

RAM PARKASH MAKKAR
v.
STATE OF HARYANA AND ORS.

SEPTEMBER 24, 1992

**[KULDIP SINGH, N.M. KASLIWAL AND B.P. JEEVAN
REDDY. JJ.]**

Civil Service :

Steno/Typist appointed in the Secretariat—Transfer to the Directorate of Local Bodies as Assistant—Selection to the post of Personal Assistant and confirmation of probation in the Directorate—Whether employee was on deputation or on regular basis appointment in the Directorate.

The appellant was appointed as a Steno/Typist on 5.1.1973 in the Secretariat. On 8.1.86, his services were placed at the disposal of Directorate of Local Bodies as an Assistant.

While he was serving in the Directorate, a vacancy arose in the category of Personal Assistant. On the basis of shorthand/type test, the appellant was selected and was promoted as a Personal Assistant. On 5.10.1988, the appellant was declared to have completed satisfactorily his probation in the post of Personal Assistant.

In 1988-89, the appellant requested the Director, Local Bodies to absorb him in the Directorate.

The Director in his letter dated 6.2.1989 to the Deputy Secretary to the Government stated that the post of Personal Assistant in the Directorate being a temporary one, and because the appellant was a confirmed employee of the Secretariat, he could not be absorbed in the Directorate unless his lien was terminated.

The Secretary to the Government in reply stated that the lien of the appellant could be terminated from the Secretariat only as and when he is confirmed in the Directorate.

On 23.2.1989, the Director in his letter to the Chief Secretary requested him to terminate the lien of the appellant to enable his absorp-

A tion in the Directorate.

On 24.10.1992, the Director reverted the appellant to his parent department with immediate effect as his services were no longer required in the Directorate.

B The appellant challenged the order of Director in a writ petition in the High Court, contending that his appointment as an Assistant in the Directorate was a regular appointment; that he was promoted as a Personal Assistant on a regular basis in the Directorate; that his probation was also declared in the post of Personal Assistant; and that he could not
C be reverted back to the Secretariat Service in the circumstances.

The respondents contended that the appellant was merely deputed to serve in the Directorate; that the order dated 7.1.86 clearly recited that the appellant could be reverted back to the parent department as and when his services were not required in the Directorate; that the very office of
D Directorate of Local Bodies was temporary department and so were of the posts therein and that in such a situation, there could be no question of regular appointment.

The Division Bench of the High Court dismissed the writ petition,
E against which the present appeal by special leave was filed.

Allowing the appeal, this Court,

HELD: 1.1. The fact that it is termed as an appointment on transfer basis coupled with the fact that his probation was commenced and declared
F to have been completed satisfactorily in the post of Assistant shows that it was a case of appointment by transfer and not one of deputation. [822-H]

1.2. The order does no doubt recite that his appointment is purely temporary and he is liable to be reverted back to his parent department at any time. But this clause must be read along with other recitals in the
G order and if so read, it must be understood as operative during the period of his probation only. Once his probation was declared to have been satisfactorily completed and - particularly after he was also promoted as Personal Assistant in the Department, and his probation commenced and declared in such post also - it appears rather odd to say that he was only
H on deputation in the Directorate. [823-B]

1.3. At no stage did any one suggest that the appellant was on deputation. It was put forward as a defence for the first time, in the writ petition. [823-F] A

1.4. In the circumstances the appellant must be held to have been appointed on regular basis as an Assistant in the Directorate and subsequently promoted as Personal Assistant. It is not a case of deputation. [824-C] B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3931 of 1992.

From the Judgment and Order dated 20.1.1992 of the Punjab and Haryana High Court in C.W.P. No. 16271 of 1991. C

O.P. Sharma, K.K. Gupta, Vivek Sharma, R.C. Gubrele, Kamal Jeet Singh and Ms. Nanita Sharma for the Appellant.

Kapil Sibal, S.P. Goel, Ms. V. Mohana, Ms. Indu Malhotra, P.N. Puri and Sudershan Goel for the Respondents. D

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. Leave granted. E

Heard counsel for the parties.

The appellant was selected as a Steno-Typist by the Haryana Subordinate Services Selection Board and appointed as such in the Haryana Civil Secretariat on 5.1.73. On 8.1.86 his services were placed at the disposal of Directorate of Local Bodies Haryana, Chandigarh as an Assistant. The order dated 8.1.86 appointing him as an Assistant in the Directorates reads as follows: F

"Shri Ram Parkash, Steno-typist, Haryana Civil Secretariat is appointed on transfer basis in this directorate as an Assistant in the pay scale of Rs.525-1050. This appointment is purely temporary and he can be reverted back to his parent department as and when his services will not be required. G

He will be on probation for one year and his lien will be H

- A retained in the Haryana Civil Secretariat until he is confirmed in this Directorate."

