(2018) 03 DEL CK 0213

In the Delhi High Court

Case No : Civil Writ Petition No. 10626 Of 2017, Civli Miscellaneous No. 43515 Of 2017, 7645 Of 2018

Rakesh Kumar Verma APPELLANT

Vs

Jawaharlal Nehru University And Anr. RESPONDENT

Date of Decision : 15-03-2018

Acts Referred:

Citation : (2018) 03 DEL CK 0213

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Krishnan Venugopal, Siddhartha, Vimal Kirti Singh, Shivendra Singh, Deepan, Pooja Dhar, Monika Arora, Vibhu Tripathi, Kushal Kumar

Final Decision : Dismissed

Judgement

1. The challenge in this petition is to impugned order of 23rd November, 2017 (Annexure P-1) vide which petitioner, who was working as Finance Officer in respondent-Jawaharlal Nehru University (hereinafter referred to as JNU), was directed to proceed on leave with immediate effect. Order of 25th November, 2017 (Annexure P-2), which is impugned in this petition, relieves petitioner of his duties and responsibilities as Finance Officer of respondent-University w.e.f. 27th November, 2017 (forenoon).

2. It is matter of record that vide Communication of 6th April, 2011 (Annexure-G with short affidavit of petitioner), respondent-University had intimated Comptroller & Auditor General of India (hereinafter referred to as "CAG") that out of the names sent by CAG, petitioner's name has been approved for appointment as Finance Officer in JNU and vide its Office Order of 25th April, 2011 (Annexure-1 to short counter of respondent-University) clarified that terms and conditions of petitioner's deputation with respondent-University would be governed by Office Memorandum of 5th January, 1994 of Department of Personnel and Training (hereinafter referred to as "DoPT"), as amended from time to time, and his leave salary and pension contribution during the period of

his deputation will be paid by respondent-University. Vide Notification of 25th May, 2011 (Annexure-H), it was notified that petitioner has taken over as Finance Officer in respondent-University on 19th May, 2011. Vide Office Order of 17th June, 2013 (Annexure-I), the deputation term of petitioner as Finance Officer in respondent-University was extended for a period of five years i.e. upto 18th May, 2016, on existing terms and conditions.

3. CAG in its Communication of 13th August, 2010 (Annexure-B) had stated that petitioner's name for appointment as Finance Officer on deputation basis was sent to respondent-University. Out of three names nominated for the post of Finance Officer in respondent-University, petitioner was selected for the said post and vide Resolution of 20th November, 2015 of Executive Council of respondent-University, petitioner's term as Finance Officer in respondent-University was approved for a period of five years or till he attains the age of 62 years, whichever is earlier.

4. It is also matter of record that on 4th December, 2015, petitioner's deputation term was extended till 31st December, 2017 by respondent-University i.e. till the date of his retirement in his parent department i.e. CAG. Pertinently, petitioner had given his willingness in writing to have his deputation term extended till 31st December, 2017. It is so evident from impugned letter of 4th December, 2015 (Annexure-M).

5. The sequence of events reveals that after extending petitioner's tenure as Finance Officer till 31st December, 2017 on deputation basis, his term as Finance Officer in respondent-University was renewed till 19th December, 2019 as per respondent-University's Office Order of 22nd December, 2015 (Annexure-O). As per Minutes of 270th Meeting of the Executive Council of respondent-University held on 23rd November, 2017, it was decided that petitioner should proceed on leave with immediate effect, as petitioner is to retire from his parent organization on 31st December, 2017 and he should be repatriated to his parent department with immediate effect. As per Agenda Item No. 12 of Minutes of aforesaid 270th Meeting of the Executive Council, it was pointed out by one of the members of Executive Council that the extension given to petitioner beyond the date of retirement is illegal and against the Rules and so, petitioner's deputation tenure was curtailed.

