

(2008) 08 MP CK 0060

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3624 of 2007 (S)

Samar Bahadur

APPELLANT

Vs

State of M.P. and another

RESPONDENT

Date of Decision : 11-08-2008

Acts Referred:

Citation : (2009) 2 MPLJ 345

Hon'ble Judges : Shantanu Kemkar, J

Bench : Single Bench

Advocate : S.C. Bagadia, with Sunil Jain, for the Appellant; M.S. Dwivedi, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

Shantanu Kemkar, J.

The petitioner was appointed in the Higher Education Department of the State Government. While he was posted as Assistant Professor (Economics) at Govt. Arts and Commerce College, Indore he was sent on deputation from Higher Education Department (for short "H.E.D.") to the Urban Administrative and Development Department (for short "U.A.D.D.") of the State Government vide dated 11-8-2000 (Annexure P/2).

On 1-7-2006 an order Annexure P/3 was issued on behalf of the State Government by the Additional Secretary of the School Education Department (for short "S.E.D.") in the name of and by the order of Governor by which the petitioner's services were withdrawn from U.A.D.D. and he was sent on deputation for a period of three years to the S.E.D. and posted as Joint Director Education, Indore.

However, before completion of the said period of deputation of three years fixed vide order dated 1-7-2006 (Annexure P/3) the Additional Secretary of S.E.D. cancelled the aforesaid order of deputation, Annexure P/3 and issued the order dated 9-7-2007 (Annexure P/I) of repatriation of the petitioner to his parent

department H.E.D. Feeling aggrieved, the petitioner submitted a representation on 10-7-2007 (Annexure P/5) and has filed this petition.

According to the petitioner vide order dated 1-7-2006 (Annexure P/3) his sendees on deputation were withdrawn from U.A.D.D. and he was sent on deputation to the S.E.D. for a period of three years, in the circumstances, before completion of three years specified period of deputation, his services could not have been repatriated by the impugned order dated 9-7-2007 (Annexure P/I). In support reliance has been placed on the judgment of the Supreme Court in the case of Union of India (UOI) through Govt. of Pondicherry and Another Vs. V. Ramakrishnan and Others, .

Respondents filed reply and have stated that H.E.D. vide letter dated 6-12-2005 (Annexure R/I) requested the U.A.D.D. to repatriate the services of the petitioner in view of the shortage of the Professors and Assistant Professors in the H.E.D. According to the respondents, the S.E.D. has wrongly issued the order dated 1-7-2006 (Annexure P/3) taking back the services of petitioner from U.A.D.D. and has wrongly posted the petitioner on deputation for 3 years in S.E.D. It is stated that it was the duty of the petitioner to have informed the S.E.D. that his parent Department is H.E.D. and therefore he be posted in the H.E.D. It is, further stated that when H.E.D. pointed out the mistake to the S.E.D. the S.E.D. has rightly issued the impugned order dated 9-7-2007 (Annexure P/I) repatriating the petitioner's services to his Parent Department.

True it is that a person on deputation can always and at any time be repatriated to his parent department to serve on his substantive position at the instance of parent department or the borrowing department. However, in the present case the petitioner was sent on deputation initially to the U.A.D.D. Thereafter he was sent on deputation to the S.E.D. for a specified period of three years vide order dated 1-7-2006, in the circumstances the general principle that he being deputationist could have been repatriated at any time will not apply. Further it is not the case of the respondents that the period of deputation has been curtailed on account of petitioner's unsuitability or his unsatisfactory performance in the S.E.D. or for any other just ground. The Supreme Court in the case of Union of India vs. Ramakrishnan (supra) has held 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. A Division Bench of this Court in C.R. Gaur Vs. State of M.P. and Others, while considering the law laid down by the Supreme Court in Union of India vs. Ramkrishan and others (supra) has observed that the examples given by the Supreme Court are not exhaustive of just grounds which can constitute exceptions for curtailment of the tenure of deputation.

In the present case, I find that the respondents have tried to justify the order for curtailment of the period of deputation and repatriation of the petitioner firstly by filing a copy of the letter dated 6-12-2005 (Annexure R/I) by which the H.E.D.

made a request to U.A.D.D. to repatriate services of the petitioner on the ground of the shortage of Professors and Assistant Professors in the H.E.D. Except filing this letter dated 6-12-2005, the respondents have not produced any material to substantiate this plea. On the other hand, after the said letter dated 6-12-2005, H.E.D. allowed the State Government through the S.E.D. to pass the order dated 1-7-2006 (Annexure P/3) by which the petitioner has been withdrawn from U.A.D.D. and sent for three years on deputation to S.E.D. In the circumstances, the letter dated 6-12-2005 had lost its effect in view of the subsequent order dated 1-7-2006 (Annexure P/3) of deputation for 3 years issued by the State Government.

The other ground on which the respondents have tried to justify the action of curtailment of the petitioner's period of deputation is that the S.E.D. had no authority to pass the order dated 1-7-2006 (Annexure P/3). It is stated by the respondents that the petitioner was the employee of the H.E.D. and he could not have been repatriated and sent on deputation by the S.E.D. In my considered view this ground is also not justified. The order dated 1-7-2006 (Annexure P/3) by which the petitioner has been sent on deputation for 3 years though has been passed by the S.E.D. but the order has been issued by the State Government in the name and by the order of the Governor in which it has been specifically mentioned that the State Government hereby orders that the services of Dr. S. & Singh, Assistant Professor of Economics (Higher Education Department) who is on deputation to the Urban Administrative and Development Department, are taken back and he is sent on deputation and posted as Joint Director Education. (Emphasis supplied). Copy of this order was also sent to the H.E.D. In the circumstances it cannot be held that the said order has been issued without any authority. Thus the grounds tried to be demonstrated by the respondents through reply to justify the order of cancellation of deputation and of repatriation before the fixed period of 3 years are not made out.

Having regard to the law laid down by the Supreme Court in the case of Union of India vs. Ramakrishnan (supra) and the Division Bench of this Court in case of C. R. Gaur vs. State of M.P. (supra) and the facts narrated hereinabove the curtailment of the petitioner's specified term of 3 years of deputation by the impugned order of repatriation without there being existence of any just ground is illegal and cannot be sustained.

Accordingly, the impugned order dated 9-7-2007 (Annexure P/I) deserves to be and is hereby quashed. The petition is allowed. No order as to costs.