

Before K. Kannan, J.

KAMAL SINGH & OTHERS,—Petitioners

versus

STATE OF HARYANA & OTHERS,—Respondents

CWP No. 14005 of 2008

30th June, 2010

Constitution of India, 1950—Art.226—Creation of a new District—Transfer of some employees on deputation without their consent—Promotion of certain junior employees ignoring claims of deputationists—Action of respondents in transferring petitioners on deputation to newly formed district without consent is indefensible—Petitions allowed with costs, orders of deputation cancelled and petitioners held entitled to be repatriated to their respective posts.

Held, that the action of the respondents in transferring the petitioners on deputation to the newly formed district without the consent is indefensible. All the persons are entitled to be repatriated to their parent posts. Their seniority will be reckoned from the date of their initial appointment at the district Gurgaon and any promotions that had been offered to persons who were holding that post subsequent to that date shall be given to the respective petitioners on the date when a subsequent appointee was offered promotion. It shall be of no consequence that the post which the petitioners are vacated had been filled up subsequently by fresh appointments. If they are to be treated as surplus, they may either be readjusted to the newly formed district or their services shall be terminated in accordance with law. If the termination of service of such surplus posts become impossible by virtue of any order of any court at the instance of proceedings by persons, who have been appointed at DRDA Gurgaon subsequently, it shall still be not taken as a ground to deny to the petitioners a right of repatriation. The entitlement of the petitioners to obtain repatriation shall be shown to the Court in which the writ petition is pending and it shall be open to the respondents to take appropriate decisions subject to the directions of the Court, which by law they would be entitled to.

(Para 8)

Ms. Preeti Khanna, Advocate, *for the petitioners.*

Ravi Dutt Sharma, DAG Haryana, *for respondents No. 1 and 2.*

Dinesh Sharma, Advocate, *for respondents No. 3 and 5.*

Vikas Bishnoi, Advocate, *for respondent Nos. 4 and 6*

K. KANNAN, J.

(1) All the petitioners are deputationists at the office of District Rural Development Authority (DRDA) Mewat, who had earlier held permanent employment at the office of DRDA, Gurgaon. The transfer on deputation from Gurgaon to Mewat took place at the time when a new district was created in the State of Haryana, which was earlier a part of the Gurgaon District. The office order, which was issued on 7th June, 2005 by that Additional Deputy Commissioner-cum-Chief Executive officer read that the temporary transfers of the petitioners were made for the proper functioning of office in the newly created Mewat District. The orders of transfer specifically stated that the respective staff will be treated as on deputation to DRDA, Mewat but they shall not be entitled to any deputation allowance. By subsequent memorandum issued by the Financial Commissioner and Principal Secretary that the person working in DRDA, Mewat would continue until further orders.

(2) The grievance of the petitioners was from amongst persons on deputation when orders were made cancelling the deputation of some persons on 28th March, 2006 when the 8th petitioner was ordered to be transferred to DRDA Mewat in the place of one Balbir Singh, who was an Accountant at DRDA, Faridabad, who had been initially so deputed. Subsequently on 4th October, 2007, deputation of another official was cancelled and reverted to his parent authority at Gurgaon. The attempt of the petitioners was to show that the deputations and transfers were done without any rationale and the respondents were merely adopting a pick and choose approach. Their grievance obtained a further dimension when certain of the officials at Gurgaon were made permanent and given promotions but the petitioners, who had been permanent officials and senior to the promoted staff were not even considered. The posts were rendered vacant by the petitioners' deputation were getting periodically filled up by direct appointments without affording to any of the petitioners their option for

repatriation. It was at this time that the petitioners have sought for information under Right to Information Act through their application dated 14th September, 2007 to elicit information about the promotions that had been offered to temporary employees, who were juniors to the petitioners. The information that was received on 31st January, 2008 (Annexure P-6) revealed the following:—

- “1. It was stated that the seniority of employees sent on deputation to DRDA, Mewat was not taken into account while making promotions/appointments in DRDA, Gurgaon.
2. At the time of making such promotions, consent of employees of DRDA, Mewat, who were sent on deputation had not been taken for being repatriated and promoted to the posts which were offered to persons juniors to the petitioners. This was, however, clarified by a memo dated 4th December, 2006 issued by the office of the Additional Deputy Commissioner, Gurgaon, all the State Departments/DRDAs were asked regarding deputation and copies were marked to DRDA Mewat but no replies had been received.
3. The promotions/appointments had not been made under any specific rule of DRDA Employees Service Rules, 2001.
4. No consent had been obtained from the Directorate, Rural Development Department, Chandigarh to ignore the claims of the employees sent on deputation to DRDA, Mewat.”