6. Upon receiving impugned letter of 23rd November, 2017 (Annexure P-1), petitioner had promptly represented to the Registrar of respondent-University on the same day vide Communication (Annexure P-22) to quote the Rule under which petitioner has been directed to proceed on leave and it is the case of petitioner that when faced with such a situation, respondent-University had issued second Communication of 25th November, 2017 (Annexure P-2) relieving petitioner from duty w.e.f. 27th November, 2017. It is the precise case of petitioner that the Resolution asking petitioner to proceed on leave immediately and to repatriate him with immediate effect was not passed in 270th Meeting of Executive Council of respondent-University, as there was no occasion to pass two

orders of 23rd and 25th November, 2017 and in normal course, instead of sending petitioner on leave with immediate effect, petitioner could have been relieved from his duty to facilitate his repatriation to his parent organization. It is also the case of petitioner that the background to the issuance of two impugned letters is the Communication of 28th November, 2017 (Annexure-RA/8 to rejoinder) of Professor Ajay Kumar Patnaik, which reveals that in meeting of Executive Council of respondent-University held on 23rd November, 2017, it was decided that a Committee would be formed to look into petitioner's repatriation to his parent cadre and till then, petitioner would be asked to go on leave. It is the assertion of petitioner that instead of constituting any Committee to consider petitioner's repatriation, impugned order of 23rd November, 2017 (Annexure P-2) has been hastily passed.

7. It is also matter of record that because of petitioner's unwillingness to go on leave, inspite of impugned order of 23rd November, 2017 (Annexure P-1), he stood repatriated vide impugned order of 25th November, 2017 w.e.f. 27th November, 2017. However, it is the case of petitioner that w.e.f. 27th November, 2017, he continues to be on medical leave and that he has not handed over the charge of Finance Officer to anyone. Vide Communication of 14th December, 2015, CAG had given "no objection" to extension of petitioner's deputation tenure upto 31st December, 2017.

8. Learned senior counsel for petitioner submitted that as per DoPT's Office Memorandum of 17th June, 2010 (Annexure-RA/6 to rejoinder of petitioner), premature reversion of a deputationist to the parent cadre can take place after giving an advance notice of at least three months to the lending Ministry/ Department of the employee concerned and no such advance notice was served upon petitioner or his parent department.

9. Learned senior counsel for petitioner submitted that after due selection, petitioner had joined respondent-University on the post of Finance Officer, which is a statutory post. Reliance was placed upon decision in Union of India & Anr. Vs. S.N. Maity & Anr. (2015) 4 SCC 164 to submit that since petitioner's appointment was substantive, therefore, he could not have been repatriated without following the mandate of Statute 31 of the Jawaharlal Nehru University Act, 1966 (hereinafter referred to as "the JNU Act"), which provides for issuance of a Show-Cause Notice and grant of an opportunity of hearing. It was submitted that no justifiable reason is put-forth for curtailing petitioner's tenure, which was upto the year 2019 and so, impugned order is perverse and void ab initio. It was pointed out by learned senior counsel for petitioner that in the reply affidavit of 21st December, 2017 filed by respondent-University, a stigma has been cast on petitioner's financial integrity and thus, the repatriation order is not innocuous one and therefore, petitioner's repatriation needs to be quashed. Attention of this Court was drawn to Supreme Court's decision in Union of India through Govt. of Pondicherry and Another v. V. Ramakrishnan and Others (2005) 8 SCC 394 wherein it has been clarified that when the tenure of deputation is specified,

despite a deputationist not having an indefeasible right to hold the said post, ordinarily the term of deputation should not be curtailed except on such just grounds, as, for example, unsuitability or unsatisfactory performance.

10. In response to court query, a short counter-affidavit was filed by respondent-University disclosing that number of complaints have been received against petitioner regarding financial irregularity, which are as under: -

"a) Financial irregularity regarding 160 crore owing to TDS being deducted @ 2% instead of 10%.

b) Finance disbursement of about 15 crores in unauthorized payment of service tax which the JNU was not supposed to pay.

c) Complaint regarding award of contract of security services in JNU."

