

(2014) 03 AHC CK 0192
In the Allahabad High Court
Case No : Service Single No. 1521 of 2014

Suresh Kumar

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 31-03-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : (2014) 3 ALJ 651 : (2014) CriLJ 3748

Hon'ble Judges : Ritu Raj Awasthi, J

Bench : Single Bench

Advocate : Uma Shankar Sahai, S.K. Chaudhary, Amit Kumar Singh, Kapil Misra, U.S. Sahai, Uma Shankar Sahai and Rakesh Chandra Tiwari, Advocate for the Appellant; Satyanshu Ojha, M.M. Asthana and Mukund M. Asthana, Advocate for the Respondent

Judgement

Rituraj Awasthi, J.—Since all the writ petitions involve similar facts and circumstances raising the same controversy, as such they have been listed together and heard, with the consent of parties' counsel, and now they are being decided by common judgment. Heard Mr. U.S. Sahai as well as Mr. Rakesh Chandra Tiwari and Mr. S.K. Chaudhary, learned counsel for petitioners and Mr. Pankaj Patel, learned Additional Chief Standing Counsel as well as Mr. Satyanshu Ojha, learned counsel for State Project Director, Uttar Pradesh Madhyamik Shiksha Abhiyan and its authorities.

2. Mr. R.C. Tiwari, learned counsel for petitioner in Writ Petition No. 7196 (SS) of 2013 and Mr. S.K. Chaudhary, learned counsel for petitioners in Writ Petition No. 6913 (SS) of 2013 submits that they may be granted time to file rejoinder affidavit to counter-affidavit filed on behalf of opposite parties. It is informed by learned counsel for opposite parties that counter-affidavit in Writ Petition No. 6913 (SS) of 2013 was filed on 12.12.2013 where as in Writ Petition No. 7196 (SS) of 2013 it was filed on 20.1.2014. Since the Court vide order dated 28.3.2014 has made it clear that the case will not be adjourned, as such the

request for grant of time to file rejoinder affidavit, looking to the fact that they have not been filed in spite of sufficient time and petitioners are enjoying interim order, is refused.

3. The writ petitions have been filed challenging the office order dated 13th November, 2013 whereby petitioners have been repatriated to their parent departments from the post of District Coordinator working under U.P. Madhyamik Shiksha Abhiyan, a National Secondary Education Programme.

4. Vide Government Order dated 23rd June, 2010 certain posts including the post of District Coordinator were created for proper implementation of Rational Secondary Education Programme. As per said Government order, 142 posts of District Coordinator were created and it is provided that the said posts were created temporarily till continuance of the aforesaid programme and they can be abolished any time without any prior notice, in case of no need.

5. Petitioners, who are Assistant Teachers, Secondary Education, were appointed on deputation vide orders dated 25.5.2011 and 30.8.2011 on the post of District Coordinator for one year. Certain more persons, to be precise 56 in number, were also appointed as District Coordinator vide office order dated 19th March, 2013. Petitioner No. 15 of Writ Petition No. 6913 (SS) of 2013 was appointed as District Coordinator vide order dated 19.3.2013. The tenure of petitioners were extended vide office order dated 12.12.2011 for the period upto 29th February, 2012, however, petitioners were allowed to continue till they were repatriated vide impugned order.

6. It is submitted by learned counsel for petitioners that petitioners of Writ Petition No. 6913 (SS) of 2013 and Writ Petition No. 7196 (SS) of 2013 were granted interim order vide orders dated 28.11.2013 and 02.12.2013, respectively to the extent that in case petitioners have not been relieved till date, the parties shall maintain status quo as exists today. The said interim orders are still operative.

7. Mr. U.S. Sahai, learned counsel for petitioner in Writ Petition No. 1521 (SS) of 2014 submits that his petitioner was relieved on the date on which the interim order was passed in Writ Petition No. 6913 (SS) of 2013, as such he was not given benefit of the interim order, therefore, he has withdrawn from Writ Petition No. 6913 (SS) of 2013 to which he was also a party, and with the leave of the Court has filed Writ Petition No. 1521 (SS) of 2014.

8. Submission of learned counsel for petitioners is, precisely on the ground, that the petitioners are Discriminated having been repatriated to their parent department as similarly situated several other persons, who were sent on deputation along with petitioners, have been allowed to continue on the post of District Coordinator and getting salary, etc.

9. It is submitted that work and conduct of petitioners is fully satisfactory. The scheme of U.P. Madhyamik Shiksha Abhiyan under which they were appointed on

deputation is continuing and the work of the posts on which petitioners are working are fully available, however, without any justifiable reason they have been repatriated in most arbitrary and discriminatory manner.

10. It is also submitted that the opposite parties themselves have recommended for absorption of certain persons under the scheme and have asked their parent department to issue no objection certificate in this regard. The opposite parties on one hand are repatriating the petitioners to their parent department whereas on the other hand are not only retaining similarly situated persons but are also recommending for their absorption which clearly indicates hostile discrimination.

