
(2014) 08 MP CK 0102
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 577/2014

State of M.P.

APPELLANT

Vs

Samar Bahadur Singh

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Citation : (2014) 4 MPHT 307 : (2014) 4 MPLJ 347

Hon'ble Judges : Shantanu Kemkar, J;M.C. Garg, J

Bench : Division Bench

Advocate : Vinita Phaye, Advocate for the Appellant; Sunil Jain, Advocate for the Respondent

Judgement

Shantanu Kemkar, J.—This intra Court appeal under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005, is directed against the order dated 11-3-2014 passed by learned Single Judge of this Court in Writ Petition No. 1066/2014 (S). Brief facts necessary for disposal of the writ appeal may be stated, as under:--

The respondent herein is holding a substantive post of Assistant Professor in the Higher Education Department of the State Government. Undisputedly, he is on deputation since 11-8-2000. Earlier, he was sent on deputation to Urban Administration Department, and thereafter, he was sent on deputation to the School Education Department. As his order of deputation was coming to an end on 16th July, 2013, the Higher Education Department (Parent Department) extended his period of deputation for two years vide order dated 28-2-2013. Thereafter, vide order dated 3-10-2013 passed by the School Education Department (Borrowing Department), the period of deputation was curtailed till the end of academic year by recording the following reasons:--

2. Thereafter, the Higher Education Department (Parent Department), vide, order dated 17-1-2014 (Annexure P-1) cancelled the deputation and repatriated not

only the respondent, but as many as 39 other similarly placed Assistant Professors. As a consequence, the respondent was posted vide order dated 4-2-2014 in Government College, Sendhwa.

3. Feeling aggrieved by the order dated 17-1-2014 and 4-2-2014, the respondent filed the aforesaid writ petition. Learned Single Judge, placing reliance on the judgment passed by the Supreme Court in the case of Union of India (UOI) through Govt. of Pondicherry and Another Vs. V. Ramakrishnan and Others, , as also on the order passed by Single Bench of this Court in the case of present respondent himself, Samar Bahadur Vs. State of M.P. and another, , vide impugned order allowed the writ petition by holding that where the period of deputation is for specific term, the same cannot be curtailed except on the grounds such as "unsuitability" or "unsatisfactory performance".

4. Aggrieved by the order passed by the learned Single Judge, the appellant/State has filed this appeal.

5. Smt. Vinita Phaye, learned Government Advocate has argued that the order of repatriation of the respondent was issued in administrative exigencies, as his and the services of other Assistant Professors were urgently required for the purposes of teaching. She also argued that the post of Joint Director, which the respondent was holding on deputation in the Borrowing Department, is a promotional post and several eligible persons are waiting for their promotion in the Borrowing Department. The process of promotion was started, and as such, the respondent was repatriated to his Parent Department. She also argued that the learned Single Judge has misinterpreted the judgment of the Supreme Court in the case of Union of India (supra), and in the case of Dr. Samar Bahadur Singh (supra).

6. Shri Sunil Jain, learned Counsel appearing for the respondent, on the other hand, supported the order passed by the learned Single Judge and has argued that when the period of deputation was already extended, it could not have been curtailed by the appellant/State, except on the ground of "unsuitability" or "unsatisfactory performance", which in the present case, being not a ground for curtailing the period of deputation of the respondent, the learned Single Judge has rightly passed the impugned order placing reliance on the judgment of Supreme Court in the case of Union of Indian (supra).

7. In the present case, for curtailing the period of deputation, in the order dated 3-10-2013 itself, reasons, as extracted above, which are administrative in nature, were mentioned. The correctness of the said reasons has not been disputed by the respondent. No mala fides in issuing of the order of repatriation has been alleged. The Supreme Court in the case of Union of India (supra), has held that ordinarily the term of deputation should not be curtailed except on such just grounds as, for example, "unsuitability" or "unsatisfactory performance" of the deputationist. The examples given by the Supreme Court are not exhaustive of just grounds, which can constitute exceptions for curtailment of the tenure of

deputation. {See: C.R. Gaur Vs. State of M.P. and Others, . Thus, there can always be other just grounds also, which can constitute exceptions for curtailment of the tenure of deputationist, which certainly would include "administrative exigencies".

8. As already observed, in the present case, the order of curtailment of the period of deputation contains reasons of administrative exigencies. The reasons mentioned in the order of curtailment have not been challenged by the respondent. It is also not the case of the respondent that they are non-existent and/or that the order of repatriation is the result of mala fide. We also find that by the impugned order of repatriation not only the respondent, but as many as 39 more Assistant Professors have been repatriated.

9. As regards the reliance of the learned Single Judge in the impugned order on the order passed in the case of respondent himself by a Single Bench consisting of one of us Samar Bahadur Vs. State of M.P. and another, is concerned, we are of the view that even in that case also, the Single Judge had observed that a Division Bench of this Court in C.R. Gaur (supra), while considering the law laid down by the Supreme Court in Union of India (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. After observing this, the Single Judge examined the reasons given for repatriation before completion of the period of deputation, and on facts, had found that the reasons shown to curtail the period of deputation were nonexistent. Thereafter, in Paragraph 9, the Single Bench had held that on the basis of the facts narrated, the curtailment of the petitioner"s specific term of thee years" of deputation by the impugned order of repatriation without there being existence of any just grounds, is illegal and cannot be sustained.

10. Whereas in the present case, the reasons for curtailment of the period are given and the said reasons have not been controverted or challenged by the respondent.

11. Thus, we are of the view that the learned Single Judge, while passing the impugned order, has not properly appreciated the law laid down by the Supreme Court in the case of Union of India (supra), the Division Bench in the case of C.R. Gaur (supra), and also by the Single Bench in the case reported in Samar Bahadur Vs. State of M.P. and another, .

12. In the circumstances, the impugned order passed by learned Single Judge cannot be sustained. The same is hereby set aside. The writ appeal is allowed. No orders as to costs.