11. The stand of respondent-University is that the aforesaid Communication of 28th November, 2017 by Professor Ajay Kumar Patnaik is of no consequence because Executive Council's Resolution of 23rd November, 2017 was unanimous one. The submission of learned counsel for respondent-University was that advance notice is to be normally given, but not in a case like instant one, where petitioner/deputationist was on the verge of retirement and since petitioner was to retire on 31st December, 2017, so three months' advance notice could not be given to him. It is pointed out that as per Clause 10 of DoPT's Office Memorandum of 17th June, 2010, any of its term or condition can be relaxed with prior concurrence of the DoPT.

12. It is the case of respondent-University that petitioner has been drawing salary according to recommendations of Seventh Central Pay Commission, which has been implemented in petitioner's parent department, i.e. CAG, but not in respondent-University and that petitioner maintains lien in the parent department. It is also pointed out that petitioner was availing deputation allowance from the year 2011 till 2013 and thereafter, he could not draw deputation allowance as petitioner was in the highest pay scale.

13. Regarding applicability of Statute 31 of the JNU Act, it was submitted by respondents' counsel that it applies to regular employees of respondent-University and not to an employee like petitioner, who has been appointed by way of deputation. It was submitted that impugned repatriation order is innocuous as no misconduct is alleged and it is not a ground to repatriate petitioner and so, case of petitioner is not covered under Statute 31 of the JNU Act. Thus, it was submitted that petitioner's repatriation was on account of his tenure coming to an end due to his retirement and so, no fault can be found with impugned order of repatriation.

14. After having heard learned counsel for the parties and on perusal of impugned orders, material on record and the decisions cited, I find that the instant case is of deputation simplicitor. No doubt, petitioner was interviewed prior to selecting him out of three proposed candidates for the post in question,

but it would not justify terming petitioner's appointment by way of deputation to be a substantive appointment as the nature and character of petitioner's appointment is evident from order of 25th April, 2011 (Annexure-1 to short counter of respondent-University). It is evident from the aforesaid order of 25th April, 2011 of petitioner's parent department that the terms and conditions of petitioner's deputation would be governed by DoPT's Office Memorandum of 5th January, 1994 as amended from time to time. Had it been a case of "appointment on deputation", then there would have been no occasion for petitioner to have drawn deputation allowance from the year 2011 upto the year 2013. It is matter of record that thereafter, petitioner could not draw the deputation allowance because he had reached the highest pay slab.

15. Reliance placed by petitioner's counsel upon Supreme Court's decision in Union of India and Another v. S.N. Maity (supra) is of no assistance to the case of petitioner as in the said decision, on facts it was concluded that it was a case of "appointment on deputation". In the instant case, had it been appointment by way of deputation, then petitioner ought to have drawn salary as payable by respondent-University, but petitioner while on deputation had drawn salary as per the 7th Central Pay Commission payable in his parent department.

16. It is not the case of petitioner that his pay was protected while appointing him on the post of Finance Officer by way of deputation. Merely because an inter-departmental communication of 6th April, 2011 (Annexure-G to short affidavit of petitioner) talks of appointment to the post of Finance Officer in JNU, it would not be justified to conclude that it was a substantive appointment as the said Communication merely refers to nomination of names for appointment on the post of Finance Officer and the said Communication is addressed by respondent-University to CAG. It is so said because respondent-University in its Office Order of 17th June, 2013 (Annexure-I to short affidavit of petitioner) makes it clear that deputation term of petitioner as Finance Officer has been extended for five years i.e. upto 18th May, 2016 on the existing terms and conditions of deputation.

17. It is relevant to note that as per University's Ordinance relating to terms and conditions of service of Finance Officer (Annexure-J to short affidavit of petitioner), the age of retirement is 62 years, but the extension of tenure has been for a period of five years or till such person attains the age of 62 years, whichever is earlier. It is true that petitioner's tenure of deputation was extended upto the age of 62 years i.e. upto 19th December, 2019, and the said extension was granted on 16th December, 2015. However, prior thereto, respondent-University vide Communication of 4th December, 2015 (Annexure-M to short affidavit of petitioner) had written to petitioner's parent department to extend petitioner's deputation period till 31st December, 2017 i.e. till the date of his retirement in the parent department and a letter of willingness from petitioner was enclosed with the aforesaid Communication of 4th December, 2015.

