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UMAPATI CHOUDHARY

v

STATE OF BIHAR

MAY 14, 1999

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[MRS. SUJATA V. MANOHAR, D.P. MOHAPATRA AND
R.C. LAHOTI, JJ.]

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SERVICE LAW—Deputation—Concept of—It is consensual—It involves a voluntary decision of employer to lend services of his employee and a corresponding acceptance of such services by the borrowing employer—Consent of employee to go on deputation also required—Parent department, the borrowing authority and deputationist, had all given their consent for deputation and his permanent absorption—No material that deputation was not in public interest or vitiated by favouritism or mala fide—Since 1981, deputationist holding the post—He retired in 1996—Held, deputationist shall be treated to be a permanent employee of the borrowing department on the date of his retirement.

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The appellant, a lecturer in Post Graduate department of the University of Bihar was deputed as Controller of Examinations of the Bihar Sanskrit Shiksha Board constituted under the Bihar Sanskrit Education Board Act, 1981. The University, the parent department, the Board, the borrowing authority and the appellant the deputationist, had all given their consent for deputation of the appellant and for his permanent absorption in the establishment of the borrowing authority. The Government of Bihar in the Department of Education by a notification authorised the appellant to discharge all the duties and responsibilities of the Controller of Examinations. Appreciating his efficiency and the hard work put in by the appellant, the Board took the decision for his confirmation and consent of the University for permanent absorption of the appellant on the post of Controller of Examinations was communicated. Thereafter the appellant was appointed as Controller of Examinations under the Board.

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Some employees of the Universities challenged the deputation of the appellant as Controller of Examinations of the Board, in a writ petition. The High Court directed the State Government to make substantive appointment in that post as the appellant had been given a temporary appointment. The appellant was communicated with the order of the Chairman of the Board

terminating his service with immediate effect in anticipation of approval of the Government. The decision of the Board to terminate the service of the appellant was approved by the State Government. These orders were challenged by a writ petition. This Court by an interim order directed that the appellant be reinstated as Controller of Examinations. The appellant continued on the post and retired from that post in 1996.

Allowing the appeal, this Court

HELD : 1.1. Deputation can be aptly described as an assignment of an employee (deputationist) of one department or cadre or even an organisation (parent department or lending authority) to another department or cadre or organisation (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 or not. In the case at hand all the three conditions were fulfilled. The University, the parent department, the Board, the borrowing authority and the appellant the deputationist, had all given their consent for deputation of the appellant and for his permanent absorption in the establishment of borrowing authority. There is no material to show that the deputation of the appellant was not in public interest or it was vitiated by favouritism or mala fide. Since 1981 the appellant was holding the post of Controller of Examinations of the Board. Initially and thereafter taking into account his efficiency and sincerity in the job the Board sought permission of the University for regularising his service on that post and sent its recommendation to the State Government. The University also had communicated its consent (no objection) for permanent absorption of the appellant on the post of Controller of Examinations of the Board. Thereafter the appointment to the post was to be made by the Board and the Board had decided to regularise the service of the appellant in the said post. However, the Board sought permission of the State Government which was also accorded. [757-D-E, B]

1.2. The Single Judge had neither quashed the deputation order nor issued any direction for its termination. In these circumstances the Division Bench was clearly in error in declining to grant relief to the appellant. Further, the appellant has, in the meantime, retired from service. He shall be treated to be a permanent employee of the Board on the date of his

- A retirement on the post of Controller of Examinations and his retirement benefits shall be calculated on that basis. [757-G-H]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 336 of 1993
Etc.

- B** From the Judgment and Order dated 17.12.91 of the Patna High Court in C.W.J.C. No. 6054 of 1991

Pankaj Kalra and R.P. Singh for the Appellant.

Irshad Ahmad and U.S. Prasad for the Respondent.