11. In support of their submissions, learned counsel for petitioners relies on the judgment of the Apex Court in the case of Union of India (UOI) through Govt. of Pondicherry and Another Vs. V. Ramakrishnan and Others, , particularly paragraphs 32 to 35, wherein the Apex Court has held that when an appointment is made for a specific period, unless any disciplinary proceeding is initiated, a person will be entitled to hold the said post.

12. Mr. Pankaj Patel, learned Additional Chief Standing Counsel, on the other hand, submits that petitioners being on deputation have no right to claim the post of District Coordinator. They were appointed for a term of one year which has been extended from time to time, as such no right has been accrued to petitioners to hold the post of District Coordinator.

13. It is submitted that the Secretary/State Project Director, Uttar Pradesh Madhyamik Shiksha Abhiyan vide letter dated 9th February, 2012 has recommended absorption of only those employees whose parent department have either become sick department or due to financial constraints have been closed down. Moreover, the said letter dated 9th February, 2012 does not mean that they have been absorbed under the Madhyamik Shiksha Abhiyan as no final decision in this regard has been taken till date.

14. Mr. Satyanshu Ojha, learned counsel appearing for Project Director, U.P. Madhyamik Shiksha Abhiyan submits that not only 26 persons but all the persons who are in excess of the required number of District Coordinator have been repatriated.

15. Mr. Satyanshu Ojha, learned counsel submits that he has filed counter-affidavit in Writ Petition No. 6913 (SS) of 2013 and Writ Petition No. 7196 (SS) of 2013, respectively, to which no rejoinder affidavits have been filed till date.

16. It is submitted that 75% of the funds under U.P. Madhyamik Shiksha Abhiyan are provided by the Central Government whereas 25% of the funds are provided by the State Government. The Management Monitoring Evaluation Research (MMER) funds are generally used for payment of salary/allowances to the employees working in the State Project Office and District Project Offices and the utilization of funds in excess to the demarcation may result in serious audit objections, as such in order to reduce MMER expenses, the Project Director vide

letter dated 18.9.2013 has directed to reduce the strength of District Coordinators from two posts to one post in each district. The decision so taken is annexed as Annexure No. CA-3 to counter affidavit.

17. It is submitted that in pursuance of said decision the strength of District Coordinator has been reduced and the persons working on the post of District Coordinator in excess of one coordinator in each district have been repatriated to their parent department. There is no discrimination or mala fide in the decision of the opposite parties in this regard.

18. It is also submitted that writ petitions filed against the repatriation by the persons appointed on deputation at various districts under Sarva Shiksha Abhiyan have been dismissed. The Court vide judgment and order dated 31.1.2012 passed in Writ Petition No. 8014 (SS) of 2011; Uma Kant Pandey v. State of U.P. and others has dismissed the writ petition observing that in absence of willingness of either of the borrowing department or of the parent department or on the part of the employee concerned, the continuance on deputation is legally not permissible.

19. In the case of Omendra Singh and others v. State of U.P. and others; Writ Petition No. 243 (SS) of 2011 the Court has observed that even in case similarly situated persons have been retained whereas petitioners who were appointed on deputation have been relieved to join back in their parent department, they have no right to maintain the writ petition as they have no right to continue on deputation.

20. I have considered the submissions made by the parties' counsel and gone through the records.

21. Admittedly, petitioners are the Assistant Teachers, Secondary Education. Their parent department is the Secondary Education Department. They were appointed on deputation on the post of District Coordinator under the Rashtriya Madhyamik Shiksha Abhiyan. The orders dated 25.5.2011 and 30.8.2011 clearly indicate that the petitioners were initially appointed for a period of one year, however, tenure of their deputation were extended from time to time. The scheme under which the petitioners were appointed on deputation, no doubt, continues, however, that does not confer any right on the petitioners to claim to continue on the post as the appointment of petitioners is purely on deputation and their hen in parent department have been maintained, which is evident from the Government Order dated 23rd June, 2010.

22. So far as the question of discrimination, as contended by learned counsel for petitioners, is concerned, the decision has been taken by the opposite parties to reduce the strength of District Coordinators from two posts to one post in each district. The said decision is based on the fact that the salary expenses were exorbitantly increased and a substantial amount of MMER funds was being utilized for payment of salary which was not proper for the effective implementation of the scheme and may result into serious audit objections. The

said decision is based on the project approval report approved by the committee headed by Secretary, Secondary Education and Learning; Ministry of Human Resources Development, Government of India. It is on the basis of said decision that the petitioners, who are working on the post of District Coordinator, have been repatriated to their parent department, as such I do not find any discrimination in case the persons working on the post of District Coordinator, who are in excess of the required number, have been repatriated.

23. So far as the recommendation for absorption of certain employees in the U.P. Madhyamik Shiksha Abhiyan is concerned, it is merely a recommendation asking for no objection certificate from the parent department. No final decision in this regard has been taken and, as such it cannot be said that certain persons sent on deputation have been absorbed.

