
(2001) 10 RAJ CK 0055

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2743 of 2000

Surendra Bijawat and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 05-10-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Rajasthan Service of Engineers and Research Officers (Irrigation Branch) Rules, 1954
— Rule 7A

Citation : (2002) 2 RLW 1178 : (2002) 1 WLC 232 : (2002) 4 WLN 428

Hon'ble Judges : P.P. Naolekar, J

Bench : Single Bench

Advocate : S.C. Gupta, Prahlad Singh, M.S. Gujar and B.B.L Sharma, for the Appellant; Sagar Mal Mehta, General, Shailesh Prakash Sharma and O.P. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Naolekar, J.—In all these writ petitions the petitioners, who are Assistant Engineers, Irrigation (Civil) in the Irrigation Department, Government of Rajasthan, have challenged the order dated 29.5.2000 (Annexure-2) passed by respondent No.2 the Chief Engineer, Irrigation, Rajasthan, Jaipur (for short "the respondent No. 2) whereby the petitioners have been sent on deputation on the post of Child Development Project Officer in the Women & Child Development Department, Rajasthan, Jaipur and the order dated 26.5,2000 (Annexure-3) passed by respondent No. 3 Director cum Special Secretary (Admn.) Women and Child Development Department, Rajasthan, Jaipur (for Short "the respondent No. 3") whereby the petitioners have been appointed in the Women & Child Development Department on deputation in the same pay scale on which they were placed in their parent Department.

2. In nutshell the petitioner's case is that- (i) neither the Rajasthan Service of Engineers and Research Officer (Irrigation Branch) Rules 1954 (hereinafter shall

be referred to as "the Rules of 1954") nor the Rajasthan Service Rules, 1951 (for short "the Rules of 1951") authorise the respondent No. 2 to send the petitioners on deputation; (ii) the order of deputation was issued by the respondent No. 2 without taking assent of (he petitioners for sending them on deputation, which is contrary to established principle of law; and, (iii) the order of deputation of the petitioners has been issued arbitrarily, without there being any policy framed by the Government, which can be said to be a reasonable policy, for selecting persons to be sent on deputation. The petitioners have been picked, to be sent on deputation, without there being any uniformed principle laid down in the policy. Further, it is not true that the posts of Assistant Engineer in the Irrigation Department are not available and, therefore, there was a need to send the petitioners on deputation.

3. From the return submitted on behalf of the respondent No. 1 State of Rajasthan and the respondent No. 2 it appears to be their stand that the order of deputation has been issued in the interest of the petitioners themselves. Had the order of deputation not been issued of the petitioners, they would have been declared surplus in the Department of respondent No. 2. That no Rule requires consent of an employee prior to sending/posting him on deputation to other Government Department. The order is not illegal, arbitrary and violative of settled principle of deputation. The order of deputation has been passed in accordance with the provisions of the Rules of 1951. The purpose of sending the petitioners on deputation to the Department of respondent No. 3 is only to safeguard the interest of the petitioners because otherwise, they would have been declared surplus to the requirement of the Department of respondent No. 2 as a whole, in view of the large scale cut in the sanctioned strength of the respondent No. 2's Department including the Indra Gandhi Nahar Department and the Command Area Development Department. The Irrigation Department is the cadre controlling Department, for Engineering cadre, deployed in the Irrigation Department, Indra Gandhi Nahar Department and the Command Area Development Department. The combined sanctioned strength of Assistant Engineers (Civil) of the three Departments was 1392 in March, 1999. The cadre strength of the three departments was reviewed by the Committee of Ministers who had recommended curtailment in the cadre of Assistant Engineers in all the three Departments. Further more, the Budget Pinalisation Committee while reviewing the budget proposals for 2000-2001 plan of three Departments had also recommended further curtailment in the cadre of Assistant Engineers (Civil). The over all effect on the sanctioned strength pursuant to the recommendations of the Committee of Ministers as well as Budget Finalisation Committee was that about 436 posts of Assistant Engineers are to be curtailed. Thus, now only 956 posts of Assistant Engineers (Civil) would be available in the three Departments, Out of these 956 posts of Assistant Engineers available in the Department, 610 posts relate to upgraded posts which are to be assigned to promotion quota in accordance with the rules. Thus there remained 346 posts of Assistant Engineers which have to be distributed between the direct recruitment quota and the

promotion quota in the rate of 50-50.

