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**(1984) 03 AHC CK 0037**  
**In the Allahabad High Court**  
**Case No : Writ Petition No. 5076 of 1981**

S. Raza Abbas Rizvi

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

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**Date of Decision :** 29-03-1984

**Acts Referred:**

**Citation :** (1984) AWC 232 Supp

**Hon'ble Judges :** K.N. Misra, J;K.N. Goyal, J

**Bench :** Division Bench

**Advocate :** Hayder Abbas, for the Appellant;

**Final Decision :** Dismissed

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## Judgement

K.N. Goyal, J.—The Petitioner was originally a temporary clerk in the Health Department of the State Government. By order Annexure No. 2, he was appointed to the post of Senior Noter Drafter in the office of Waqf Commissioner. This order dated 13--9--79 states that the appointment was being made on .deputation and that he would be liable to be sent back, to his parent department on the post coming to an end or whenever his services were No. longer required. Later, while working under the Waqf Commissioner he was appointed in ad--hoc capacity on the post of office Superintendent. This order is dated 6--6--1980 vide Annexure No. 3. On 14th July, 1981 the Health Directorate passed an order which is Annexure A--I to the supplementary counter--affidavit of opposite parties 1 and 2 directing the Petitioner to be posted to his old post on his return from deputation. On 15th July, 1981 the Waqf Commissioner passed an order of return of the Petitioner to his original post. This order is annexure No. 5 to the writ petition. The Petitioner has come to this court against this order.

2. His main contention is that he had been regularised on the post of office Superintendent and that his appointment should not be treated as on deputation. He relies on a G.O. of 19S8, according to which a temporary employee on being sent to another department has No. claim to come back to his parent

department. It may be that such a temporary employee may have No. "claim" to come back to his parent department against the wishes of the authorities concerned; but if both the borrowing and lending departments have agreed to the appointment of such employee on deputation and the lending department is thereafter prepared to take him back, the employee on his part cannot insist on not coming back. This has been held by another Division Bench in *Surya Nath v. Cane Commissioner* W.P. No. 3493 of 1982 decided on 15--2--1984 (unreported).

3. Learned Counsel for the Petitioner has relied on certain averments of State in counter--affidavit filed in a writ petition which was instituted by one Wahajuddin against the petitioner's appointment in the Waqf Commissioner's office as Office Superintendent. We have sent for the file of that case, being Writ Petition No. 2146 of 1980 *Syed Wahajuddin v. State of U.P.* In that case the Petitioner who was opposite party No. 3 had himself filed a counter--affidavit in which he had admitted that he had been appointed on deputation. The post of Office Superintendent was even advertised as intended to be filled on only deputation basis, because the office of the Wakf Commissioner was itself a temporary department. In this view of the matter the Petitioner cannot be heard to contend that his appointment was a regular appointment and not an ad--hoc appointment on deputation.

4. It has also been contended that in view of the allegations in the counter--affidavit made against the Petitioner it should be deemed that his reversion is founded on stigma. Actually Petitioner himself had alleged in the writ petition that his work and conduct were excellent, and, such as, there was No. ground for sending him back to his parent department. It was in reply to this assertion that certain allegations have been made. Such allegations do not find place in the impugned order. They may have formed the background motive for deciding to send the Petitioner back to his parent department, but they cannot in the circumstances be said to form a foundation for the order and, as such the decisions in *K.H. (sic) v. State of Maharashtra* 1971 (2) SLR 345 (SC) and *Shri C. L. Raizada v. Delhi Administration*, Delhi 1977 L I C 1988 are clearly distinguishable on facts.

5. We thus find No. merit in the writ petition. It is accordingly, dismissed. No. order as to costs.