24. The question as to whether petitioners while working on deputation under Sarva Shiksha Abhiyan have any legal right to continue under the scheme and cannot be repatriated as the scheme is still in continuation has been earlier considered in a bunch of writ petitions leading being Writ Petition No. 7236 (SS) of 2004; Surendra Kumar Srivastava and others v. State of U.P. and others and other connected matters wherein vide judgment and order dated 6th July, 2006 the writ petitions filed by persons working as Coordinators and Assistant Coordinators at the Block Resource Center (BRC) and Nyay Panchayat Resource Center (NPRC) under Sarva Shiksha Abhiyan challenging their repatriation were dismissed. The relevant paragraphs of the said judgment on reproduction reads as under:

For the aforesaid reasons, I find that the petitioners have no right to continue under the new scheme. They were on deputation and were not held out any promise, nor have they altered their position to any disadvantage, to apply principles of promissory estoppel. The repatriation to their substantively held posts and selection of fresh, comparatively young and energetic hands to serve as Coordinators and Assistant Coordinators at Block and Panchayat levels in the new scheme, with revised eligibility, term, and selection procedure, in which they can also be considered in the new scheme with higher objectives, targets and reach, is not violative of their rights under Articles 14 and 16 of the Constitution of India. All the writ petitions are consequently dismissed. The petitioners shall have right to apply for selection under the Sarva Shiksha Abhiyan. In case they have applied in pursuance of the advertisement made earlier, or apply afresh within a period of one month, their candidature shall also be considered along with other applicants, without any preference. The costs are made easy.

(Emphasis supplied)

25. The special appeal preferred against the aforesaid judgment was dismissed vide judgment and order dated 11.8.2006 passed in Special Appeal No. 492 of 2006. The Division has held that petitioners cannot be said to be prejudiced if they are sent back to their parent department. The operative portion of the

judgment dated 11.8.2006 on reproduction reads as under:

Needless to mention that the appellants are substantively appointed Assistant Teachers/Head-Masters in different Institutions governed by the provisions of Basic Education Act, and therefore, they are not at all prejudiced, if they are sent back to their parent departments.

We are in respectful agreement with the view expressed in the Special Appeal of Ganga Singh Yadav (*supra*). We do not find any illegality or infirmity in the impugned order passed by the learned single Judge. The special appeals have no force and are hereby dismissed.

(Emphasis supplied)

26. In the judgment relied by learned counsel for petitioners i.e. Union of India (UOI) through Govt. of Pondicherry and Another Vs. V. Ramakrishnan and Others, the Apex Court has observed that when the tenure of deputation is specified, despite a deputation is 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. Relevant paragraphs 32 to 35 of the said judgment on reproduction read as under:

32. Ordinarily, a deputationist has no legal right to continue in the post. A deputationist indisputably has no right to be absorbed in the post to which he is deputed. However, there is no bar thereto as well. It may be true that when deputation does not result in absorption in the service to which an officer is deputed, no recruitment in its true import and significance takes place as he is continued to be a member of the parent service. 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. But, even where the tenure is not specified, an order of reversion can be questioned when the same is mala fide. An action taken in a post haste manner also indicates malice. [See *Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia and Others*,]

33. *Kunal Nanda Vs. Union of India and Another*, , relied upon by the learned Solicitor General, was a case where the petitioner therein had asserted a claim for permanent absorption in the department.

34. The matter relating to appointment through the Government of Pondicherry Public Works Department Group "A" Post of Chief Engineer Recruitment Rules, 1996 was governed in terms of a notification dated 11th December, 1996. The said notification was issued by the Government of Pondicherry in exercise of its power under the proviso to Article 309 of the Constitution of India. Rule 3 thereof prescribes that the method of recruitment thereto shall be as specified in columns 5 to 14 of the Schedule appended thereto. In terms of the Schedule, the

post of Chief Engineer was a selection post and one of the methods for recruitment as envisaged in Column 11 thereof is that the same post may be filled up by direct recruitment or by promotion or by deputation/transfer. The said post could be filled up by transfer on deputation in terms of Column 12 of the Scheduled appended thereto. The appointment of the First Respondent in the said post was on short term deputation/temporary basis till a regular appointment is made.

35. In *Parshotam Lal Dhingra Vs. Union of India (UOI)*, , it is categorically stated that when an appointment is made for a specific period, unless any disciplinary proceeding is initiated, a person will be entitled to hold the said post.

27. In the present case, I have come to conclusion that there were justifiable reasons for repatriation of the petitioners, as such I am of the considered view that the aforesaid judgment is of no help to petitioners.

28. This Court in the case of *Omendra Singh and others (supra)* and *Uma Nath Pandey (supra)* has dismissed the writ petitions filed by the persons challenging the repatriation to their parent department.

29. The Division Bench headed by Hon"ble the Chief Justice in Special Appeal No. 1980 of 2013; *Kishan Ji Verma v. State of U.P. and others* vide judgment and order dated 20.12.2013 has dismissed the special appeal filed against one of such judgments where the writ petition of a deputationist working on the post of Assistant Coordinator in Block Resource Center under the National Literacy Mission was dismissed.

30. In view of above, I am of the considered opinion that the petitioners have no legal right to continue on the post of District Coordinator on which they were appointed on deputation.

31. There is no illegality or infirmity in the orders impugned. The writ petitions being devoid of merit are dismissed.