



THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 22nd MARCH, 2023

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP(C) No.20 of 2019

Petitioner : Santosh Dong

versus

Respondents : State of Sikkim and Others

Application under Articles 226/227 of the Constitution of India

Appearance

Mr. A. K. Upadhyaya, Senior Advocate with Ms. Rachhitta Rai, Advocate for the Petitioner.

Mr. Thinlay Dorjee Bhutia, Government Advocate with Mr. Shakil Raj Karki, Assistant Government Advocate for the State-Respondents.

J U D G M E N T

Meenakshi Madan Rai, J.

1. The Petitioner is aggrieved by the non-absorption of his services in the Motor Vehicles Division of the Transport Department, Government of Sikkim (hereinafter, "MV Division"), having been transferred therein on deputation on 10-09-2014, from the Human Resource Development Department (Education Department), Government of Sikkim, where he was initially appointed as a Primary School Teacher. He is further aggrieved by the Order dated 25-07-2019, issued by the Office of the Respondent No.2 repatriating him to his parent Department. The Petitioner seeks issuance of directions to the Respondents to induct him in the MV Division from 21-03-2015, the date on which the Sikkim State Subordinate Motor Vehicles Service Rules, 2015 (hereinafter, the "Service Rules"), was brought into force. He also



seeks issuance of a direction to the Respondents to grant him all pay, allowances and promotions that may have accrued to him since 21-03-2015 and for withdrawal of the repatriation Office Order bearing No.116/GEN/DOP, dated 25-07-2019.

2. Learned Senior Counsel for the Petitioner advanced the argument that by virtue of Rule 4(1) of the Service Rules it is evident that the Petitioner is entitled to be absorbed into the MV Division as at the time of framing of the Service Rules the Petitioner was already holding the post of Assistant Motor Vehicles Inspector (AMVI). That, the Rule specifies that persons holding posts as included in Schedule I shall be deemed to have been appointed to the service from the appointed day. It was next contended that one Roshan Gurung, Computer Technician in the Home Department joined the MV Division on 04-03-2014 as AMVI also on deputation. That, on the Service Rules (*supra*) being enforced he was not only inducted formally to the post of AMVI, but later promoted to the post of Motor Vehicles Inspector (MVI). The attention of this Court was drawn to the Office Order bearing No.3016/G/DOP, dated 19-09-2017, whereby five persons were inducted into the Sikkim State Motor Vehicles Service in terms of Rule 4(1) of the Service Rules and it was contended that the procedure laid down by the Service Rules were not complied with in the case of the Petitioner. That, non-induction of the Petitioner in the MV Division despite multiple representations made by him amounts to violation of Articles 14 and 16 of the Constitution of India. Consequent upon the order of repatriation, *viz*; Office Order dated 25-07-2019 the Petitioner joined duty in his parent Department on 23-12-2019, but was retransferred on deputation to



the Transport Department on 10-06-2022 vide Order No.290/GEN/DOP indicating his suitability for manning the post. That, in fact as the Petitioner was deemed to have been appointed as AMVI in terms of Rule 4(1) of the Service Rules there was no room for repatriating him to his parent Department reasoning that he did not fulfil the minimum requirement stipulated by the Rules for the post of AMVI. Learned Senior Counsel further contended that executive orders cannot prevail over Rules framed, in the instant case being the Service Rules (*supra*), towards which reliance was placed on ***State of Madhya Pradesh and Others*** vs. ***Yogendra Shrivastava***¹. That, when the terms and conditions of the services of an employee are governed by the Rules made under a statute or the proviso appended to Article 309 of the Constitution of India laying down the mode and manner in which the recruitment would be given effect to, no order under Article 162 of the Constitution can be made by way of alterations or amendments of the said Rules. On this aspect, reliance was placed on ***Punjab State Warehousing Corpn., Chandigarh*** vs. ***Manmohan Singh and Another***² and ***A. K. Bhatnagar and Others*** vs. ***Union of India and Others***³. Hence, the Petitioner be granted the reliefs sought.

