

(1970) 12 DEL CK 0019

In the Delhi High Court

Case No : Civil Writ Appeal No. 1064 of 1969

V. Radhakrishnan Murthy

APPELLANT

Vs

Secretary, National Council of Educational Research and
Training and Others

RESPONDENT

Date of Decision : 09-12-1970

Acts Referred:

Citation : (1971) ILR Delhi 121

Hon'ble Judges : S.N. Shankar, J

Bench : Single Bench

Advocate : S.K. Puri, Deepak Chaudhary and S.P. Aggarwal, for the Appellant;

Judgement

S.N. Shankar, J.

(1) By this petition under Art. 226 of the Constitution ,the petitioner has. prayed that the. order dated . 23/08/1969, reliving him of his duties of the post held by him in the Regional College of Education, Bhopal, with effect from 31/08/1969 and directing him to report to the Commandant, Army Education Corps Training College and Centre, Pachmarhi, be quashed. Respondents to the petition were the Secretary, National Council of Educational Research and Training, respondent No. 1, Regional College of Education, Bhopal and Union of India, respondents 2 and 3.Later on, however, the petitioner prayed for the addition of Unionof India through the Secretary, Ministry of defense also and on the prayer being granted, put in an amended petition. Affidavits in opposition have now been filed by respondent No. 1 through itsSecretary as also by respondent No. 2 in so far as the allegations of mala-fides against him are concerned as also by respondent No. 3through Major B. N. Sharma.

(2) The relevant facts briefly are that in the year 1952, the petitioner was employed as an Artist (Instructor) in the Army Education Corps Training College and Centre set up by the Ministry of defense, Government of India, hereinafter called "the Government Training College "for facility of reference. In 1964,

respondent No. 1, a Society registered under the Societies Registration Act, 1860. with its Managing Committee consisting of representatives of Ministry of Education and some Universities, advertised for the post of Artist (Audiovisual) .The petitioner applied in response to this advertisement through the Commandant, Army Education Corps Training College and Centre. After interview, he was selected by a Selection Committee and was appointed to the post of Artist (Audio Visual) in the Regional College of Education, Bhopal (hereafter referred to as " the Regional College") run and maintained by the registered Society and affiliated to Vikram University, on a salary of Rs. 400.00 per month in the scale of Rs. 400-30-840-EB-40-800 with effect from 1/07/1965, in a temporary capacity and was put on probation for a period of two years. After completion of the period of probation, the petitioner continued to work in the Regional College. On 23/08/1969, he was served with the impugned order relieving him from the duties of the post held by him and directing him to report to the Commandant ,Army Education Corps Training College and Centre at Pachmarhi. The petitioner contends that this order of respondent No.1 is illegal and ultra-vires and deserves to be quashed for reasons mentioned in the petition.

(3) In the Return filed on behalf of respondents 1 and 2 it was urged, amongst others, that the petitioner was taken on deputation by the Council from the Government College and he had now been reverted back to his parent Department and as such there was no dismissal or reduction in rank as alleged. and that though the Regional College was one of the colleges affiliated to the Vikram University, it was not subject to the privileges of the University and that the Regional College was subject to the supervision and inspection of the University under S. 16 clauses (6) and (7) of the Vikram University Act and that the terms and conditions of service of the staff of this College were governed by the rules and regulations which were applicable to Government servants of the Government of India and that the petitioner had no cause of action for the relief claimed. It was further contended that respondent No. 1 being a registered Society was not amenable to the writ jurisdiction of the Court. In the counter-affidavit filed on behalf of the Union of India, it was admitted that the petitioner held the post of a permanent Artist in the Government Training College but it was maintained that he held this post till 30/06/1965, when he was relieved to take up "his new assignment" in the Regional College run by the registered Society and that his lien on the post in the Government College had not been terminated and was always there .

