

HIGH COURT OF CHHATTISGARH : BILASPUR

WRIT PETITION (S) NO.2741 OF 2012

PETITIONER

Sagir Khan

Versus

RESPONDENTS

State of Chhattisgarh & Another

Single Bench : Hon'ble Shri Prashant Kumar Mishra, J.

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Present :- Shri Anil Singh Rajput, Advocate for the petitioner.

Shri Ajit Singh, Panel Lawyer for the State.

Shri B.L. Sahu, Advocate for the respondent No.2.

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ORDER (OPEN COURT)

(Passed on this 2nd day of September, 2014)

Heard learned counsel for the parties.

1. Petitioner has challenged the legality and validity of the order dated 19-7-2012 (Annexure – P/2) whereby the State Government has transferred him from BRCC (विकासखण्ड स्रोत केन्द्र समन्वयक), District Korea to Panchayat and Rural Development Department, on his repatriation to the Panchayat Department.
2. The petitioner is a Shiksha Karmi Grade II. Vide order dated 15-3-2012 (Annexure – P/1) passed by the District Project Coordinator, Rajeev Gandhi Shiksha Mission, Korea (for short 'RGSM') the petitioner was directed to work as BRCC at Khadgawa.
3. According to the learned counsel for the petitioner, by order dated 15-3-2012 the petitioner was sent on deputation, therefore, the petitioner cannot be repatriated without obtaining his consent.
4. Learned counsel for the State would submit that the order Annexure – P/1 was passed by the District Project Coordinator, RGSM, Korea, without mentioning that the petitioner is sent on deputation, therefore, even if it is mentioned in the impugned order that the services are repatriated, it would not make any difference. He would further submit

that even otherwise for conclusion of deputation and consequent repatriation consent of the concerned employee is not necessary.

5. On reading of the order dated 15-3-2012, it would manifest that the petitioner's post is mentioned therein as Teacher (Panchayat) meaning thereby that he is the employee of the Panchayat Department, however, the order Annexure – P/1 was passed by the District Projector Coordinator, RGSM, Korea. It does not appear that at the time of passing of order Annexure – P/1 consent of the Panchayat Department was obtained. In the impugned order Annexure – P/2, passed by the Department of School Education, opening part of the order reads that the following BRCC/Lecturer/Head Master/PTI are transferred on administrative exigency meaning thereby that the same is an order of transfer, however, since the petitioner is substantively appointed as Teacher (Panchayat) in the Department of Panchayat his services were repatriated to the Panchayat Department.
6. In *Kavi Raj and Others v. State of Jammu and Kashmir and Others*<sup>1</sup> the Supreme Court held thus :

“22. Having given our thoughtful consideration to the submissions advanced at the hands of the learned counsel for the rival parties we are of the view that the submissions advanced on behalf of the respondents as have been summarized above are unexceptionable. It is, therefore, not possible for us to accept that the appointment of the appellants was substantively made to a cadre under the Directorate of Medical Education. We are also of the view that the appointment of the appellants in the Directorate of Medical Education was clearly by way of deputation. Their posting at the Government Medical College, Jammu (and/or at the hospitals associated therewith) was most certainly beyond their parent cadre, and therefore, by way of deputation. The reasons for our aforesaid conclusions, are being recorded in the following paragraphs.

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<sup>1</sup>(2013) 3 SCC 526