While he was serving in the Directorate, a vacancy arose in the category of Personal Assistant. A shorthand/type test was held on the basis of which the appellant was selected and promoted as a Personal Assistant.

- B The order of promotion reads as follows:

"Shri Ram Parkash Makkar, Assistant of this directorate is hereby promoted to the post of Personal Assistant to Director, Local Bodies, Haryana in the pay scale of Rs.1640-40-2600-EB-75-2900 + 75 Spl. pay. He will be on probation for a period of one year, which can be extended upto a maximum period of one year. If his work and conduct during the probation period is not found satisfactory, he will be liable to be reverted to the post of Assistant without assigning any reasons.

D

Dated Chandigarh
the 4th Sept. 1987.

R.S. Kailay
Director, Local bodies,
Haryana, Chandigarh.

- E His probation was declared to have been completed satisfactorily in the post of Personal Assistant by an order dated 5th October 1988. The order reads as follows:

"As per terms and conditions of promotion order of Shri Ram Parkash Makkar, Assistant to the post of Personal Assistant to Director, Local Bodies, Haryana, issued vide Endst. No.7187-2A-87/32121 dated 4.9.1987, he has been declared to have completed his probation period from 4.9.1987 to 5.9.1988 satisfactorily."

F

- G Sometime in 1988-89 the appellant appears to have requested the Director, Local Bodies, Haryana that he may be absorbed in the Directorate. He expressed his disinterestedness in going back to Secretariat. On the basis of his request a letter was written by the Director to the Deputy Secretary to Government, Haryana Secretariat Establishment (letter dated 6th February 1989) stating "that the post of Personal Assistant in this Directorate is a temporary one and he is a confirmed employee of Haryana Civil Secretariat and
- H

he can not be absorbed permanently in this Directorate, unless his lien is terminated from the Civil Secretariat. It is requested that the lien of the official may be terminated from the Civil Secretariat, so that he can be absorbed in this Directorate, as this department has no objection in absorbing this official against the post of the Personal Assistant." On 15th February 1989 a letter was addressed by the Chief Secretary to the Haryana Government to the Director, Local Bodies stating that "according to rule 3.15 of C.S.R. Vol.I Part- I, the lien of Shri Ram Parkash, Steno-typist can be terminated from Civil Secretariat only as and when he will be confirmed in your Directorate" On 23rd February 1989, the Director wrote to the Chief Secretary requesting that "the lien of Sh. Ram Parkash from the post of Steno-typist may be terminated, so that the official may be absorbed in the Directorate, as this Directorate has already referred the case of Govt. for converting the temporary posts into permanent and it is hoped that these posts will be made permanent shortly. So under the provision of rule 3.15 of CSR Vol.I Part I, the incumbent will not have to remain without lien for a long time and it will also not bring adverse effect on the services of the official."

It is not clear as to what happened later but on 24.10.91 the impugned order was passed by the Director Local Bodies, Haryana. The order reads as follows:

"Sh. Ram Parkash Makkar, Steno-typist of Secretariat Establishment, who was appointed as Assistant in this Department vide Order No.3A-86/832-33 dated 8.1.86 and now working as Personal Assistant/D.L.B., is hereby reverted to his parent department with immediate effect as per terms and conditions of his appointment letter as the services of the official and no longer required in this department.

R.K. Ranga
Director, Local Bodies, Haryana

Dated Chandigarh
the 24.10.91."

The appellant questioned the same by way of a writ petition in the High Court of Punjab and Haryana being CWP 16271 of 1991. The appellant's contention was that his appointment as an Assistant in the

A Directorate was a regular appointment, that his probation was also declared in the post of Assistant and further that he was promoted as Personal Assistant on a regular basis in the Directorate. The fact that his probation was also declared in the post of a Personal Assistant, established that his appointment in the Directorate was a regular appointment and that, in the circumstances, termination of his lien in the Secretariat service

B was only a formality. He submitted that he cannot be reverted back to the Secretariat Service in the circumstances. The Respondents, however, contended that the appellant was merely deputed to serve in the Directorate. The order dated 7.1.86, they submitted, clearly recited that the appellant can be reverted back to his parent department as and when his services

C are not required in the Directorate. They submitted that the very Office of Directorate of Local Bodies is a temporary department and so/are all the posts therein. In such a situation there can be no question of regular appointment, they contended.