(4) Shri S. K. Puri, appearing on behalf of the petitioner, raised the following contention in support of the relief claimed in the petition :

(1) That the petitioner did not hold a lien on his parent job in the Government Training College and the impugned order relieving him of the post held by him in the Regional College without notice or an opportunity of being heard and directing him to report to the Commandant ,A.E.C. Training College and Centre was wholly illegal and un-warranted.(2) That the petitioner had relinquished his

lien on the parent job in the Government College and in any case no such lien could subsist after the expiry of two years from the date of his joining the Regional College.(3) That the petitioner in any case having been appointed as a teacher of the Regional College was entitled to the protection of statute II-B of the Vikram University Calendar framed under S. 27 (h) of the Act.(4) That the petitioner under all circumstances was entitled to the benefit of the provisions of Art, 311 of the Constitution and the relevant rules contained in the Civil Service Regulations.(5) That the impugned order in any view was contrary to the principles of natural justice.

(5) Before dealing with the contentions on merits it will be appropriate to notice the preliminary objection raised by respondents 1 and 2 that the registered Society was not amenable to writ jurisdiction of the Court and the petition deserved to be dismissed on this short ground. I see no merits in this contention, A similar objection was raised in respect of this very Society in *Shital Prasad Tyagi v. The Principal, Central Institute of Education*, ILR 1969 Del 1184 Citing *Mohinder Singh Vs. Union of India*, and *Amir-i-Jamia and others v. Deshrath Raj Kapila* (L.P.A. 33 of 1968, decided on 25-11-1968), (3) the Bench held that a writ could be issued against this Society. In *Shital Prasad Tyagi's* case, the argument raised was precisely the same as is being repeated now, namely, that the Society did not exercise any statutory powers and had not been created by the Statute and was, Therefore, not subject to the supervisory jurisdiction of this Court under Art, 226 of the Constitution but it did not find favor with this Court. The preliminary objection, Therefore, has no force and has to be repelled.

(6) Coming now to the merits of the controversy, I find that Annexure "B" is the proforma of the application for the post advertised by the Council, It stated that there was only one vacancy at Bhopal and that the scale of pay for this post was Rs. 400-30-640-EB-40-800. The qualifications for the post were also mentioned in it. It is admitted between the parties that in pursuance of the advertisement for the post, the petitioner applied and was selected. Annexure "E" is the order issued by the Secretary of the Council appointing the petitioner to the advertised post on a pay of Rs. 400.00 per month with effect from 1/07/1965. It reads as under :

"NO.F-7-197/65 RCEU/698 NATIONAL Council Of Educational research And TRAINING 114-SUNDER NAGAR. NEW DELHI-11 ORDER The Director, National Council of Educational Research & Training, is pleased to appoint Shri V. Radhakrishna Murthy to the post of Artist (Audio-Visual) in the Regional College of Educational Research & Training on a pay of Rs. 400 per month in the scale of Rs. 400-30-640-EB-40-800 with effect from 1/07/1965 in a temporary capacity and until further orders. sd/- M. GUPTA for Secretary Shri V, Radhakrishna Murthy, Artist (Audio-Visual) Regional College of Education. Bhopal. Copy to:--1. The Principal, Regional College of Education, Bhopal. The requisite formalities should please be completed as suggested in this Council's Memoranda No. F. 1/12.0062 NCE. 2 dated the 2/06/1962, and 24th July, 63 and subsequent

reference e.g. a check-up and supply of attested copies of the certificates of the officers academic qualifications/experience, submission of annual assessment reports, verification of character antecedents ,etc,2, Chid" Accounts Officer, N.C.E.R.T., with a copy of Charge report and medical report.1253. Comdt. Aec Training College and Centre, Pachmarhi (Madhya Pradesh).for Secretary."

(7) This letter of appointment makes no reference to the petitioner being on deputation. And we have ,Therefore, to look to the other evidence and attending circumstances to see if this appointment of the petitioner was by way of deputations. Appendix 31, according to Chaudhri's compilation of the Civil Service Regulations contains the orders that govern the grant of deputation (duty) allowance to Central Government employees transferred on deputation to other Government departments or Bodies (incorporated or not) wholly or substantially owned or controlled by the Government. Para (1) (i) of this Appendix provides that the term "deputation" will cover only appointments made by transfer on temporary basis. Appointments of serving Government servants made either by promotion or by direct recruitment in competition with open market candidates, whether on a permanent or temporary basis, will not be regarded as "deputation". The admitted fact, therefore ,that the post was advertised by the Council and the petitioner applied for the same and was selected after interview by a duly constituted Selection Committee and then appointed in terms of the letter Annexure "E" initially support the petitioner's contention that he was a direct appointee to the Regional College and that his services had not been transferred or loaned out to the Council by way of deputation .