The information unearthed same like to the Special Secretary and Director, Rural Development Department, Haryana when he had ordered on 7th March, 2008 that the deputations/promotions/transfers of employees were being issued by the Deputy Commissioners of the DRDAs at their own level, when they were not competent to make such order as per the Service Rules. It was submitted in that order that the department was facing a lot of legal complications in view of such actions of the Deputy Commissioners and rested the responsibility to such officers who were issuing orders without prior approval from the Government. The petitioners joined together and made a representation to the Financial Commissioner to cancel the orders of deputations and repatriated them to their parent department. The petitioners are also warned through their letter dated 4th June, 2008 that if the communications did not evoke appropriate

response, they would be constrained to seek action through Court. Similar communications had also been sent to the Additional Deputy Commissioner at Gurgaon.

(3) Finding that the notices did not evoke their desired response, the writ petition has been filed with the prayer that the orders issued sending them on deputation from Gurgaon to Mewat without securing their consent to be bad in law and for issuance of a mandamus directing the official respondents No. 1 to 3 to forthwith repatriate the petitioners back to their parent department and consider their respective claims for promotion in accordance with the seniority. Respondents No. 1 to 3, who are the Financial Commissioner, Special Secretary and the Deputy Commissioner at Gurgaon have filed the written statements. The Deputy Commissioner and the Additional Deputy Commissioner, Gurgaon on the one hand and the Deputy Commissioner and the Additional Deputy Commissioner, Mewat on the other hand have filed their respective separate statements. It is contended by the respondents that there is no scope for an assumption for the petitioners that they were permanent staff and it was a matter of policy that DRDA ought not to have any permanent staff. When the petitioners had been transferred to Mewat, which was a part of the larger district of Gurgaon, their services had been assimilated in the area of Mewat itself, for the alternate situation that was emerged was the establishment could have dispensed with the services of the officials when a new District was formed. It is further contended that the Service Rules did not recognize to be at par with the Government except to the extent which was provided by the District Development Rural Agencies Service Rules, 2001. The aims of the agency were primarily to address the task of the rural development and to keep the interest of the employees subordinate to this "primary objective of alleviation of rural points" (sic). Although all the petitioners had been referred to as transferred and posted on deputation at the newly formed district at Mewat, they were actually serving in the same geographical area as they were working in the earlier larger district of Gurgaon. The respondents, therefore, sought to contend that the expression "deputation" itself had been used not in a technical sense but it should be understood as an expression in common parlance that they had been allowed to continue with the working at the same place although in a different District, which was newly carved out from Gurgaon. The rules themselves did not provide for any deputation in the legal sense and all the petitioners had been sent on transfer by the respondents, which was willingly accepted by the petitioners, which the respondents would attribute to the so-called perception of the

transferees that they would get rapid promotions in the newly created district. The petitioners have not been transferred to any far-flung areas but they were retained in the same place of the erstwhile District to Haryana carved out from Gurgaon. By the constitution of a new district, they had to be adjusted at the same place although assigned to new district. Only the name of the district had been changed otherwise the petitioners had not gone through any particular disadvantage. The change of place and transfer of petitioners was the result of necessity and requirement as per the creation of a new district. The workforce from the existing district had to be picked up to run the administrative work in a new district and if a new district would not have been formed, it would have been perfectly possible that the petitioners would have been liable to be posted in the Mewat area being a part of the erstwhile Gurgaon district. The places where the petitioners had been posted were Nuh, Forozepur Jhirkha, Taoru and Punhana, which were earlier part of the Gurgaon District.

