

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:31.08.2006

CORAM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

Writ Petition No.13365 of 2006

Dr.T.Ilan Chezhan

... Petitioner

Vs.

1. Chairman,  
State Resource Centre for  
Non-formal, Adult & Continuing Education,  
Under Ministry of Human Resource Development,  
Government of India,  
"Adiseshiah Bhavan"  
20 First Street, Venkatratnam Nagar Extension,  
Adayar, Chennai 20.
  2. Director,  
State Resource Centre for  
Non-Formal Adult & Continuing Education,  
Under Ministry of Human Resource Development,  
Government of India,  
"Adiseshiah Bhavan"  
20 First Street, Venkatratnam Nagar Extension,  
Adayar, Chennai 20.
- ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Mandamus, calling for the records relating to the order passed by the 2<sup>nd</sup> respondent in No.Nil dated 17.04.2006 as confirmed by the 1<sup>st</sup> respondent in No.Nil dated 01.05.2006 and quash the same and direct the respondents to grant extension of deputation for one more year to the petitioner by placing the matter before the governing body in, Chennai so as to enable the petitioner to continue there.

For Petitioner :Mr.C.Selvaraj, Senior Counsel  
for Mr. S. Mani.

For Respondents :Mr.S. Muthukumar

## O R D E R

This writ petition is filed challenging the order of the second respondent dated 17.04.2006 as confirmed by the order of the first respondent dated 01.05.2006, directing the respondents to grant extension of deputation for one more year to the petitioner.

2. The petitioner has joined as a Programme Associate in the respondent center which is an autonomous body, organized for promoting Non-formal, Adult & Continuing Education and also to provide technical support in the areas of training material development, research and evaluation and the organization is 100% aided by the Government of India. The petitioner performed as Associate programme Co-ordinator on 01.05.1995 and he has been in charge of programme coordinator Head of Department of Post Literacy and continuing education department for 6 months. Thereafter he was reverted back to the regular post of Associate Programme Co-ordinator.

3. Applications were called for the post of programme officer-communication by AIDS Prevention and Control (APAC) project administrated by Voluntary Health Service, Chennai, with financial assistance of United States Agency for International development (USAID) on bi-lateral agreement with Government of India that was created for the purpose of creating awareness on STI/HIV/AIDS. The petitioner has applied for the post of Programme Officer communication after obtaining no objection certificate and the petitioner was selected and appointed. The petitioner was relieved by the respondent to join on deputation under the said project for four years ending upto 02.05.2006. After the period came to an end the petitioner has requested for extension of the same for one more year, since in the deputed body he was incharge of behavior changes in communication and mass media related communication activities and he has also taken special initiatives as a model. It is in the complete stage of project that he needs one more year. The object of the project is to address both literates illiterates, neo-literates both in Tamil Nadu and Pondicherry to improve the quality of life as envisaged by the National Literacy Mission. The second phase of his project is almost at an end and therefore, it was required atleast to have one more year. While so, the second respondent by the order dated 17.02.2006 has rejected the request which has been confirmed by the first respondent in the order dated 17.04.2006 without assigning any reason. It is challenging the

said orders, the petitioner has filed the present writ petition on various grounds including that it is arbitrary and illegal and it is against the social benevolent concept since if the petitioner leave in the middle of the project there will be no use to public at large. It is also the case of the petitioner that he is losing the salary of Rs.40,000/- per month in the deputed organization by virtue of the contact of the respondent in denying permission for extending the term for one more year.

4. Mr.C.Selvaraj learned Senior Counsel appearing for the petitioner would submit that while it is the governing body as a whole the respondent has to take a decision. The impugned order of the second respondent dated 17.02.2006 rejecting the claim of the extension of deputation itself shows that the Government of India representative has objected the extension of deputation and therefore the plea of deputation was rejected. He would also contend that the first respondent by the order dated 01.05.2006 has also referred about the decision of the governing body of the respondent dated 08.12.2004 stating that the governing body has already taken decision about the deputation and therefore the period of deputation of the petitioner cannot be extended by one more year. He would also submit that the order of the second respondent dated 17.02.2006 itself is passed by a person who is holding the post as in charge in the state resources center. Therefore, according to the learned Senior Counsel appearing for the petitioner, admittedly, the governing body has not taken a decision and it is only on objection of one of the members, the impugned order came to be passed.

5. On the other hand, Mr.S.Muthukumar, learned counsel appearing for the respondent would submit that inasmuch as in minutes of meeting of the Governing body of the respondent dated 08.12.2004 it has been decided that the deputation in respect of one Dr.S.Balasubramaniyan cannot be extended, the same analogy will apply to the petitioner also and therefore, there is absolutely no justification on the part of the petitioner to claim the deputation, especially in the circumstances that the original period of deputation of four years has admittedly come to an end. According to the learned counsel, it is not open to the petitioner to claim the extension of deputation as a matter of right and it is for the parent department, namely, the respondent to decide the same since the issue involves so many factors. It is also the case of the learned counsel for the respondent that it is not as if the deputation department alone is working on the social cause but on the other hand the respondent itself is created as a non Governmental organization funded with 100% fund for the Government of India for doing

social benefactions. The learned counsel for the respondent has also produced the office memorandum of the Government of India in respect of the right of deputation and said that the period of deputation cannot be claimed as a matter of right.