4. The Rules of 1954 provide for maintenance of ratio 50:50 in respect of Assistant Engineers appointed through direct recruitment and through promotion. The promotion quota is further distributed between diploma holder Assistant Engineers and Degree holder Assistant Engineers in the ratio of 60:40. Thus, post of Assistant Engineers shall be divided into 5:3:2 respectively between the direct recruitment quota, promotion quota of diploma holder and promotion quota of degree holders. The consequent strength of direct recruited Assistant Engineers will be 346 divided by 2 which is equal to 173 posts. At present 421 direct recruited Assistant Engineers are available in the Department of respondent No. 2 against required strength of 173. Therefore, 248 i.e. 421-173, direct recruited Assistant Engineers (Civil) are in excess to the requirement of three departments. In order that the Departments may not lose experience and an alternative arrangement of sending the Assistant Engineers on deputation was adopted in stead of declaring them surplus and losing them once for all. The post of Assistant Engineer is lowest post in the cadre. In view of the fact that the other engineering departments in the State of Rajasthan were also facing the same difficulty of adjusting of excess Assistant Engineers, other non-engineering departments of the State of Rajasthan were contacted for taking the Assistant Engineers of the respondent Department on deputation. Respondent No. 3 the Women & Child Development Department is one of such Departments who agreed to accept the services of the Assistant Engineers of the Irrigation Department. A list of 202 directly recruited junior most Assistant Engineers was sent to the respondents No. 3 for taking them in their Department on deputation, out of which the respondent No. 3 selected 101 Assistant Engineers and selected Assistant Engineers have been given appointment on deputation in the department of respondent No. 3.

5. The petitioners by filing rejoinder have contradicted the facts and figures given by the answering respondents in their return and it is said that 202 Junior Engineers (Civil) are working as Assistant Engineer in the Irrigation Department on working arrangement basis. That apart, 224 more Junior Engineers, who have been given promotion to the post of Assistant Engineers (Civil), are retained illegally. They are in excess of 50% quota prescribed for promotion. The persons, who have been illegally given promotion beyond the quota strength, shall be taken to be outside the sanctioned strength of the cadre, 610 posts of Junior Engineers, to avoid their stagnation, have been upgraded to the post of Assistant Engineers and those persons have been given promotion to the aforesaid upgraded posts. Out of these 610 upgraded posts, 98 posts were upgraded in the year 1989 and 489 posts have been upgraded in the year 1996-97. The petitioners are admittedly senior to them in the cadre of Assistant Engineer. Out of upgraded posts, 276 persons have already retired on their attaining the age of superannuation or compulsory retirement. The upgraded posts, being the posts having their life only till the candidate or the incumbent remained in service, cannot be counted as cadred posts and the upgraded posts are reverted back to

the original posts as soon as the person holding that post goes out of service either on account of superannuation or dismissal or removal from service or by resignation. The persons working against total 693 posts (202+224+267) have to be sent back to their original care in case of any curtailment of the posts of Assistant Engineer in the Irrigation Department. In stead of curtailing 693 posts, the respondents are allowing them to continue and the petitioners have been sent on deputation, assuming that the petitioners will be declared surplus. Had the proper and legal method been adopted by the respondents, neither the petitioners could have been sent on deputation nor they can be declared surplus.

6. The learned Advocate General, Shri S.M. Mehta, appearing for the State has relied upon Rule 141 and 144-A of Chapter XIII of Part V of the Rules of 1951 and Rule 7-A of the Rules of 1954 as source of power for sending the petitioners on deputation to the Women & Child Development Department. Rule 7-A of the Rules of 1954 authorises the State to send the employee on deputation in emergency, which says that any person appointed to the Service on or after 26.10.1952 shall, if so required, be liable to serve in any defence service or post connected with the Defence of India, on deputation, to any part of India in connection with any emergency for a period of not less than four years including the period spent on training if any, provided that such person shall not be sent on deputation after expiry of ten years of his service from the date of appointment or after attaining the age of forty years. Rule 7-A of the Rules of 1954 authorises the authority to send on deputation an employee whose services are governed under the Rules of 1954 on the post of defence service or the post which is connected with the defence of India if there is an emergency. The deputation shall be not less than four years including the period spent on training.