(4) During the pendency of the writ petition, the respondents No. 1 and 2 appear to have seen same justification in the complaints of the petitioners that some of them, who had been transferred to Mewat district had been denied the benefit of promotions, which they would have obtained if they had continued in Gurgaon district. The Director, Rural Development, Haryana Sh. Vimal Chandra filed an affidavit in Court that to redress the grievance of the petitioners, the DRDA, Gurgaon was to reconsider/revise the orders of the deputation of the petitioners to DRDA, Mewat and fresh orders of promotion/appointment ought to be made in DRDA, Gurgaon against vacancies thereafter. While specifically advertng to causes of persons, who had been appointed subsequently to the petitioners at Gurgaon and who had gained promotions, the affidavit stated that the readjustment would take about four to five months and they had sought for completing the reconsideration of the appointments made by a period of six months. This affidavit and the communications sent by the Additional Deputy Commissioner at Gurgaon appears to be evidently to placad the administrative admonition that flows from the communication of the Special Secretary and Director, Rural Development Department issued on 7th March, 2008, which we have referred to above.

(5) The pleadings of the parties show that when the petitioners were sent on deputation to Mewat District, the respondents were implying the terms of deputation as synonymous with transfers and such transfers were accepted by all the petitioners without any objection. The transfers

were also became necessary by the formation of a new district and the petitioners came by benefit of not having list their jobs for the fall in number of posts by the reduction in size of the District Gurgaon. The petitioners could not treat themselves as permanent employees at Gurgaon and according to the respondents, the petitioners were merely spirited by a desire to get back to the city like life of Gurgaon instead of working in the Mewat district. Even apart from the matter covered through pleadings some additional facts have been brought through documents which are not governed by pleadings. Learned counsel appearing for the Deputy Commissioner, Mewat has produced before Court without any application at the time of arguments some office orders relating to an order of promotion issued to the 2nd petitioner Kishan Lal from his original post of Clerk-cum-Data Entry Operator to Junior Computer Programmer with higher scales of pay by order dated 28th March, 2007. Shri Soraj Sharma (4th petitioner) referred to as Sheoraj Singh, who was working as a Peon in Mewat was promoted as a Clerk on 25th July, 2007. This order, however, appears to have been subsequently withdrawn on 14th December, 2007. It appears subsequent to the writ petition, when newly appointed persons at Gurgaon in the vacancies created by transfer on deputation of the petitioners to Mewat were sought to be withdrawn, they had filed writ petitions and obtained orders of stay. The employees were : (i) Vishal Garg; (ii) Ajay Swaroop; (iii) Surender Singh; (iv) Zile Singh; (v) Sanjay Singh; (vi) Dharamvir; (vi) Baljeet Singh.

(6) The actions of respondents ought to say the least and in particular the Deputy Commissioners at Gurgaon and Mewat to say leas the least are most arbitrary. It is puerile to contend that they had not understood what deputation were and they were treated as synonymous with mere orders of transfer. While a transfer could be a mere fasten of service in the constitutional scheme of things for civil service and the respective rules. Transfers cannot merely obtain justification in the absence of such rules. If such transfers are made and they are not provided for any terms of employment, they cannot persisted obtaining consent from the transferred employees. Consequently if the petitioners grievance is that they had been transferred from the District of Gurgaon to the newly formed District of Mewat without their consent, it can be no defence to contend that if a new District had not been formed they could have been transferred within the same district. Even such a justification is wrong if the terms of appointment did not provide for the same. If it was exigent that they were

required to be transferred to the newly formed district, they should have been given an opportunity to either get transferred into the newly formed district or served with notices of termination and again ought to terminate the services in the manner provided by law. It is impermissible to transfer persons to another district only because it is exigent.

(7) Even the contention that all these employees ought not to be treated as permanent employees and therefore, any fresh appointment was possible and any offer of promotion was also possible in the vacancies created by the transfer of the petitioners to the district of Mewat is equally untenable. Learned counsel appearing for the petitioners has relied extensively on several judgments on the fundamental position that deputations cannot be made without consent and the deputationists have a right of lien in the parent department and orders of promotion could not be made without reference to their respective seniority in the parent service. I am citing them merely in acknowledge of the legal flavour that the petitioners seek to give to the justice of the demand. In **Jawaharlal Nehru University versus Dr. K.S. Jawatkar and others (1)**, it was held that transfer of service to a third party without the employee's consent at a special centre established by a University could not result in transfer of the teacher's service to the other University and the teacher originally appointed would continue to be an employee of the first appointed authority. If there were ever to be abolition of posts, the principle of last come first go should apply. The position of law was made clear that no employee could be transferred without sent for one employer to another employer. In **Orissa Electrical Engineers' Service Associations versus State of Orissa and others (2)**, the position of law was reaffirmed that repatriation from a transferee employment on deputation could not be stalled on the ground that only limited posts were available in the parent cadre. The Hon'ble Supreme Court held that deputationists can be entitled to repatriation according to their lien in the parent cadre. In **State of Punjab and others versus Inder Singh and others (3)**, the concept of deputation was explained by saying that it meant service outside the cadre or outside the parent department. The deputation involved "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 of deputation, the employee had a right to come back to parent department to occupy the same position unless in the meanwhile.

