
(1979) 03 AP CK 0017

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1537 of 1978

Sri C. Venkataswami and others

APPELLANT

Vs

A.P.S.E.B. and others

RESPONDENT

Date of Decision : 21-03-1979

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1979) 03 AP CK 0017

Hon'ble Judges : Ramachandra Rao, J

Bench : Single Bench

Advocate : Y. Suryanarayana, for the Appellant; T. Anantha Babu, for the Respondent

Judgement

Mr. Ramachandra Rao, J.—In this writ petition, the petitioners seek the issue of a writ of Mandamus directing the respondents not to enforce the proceedings in B.P.Ms. No. 349 dated 31-3-1978 of the Andhra Pradesh State Electricity Board (hereinafter referred to as the Board) and to issue a direction to the respondents to pay deputation allowance to the petitioners at the rates mentioned in the orders of the Government of Andhra Pradesh (hereinafter referred to as the Government) in G.O.Ms, No. 1246, (Public Works) (Ser. III) Department, dated 17-12-1974 and G.O Ms. No. 204 (Finance and Planning) (Fm. Wing. (F.R. II) Department dated 21-5-1976 with effect from 29-6-1970 till the petitioners are repatriated to their parent department. The facts which are not in dispute are as follows :—The petitioners who are 108 in number belong to various categories, of Executive Engineers, Assistant Engineers, Junior Engineers and Supervisors of the Public Works Department of the Government of Andhra Pradesh and they are presently working on deputation in the Andhra Pradesh State Electricity Board which is a statutory body constituted on 1-4-1959 under the provisions of the Indian Electricity Supply Act, 1948.

2. In G.O.Ms. No. 193, Finance (F.R.) Department, dated 29-6-70, the Government issued orders with regard to grant of deputation (duty) allowance to

Government employees transferred on the deputation to other Governments/ Departments/Companies/Corporations, etc. By this order, the Government directed that the period of deputation of the Government servant shall be subject to a maximum period of three years with a provision for extension upto one year in certain circumstances and that deputation allowance shall be paid at the rate of 10 per cent of the employee's basic pay subject to a maximum of Rs. 150/-. It appears, the Government employees who were on deputation to the Board, including some of the petitioners herein, made a representation to the Board for payment of deputation allowance. But that representation was rejected by the Board on 15-6-1972. There upon, some of the petitioners herein and others filed a writ petition, W.P. No. 4732/72 in this Court, seeking the issue of a writ of Mandamus directing the respondents hereto, viz., the State of Andhra Pradesh, the Board and the Chief Engineer (General) P.W.D., to pay deputation allowance to them in accordance with the provisions of G.Os. No. 193 dated 29-6-1970. That writ petition was allowed by my learned brother, Maktadar J., by judgment dated 1-8-1974 and a direction was issued to the respondents to pay the deputation allowance to the petitioners therein, in accordance with G.Os. No. 193 dated 29-6-1970.

3. Thereafter, the Board requested the Government to pass orders sanctioning deputation allowances to the Civil Engineers working in the Board. The Government considered the request in the light of the judgment in W.P. No. 4732/72, and issued G.O. Ms. No. 1246, (Public Works) (Ser. III) Department, dated 17-12-1974 and accorded sanction to the payment of deputation allowance with effect from 29-6-1970, to the Civil Engineers of the P.W D. working under the A.P.S-E. Board, at 10 per cent of basic pay in case no case change of headquarters is involved and at 20 per cent basic pay in case change of headquarters is involved, in terms of G.O. Ms. No. 193, Finance (F.R.) Department, dated 29 6-1970". On receipt of this order, the Board made a representation to the Government through its letter No. AS (G) 4 P2/74 18, dated 11-6-1975 stating that till 1-10-1973 all the Engineers both Civil and Electrical were on deputation from Government and working with Board, that the Government had transferred the services of the Engineers of Electricity Department to the Board only from 1-10-1973 and that by specific order from the Government, the said Engineers were debarred from claiming any deputation allowance and if the Civil Engineers on deputation to Board were paid deputation allowance from a date prior to 1-10-1973 claims from Electrical Engineers for similar payments would arise and therefore, the Civil Engineers should also be paid deputation allowance either from 1-10-1973 or from the date of deputation whichever is later and the Government should revise the orders accordingly. This was followed up by the Board's proceedings in B.P. Ms. No. 441 dated 26-6-1975 in and by which the Board decided that Civil Engineers who were working in the Board should be paid deputation allowance either from 1-10-1973 or from the date of deputation whichever is later and that the deputation allowance should be paid at the rates mentioned in G.O. Ms, No.

193 (Fid.) dated 29-6-1970.

4. The Association of Civil Engineers (P.W.D.) (On deputation to A.P.S.E. Board) thereupon made a representation to the Board on 9-8-1975 stating that the deputation allowance should be paid from 29-6-1970 in accordance with G.O. Ms No. 1246 dated 17-12-1974 to certain employees working in Lower Sileru Project at 20 per cent since change of headquarters was involved.