(8) The petitioner has produced on record copy of a certificate dated 27/05/1965, Annexure "G" signed by him and countersigned by an Official of the Government College. It reads as under:

"1.I, No. 11 Shri V. Radhakrishnan (Artist) hereby certify that I accept the appointment offered to me by the National Council of Educational Research and Training (Regional College Unit), New Delhi vide letter No. F. 7-197/65-RCEV dated Nil on the terms and conditions mentioned therein.2. I further certify that I know fully well that in the event of my appointment in the new post, I am not entitled for retention of lien etc. on the present post of Artist at the AEC Training College and Centre, Pachmarhi and will not make any claim for the same in the future. Signature : sd/- V. Radhakrishnan Artist PACHMARHI (MP)27 May 65Countersigned"sd/- Captain Adjutant AEC Training College & Centre pachmarhi (MP)27 May 65. . .".

(9) The factum and genuineness of this Certificate is not disputed by the respondents. It clearly shows that before relieving the petitioner from his post in the Government College he was asked to confirm that in case of his appointment in the new post for which he had applied he would not be entitled to the retention of lien on the post of Artist held by him at the Government Training College and that he will not make any claim in respect of it in the future. After

obtaining this certificate, the Government College issued to him the final no-demand-certificate dated 30/06/1965, copy Annexure ""H". The obtaining of the certificate dated 27/05/1965, Annexure "G" as well as the issuance of no no-demand-certificate thereafter bear out the petitioner's contention that when he took up the appointment with the Regional College he had no right, title or interest left thathe could enforce in respect .of his post in the Government College and there was no question at that time of his being sent on deputation .

(10) The petitioner has further produced along with the petition, Annexure "Z" which is a copy of office memorandum dated 22/01/1966. from the Ministry of Home Affairs dealing with the applications of Central Government servants for posts in Public Sector undertakings ,autonomous bodies etc. Both the petitioner and the respondents have placed reliance on difference parts of this memorandum. The preamble of the memorandum states that the Government had decided that permanent Government servants selected for appointment in Public Sector undertakings or autonomous semi-Government organisations should be allowed to retain lien on their permanent posts for a period of two years or till they are permanently absorbed in the Undertaking etc. which ever is earlier subject to conditions mentioned there under. It is the case of the petitioner that in case the petitioner is considered for any reason to have retained a lien on his post in the Government College it could not subsist beyond the period of two years according to the Memorandum. References made to clause (v) of this memorandum on behalf of the respondents. This clause provides that if the Government servant is not permanently absorbed within a period of two years from the date of his appointment in the Public Sector Undertaking or the autonomous semi - Government organisation, he should immediately on the expiry of this period either resign from Government service or revert to his parent office. It is urged on behalf of the respondents that the petitioner having not resigned in compliance with clause (v) his lien should be deemed to have continued. The preamble part of the memorandum indicates that in the normal course the maximum period fixed by the Government for retention of lien in case of such appointments as the present one is two years. The petitioner admittedly served the Regional College for more than two years. Prima-facie, Therefore, according to this memorandum, he was not entitled to the retentionof lien on this post in the Government College and the burden lay heavily on the respondents to show that in this case inspire of this avowed policy of the Government, his lien continued to subsist. Reference to cl. (v) of this memorandum and the argument that because the petitioner did not resign, Therefore, his lien should be deemed to have continued cannot be accepted in the facts of this case. This clause of memorandum reads as under :

"If the Government Servant is not permanently absorbed within a period of two years from the date of his appointment in the public sector/undertaking/an autonomous semi-Government organisation as indicated at (iii) above, he should ,immediately on expiry of the said period of two years ,either resign from Government Service or revert to his parent office,"

(11) The petitioner, as stated earlier, had already given certificate (Annexure "G") certifying that will not claim his lien and, Therefore no further resignation was called for in this case. The question of his tendering any further resignation in the circumstances of the case did not arise. Clause (v) of this Memorandum thus does not help the respondents. This memorandum of the Home Ministry, Therefore, also supports the petitioner's case that he no more held a lien on the post in the Government College.