6. I have heard the learned Senior counsel for the petitioner and also the learned counsel who is appearing for the respondent and perused the entire documents.

7. A reference to the rule relating to the deputation which is stated to be applicable to the respondent organization has been produced by the learned counsel for the respondent is shown in paragraph 4 (the deputation) which reads as follows:

"Deputation.- 'Deputation' for purpose of drawal of 'Deputation(Duty) Allowance' will cover appointments made in public interest outside the normal field of deployment-

(i) on a temporary transfer basis to other posts in the same or other Central Government Departments and State Governments; and

(ii) on temporary transfer on foreign service to Bodies (incorporated or not) wholly or substantially owned or controlled by Government and Organizations, e.g., Municipalities, Universities, etc.

Deputation (Duty) Allowance is treated as 'Special Pay' as defined in FR9(25).

Period of Deputation.-The deputation will be for a maximum of three years. Deputation to other Ministries/Departments for the fourth year may be granted with the approval of the Secretary of the borrowing Ministry. Extension for one year beyond the fourth year requires the approval of the Minister of the borrowing Ministry; but no Deputation Allowance is admissible for that period.

Extension.-Proposals for extensions beyond the period prescribed in the Recruitment Rules should be sent to the Department of Personnel and Training only in rare and exceptional circumstances where extension in the period of deputation is considered absolutely necessary. The proposal should be sent with the approval of the Minister of the borrowing department at least three months before the expiry of the extended tenure, with full particulars.-OM, dated 3.11.2004."



"It is admitted that the deputation order either issuance of the order of the deputation or extension of the deputation lies the governing body of the respondent."

8. As it is elicited, the rules relating to the deputation which is applicable to the respondent permit that in rare and exceptional circumstances where the deputation is considered absolutely necessary, the proposal should be send to the approval of the Minister of the borrowing department and the same has to be considered. Therefore, it is not as if the extension of deputation cannot be considered at all at any circumstances but such power of granting extension in exceptional circumstances is always available with the governing body, by following the procedure as stated above. According to the learned counsel for the respondent a reference to the impugned order show that the governing body has in fact taken a decision on 08.12.2004 in not extending the period of deputation to the petitioner. In fact the respondent has also produced in the typed set of papers, the said resolution of the governing body of the respondent dated 08.12.2004. The resolution of the governing body dated 08.12.2004 filed by the respondent and reliance placed on item No.60 of the said resolution by the learned counsel for the respondent shows as follows:

"Deputation of Dr.S.Balasubramanian to TNOU  
Reiterating the contractual nature of staffing in SRC,  
the Government of India representative made it clear  
that deputation cannot be granted to a staff in SRC and  
hence, the staff already on deputation may be requested  
to return back to SRC or else resign the position in  
SRC."

9. It is based on that decision which was taken in respect of the extension of deputation requested in respect of one Dr.S.Balasubramanian, the present impugned order has been passed by the respondent stating as if the governing body has taken a general decision regarding deputation. Therefore, it is clear that the governing body have not considered the claim of the petitioner for extension at all in the individual character. It is relevant because as per the rules enumerated above, it is only in the individual cases the extension of deputation can be granted.

10. Considering the facts and circumstances of the case, based on the general decision taken as per the said rules stated above or decision taken in respect of another individual for whom

the deputation was rejected, one cannot come to a safe conclusion that the petitioner is not entitled for the consideration of extension of period of deputation. It is true that the continuance of extension of deputation is not a matter of light of the petitioner but in the circumstances that the respondent has relied upon a rule which empowers the governing board to consider the individual circumstances for the purpose of extension of deputation in exceptional case, in my view the respondent ought to have considered the claim of the petitioner and find out whether there is any exceptional circumstance at all. In this regard, it is also relevant to point out that the very purpose of claiming extension of the deputation by the petitioner is that he is involved in a project regarding AIDS programme and requires few more months for the purpose of concluding the project and that project will be of useful for the society at large. On the other hand, if the petitioner leaves the project in the middle, it cannot be use for the public as such. Therefore, according to the petitioner there is exceptional circumstances in existence and the same has not be considered by the respondents.

11. In view of the same the writ petition is ordered, directing the respondents to consider the claim of the petitioner for the purpose of extension of his period of deputation for one year from 02.05.2006 in the light of the orders relating to deputation as enumerated above which has to be decided by the governing counsel in accordance with the procedure laid down there and such order shall be passed by the respondents within a period of four weeks from the date of receipt of a copy of this order.

12. The writ petition stands allowed in the above terms setting aside the impugned orders of the respondents dated 17.04.2006 and 01.05.2006.

nbj

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Chairman,  
State Resource Centre for  
Non-formal, Adult & Continuing Education,  
Under Ministry of Human Resource Development,  
Government of India,  
"Adiseshiah Bhavan"  
20 First Street, Venkatratnam Nagar Extension,  
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Adayar, Chennai 20.

+ 1 cc to Mr. S. Mani, Advocate SR No. 39613

+ 1 cc to Mr. S. Muthukumaran, Advocate SR No. 39548

TJL(CO)  
SR/6.9.2006

Order in  
W.P.No.13365 of 2006



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