
(2010) 07 DEL CK 0102

In the Delhi High Court

Case No : Writ Petition (C) 12773 of 2009

Shri Sitamber Singh

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 15-07-2010

Acts Referred:

Citation : (2010) 07 DEL CK 0102

Hon'ble Judges : Veena Birbal, J

Bench : Single Bench

Advocate : Shrikant Tyagi, for the Appellant; Rajeev Sharma and Chandan Sharma, Advs, for the Respondent

Judgement

Veena Birbal, J.—By way of present writ petition, petitioner is seeking a writ of certiorari for quashing the impugned order dated 9th October, 2009(Annexure P1) vide which respondent No. 2 has relieved the services of the petitioner w.e.f 30th October, 2009 before the expiry of the deputation period.

2. Petitioner was appointed on 25.6.1979 and was working as a Statistical Assistant under the Office of Leprosy Officer at PL Sharma Hospital Campus, Meerut, U.P. In the year 2008, respondent No. 2 advertised for three posts of "Research Investigator" on deputation basis. Petitioner applied for the said post and was appointed for the post of "Research Investigator" on a deputation basis for a period of three years w.e.f 18th June, 2008 vide office order dated 27th June, 2008. The period of deputation was for three years which was to expire on 17th June, 2011 (Annexure P3). It is stated that after joining respondent No. 2, petitioner worked with dedication and performed well in the work assigned to him. In October, 2009, to the utter shock and surprise, petitioner was handed over the impugned letter dated 9th October, 2009 which was addressed to his parent department. As per the said letter, it was informed that the services of the petitioner would not be required w.e.f 30th October, 2009 and he would be relieved on that day. It is alleged that the impugned order was passed without following the principles of natural justice. It is stated that neither a show cause

notice was issued nor an enquiry was conducted by respondent No. 2 while passing the said order.

3. In the counter affidavit filed by respondent No. 2, it is stated that a deputationist has no legal right to a post and can be repatriated to his parent organisation at any point of time. It is stated that the decision to repatriate the petitioner was taken after reviewing the performance of the petitioner which revealed that the performance of the petitioner was not satisfactory and the decision to repatriate the petitioner back to his parent organisation was bonafide and taken in public interest. It is contended that the petitioner holds his lien in his parent organisation and would be entitled to join there.

4. The stand of respondent No. 2 is that the petitioner was appointed on deputation with respondent No. 2 as a Research Investigator. The work of the Research Investigator involves assisting the Research Officers in surveys for inclusion of castes and communities in the Central list of OBCs. The work is of a specialized nature and requires proficiency in the use of computers. The petitioner was found unsuitable for the nature of work involved and it was also found that the petitioner was not familiar with the use of computers and considering the unsuitability of the petitioner and unsatisfactory performance, it was decided to repatriate the petitioner to his parent department. It is also stated that the petitioner was frequently found unauthorisedly absent from his duty and from time to time, memos were served upon him regarding unsatisfactory work and unauthorized absence. Those memos are annexed with the counter affidavit as Annexure A. It is also stated that before repatriating a deputationist, no show cause notice or opportunity of hearing is required. It is contended that a deputationist has no right to a post nor he can insist that his deputation period may be continued and that the deputation period can be curtailed at any point of time. It is further stated that the repatriation of the petitioner is neither stigmatic nor by way of punishment nor actuated by any malafides. It is prayed that the writ petition has no merit and same be dismissed.

5. The main contention of the petitioner is that the impugned order dated 9th October, 2009 by which he has been repatriated before the expiry of the deputation period is passed without any notice/inquiry. It is contended that no hearing has been given to the petitioner before passing the impugned order and same was passed without following the principles of natural justice. Deputation period was for three years but same has been curtailed without any rhyme or reason after expiry of period of one year and four months and that too without following the principles of natural justice and without providing any opportunity of hearing to the petitioner which violates the principles of natural justice. It is further contended that two other candidates were appointed on similar posts by respondent No. 2 on deputation, however, those persons are still working.

6. On the other hand contention of respondent No. 2 is that a deputationist has no right to a post nor he can insist that his deputation must be continued. It is contended that deputation can be curtailed at any point of time. It is also

contended that there were justified reasons as is stated above for curtailing his deputation period. It is further contended that the order/letter dated 9th October, 2009 by which, petitioner has been relieved to his parent organisation does not cast any stigma.

7. I have heard learned Counsel for the parties and perused the material on record.

8. Petitioner was admittedly appointed on deputation with respondent No. 2 vide office order dated 27th June, 2008 w.e.f 18th June, 2008. The period of deputation mentioned therein is three years. After expiry of a period of one year and four months, impugned letter dated 9th October, 2009 has been issued by which parent department of the petitioner has been informed that the services of the petitioner are no longer required w.e.f. 30th October, 2009 and he would be relieved w.e.f that day.

When show cause notice was issued in the present writ petition vide orders dated 5th November, 2009, the operation of the impugned order dated 9th October, 2009 was kept in abeyance which continued from time to time as such as on today, deputation period of two years is almost over.

In *Kunal Nanda Vs. Union of India and Another*, , the appellant therein challenged his repatriation to his parent department before the expiry of deputation period. The Supreme Court has observed as under:

....

The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of; either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation.

....