- C** The Judgment of the Court was delivered by

D.P. MOHAPATRA, J. These two cases are inter-linked with each other. Both the cases have been filed by the same person Shri Umapati Choudhary. While Civil Appeal No. 336 of 1993 is directed against the judgment and order dated 17.12.1991 of the Patna High Court in C.W.J.C. No. 6054 of 1991, in Writ Petition (C) No. 667 of 1992 the petitioner has sought quashing of the orders dated 17.3.1992, 20.3.1992 and 21.3.1992 filed as Annexures 11, 12 and 13 respectively of the writ petition which appear to have been passed on the basis of the judgment dated 17.12.1991 in C.W.J.C. No. 6054 of 1991.

- E** The controversy raised in the case relates to the question whether the appellant should be treated as a permanent employee of the Bihar Sanskrit Shiksha Board (for short 'the Board') or he was on deputation to the Board from Kameshwar Singh Darbhanga Sanskrit University (for short 'the University'). The High Court having held that the appellant could not claim to be a permanent employee of the Board and his service as Controller of Examinations of the Board having been terminated on that basis, he has filed the two cases.

The factual matrix relevant for appreciating the controversy may be stated thus :

- G** The Board was constituted under the Bihar Sanskrit Education Board Act, 1981 (Act No. 31 of 1982) and it was vested with the power to direct, supervise and control Sanskrit education upto Madhyama standard in the State of Bihar. The Chairman of the Board made a request to the University to depute a competent and experienced person to conduct and control the examinations conducted by the Board vide his letter No. 21/15 dated 29.7.1981.

The Registrar of the University by his letter No. 8105/89 dated 14.8.1981 (Annexure- 2 to the S.L.P.) communicated the decision of the University granting permission for the appellant who was then a lecturer in Post Graduate department of the University to be deputed as Controller of Examinations of the board until further orders. The Government of Bihar in the Department of Education by Notification dated 17.9.1982 (Annexure- 3) authorised the appellant to discharge all duties and responsibilities of the Controller of Examinations of the Board and made the order effective from the first day of deputation. It appears from the letter of the State Government to the Accountant General, Bihar dated 16th June, 1983 (Annexure-4) that the post of Assistant Registrar (Sanskrit Education) which was created, in the Bihar Sanskrit Shiksha Parishad on being transferred to the Bihar Sanskrit Shiksha Board was re-designated as Controller of Examinations. Thereafter the question of confirmation of the appellant on the post of Controller of Examinations was taken up by the Board and by the letter dated 15.9.1983 (Annexure-5) the Chairman of the board wrote to the State Government recommending his confirmation. It appears from the said letter that the Board took the decision appreciating the efficiency and hard work put in by the appellant as Controller of Examinations took the decision for his confirmation. In the letter dated 20.4.1985 (Annexure-7) of the Registrar of the University addressed to the Chairman of the Board consent of the University for permanent absorption of the appellant on the post of Controller of Examinations of the Board was communicated. Thereafter, by the Notification dated 10th November, 1986 (Annexure-8) issued by the Department of Education of the Government of Bihar the appellant was appointed as Controller of Examinations under the Board on the pay scale of Rs.1000-1820 from the date of issue of the Notification till further orders.

Some employees of the University challenged the deputation of the appellant as Controller of Examinations of the Board before the Patna High Court in a writ petition, C.W.J.C. No. 2230 of 1982 which was disposed of by Single Judge of the Court by the judgment dated 13.11.1987. The operative portion of the said judgment reads as follows:

"10. Respondent no. 3 has been given a temporary appointment and not a substantive appointment. Service conditions for the post of the Controller of Examination are yet to be provided for. The respondent— State Govt. and the Board are duty bound to decide finally whether they shall have a Controller of Examination or not and if they decide to have one they must have a procedure to make a substantive

A appointment. Since the office of the Controller of Examination is not yet permanently filled is by a qualified person in my view, ends of justice shall be satisfied by giving a direction to the State Government to proceed forthwith to decide the mode of appointment and service conditions of the posts of Controller of Examination and make substantive appointment in the said post. The State Government will complete the necessary formalities within six months from today. If such formalities are not completed within six months and the temporary appointment of the respondent No. 3 is continued any further it shall be open to the petitioners to Question the validity and genuineness, of the appointment by notification dated 10.1.1987.