5. At that stage, the Board issued orders in Memo No. DM IV 8-28 J3/76-6 dated 20-10-1976 that the Civil Engineers of P.W.D, on deputation to the Board should be allowed to draw deputation allowance as per the scale laid down in B.P. No. 441 dated 26-6-75 for a maximum period of five years either from 10-10-1973 or from the date of their joining in the Board, whichever is later.

6. While, so the Government reviewed the position and re-issued upto-date and consolidated terms of deputation to be adopted in respect of Government servants deputed to Foreign Service, in G.O. Ms. No. 204, (Finance and Planning) (Fm. Wing. F.R. III) Department dated 21-5-1976. The said order covers several terms and conditions, but in this petition, we are concerned only with the period of deputation and the rate of deputation allowance. In para 2 of the said G.O., sub-paras (i), (ii) and (iii) are relevant for the purpose of this writ petition and they read as follows:-

""(i) Period of deputation:-The total period of deputation should not exceed five years, the period being reckoned from the date of relief from service to the date on which he takes charge of a post under the Government on reversion from Foreign service. The period of deputation shall be subject to a maximum of five years of which the initial period of deputation upto 3 years shall be sanctioned by the competent authorities. Extension beyond the initial period of 3 years i.e., for the further period upto 2 years shall be granted with the approval of concerned secretaries to Government where such extension is considered necessary in public interest.

(ii) Pay-allowances:-The foreign employer shall during the period of foreign service, allow the Govt., servant pay and other allowances, as mentioned below:

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(iii) Deputation allowance;-If grade in the parent department only is allowance in foreign service under the term (ii) (a) above, deputation allowance at the rate 20 per cent grade pay (excluding all allowances) may be allowed subject to a maximum of Rs. 250-00 per month. This rate is irrespective of whether the deputation involves change of station or not."

The rest of the provisions are omitted as they are not necessary for the purpose of the of this writ petition.

7. On the receipt of the said order of the Government, the Board issued

proceedings E.P. No. 324 dated 28-4-1977 making the order in the said G.O. applicable to all the State Government employees working on deputation in the board on foreign service terms. On the ground the Civil Engineers of P.W.D. were representing from time to time to revise the orders issued in B.P. Ms. No. 441 dated 26-6-1975 and to allow them deputation allowance as per the orders issued by the Government in G.O. Ms. No. 1246 P.W.(Ser.1) Department dated 17-12-1974, the Board issued proceeding B.P. Ms. No. 349 dated 31-3-1978 ordering as follows:-

"(i) The Civil Engineer of P.W.D. who have joined on deputation in the board pe(sic)or to 29-6-70 may be paid deputation allowance at 10 per cent of their basic pay subject to a maximum of Rs. 150/- per month. The deputation allowance may be paid for a maximum period of 5 years from 29-6-70 or till the date of their re(sic)et in Board on surrender to the P.W.D. whichever is ealier.

(ii) The Civil Engineers of P.W.D. (now I & P Department) who have joined on deputation in the Board on or alter 29 6-70 may be paid deputation allowance at the following rates with effect from 29-6-60 or from the date of their joining in Borad whichever is later.

a) From 29-6-70 10 per cent basic pay of the employee in case no change to 31-5-76 of headquarters is involved consequent on joining in Board on deputation and 20 per cent basic pay of the employee in case change of headquarters is involved subject to a maximum of Rs. 130/- p.m.

b) From 1-6-76 20 per cent basic pay of the employee subject to a onwards. maximum of Rs. 250/- p.m."

"The deputation allowance may be paid for a maximum period of 5 years only with effect from 29-6-70 or from the date of joining of the employee on deputation in Board whichever is later. In case any excess amount is paid, the same may be recovered,"

By virtue of these revised proceedings, the deputation allowance is now limited to 5 years from 29-6-1970 or from the date of their joining in Board Service, whichever is later; the deputation allowance shall be paid at the rate of 10 per cent of where there is no change of headquarters is involved subject to a maximum of Ks. 150/- for the period from 29 6-70 to 31 5-76; and from 1-6-1976 onwards; at the rate of 20 per cent of the basic pay subject to a maximum of Rs. 250/-. It is further directed that the excess amount paid lo each of the employees should be recovered. It is these proceedings that are now challenged in this writ petition.

8. The petitioners contend that the impugned proceedings restricting the deputation allowance for a period of five years with effect from 29-6-70 or from the date of joining the Board on deputation, whichever is later, is illegal and amounts to a hostile discrimination and violates article 14 of the constitution and tint so long as the Government servant is Dorking on deputation in the Board, he

is entitled to be paid the deputation allowance in accordance with the various orders of the Government issued in G.O. Ms. No. 193, Fin. dated 29-6-70 and G.O. Ms. No. 1246 dated 17-12-74. On the other hand, it is contended by the learned counsel for the Board that the Government had restricted the period of deputation to five years in G.O. Ms. No. 204. Finance and Planning, dated 21-5-76 and the same was adopted by the Board in B.P Ms. No. 349 dated 31-78 and therefore, the petitioners cannot claim deputation allowance beyond the period of five years which is the maximum period fixed by the Government. I find it difficult to accept this submission, In G.O. Ms. No. 193 dated 26-6-70. It is directed that the Government employees on deputation should be allowed deputation allowance in accordance with the rates mentioned therein,. But in the said G.O., the maximum period of deputation is fixed at three years, with a further extension of one year.

