
(1985) 01 GUJ CK 0027
In the Gujarat High Court

R. Basu

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 21-01-1985

Acts Referred:

All India Services (Conditions of Service Residuary Matters) Rules, 1960 — Rule 2(b)

Citation : (1985) 1 GLR 504

Hon'ble Judges : A.S. Quresh, J

Bench : Single Bench

Judgement

A.S. Quresh, J

1. In all these petitions, a common question of law is involved and therefore at the request of the learned Counsel for the parties, they have been heard together and are disposed of by the common judgment.

2. The petitioners in all these petitions are the members of All India Services being officers of Indian Administrative Service (I.A.S.). The petitioners have been allocated to the State of Gujarat where they have been serving. While serving with the State of Gujarat, the petitioners have been deputed to the corporations in the State of Gujarat, such as Ahmedabad Municipal Corporation, Gujarat Electricity Board, etc. The common question involved in these petitions is whether these petitioners are entitled to the deputation allowance while they serve on deputation with different corporations. Mr. A.H. Mehta, the learned Counsel for the petitioners has submitted that as far as pay and allowances of the petitioners are concerned, they are governed by the relevant pay rules. But according to him, there is no provision with regard to paying them allowance for deputation while they are serving on different corporations. Mr. Mehta relies on Sub-rule (2) Clause (b) of All India Services (Conditions of Service-Residuary Matters) Rules 1960 (hereinafter referred to as Residuary Rules). It is the case of the petitioners that they are entitled to all the benefits which are given to Class-1 officers in the State Civil Services, which includes the deputation allowance. As regards the deputation allowance payable to Class-1 officers in the State Civil

Services is governed by resolution No. PTN-1175/1221-J, dated 22nd September 1975 (hereinafter referred to as the resolution). There has been a previous similar resolution of 1964, and subsequently one of 1981. The provision with regard to the deputation allowance payable to Class-1 officers in the State Civil Services is clearly specified at a uniform rate of 20% of the pay and subject to a maximum of Rs. 300/- per month with a proviso that the pay together with the deputation facts and circumstances of the case mentioned above except that the petitioners allowance shall not exceed Rs. 3000/- per month. The resolution inter alia provides that it will not apply to the members of All India Services and to appointments to posts whose terms are regulated under specific statutory rules or orders. Mr. Mehta, relying on the judgment of Supreme Court in *P.C. Wadhwa Vs. State of Haryana and others*, submits that under Rule 2(b) of the Residuary Rules, it is not open to the State Government to deprive the petitioners of their right to claim the deputation allowance as is sought to be done by the aforesaid resolution. In the afore-mentioned case, the Supreme Court was considering a similar order made by the Punjab Government on 25/31st January 1963. In that case, the petitioner was an officer in Indian Police Service allocated to the State of Haryana. The Supreme Court interpreted Rule 2(b) of the Residuary Rules so as to mean that the petitioner was entitled to the deputation allowance which was available to Class-1 officers in the State Civil Services. The facts and circumstances in these petitions are almost identical with the facts and circumstances of the case mentioned above except that the petitioners are in the Indian Administrative Service. According to Mr. Mehta, the ratio in the aforesaid decision of the Supreme Court is applicable wholly to the present petitions and therefore he has canvassed that the relevant provision in the aforesaid Government Resolution excluding the petitioners and other members of All India Services from being eligible for the deputation allowance deserves to be struck down.

3. Mr. S.D. Shah, the learned Counsel for the Union of India has urged that the provision in the aforesaid resolution is valid and must be upheld. According to him, the Central Government has in effect approved of the stand taken by the State Government in this case and therefore it should be held that the impugned provision in the resolution is, as if it were adopted by the Central Government. Mr. R.M. Vin, the learned Counsel for the State Government has supported Mr. S.D. Shah and argued that it is open to the State Government to exclude the members of All India Services from the benefits which it gives to Class-1 officers in the State Civil Services. As regards the respondent Ahmedabad Municipal Corporation, Mr. M.A. Panchal, learned Counsel for the corporation has urged that in fairness it must be stated that Rule 2(b) can only be considered to mean that the benefits which the State Government chooses to give to its Class-1 officers must be extended to the members of All India Services who are deputed to the corporations.

4. The contention raised by Mr. Shah on behalf of the Central Government and by Mr. Vin on behalf of the State Government is not tenable because the provision

made in Rule 2(b) is quite clear on the point that all the benefits which are available to Class-1 officers in the State Civil Services would be applicable to the members of All India Services whose services are allocated to the State and that if any exception or modification is to be made therein, it can only be done by the Central Government after consultation with the State Government and by an order in writing. The resolution of the State Government cannot be regarded as Rule, Regulation or Order of the Central Government. The competent authority under the said Sub-clause (b) is the Central Government. Any act done by the State Government cannot be regarded as that of the Central Government by ratification. The specific provision is that not only it must be order of the Central Government but also it must be in writing. These two conditions are not satisfied by the impugned provision in the said resolution and therefore the said provision will have to be struck down as being outside the jurisdiction of the State Government. It is open to the Central Government to exclude the members of All India Services from getting deputation allowance by a specific Rule, Regulation or Order in writing. The scheme of Rule 2 is that under Clause (a), the members of All India Services who serve under the Central Government are held entitled to the benefits which are available to Class-1 officers of Central Services. Similarly in Clause (b), the members of All India Services allocated to different States are entitled to the benefits which are available to Class-1 officers in the State Civil Services. Any attempt to deprive the members of All India Services allocated to State who are sent on deputation, would create an imbalance between the members who serve under the Central Government and who are eligible to the benefits available to Class-1. officers under the Central Government and those members of All India Services who are allocated to State and who may be deprived of the benefits which are available to the Class-1 officers in the State Services.