7. In the present case the petitioners having not sent on deputation to the defence services or the post connected with the defence of India for the emergency need. Rule 7-A of the Rules of 1954 has no application to the petitioners' case.

8. Rule 141 of the Rules of 1951 prohibits sending the government servant on transfer to foreign services against his will but this Rule will not apply to the transfer of government servant to the service of body, which is wholly or substantially owned or controlled by the Government, whether Incorporated or not incorporated, or to the transfer of the government servant to the service which is paid from a Panchayat Samiti/Zila Parishads Fund constituted under the Rajasthan Panchayat Samiti and Zila Parishads Act, 1959. Thus, the transfer of a government servant can be affected to a body which is wholly or substantially owned or controlled by the Government whether incorporated or not, or to a service which is paid from Panchayat Samiti/Zila Parishad Fund. Thus Rule applies to the transfer of the Government servant either to the foreign service with his consent or a transfer to the body owned and controlled by the Government or transfer to the service for which the salary is paid from Panchayat Samiti/Zila Parishad Fund. The petitioners have been transferred in the Women

and Child Development Department and are being sent on deputation. The petitioners' deputation is neither to the foreign service with consent nor to the body incorporated or not, which is substantially owned and controlled by the Government nor to the service which is paid from the Funds constituted under the Rajasthan Panchayat Samiti and Zila Parishads Act, 1959. Therefore, Rule 141 of the Rules of 1951 has no application to the petitioners' case.

9. Rule 144-A of the Rules of 1951 speaks about the terms and conditions of the State Government servants who have been transferred on deputation to the foreign service to Central Government, other State Government Public Undertakings, Autonomous Bodies (whether incorporated or not) and other bodies wholly or substantially controlled by the Government etc., which shall be as per the order issued by the Government from time to time. A plain reading of Rule 144-A of the Rules of 1951 does not cover the cases of those Government servants who are sent on deputation from one department of the Government to its another department. If the Rule 144-A is assumed to have any application in the matter of transfer of a Government servant on deputation, it will govern the field only if the transfer is made on deputation to the foreign service i.e. to the Central Government, other State Government Public Undertakings, autonomous bodies (whether incorporated or not) and other bodies wholly or substantially controlled by the Government. The other bodies would be in the nature of Government Public Undertakings or autonomous bodies and could not be the other departments of the same State Government. Rule 144-A also does not apply to the petitioners' case.

10. From the aforesaid it is clear that there is neither any Rule nor Regulation which authorises the Government to transfer the petitioners on deputation to the Department of Women & Child Development in the manner it was done by the respondents.

11. Apart from this, it has been held by the Apex Court in the matter reported in *State of Punjab v. Inder Singh* (1):-

"Concept of 'deputation' is well understood in service law and has a recognised meaning. 'Deputation' has a different connotation in service law. The dictionary meaning of the word 'deputation' is of no help. In simple words, 'deputation' means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation, the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the recruitment rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority which controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post."

12. Similarly, in the matter of Umapati Choudhary v. State of Bihar (2) the Apex Court has held as under:-

"Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation...."

13. It is apparent from the decisions rendered by the Apex Court that a Government servant cannot be sent on deputation without asking for the his consent. The Government servant can be sent on deputation only after his consent is obtained by the State. In the present case, admittedly, the petitioners have not been asked for their consent to be sent on deputation.

14. Without going into the merits of the cases and arriving at a finding whether in fact and under law the petitioners can be declared surplus, one thing is absolutely clear that once the employees have occupied the post of Assistant Engineer by way of promotion or .by way of direct recruitment or an account of upgradation of the posts, they acquired the same status in the cadre and cannot be distinguished for the purpose of sending them on deputation to other Department. In the case of Kamlakar & Others v. Union of India & Others (3), it has been held by the Apex Court that once the direct recruits and the promotees are in one cadre, distinction between them disappears, at any rate so far as equal treatment in the same cadre for payment of pay scale given is concerned. The birth marks have no relevance in this connection. The distinction between direct recruits and those who were promotees, is not permissible. In the matter of Ram Chander Shankar v. State of Maharashtra), the Constitution Bench of the Supreme Court has found that direct recruit Mamlatdar and promotee Mamlatdar from one class, known by the same designation, getting same pay scale, discharging same function and, held that it is not competent to the Government to discriminate between direct recruits and promotees in the matter of promotion and that would be violative of Article 16 of the Constitution. In the case in hand it can hardly be disputed that Assistant Engineers promotee and direct recruit both form one class, their designation, pay scale, nature of job are same and therefore they can not be discriminated in the matter of deputation only on the basis of source of recruitment. It has been authoritatively laid down by the Apex Court that once the selection is made to one post either by direct recruitment or by promotion and the persons became member of one cadre, there cannot be any distinction made between them.