(12) There is yet another angle from which the matter has to be examined. According to the orders governing the grant of deputation allowance as per Appendix 31 of Chaudhri's compilation of the Civil Service Regulations referred to already, the deputation (duty) allowance has been fixed at a uniform rate of 20 per cent of the employee's basic pay subject to a maximum of Rs. 300.00 per mensem. This deputation allowance, it has been provided in Gimf Memo No. F-10(24)-E/III/60 dated 20/03/1962 also referred to in Chaudhri's compilation is to be deemed to be the special pay as defined in Fundamental Rules. The rate of 20 per cent has subsequently been increased to 33.1/3 per cent in case of employees in receipt of basic pay of and below Rs. 300.00. The pay of the deputationist has to be fixed in accordance with the prescribed principles. Gimf Memo No. F-10(24)-East/III/60 dated 28/03/1962, then (page 286 of Chaudhri's compilation of Civil Service Regulations, 6th Ed.) provided as under:-

" A question has been raised whether the application of the restriction of pay below the minimum of the scale of pay of the deputation post envisaged in para 3 of order No.(1) above is to be watched by the borrowing authority or by the lending authority."

(13) This question has been considered carefully and it has been decided that the deputing authority should watch that an officer on deputation does not get an abnormal increase in pay on account of the deputation and should also decide the manner in which pay on deputation should be restricted. In the case of original deputation the exercise "of such watch is not difficult. The lending authority can indicate the pay to be given. But difficulty will arise when a person already on deputation is promoted to another post by the borrowing authority. In cases the borrowing authority should obtain the concurrence of the lending authority prior to the promotion so that the latter may decide how pay in the higher post should be regulated."

(14) The second eventuality envisaged in this Memo of promotion of the petitioner by the borrowing authority, did not arise in this case, but as enjoined by this Memo the deputing authority was bound to see to the manner in which the pay of the petitioner was being regulated if he was sent on deputation. Nothing has been placed on the record to show that the deputing authority in the case did anything of that sort. No material has been brought to my notice to indicate that the deputing authority in compliance with these instructions took any step to fix the pay of the petitioner in the new post to which he was appointed. On the

contrary, as stated earlier, the Regional College had already fixed its scale of pay as advertised and the petitioner was appointed to the new post on this basis irrespective of his pay in the parent post .

(15) Annexed to Appendix 33. referred to above is also prescribed form of a memo of deputation containing the standard terms of deputation for officers deputed from Centre to the State Governments etc, It has certain columns which have to be filled in. Column 1 and 2 of this memorandum which are relevant for purposes of the present controversy read as under :

(1)"PERIOD Of Deputationyears from.....(Date to be given).

(2) Pay (i) (if the transfer is in the public interest as defined in the Ministry of Finance O.M. No. F. 10(24) -E/111/60, dated 4-5-61).During the period of deputation, Shri.....will have the option either to get his pay fixed in the deputation post under the operation of the normal rules or to draw pay of the post held by him in his parent department plus a deputation (duty) allowance in accordance with and subject to the conditions of the Ministry of Finance Office Memorandum No, 10(24)-E/III/ 60 dated 4/05/1961, as modified from time to time and such other general or special orders issued by the Ministry of Finance under Para (iii) of that Office Memorandum.(ii) If the transfer is not in the public interest During the period of deputation "Shri.....will be entitled to pay in the scale of the post of thedue" under the operation of normal rules."

(16) No such memo containing the terms of deputation is shown to have been drawn up in the case of the petitioner when his services are alleged to have been loaned to the Regional College fixing either period of his deputation or his pay.