5. Mr. Shah has also urged that the ratio in the aforesaid judgment of the Supreme Court is not applicable to the present petitioners because according to him, it is not clear whether in the Punjab Government order, which was before the Supreme Court, there was a specific provision excluding the members of All India Services who were on deputation. Although Mr. Shah was given long adjournment to produce a copy of the Punjab Government order before this court, for some unknown reason he has not been able to do so, but that would not make any difference. Even assuming that there was no such provision made in the Punjab Government order which was before the Supreme Court, the question really is whether it is within the legislative or executive competence of the State Government to make a provision in this behalf at all. On reading Rule 2(b) of Residuary Rules, it is quite obvious that the legislative or executive competence is that of the Central Government alone and not of the State Government. Therefore the fact that there is a specific exclusion in the impugned State resolution would be of no avail to the respondents. The only way as stated above deprive the members of All India Services allocated to the State and who are sent on deputation is that the Central Government may by the Rules,

Regulations or Orders, after consultation with the State Government, make by an order in writing.

6. Mr. Vin has also raised a contention that there is a specific provision made in the Indian Administrative Service (Cadre) Rules, 1954, wherein Rule 6 provides for the deputation of Cadre Officers. Mr. Vin relies on the second proviso to Sub-rule (2) of Rule 6, which reads as under:

Provided further that no cadre officer shall be deputed under Sub-rule (1) or Sub-rule (2) to a post carrying a prescribed pay which is less than, or a pay scale, the maximum of which is less than, the basic pay he would have drawn in the cadre post but for his deputation.

Mr. Vin submits that the said second proviso to Sub-rule (2) of Rule 6 is indicative of the fact that the only thing that is protected in the case of deputation of an officer is his salary. According to him, the fact that there is no provision with regard to deputation allowance, clearly shows that no deputation allowance was intended to be paid. This argument of Mr. Vin is clearly fallacious. The Rule no doubt provides for deputation. But it is not necessary for making a provision with regard to the deputation allowance in this Rule or in the said Cadre Rules. Infact all those situations where there was no provision in different rules, are covered in the aforesaid Residuary Rules. They have been enacted by definition to cover the un-covered ground under various relevant Rules. Since there is no provision with regard to the payment of deputation allowance in the Cadre Rules, one has to look at the Residuary Rules. The relevant provision in the Residuary Rules is very clear and unambiguous. There is really no answer to the contention that the impugned provision in the aforesaid State Government resolution is in clear contravention of Rule 2(b) of the Residuary Rules. It is beyond the legislative or executive competence of the State Government. Hence it will have to be struck down.

7. It is rather strange that the State Government should take lip the attitude it has taken. It is difficult to understand why the State Government wants to deprive the members of All India Services who are allocated to the State Government of the deputation allowance which it gives to its Class-1 officers in the State Services. There seems to be sound reason in making the provision for deputation allowance for Class-1 Officers in the State Services. Going through the said resolution, one finds that there is a provision which says that it is not necessary to ascertain the willingness of the Government servant concerned before taking a decision in regard to deputation to other Government or Body which is wholly or substantially owned or controlled by the Government of Gujarat. This means that the officer concerned has no choice in the matter of deputation. He has to accept the order as such. Where there is an element of compulsion in going on deputation, it is fair and proper that the State Government should provide for deputation allowance.

8. Once the principle of deputation allowance is accepted by the State

Government in respect of its Class-1 officers in the State Services, there is no rational reason why it should not be extended to the members of All India Services who are serving under the State Government. The said resolution is very comprehensive and contains several detailed provisions regarding the service on deputation. Taking the overall view, the said resolution has balanced the difficulties and personal inconveniences of the officers on deputation with certain benefits, that it would be unfair to hold that the officers of All India Services on deputation must only get the difficulties and hardships but not the benefits. Moreover, the benefits given also are of a very modest nature. The deputation allowance with a maximum of Rs. 300/- per month subject to the condition that the total emoluments shall not exceed Rs. 3000/- per month.

9. In the result, all the petitions succeed. A writ of certiorari shall issue quashing and setting aside the impugned provision in the aforesaid resolution excluding the petitioners and other members of All India Services from getting the deputation allowance. A writ of mandamus shall issue directing the appropriate respondents for paying the deputation allowance to the petitioners for the period they have been on deputation. The arrears shall be paid within a period of 8 weeks from the date on which the writ is received by the concerned respondents. Rule made "absolute. In the circumstances of the case, there shall be no order as to costs.

10. At this stage, Mr. S.D. Shah on behalf of the Union of India requests that the operation of this judgment and order be stayed for four weeks. Mr. A.H. Mehta opposes the grant of stay in view of the fact that a period of 8 weeks is granted for the payment of the arrears of deputation allowance. The request of Mr. Shah is not quite reasonable as the Union Government has not to pay the arrears. The arrears are payable by the concerned Corporations, who are not praying for the stay nor is the State of Gujarat seeking stay. Moreover, 8 weeks' time has been granted for the payment of the arrears and a Letters Patent Appeal before a Division Bench of this court can be filed within a few days. The request for the stay is therefore rejected.