C 11. In the result, with the directions made above, this application is dismissed. There shall be no order as to costs."

This judgment is under challenge in Civil Appeal No .336 of 1993.

D In pursuance of the aforementioned judgment of the High Court the Secretary of the board by the order dated 17.3.1992 (Annexure-II of the Writ Petition) communicated to the appellant the order of the Chairman terminating his service with immediate effect in anticipation of approval of the Government. The relevant portion of the communication reads as under :

E "In pursuance of the Judgment dated 17.12.1991 passed by the Hon'ble High. Court in C.W.J.C. No. 6054/91 on the above subject and under the order of the Chairman, Bihar Sanskrit Education Board your services are terminated with immediate effect in anticipation of the approval of the Government."

F The decision of the Board to terminate the service of the appellant was approved by the State Government vide Notification dated 21.3.1992 Annexures 14 & 15) issued by Commissioner-cum- Secretary, Human Resources Development Department, Bihar. These orders are under challenge in the writ petition. Therein by order passed on 27.1.1993 in I.A.No. 1 of 1992 this Court while issuing notice ordered that in the meantime operation of the impugned orders in Annexure-II dated 17.3.1992 (Annexure-14) dated 21.3.1992 shall remain stayed. This Court further directed that the petitioner be reinstated as Controller of Examinations and be paid his arrears of salary upto date, within two months from the date of the order, by the Board. The learned counsel appearing for the petitioner/appellant submitted that in pursuance of the said order the petitioner/appellant continued on the post of Controller of

H Examinations of the Board and retired from the said post sometime in 1996.

From the contents of the documents discussed in the preceding paragraphs the position that emerges is that since 1981 the appellant was holding the post of Controller of Examinations of the Board. Initially he was brought on deputation from the University and thereafter taking into account his efficiency and sincerity in the job the Board sought permission of the university for regularising his service on that post and sent its recommendation to the State Government. The University also had communicated its consent (no objection) for permanent absorption of the appellant on the post of Controller of Examinations of the Board. Thereafter the appointment to the post was to be made by the Board and the Board had decided to regularise the service of the appellant in the said post. However, the Board sought permission of the State Government which was also accorded.

Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to 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 or not. In the case at hand all the three conditions were fulfilled. The University, the parent department or lending authority, the Board, the borrowing authority and the appellant the deputationist, had all given their consent for deputation of the appellant and for his permanent absorption in the establishment of the borrowing authority. There is no material to show that the deputation of the appellant was not in public interest or it was vitiated by favouritism or mala fide. The learned single Judge in the previous writ petition had neither quashed the deputation order nor issued any direction for its termination. Indeed the learned single Judge had dismissed the writ petition. No material has been placed before us to show that between November 1987 when the judgment of the single Judge was rendered and December 1991 when the Division Bench disposed of the writ petition filed by the appellant the petitioners of the previous case had raised any grievance or made any complaint regarding non-compliance of the directions made in the judgment of the learned single Judge. In these circumstances the Division Bench was clearly in error in declining to grant relief to the appellant. Further, the appellant has, in the meantime, retired from service, and therefore, the decision in the case is relevant only for the

A purpose of calculating his retiral benefits.

On consideration of the entire matter we are of the view that the High Court was in error in dismissing the writ petition filed by the appellant.

Accordingly the appeal is allowed. The impugned judgment dated 17.12.1991 in C.W.J.C. No. 6054 of 1991 is set aside. Consequentially, the writ petition No .667 of 1992 is allowed and the orders dated 17.3.1992, 20.3.1992 and 21.3.1992 which are based on the judgment in C.W.J.C. No. 6054 of 1991 are quashed. The appellant shall be treated to be a permanent employee of the Board on the date of his retirement from the post of Controller of Examinations and his retirement benefits shall be calculated on that basis.

C There will, however, be no order as to costs.

R.A.

Appeal and petition allowed.