D A Division Bench of the Punjab and Haryana High Court held, agreeing with the respondents that the order dated 8.1.86 shows that the appellant was merely deputed to serve in the Directorate which is evident from the fact that the order expressly recited that he can be reverted back to his parent department as and when his services are not required. The Division Bench also observed that the post on which the appellant was

E appointed as well as the department itself in which he was appointed was temporary and, therefore, question of substantive appointment to the post of Assistant or Personal Assistant cannot arise. Accordingly, the Writ Petition was dismissed.

F The main question in this appeal is whether the appellant was appointed by transfer as an Assistant in the Directorate or whether it was a mere case of deputation. We have set out hereinbefore the order of his appointment in the Directorate. The order has to be read as a whole. It says that the appellant is "appointed on transfer basis" as an Assistant in the Directorate. It also says that his appointment is purely temporary and

G that he can be reverted to his parent department as and when his services are not required. The order further says that the appellant shall be on probation for one year and that his lien in the Civil Secretariat Service will remain until he is confirmed in the Directorate. Now what do these three features read together mean? The Division Bench has laid emphasis upon

H the second feature, ignoring the first and the third. With respect we are

unable to agree with its view. The fact that it is termed as an appointment on transfer basis coupled with the fact that his probation is commenced shows that it was a case of appointment by transfer and not one of deputation. Indeed, the order expressly contemplates his confirmation in Directorate. It is true that the order does recite that his appointment is purely temporary and he is liable to be reverted back to his parent department any any time. But this clause must be read along with other recitals in the order and if so read, it must be understood as operative during the period of his probation only. Once his probation was declared to have been satisfactorily completed and - particularly after he was also promoted as Personal Assistant in the Department, and his probation commenced and declared in such post also - it appears rather odd to say that he was only on deputation in the Directorate. The correspondence between the Directorate and Secretariat referred to hereinbefore further reinforces our opinion. When the appellant expressed his desire to be absorbed as Personal Assistant in the Directorate and requested the Director to approach the Secretariat for terminating his lien, the Director agreed with his request and requested the Secretariat to terminate the appellant's lien therein so as to enable him to absorb the appellant in his service. In his letter dated 15th February, 1989, the Chief Secretary replied that his lien will be terminated only when he is confirmed in the Directorate. In his letter dated 23rd February, 1989, the Director requested the Chief Secretary again to terminate the appellant's lien in the Secretariat service so as to enable his absorption in the Directorate. All this correspondence goes to show that all that was remaining to be done was a formal order of termination of his lien in the Secretariat Service and a corresponding order of confirmation in the Directorate. It is not without significance that at no stage did any one suggest that the appellant was on deputation - not even in the impugned order. It was put forward as a defence for the first time, in the writ petition. In the face of all this material, we find it difficult to agree with the respondents that the appellant was merely deputed to serve in the Directorate and his reversion back to the Secretariat is unexceptionable.

We are also not impressed by the argument that the very Directorate is temporary and, therefore, there is no question of permanent absorption of anyone in its service. The answer to this argument is furnished by the Director himself in his letter dated 23rd February, 1989, the relevant

A portion of which has been extracted hereinabove. It is evident that the appellant stands on the same footing as other regular employees of the Directorate in this behalf.

B The learned counsel for the respondents then argued that the appellant's promotion as a Personal Assistant was contrary to rules and that he was not eligible to hold the said post. But that is not the ground upon which the impugned order was passed. The impugned order does not say anything about the appellant's eligibility to hold the post of Personal Assistant nor does it say that it is invalid for any reason. We are, therefore, not called upon to express any opinion on the above submission of the
C counsel for respondents. Suffice it to say that in the circumstances the appellant must be held to have been appointed on regular basis as an Assistant in the Directorate and subsequently promoted as Personal Assistant. It is not a case of deputation.

D For the above reasons, the order dated 24.10.1991 must be held to be contrary to law and is accordingly quashed. The Director, Local Bodies, Haryana shall consider the appellant's case for confirmation according to Rules and pass orders thereon accordings to law, within a period of three months from today. The lien of the appellant in the Secretariat service will depend upon the orders passed by the Director in pursuance of the
E directions given herein. The Civil Appeal is allowed accordingly. No order as to costs.

V.P.R.

Appeal allowed.