3. Learned Government Advocate refuted the contentions raised by the Petitioner and submitted that in the first instance the Petitioner has failed to establish as to who exactly were the persons similarly situated with him and how they were treated differently in terms of their services being inducted into the MV Division while excluding the Petitioner, sans documents. That, Roshan Gurung referred to by the Petitioner was a Mechanical

¹ (2010) 12 SCC 538

² (2007) 9 SCC 337

³ (1991) 1 SCC 544



Assistant in the Home Department and was in fact already on deputation to the post of AMVI prior to 04-03-2014, much before the enforcement of the Service Rules of 2015 and subsequently, vide Office Order bearing No.160/MV/T, dated 04-03-2014 (Annexure R9), his services were absorbed in the post of AMVI under the MV Division. That, in the circumstances, the Petitioner cannot claim to be similarly circumstanced as him. That, reliance on Rule 4(1) of the Service Rules renders no assistance to the Petitioner's case as on the date of enforcement of the Rules he was not holding the post of AMVI, but was merely on deputation to the said post making the Rules inapplicable to him. It was next contended that the Writ Petition is in fact infructuous for the reason that the Petitioner was repatriated in 2019 to his parent Department and brought on deputation to the MV Division again in 2022, while his grievance relates to the year 2019. That apart, the Petition suffers from delay and laches having been filed in 2019, four years and two months after the Service Rules came into force in 2015. That, it is now settled law that a deputationist cannot assert and succeed in any claim for absorption in the Department where he works on deputation. This submission was buttressed by the ratio in **Kunal Nanda vs. Union of India and Another**⁴. Hence, the Writ Petition deserves a dismissal for the aforesaid circumstances.

4. Having heard Learned Counsel for the parties and examined all pleadings and documents on record, the only question that falls for consideration before this Court is; Whether the Petitioner can claim absorption of his services as of right in the

⁴ (2000) 5 SCC 362



Motor Vehicles Division of the Transport Department where he was transferred on deputation?

5. The entire claim of the Petitioner is premised on Rule 4(1) of the Sikkim State Subordinate Motor Vehicles Service Rules, 2015, dated 20-02-2015, published vide Sikkim Government Gazette bearing No.99 dated 21-03-2015, which provides as follows;

- “4. Initial constitution of Service.-
- (1) In its initial constitution, persons holding posts as included in Schedule I shall be deemed to have been appointed to the Service from the appointed day,
- Provided that such persons who are not interested to be appointed to the service at its initial constitution shall, within 30 (thirty) days from the appointed day, convey his/her intention to the Government in writing opting out of the service. Option once exercised shall be final.
- (2)”

Schedule I referred to in the Rules provides for the strength and composition of the cadre posts. At this juncture, it is essential to comprehend that initially the appointment of the Petitioner was made in the post of Primary School Teacher under the Human Resource Development Department. Thereafter, vide Office Order bearing No.141/GEN/DOP, dated 10-09-2014, he was transferred and posted to the Transport Department as Assistant Motor Vehicles Inspector concededly on deputation, with immediate effect.

6. In *The Law of Services and Dismissals* by Doabia & Doabia, 4th Edition Reprint 2012, Chapter 22 at Page 3213 - Maxims, Doctrines, Words and Phrases, the word ‘Deputation’ is defined as follows;



"Deputation.—"Deputation" means an assignment of an employee of one department or cadre or even an organization to another department or cadre or organization. The necessity for sending on deputation arises in public interest to meet the exigencies of public service. [*Umapati Choudhary v. State of Bihar*, (1999) 4 SCC 659]

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. [*State of Punjab v. Inder Singh*, (1997) 8 SCC 372]"

In fact, in **Kunal Nanda** (*supra*), the law has been clearly laid down as follows;

"6. On the legal submissions also made there are no merits whatsoever. It is well settled that unless the claim of the deputationist for a permanent absorption in the department where he works on deputation is based upon any statutory rule, regulation or order having 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 in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation. The reference to the decision reported in *Rameshwar Prasad v. M.D., U.P. Rajkiya Nirman Nigam Ltd.* [(1999) 8 SCC 381 : 2000 SCC (L&S) 60] is inappropriate since the consideration therein was in the light of the statutory Rules for absorption and the scope of those Rules. The claim that he need not be a graduate for absorption and being a service candidate, on completing service of 10 years he is exempt from the requirement of possessing a degree needs mention, only to be rejected. The stand of the respondent Department that the absorption of a deputationist being one against the direct quota, the possession of basic educational qualification prescribed for direct recruitment i.e. a degree is a must and essential and that there could be no comparison of the claim of such a person with one to be dealt with on promotion of a candidate who is already in service in that Department is well merited and deserves to be sustained and we see no infirmity whatsoever in the said claim."