18. Renewal of petitioner's deputation till December, 2019 was reconsidered by

the Executive Council of respondent-University because one of the members of the Executive Council of respondent-University had pointed out that petitioner will attain the age of 60 years in December, 2017, which is the age of his retirement in his parent department and so, extension of petitioner's deputation beyond the date of his retirement was irregular and against the rules and so, petitioner should be repatriated to his parent department before his attaining the age of retirement. As per the Minutes of 270th Meeting of the Executive Council (Annexure-III to short counter of respondent-University), it was resolved by the Executive Council of respondent-University that petitioner should proceed on leave with immediate effect and he should be also repatriated to his parent department with immediate effect as he is due to retire on 31st December, 2017.

19. Supreme Court in Ashok Kumar Ratilal Patel v. Union of India and Another, (2012) 7 SCC 757 has reiterated that a person, who applies for appointment on deputation has an indefeasible right to be treated fairly and once such person is selected and offered letter of appointment on deputation, the same cannot be cancelled except on the ground of non-suitability or unsatisfactory work.

20. In the considered opinion of this Court, a deputationist has to be treated fairly, but his tenure can be cut short not only on the ground of unsuitability or unsatisfactory work, but also on the ground that the tenure of deputation must end on the date of his retirement in his parent department. Respondent-University has reconsidered extension of petitioner's deputation tenure on the ground that petitioner's deputation has to be co-terminus on the date of his retirement. There is sound basis to adopt such a course. Curtailment of petitioner's deputation cannot be termed to be arbitrary nor can it be said that it has been hastily done in a capricious manner. It would be far-fetched to assert that petitioner's deputation tenure has been curtailed without any justifiable reason. Although it is the case of petitioner that curtailment of his tenure has cast a stigma, but I find that impugned order repatriating petitioner is innocuous one. On a plain reading of impugned order, it cannot be said that it is stigmatic. It is made clear that petitioner's repatriation is not on ground of any financial impropriety nor has any misconduct been attributed to him. There is no basis to assume that repatriation of petitioner has been done in a post-haste manner. Petitioner has been asked to proceed on leave with immediate effect to facilitate his repatriation to his parent department. Such a course was perhaps adopted to ensure petitioner's smooth repatriation to his parent department and on this ground, impugned orders cannot be faulted with. Statute 14 (ix) of the JNU Act empowers respondent-University to vary/cut short petitioner's tenure.

21. DoPT's O.M. of 5th January, 1994 permits premature reversion of deputationist to parent cadre after giving him advance intimation to the lending department and the employee concerned. However, such a course is to be normally adopted. In the instant case, the time between curtailment of petitioner's deputation and his retirement was too short and so, service of advance notice was not required as petitioner's deputation was initially extended

upto December, 2017 after intimation to petitioner's parent department and after obtaining his consent. So, it cannot be said that there is any wilful infringement of Clause 9 of DoPT's O.M. of 5th January, 1994. In any case, it was not shown as to how petitioner was prejudiced on account of lack of literal compliance of aforesaid O.M.. Since the Resolution of the Executive Council to repatriate petitioner with immediate effect was unanimous, therefore, no importance can be attached to letter of 28th November, 2017 purportedly written by Professor Ajay Patnaik, Dean of School of International Studies to the Vice Chancellor as it appears to be an afterthought.

22. Undisputedly, petitioner's pension contribution, leave contribution and provident fund contribution was sent by respondent-University to petitioner's parent department, which clearly indicates that petitioner was not substantively appointed as Finance Officer but was on deputation. Such a conclusion is justified as petitioner during the period of his deputation had drawn his salary as per the 7th Central Pay Commission recommendations, which have not been implemented for the employees of respondent-University. Petitioner while on deputation had been getting his salary as per the 7th Central Pay Commission recommendations because the said recommendations have been implemented by his parent department. It is settled legal position that a deputationist has no legally enforceable right to continue and complete the agreed deputation period.

23. In light of foregoing narration, this Court finds that impugned premature repatriation of petitioner to his parent department proceeds on sound logic and is not mala fide. No case for quashing of impugned orders is made out. Hence, this petition and the pending applications are dismissed.