(1) 1989 Supp. (1) S.C.C. 679

(2) (1998) 2 S.C.C. 563

(3) AIR 1998 S.C. 7

he had earned promotion in his parent department as per recruitment rules." The issue was whether the transfer is outside the normal field of deployment would be decided by the authority to control the service or post from which the employee would have transferred. In **Satya Narain Parcek versus State of Rajasthan and another (4)**, a person who was temporarily transferred to a junior post had his lien in the parent department could not be suspended. In **Umapati Choudhary versus State of Bihar and another (5)**, the definition of deputation was made to distinct the same as "assignment of an employee (commonly referred to as the deputationist) of one department or cadre as the parent department or lending authority) to another department or cadre or organization (commonly referred to as the borrowing authority). The necessity of sending on deputation arises in public interest to meet the exigencies in 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 **State of Mysore versus M.H. Bellary (6)**, a Five Member Bench of the Hon'ble Supreme Court held that the service of an officer on deputation in another department is treated by the rule as equivalent to services in the parent department and it is the equation between the services of the two departments that forms the basis for the Rule 50(b) of the Civil Services Rules. It stands to reason that satisfactory service and the manner of its discharge in the post he actually fills, should be deemed to be rendered in the parent department also so as to entitle him to promotions which are often on seniority-cum-merit basis. What is indicated there is precisely what is termed in official language the "next below rule" under which an officer on deputation is given a paper-promotion and shown as holding a higher post in the parent department if the officer next below him there is being promoted. In **Block Development Officers' Assn and others versus State of M.P. and others (7)**, while repatriating the deputationists, the Court held that such persons would be entitled to all those benefits in the parent department which were given to juniors and who were similarly situated and further held that their State shall consider such persons for promotion from the relevant dates when person juniors to them were considered for promotion. In **Bihar State Water Development Corporation versus Arun Kumar Mishra and others (8)**, laid down that

- (4) AIR 1997 S.C. 256
- (5) AIR 1999 S.C. 1948
- (6) AIR 1968 S.C. 868
- (7) (1996) 7 S.C.C. 260
- (8) AIR 1997 S.C. 2185

employees sent on deputation from one department to Corporation was allowed to retain his lien in the parent department. In **R.L. Gupta and another versus Union of India and others (9)**, it was observed that members going on deputation in judicial service could not lose his seniority even if he opted for deputation at his own risk.

(8) The action of the respondents in transferring the petitioners on deputation to the newly formed district without the consent is indefensible. All the persons are entitled to be repatriated to their parent posts. Their seniority will be reckoned from the date of their initial appointment at the district Gurgaon and any promotions that had been offered to persons who were holding that post subsequent to that date shall be given to the respective petitioners on the date when a subsequent appointee was offered promotion. It shall be of no consequence that the post which the petitioners are vacated had been filled up subsequently by fresh appointments. If they are to be treated as surplus, they may either be readjusted to the newly formed district or their services shall be terminated in accordance with law. If the termination of service of such surplus posts become impossible by virtue of any order of any court at the instance of proceedings by persons, who have been appointed at DRDA Gurgaon subsequently, it shall still be not taken as a ground to deny to the petitioners a right of repatriation. The entitlement of the petitioners to obtain repatriation shall be shown to the Court in which the writ petition is pending and it shall be open to the respondents to take appropriate decisions subject to the directions of the Court, which by law they would be entitled to.

(9) The writ petitions are allowed with costs awarded at Rs. 10,000. The orders of deputation are cancelled and the petitioners shall be entitled to be repatriated in their respective posts, which they held and awarded them with further promotion to which their juniors were afforded. It shall be of no consequence that any of the petitioners have been promoted in the place of deputation at the time of repatriation. They will hold the post they were entitled to and promoted if any other employee junior to him was shown to have been promoted.

(10) The writ petitions are allowed on the above terms.

R.N.R.