7. The Sikkim Government Service Rules, 1974, which admittedly is applicable to the Petitioner, at Rule 5(11) and Rule 8 provide as follows;



“5. In these rules, unless the context requires otherwise,-

.....
(11) ‘Lien’ means the title of a Government servant to return on the termination of a period of absence to a post, which he holds substantively;

[Explanation.- The concept of lien as the title of a Government Servant to hold substantively a permanent post will undergo a change consequent on simplification of confirmation procedure as per Note (iii) below rule 7. Lien will now represent only the right /title of a Government servant to hold a regular post, either permanent or temporary, either immediately or on termination of periods of absence. The benefits of having a lien in a grade will thus be enjoyed by all Government Servant who are confirmed in the grade of entry or who have been promoted to a higher post and declared as having completed the probation satisfactorily where it is prescribed or those who have been promoted on regular basis to a higher post where no probation is prescribed under the rules, as the case may be.

The above right/title will, however, be subject to the condition that the junior-most person in the grade will be liable to be reverted to the lower grade if at any time the number of persons so entitled is more than the posts available in the grade. For example, if a person who is confirmed or whose probation in a higher post has been declared as having been completed or one who is holding a higher post for which there is no probation on a regular basis or reverts from deputation of Foreign Service and if there is no vacancy in that grade to accommodate him/her, the junior-most person will be reverted. If, however, this Government Servant himself/herself is the junior-most, he/she will be reverted to the next lower grade from which he/she will be reverted to the next lower grade from which he/she was earlier promoted.]

.....
8. Acquisition of lien.- A Government Servant who is confirmed against a post shall acquire a lien on that post while performing the duties of that post or being temporarily away from it on deputation, leave or other circumstances of authorized absence from it, except retirement, or while under suspension.

Note.- Government Servant shall not be entitled to a lien on more than one post at the same time.”

8. While elucidating the word ‘lien’ it would but be relevant to refer to the observation in **State of Rajasthan and Another vs. S. N. Tiwari and Others**⁵, which is extracted hereinbelow;

⁵ (2009) 4 SCC 700



"17. It is very well settled that when a person with a lien against the post is appointed substantively to another post, only then he acquires a lien against the latter post. Then and then alone the lien against the previous post disappears. Lien connotes the right of a civil servant to hold the post substantively to which he is appointed. The lien of a government employee over the previous post ends if he is appointed to another permanent post on permanent basis. In such a case the lien of the employee shifts to the new permanent post. It may not require a formal termination of lien over the previous permanent post.

18. This Court in *Ramlal Khurana v. State of Punjab* [(1989) 4 SCC 99] observed that: (SCC p.102, para 8)

"8. ... Lien is not a word of art. It just connotes the right of a civil servant to hold the post substantively to which he is appointed."

19. The term "lien" comes from the Latin term "ligament" meaning "binding". The meaning of lien in service law is different from other meanings in the context of contract, common law, equity, etc. **The lien of a government employee in service law is the right of the government employee to hold a permanent post substantively to which he has been permanently appointed.** (See *Triveni Shankar Saxena v. State of U.P.* [1992 Supp (1) 524])." [emphasis supplied]

9. Hence, the Petitioner cannot claim that when the Service Rules were enforced he was holding the post as included in Schedule I of the said Rules as he was merely transferred on deputation to the MV Division of the Transport Department, his substantive post being in the Human Resource Development Department where he held a lien to the post in which he was appointed. Schedule I undoubtedly applies only to persons holding the posts enumerated therein, having been appointed in the Motor Vehicles Service. It surely does not envisage inclusion of an official on deputation from another Department, the Petitioner has thus erred in interpreting the provisions of Rule 4(1). Reliance of the Petitioner in the ratio of **Yogendra Shrivastava** (*supra*) is misplaced.



9. Deputation, refers to service outside the parent Department, in the Petitioner's case from the Human Resource Development Department to the Motor Vehicles Division of the Transport Department. He cannot as of right claim induction of his services into the Motor Vehicles Division of the Transport Department for the reasons put forth above.

10. Consequently, there is no merit in this Petition, which accordingly stands dismissed.

11. No order as to costs.

12. Pending applications, if any, also stand disposed of.

(Meenakshi Madan Rai)
Judge

22-03-2023

Approved for reporting : **Yes**