

WP(C) 228/2010

BEFORE

THE HON'BLE MR JUSTICE H. N. SARMA

(1) The common question of law on the basis of common facts having arose in all these Writ Petitions, they are taken analogously for hearing as prayed for by the learned counsel for the appearing parties.

(2) The subject matter of grievance raised in these Writ Petition relates to the repatriation of the petitioners who are deputed to the department of Urban Development and Housing to their parent department namely Public Works Department before completion of the period of deputation and without considering their case for permanent absorption in the borrowing department.

(3) Heard Mr. K. Ete, learned counsel for the petitioners and Ms. G. Deka, Learned Sr. Addl. Govt Advocate appearing for the State respondent Nos. 1 and 2 as well as Mr. N. Taje learned counsel appearing for respondent Nos. 3 and 4, in all the Writ Petitions.

(4) The basis facts necessary for disposal of this petition which are not in dispute are as follows- The petitioners in W. P. (C) No. 288/2010, W. P. (C) No. 185/2010 and W. P. (C) No. 199/2010 were appointed in the year 1982 whereas the petitioner in W. P. (C) 182/2010 and the private respondent Nos. 3 and 4 were appointed as Junior Engineer in the year 2001. Similarly, the petitioner in W. P. (C) No. 316/2010 was appointed as Junior Engineer in the year 1984. In terms of such appointment as Junior Engineer in the Public Works Department while the petitioners and the private respondent Nos. 3 and 4 were rendering their services in such capacity they were deputed to serve in the department of Urban Development and Housing vide order dated 28. 11. 2007 for a period of 3 years and their deputation having been accepted by the borrowing department they were allowed to join as Assistant Urban Development Programme Officers which is equivalent to the rank of Junior Engineer in PWD. When the petitioners were rendering services in the deputed post, two of their colleagues namely the respondent Nos. 3 and 4 were permanently absorbed in the borrowing department as Urban Development Programme Officers. However, even before completion of the full term of deputation, vide impugned order dated 14. 5. 2010, on the request of the lending department the borrowing department repatriated the petitioners to the parent department vide impugned order dated 14. 5. 2010. Challenging the order of repatriation dated 14. 5. 2010, the petitioners have approached this Court by filing this batch of Writ petitions.

(5) Mr. K. Ete, learned counsel appearing for the petitioners submits that the impugned order and the decision to repatriate the petitioners to the parent department is illegal and unjust in view of the fact that the period of deputation of the petitioners having been till 28. 11. 2010 they ought not to have been repatriated before expiry of the said period. Further, two of the deputationists, viz. , respondent Nos. 3 and 4 having been already absorbed permanently by the borrowing department and the petitioners also having signified their willingness for such permanent absorption, the authority acted arbitrarily in not considering their cases for permanent absorption.

(6) Ms. Deka, learned Addl. Sr. Govt Advocate, per contra contends that the lending department i. e. PWD having decided to withdraw the petitioners from deputation on account of exigency of service in the PWD, request for their repatriation has been made to the borrowing department, the borrowing department accepted the request and repatriated the petitioners to the parent department. However, two of their colleagues i. e. the respondent Nos. 3 and 4 have been permanently absorbed in the borrowing department against two available vacant posts of Assistant Urban Development Programme Officers on first-come-first-serve basis and there is no discrimination in absorbing the respondent Nos. 3 and 4 as alleged by the petitioners. The respondent Nos. 3 and 4 have also filed their counter. The st

and of the respondent Nos. 3 and 4 is that they have been absorbed permanently in parent department upto relevant consideration and such absorption, having been made with due approval of the lending department, there is no irregularity in their absorption, more particularly when their absorption is made on the basis of their seriatum as found in the deputation order.

(7) I have considered the submissions so advanced by the learned counsel for the petitioners as well as the learned counsel for the respondents.

(8) The petitioners have been appointed on deputation vide order dated 28. 11. 2007 for a period of 3 years. As regards the right of the deputationists, the learned G. A. relying on the decision of a Division Bench of this Court reported in 2005 (1) GLT 192 : M. V. Kartikeyan Nair and Ors. Vs. State of Arunachal Pradesh and Ors. submits that the deputationists have no right to be absorbed permanently in the borrowing department and services of such deputationists are at the disposal of the parent department who has got right to withdraw their services from deputation due to exigency of service at any time. Ms. Deka submits that the department of Urban Development and Housing in order to curb the ever growing necessity of urban infrastructure development and amenities in the State, had been entrusted with a few developmental project by the Govt. of India, Ministry of Urban Development, requiring those to be completed within specific period. At the same time the department was running short of technical staff and due to financial crunch, the State Govt. not being in a position to create any new post, requested the Public Works Department to provide some technical staff in the cadre of Junior Engineer and accordingly accepting such request the Public Works Department deputed the petitioners. The PWD however, 2009 called back the petitioners when their services were required in the PWD for implementing 'trans Arunachal Highway\ Project sanctioned by the Govt. of India to be completed within a specific time frame and accordingly the petitioners were repatriated to the parent department. In the case of M. V. Kartikeyan Nair (supra) a Division Bench of this court had the occasion to consider the scope and ambit of a deputationist vis-a-vis the right at paragraphs 13,14 and 15 of the judgment held as follows-