In *Gurinder Pal Singh and Ors. v. State of Punjab and Ors.* decided by Division Bench of Punjab & Haryana High Court reported in 2005 (1) SLR 629, one of the questions involved was whether deputationist has a vested right to continue on deputation till the deputation period is over. The relevant para of the judgment dealing with this aspect of matter is reproduced as under:

In service jurisprudence, "deputation" is described as an assignment of an employee of an department or cadre to another department or cadre. The necessity for sending on deputation arises in "public interest" to meet the exigencies of "public services". The concept of deputation is based upon consent and voluntary decision of the employer to lend the services of his employee, corresponding acceptance of such service by the borrowing employer and the consent of the employee to go on deputation. A deputation subsists so long as the parties to this tripartite agreement do not abrogate it. However, if any one of

the parties repudiate the agreement, the other two have no legally enforceable right to insist upon continuance of the deputation. Even in the cases where deputationists continue for a pretty long period and options for their "absorption" in the borrowing department were taken, yet their repatriation to the parent department was upheld by the Apex Court in Ratilal B. Soni and others Vs. State of Gujarat and others, after holding that "the appellants being on deputation, they could be repatriated to their parent cadre at any time and they do not get any right to be absorbed on the deputation post."

"Deputation" per se being a contractually made ad hoc arrangement, seldom confers any right upon a deputationist, either for completion of the term of deputation or regularization of such stopgap arrangement. The judgments relied upon by the learned Counsel for the College in this regard squarely answer the controversy.

Similar question as is raised in the present case has been considered by the learned Single Judge of this Court in L/Nk V.H.K. Murthy v. Special Protection Group and Anr. reported in 2000 (54) DRJ 157. The relevant para of the judgment is as under:

After all, even otherwise, what are the rights of a deputationist ?

It is now well settled that deputation is just a transfer of a Government employee from one department to another or from one Government to another, i.e. from Central Government to State Government or State Government to State Government or State Government to Central Government. So in its very nature, the tenure of a deputationist is a precarious one. Of course, in some cases, it may be for a fixed term, but even then it is implicit that a deputationist can always be repatriated to his parent State/Department in public interest or in the exigencies of service. Further, a deputationist continues to hold lien on his permanent post in his parent cadre till of course he is permanently absorbed in the borrowing department. Another wholesome principle is that if many persons are drafted to serve on deputation, their inter-seniority in the borrowing department should be respected and preserved during the period of such deputation to the new department. Reference K. Madhavan and Another Vs. Union of India (UOI) and Others, wherein it was observed: "There is not much difference between deputation and transfer. Indeed when a deputationist is permanently absorbed in the CBI, he is under the rules appointed on transfer. In other words, deputation may be regarded as a transfer from one Government to another." It is thus manifest that a deputationist has no right to the post held by him in the borrowing department and he can always be repatriated to his parent department in public interest and exigencies of service. This right of the borrowing department to repatriate the employee and for that matter right of the lending department to recall their own employee sent on deputation, is well recognised in service jurisprudence.

For these reasons I am also inclined to accept the submissions made by Mr.

Maninder Singh learned Counsel for the respondents that the tenure of deputation can be curtailed for bona fide reasons and in the instant case the moment it is found that "suitability" of an officer has attracted a question mark, it is permissible for the respondents to repatriate said officer to his parent department. For this reason the Constitutional Bench judgment of Supreme Court cited by the petitioners in the case of K.H. Phadnis Vs. State of Maharashtra, may not be of any help to the petitioners. First as I have already pointed out above, the sensitive nature of the duties is to be kept in mind which is the hallmark of the present case. Secondly, even as per the aforesaid judgment of the Supreme Court "unsuitability" would be a valid ground to repatriate an officer. Thirdly, since petitioners have no vested right to remain in SPG for complete period of six years, the question of observance of Principles of Natural Justice, before sending a person back to his parent department would not arise, inasmuch as the repatriation of these petitioners is as per the terms of contract and the judgment of Supreme Court in the case of Kaushal Kishore Shukla (Supra) comes handy.

9. In view of the legal position discussed above, the deputationist has no vested right to remain on deputation for the complete period for which he is appointed. I have also perused the impugned letter dated 9th October, 2009 by which the petitioner has been repatriated. The said letter is innocuous. The same is not casting any stigma on the petitioner. Accordingly, petitioner was not entitled for any show cause notice nor it was necessary to hold an inquiry before repatriating him, as is alleged. There is no violation of principles of natural justice by the respondent No. 2 as is alleged. The contention raised has no force and is rejected.

10. The reasons given by respondent No. 2 for repatriation of petitioner in the counter affidavit are that the performance of the petitioner was not satisfactory and was not found suitable for the post which he was holding. As per stand of respondent No. 2, the work involved was of a specialized nature and the petitioner was found unsuitable for the nature of work involved. Petitioner has not shown any material to contradict the same. There are justified grounds also in repatriating the petitioner to his parent department.

Though a plea of malafide is raised in the petition, however, the same is not pressed at the time of arguments. Further petition lacks material particulars in this regard. The petitioner has also to specify the person who has acted in a malafide manner and that person must be impleaded as a respondent. In the absence of all these, contentions raised in this regard have no force. It may also be mentioned that petitioner has not impleaded his parent department as a party in the present case.

In view of the above discussion, petitioner is not entitled for any relief. Interim order passed in his favour is vacated.

Accordingly, the petition stands dismissed with no order as to costs.