15. The Government is bound to act reasonably. Of course, the doctrine that

powers must be exercised reasonably has to be reconciled with the no less important doctrine that Court must not usurp the discretion of the public authority appointed by the Parliament to take decision. Within the bounds of legal reasonableness, is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The Court must, therefore, resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to deciding authority the full range of choice which the legislature is presumed to have intended. Decisions which are extravagant or capricious cannot be legitimate. But if the decision is within the canvass of the reasonableness it is no part of the court's function to look further into its merits. With the question whether a particular policy is wise or foolish, the court is not concerned, it can only interfere, if to pursue it, is beyond the powers of the authority.

16. Whether the policy of the Government to pick up only those persons who have been directly recruited on the post of Assistant Engineer for sending them on deputation, whereas to retain the persons occupying the post of Assistant Engineer by virtue of promotion or because of upgradation of the post, in the parent Department, can be said to be a reasonable policy? the Government appears to have taken this policy decision with the apparent mistaken notion, that even after appointment to the cadre they have to be treated separately and that because the number of direct recruitee Assistant Engineers is more than allotted quota, they have to be sent on deputation. Forgetting the fact the once the persons appointed to a cadre/post either by direct recruitment or by promotion or because of upgradation of the cadre/post, they have to be treated on equal footing, and that the deputation is nothing but the appointment made by transfer on temporary basis. Deputation is not permanent appointment made by transfer or final absorption or direct recruitment in competition with open market candidates. The deputationst has lien in the parent Department for all purposes and the cadre strength is to be considered, considering the number of persons who have been sent on deputation. Not sending, on deputation, the Assistant Engineers holding the post on upgradation of the post on the ground that post shall die on superannuation of the incumbent holding the post is not correct nor their cases can be distinguished on that count from that of Assistant Engineers holding the post on promotion or direct recruitment. The upgraded Assistant Engineers if sent on deputation will continue their lien in the parent department and when they reach the age of superannuation while serving on the post of deputation, the deputation will stand terminated, they shall retire from their parent department from where they have been sent on deputation. Thus, the position of the direct recruits, promolees and those who are holding the post on account of upgradation of the post, is not different. All of them can be sent on deputation by the Government with all of them holding lien on the cadre post in the parent department. Distinction made by the Government in between the parsons holding the post of Assistant Engineer by virtue of they being promoted, directly recruited or on account of upgradation of the post, is not based on

"intelligible differentia" having any nexus to the object namely efficiency in service. They have to be treated equally. Holder of the post in the same cadre, by virtue of direct recruitment or promotion or on account of upgradation of the post, cannot be treated unequal for the purpose of selecting them for sending on deputation. The Government is duty bound to lay down a policy which is a reasonable one. The Government cannot act arbitrarily at its sweet will and deal with the person as it pleases. The Government should act in conformity with the standard or norms which are not arbitrary, irrational or irrelevant. In the present case the policy which has been alleged in the return is irrational, discriminatory and unreasonable. If the Government does not frame a policy which can be supported on valid principle and acts at its sweet will, the policy or action so taken will be struck down. Transfer of the petitioner, who are direct recruits, on deputation only, excluding those Assistant Engineers who are holding the post on promotion or upgradation of the post, is irrational and discriminatory. Such a decision of the Government strikes at the very root of the principle of equality enshrined in Articles 14 and Article 16 of the Constitution of India. The policy alleged by the Government in its return cannot be said to be a reasonable policy where the Court will not exercise its discretion to interfere with it.

17. For the aforesaid reasons, the order dated 29.5.2000 (Annex.2) passed by the respondent No.2 sending the petitioners on deputation and the order dated 26.5.2000 (Annexure-3) passed by the respondent No. 3 accepting the petitioners on deputation in its Department, cannot stand and they are hereby quashed. The writ petitions are allowed. However, in the circumstances of the case, there shall be no order as to costs.