\13. Exigencies of public service may occasion an employee to be sent on deputation with the consent of the employee. Now, we are to seen as to what the terminology \deputation\ connotes. The concept of \deputation\ in essence derived from the significance of the word \deputy and the appropriate meaning of \ deputy, in this context, would be \substantive\. In Black's Law Dictionary, the word 'deputy has been defined as \a person appointed or delegated to act as a substitute for another exp, for an \official\, the Apex Court has explained the concept of deputation in the case of State of Punjab Vs. Inder Singh (supra), at para 18 in the following term:

18. The concept of \deputation\ is well understood in service law and has a recognized meaning. \deputation\ has a different connotation in service law and the dictionary meaning of the word \deputation\ is of the 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 this parent Department to occupy the same position unless in the meanwhile he has entered 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 who 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 department post. The law on deputation and repatriation is quite settled law as we have also seen in various judgments, which we have above. There is no escape for the respondents now to go back to the parent Department and working there as Constables or Head Constables as the case may be.

14. In Kunal Nanda Vs. Union of India, reported in (2000) 5 SCC 362, the Apex Court dealing with the question relating to the validity of an order or repatriati

on of a deputationist, inter alias, held at para 6 as following :

6. On the legal submissions also made there are no merits whatsoever. It will settle that unless the claim of the deputationist for permanent absorption in the department where he works on deputation is based upon any statutory rule, regulation or order bearing the force of law, a deputationist cannot assert and succeed in any such claim for absorption. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent Department to serve his substantive position therein at the instance of either of the Department and there is no vested right in such a person to continue for long on deputation.

15. Recruitment to service may be made by way of deputation also apart from other modes; but when it is made on deputation, it does not result in absorption in the service to which an employee is deputed unless the concerned department decides to do so. In that sense, it is not recruitment in its true import and significance and the employee continues to be a member of parent service from where he is posted on deputation. By passing an order of deputation or putting an employee on deputation in another service, it does not confer any right to be absorbed in the deputed post and the deputationist can, therefore, be reverted to the parent cadre at any time. A deputationist may be absorbed in substantive capacity in the borrowed Department provided the borrowed Department so desires and the parent Department so agrees. In the instant case, neither the parent Department nor requisitioning Department is willing to have the petitioners absorbed permanently. The statutory rules, which is the source of right of the petitioners to be on deputation, prescribe the maximum limit of the period of deputation for three years only. The orders by which the petitioners were deputed from the parent Department is very specific that the period of deputation would not exceed beyond three years. The petitioners have lien to their respective posts. The materials available on record do not disclose any infirmity or illegality in passing the orders of repatriation after expiry of the period of deputation nor do the orders, in any way, violate any of the provisions of the statutory rules or regulations holding the field. \

Even in the case of Umapati Choudhury Vs. State of Bihar and Anr. reported in (1999) 4 SCC 659 the Apex Court held that deputation can be aptly described as an assignment of an employee (commonly as the deputationist) of one department or cadre or even an organisation (commonly as the parent department or leading authority) to another department or cadre or organisation (commonly 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.

Further, in the case of Prasar Bharati Vs. Amarjeet Singh, 2007 (9) SCC 539 the Apex Court noted the distinction between \transfer\ and \deputation\. Deputation connotes service outside the cadre or outside the parent department in which an employee is serving. \transfer, however, is limited to equivalent post in the same cadre and in the same department. Whereas deputation would be a temporary phenomenon, transfer being antithesis must exhibit the opposite indications.

(9) In the instant case though the order placing the petitioners on deputation shows that the petitioners were transferred and posted on encadrement basis for a period of three years in the interest of public service, the placement of the petitioners in the Urban Development and Housing Department is nothing but pure and simple deputation of service.

(10) In view of the right of the deputationists vis-a-vis the right of the parent department to call back the deputed employee in exigency of service the action of the respondent authorities to repatriate the petitioners to the parent department cannot be found to be faulted with. Although the impugned order for repatriation was passed on 14th May, 2010, and the petitioners having deputed for three years they are entitled to continue upto 28. 11. 2010 but only few days havi

ng been left to complete 3 years, in the meantime, I do not consider that any substantial injustice has been caused to the petitioners by repatriating them to the parent department.

(11) The respondent Nos. 3 and 4 have been permanently absorbed in the department against the two vacant posts and the deputed department considered their case in seriatum as found in the deputation order dated 28. 11. 2007 and the two posts having been fallen vacant during that time and the parent department having signified its consent for such absorption, the respondent Nos. 3 and 4 were permanently absorbed. It is the further case of the respondents that there is no other vacant posts to absorb the petitioners permanently, that apart, their services are required in the parent department for public department and the impugned order of repatriation having been passed on such consideration, the alleged ground of discrimination argued by Mr. Ete has no legs to stand. In view of the above discussions, I do not find any merit in these Writ Petition and stand dismissed. The earlier interim order (s) stand vacated.