9. Some of the employees filed a writ petition, W.P 4732/72 and the same was allowed and a Mandamus was issued directing the respondents to pay deputation allowance to the Civil Engineers on deputation to the Board at the rates prescribed in G.O. Ms. No. 193 dated 29-6-1970 with effect from 19-6-1970. The subsequent G.O. Viz G.O. Ms. No. 1246, dated 17-12-1974 was issued on representation by the Board, sanctioning payment of deputation allowance to the Civil Engineers of PW D. working on deputation in the Board at the rates mentioned in G.O. Ms. No. 193 dated 29-6-1970 with effect from the date of the said GO. The Board made representation to the Government that the deputation allowance should be paid to the Civil Engineers on deputation only from 1-10-73, but the Government did not apparently approve the said representation. Nevertheless, the Board took a decision to pay deputation allowance only from 1-10-73 or from the date of deputation whichever is later. The Civil Engineers working on deputation once again made a representation and thereafter, the Government issued G O. Ms. No. 204 dated 21-5-76 directing payment of deputation allowance at a flat rate of 20 per cent of the basic pay with effect from 1-6-76. The Government, however, restricted the period of deputation to five years.

10. The learned counsel for the Board relies upon the orders of the Government restricting the period of deputation for five years and contends that there is no obligation on the part of the Board to pay deputation allowance beyond the period of five years. But I find it difficult to accept this submission. No doubt, the maximum period of deputation should not exceed five years, but G.O. is silent as to payment of deputation allowance after the expiry of the said period of five years when an employee continues to be in service of the Board on deputation. In sub-para (i) of para 2 of the said G. O., the period of deputation is reckoned from the date of relief from service to the date on which the employee takes charge of a post under the Government on reversion from foreign service,

11. Sub-para (ii) of para 2 of G.O Ms No. 204, dated 21-5-1976 farther directs that the foreign employer shall, daring, the period of foreign service, allow the

Government servant pay and other allowances as mentioned therein. Therefore so long as the Government servant is in the service of the foreign employer, there is an obligation cast on the foreign employer to pay such Government servant the salary and other allowances including deputation allowance as mentioned in the said G.O. The foreign employer having utilised the services of the Government Servant on deputation, cannot deny the said Government servant, deputation allowance in accordance with the various orders issued by the Government. The orders of the Government in G.O.Ms. No. 204, therefore, cannot be read as restricting the payment of deputation allowance to a period of five years when a Government servant continues to be in the foreign service on deputation beyond the period of five years, fixed by the Government. I do not, therefore, agree with the contention of the learned counsel for the Board that the petitioners cannot claim deputation allowance beyond the period of five years from 29-6-1970 or from the date of deputation whichever is later.

12. It is contended by the learned counsel for the Board that the Board has passed the impugned proceedings in B P. Ms. No. 394 dated 31-3-1978 restricting the period of deputation and also laying down the rates of deputation allowance and therefore, the impugned proceedings cannot be challenged as invalid by the petitioners. But, in the instant case, it is the Government servants employed by the Board on deputation, that are challenging the impugned proceedings. The Government issued orders from time to time laying down the terms and conditions of the deputation and the Board has also been seeking either direction of the Government from time to time with regard to the terms and conditions of deputation of the Government servants working on deputation under the Board. Therefore, the Board is bound to implement the orders issued by the Government in the various G.Os. referred to above with regard to payment of deputation allowance to the Civil Engineer working on deputation under the Board.

13. So far as the rates of deputation allowance and the period for which the deputation allowance has to be paid are concerned, there cannot be much dispute, the petitioners can only claim periods in accordance with the orders issued by the Government from time to time. Paragraph (XVIII) of G.O. Ms. No. 204 dated 21-5-1976 clearly lays down that the orders fixing the deputation allowance at a flat rate of 20 per cent of grade pay (excluding all allowance) subject to a maximum of Rs 250/- per month shall come into force from 1-6-1976 and that the Government servant who are already on deputation prior to 1-6-1976 shall be eligible for the enhancement of deputation allowance from 1-6-1976. Therefore, the petitioners cannot claim the benefit of the enhanced rate of deputation allowance at 20 per cent of the basic pay from 29-6-1970. Sri Y. Suryanarayana, the learned counsel for the petitioner also did not rightly press for payment of deputation allowance at the enhanced rate prior to 1-7-1976. In the result, the writ petition is partly allowed and a writ of Mandamus will issue directing the respondents not to enforce the provisions of B.P. No. 349 dated 31-3-1978 in so far as it restricts the deputation allowance to a maximum period

of five years from 29-6-1970 or from the date of deputation and directing the respondent-Board to pay deputation allowance to the petitioners till the date of allowance to the petitioners till the date of their relief from service under the Board on surrender to Government service. In the circumstances, there will be no order as to costs.