(17) Shri Deepak Chaudhry appearing on behalf of the respondents, conceded that no pay of the. petitioner had so far been fixed by the deputing authority. He had also to admit that in terms of Appendix 31, the petitioner would not be entitled to any deputation allowance more than what was permissible to him under the orders, referred to above ,(namely, the maximum of 33.01/3 per cent of his basic pay in the parent department). Calculated at this rate, it was clear that the pay actually drawn and received by him in the Regional College was much more. The learned counsel, Therefore, said that the extra payment so received by the petitioner during his period of service in the Regional College will have to be refunded by him. It. is not possible to accept such a situation. A specific procedure to be adopted and the formalities to be complied with, referred to above, have been laid down by the appropriate authority and it was not disputed that they were applicable to the present case. If this was really a deputation it has to be in accordance with this procedure. The question of deputation has to be decided by the deputing authority at the time when the services of the Government Servant are lent on deputation. No rule or order has been brought to my notice which could enable the deputing authority to adopt any other course and to defer the matter for an indefinite period for no reasonable excuse and then suddenly turn around one fine morning to fix the pay and claim refund as suggested by the learned counsel.

(18) The learned counsel then contended that after signing the certificate Annexure "G" referred above, the petitioner, by his letter dated 6/ 7/06/1965 (Annexure R2) addressed to the Secretary of the Council himself ,stated that as the service of the Regional College advertised bythe Council was not a Government Service the question of his retaining lien on the Government College post was yet to be resolved by the Government ,Ministry of defense, and that he hoped to get a lien on this post. He submitted that this showed that the petitioner had not in fact relinquished his lien on the post and should, Therefore, be considered to have joined his new post in the Regional College as on deputation .It is true that in this letter the petitioner did make the statement referred to by the learned counsel but this does not take away the fact that before writing this letter he had already issued the Certificate of relinquishment which was final between the parties and was never agreed by mutual consent to be cancelled or revoked. It was explained by the learned counsel for the petitioner that this letter (R-2)was in fact in reply to the letter of the Council dated 5/06/1965,to the Director of Health Services, Madhya Pradesh, Indore (Annexure "T") copy endorsed to the petitioner requiring him to get himself examined by a Medical Board and that the main object of the petitioner in claiming to assert the lien was to avoid the risk of this examination by the Medical Board as he, was required to do so and that the petitioner hoped that in case his contention of still being a Government servant prevailed, no second medical examination may be necessary. Be that as it may, there is nothing on the file to show, as stated earlier, that the. petitioner and the Government Training College authorities agreed to the cancellation of the relinquishment certificate. Annexure "G". The submission, Therefore, that the letter Annexure R-2 showed that the petitioner had not relinquished the lien on his former post cannot be accepted.

(19) Reliance in support of the same submission was also placed by the learned counsel on another letter issued by the Vice-chief of the Army Staff to the Commandant of the Government College dated 22/05/1965, Annexure R-3. In this letter the Vice-chief of the Army Staff said that as the Council was an autonomous organisation and the service under the Council was not a Govt. service the question of retention of lien by the petitioner on the permanent post of Artist at the Government College may not arise, but it was added that this will be clarified later. Emphasis was placed on the later sentence to urge that the question" of relinquishment of lien by the petitioner was still under consideration.

(20) This letter rather than he ping the respondents, supports the contention of the petitione.r that "at the time of writing this letter (dated 22/05/1965) it was the view of the. Government that in a case of this kind the question of retention of lien by the Government Servant on the permanent post did not arise. Subsequent to the writing of this letter on 27/05/1965, the relinquishment certificate Annexure "G" was taken from the petitioner. This letter, Therefore, does not help the respondents.

(21) It is not the case of the respondents 1 and 2 that the Services of the petitioner in the Regional College, Bhopal, were terminated by the impugned order. This order was passed on the "assumption that the petitioner was a deputationist serving in the Regional College and as such had to revert back to the Government Training College. This assumption being not correct for reasons that I have already stated, the impugned order cannot be sustained. These respondents, will, Therefore, reconsider the position in the light of the above finding and deal with the petitioner appropriately in accordance with law.

(22) In view of the conclusion that I have reached the other contentions raised by Shri Puri do not need consideration.

(23) Civil Writ 1064 of 1969 is, Therefore, accepted in the above terms and the impugned order passed by respondents 1 and 2 is quashed. In the circumstances of the case, the parties are left to bear their own costs.