24. Before concluding, it is essential to deal with certain inferences drawn by the learned Single Judge of the High Court. According to the learned Single Judge, prior consent of an employee is imperative, binding, peremptory and mandatory, before he is posted on deputation outside his parent department. No statutory rule has been brought to our notice, requiring prior consent of an employee, before his deployment against a post beyond his parent cadre. The mere fact that the appellants' consent was not sought before their posting at the Government Medical College, Jammu (and/or at the hospitals associated therewith) would not, in our view have any determinative effect on the present controversy. Broadly, an employee can only be posted (or transferred) to a post against which he is selected. This would ensure his stationing, within the cadre of posts, under his principal employer. His posting may, however, be regulated differently, by statutory rules, governing his conditions of service. In the absence of any such rules, an employee cannot be posted (or transferred) beyond the cadre to which he is selected, without his willingness/readiness. Therefore, an employee's posting (or transfer), to a department other than the one to which he is appointed, against his will, would be impermissible. But willingness of posting beyond the cadre (and/or parent department) need not be expressly sought. It can be implied. It need not be in the nature of a written consent. Consent of posting (or transfer) beyond the cadre (or parent department) is inferable from the conduct of the employee, who does not protest or contest such posting/transfer. In the present controversy, the appellants were issued posting orders by the Principal, Government Medical College, Jammu, dated 30.12.1997. They accepted the same, and assumed charge as Senior/Junior House Officers at the Government Medical College, Jammu, despite their selection and appointment as Assistant Surgeons. Even now they wish to continue to serve against posts in the Directorate of Medical Education. There cannot be any doubt about their willingness/readiness to serve with the borrowing Directorate. The consent of the appellants is tacit and unquestionable. We are therefore of the view that the learned Single Judge of the High Court clearly erred on the instant aspect of the matter."

(Emphasis added)

7. Thus, the petitioner's posting as BRCC in the RGSM, outside his parent department, can at best be treated as deputation. However, it does not confer him any right to remain on deputation for an indefinite period.

8. It is settled law that if an order of deputation is for a fixed period then the employee cannot be repatriated unless there are compelling reasons. Similarly, if the order of deputation does not provide for any fixed period of deputation it is for the concerned authority to pass an order of repatriation as and when necessity arises on the ground of administrative exigency.

9. In *Kunal Nanda v. Union of India and Another*<sup>2</sup>, the Supreme Court held thus :

“6.....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.....”

10. In *Ratilal B. Soni & others v. State of Gujarat & others*<sup>3</sup>, it has been held by the Supreme Court that an employee on deputation can be repatriated to the parent cadre at any time as he does not have any right to continue on the deputation basis.

11. In this context, it is profitable to refer to the decision of the Supreme Court rendered in *Umapati Choudhary v. State of Bihar and Another*<sup>4</sup>, wherein their Lordships have observed thus:

“8. 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....”

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<sup>2</sup>(2000) 5 SCC 362

<sup>3</sup>AIR 1990 SC 1132

<sup>4</sup>(1999) 4 SCC 659

12. The Supreme Court in *Union of India and another v V. Ramakrishnan and others*<sup>5</sup>, held thus :

“32. Ordinarily, a deputationist has no legal right to continue in the post. A deputationist indisputably has no right to be absorbed in the post to which he is deputed. However, there is no bar thereto as well. It may be trued that when deputation does not result in absorption in the service to which an officer is deputed, no recruitment in its true import and significance takes place as he is continued to be a member of the parent service. When the tenure of deputation is specified, despite a deputationist not having an indefeasible right to hold the said post, ordinarily the term of deputation should not be curtailed except on such just grounds as, for example, unsuitability or unsatisfactory performance. But, even where the tenure is not specified, an order of reversion can be questioned when the same is mala fide. An action taken in a post-haste manner also indicates malice.”

13. The Supreme Court in *U.P. Gram Panchayat Adhikari Sangh and others v. Daya Ram Saroj and others*<sup>6</sup>, held thus :

“57. Once we hold that the respondents were on deputation to the Gram Panchayats, the position of deputation in service is well settled by a catena of decisions of this Court. Avoiding multiplicity, we refer to Kunal nanda v. Union of India (supra) as under:-

“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.”

14. Consequently, the writ petition, being *sans substratum*, stands dismissed. The interim order granted in favour of the petitioner stands vacated. Copy of this order be sent to the respondents forthwith.
15. There shall be no order as to costs.

J u d g e

Gowri

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<sup>5</sup>(2005) 8 SCC 394

<sup>6</sup>(2007) 2 SCC 138