case, deputation does not result into recruitment, as no recruitment in its true import and significance takes place as the person continues to be a member of the parent service.

14. However, the aforesaid principle cannot be made applicable in the matter of appointment (recruitment) on deputation. In such case, for appointment on deputation in the services of the State or organisation or State within the meaning of Article 12 of the Constitution of India, the provisions of Article 14 and Article 16 are to be followed. No person can be discriminated nor is it open to the appointing authority to act arbitrarily or to pass any order in violation of Article 14 of the Constitution of India. A person who applies for appointment on deputation has an indefeasible right to be treated fairly and equally and once such person is selected and offered with the letter of appointment on deputation, the same cannot be cancelled except on the ground of non-suitability or unsatisfactory work.

15. The present case is not a case of transfer on deputation. It is a case of appointment on deputation for which advertisement was issued and after due selection, the offer of appointment was issued in favour of the appellant. In such circumstances, it was not open for the respondent to argue that the appellant has no right to claim deputation and the respondent cannot refuse to accept the joining of most eligible selected candidate except on ground of unsuitability or unsatisfactory performance.

8. In the present case, the petitioner's appointment cannot be treated as "transfer on deputation". On the contrary, the petitioner's deputation falls within the purview of "appointment on deputation". The respondents admittedly issued an advertisement inviting the candidature of illegible candidates. Pursuant to this advertisement, the petitioners were selected and were appointed on deputation. Thus, the nature of present deputation is different than ordinary deputation on which judgment of Kunal Nanda (supra) can be made applicable. In the peculiar facts of these cases, in the

considered opinion of this court, the judgment of Ashok Kumar Ratilal Patel (supra) will be applicable. In view of this judgment, the repatriation of petitioner on the basis of blanket decision taken by the government is impermissible.

9. In this view of the matter, the impugned orders of repatriation cannot sustain judicial scrutiny. The impugned orders of repatriation in all the cases are therefore set aside. It is made clear that this order will not come in the way of the respondents to repatriate the petitioner in accordance with law.

10. The petitions are allowed.