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Court : Patna

Decided On : Oct-14-2003

Judge : Sachchidanand Jha and B.N.P. Singh, JJ.

Acts : Service Law

Appeal No. : CWJC No. 4245 of 2003

Appellant : Md. Amanullah

Respondent : State of Bihar and ors.

Advocate for Def. : R.K. Dutta, SC 4

Advocate for Pet/Ap. : Ganesh Prasad Singh, Bindhyachal Singh and Uday Pratap Singh, Advs.

Disposition : Petition dismissed

Judgement :

S.N. Jha, J.

1. This writ petition on behalf of sole petitioner is directed against the order of the District Magistrate, Muzaffarpur dated 3-4-2003 by which a departmental proceeding has been initiated against him and he has been repatriated to his parent organisation, namely, Bihar Finished Leathers Limited. It may straightaway

be stated that validity of the departmental proceeding is not under challenge in this writ petition, the petitioner is only aggrieved by the repatriation part of the order.

2. The case of the petitioner is that he was appointed as Accounts Assistant in the Bihar Finished Leathers Limited, a Government company incorporated under the Companies Act, in 1979. In 1990 the financial-condition of the company deteriorated so much so that it was not in a position to even pay salary to its employees. Like this company, many Boards and Corporations of the State too had become sick. The State Government came out with a scheme for rehabilitation of the employees of such Boards, Corporations and Companies vide letter No. 128 dated 1-3-1996 of the Finance Department. At the first instance they were deputed as Accounts Clerk in different District Treasuries/Sub-Treasuries after observing a selection procedure. Such deputation was to continue till regular appointment on the post or their absorption in the cadre of treasury employees. The case of the petitioner is that in the aftermath of the fodder scam in the State of Bihar, vacancies occurred on the post of Accounts Clerk in different Treasuries/Sub-Treasuries in the State and therefore, while the employees of the concerned Boards/Corporations had to be rehabilitated, the Government too needed employees to man those posts. The deputation of the employees was thus to serve dual purpose. In the light of above said letter of the Finance Department dated 1-3-1996, the Directorate of Treasuries issued letter No. 305 dated 6-6-1996 for deputation of the suitable employees of the Boards and Corporations on the vacant posts in the Treasuries. Accordingly, on 14-3-1997 a list of employees of 16 Boards and Corporations including Bihar Finished Leathers Limited found suitable was finalised by the Directorate of Treasuries and sent to the Department for their deputation in different Treasuries. The petitioner was one of them. He was the solitary employee of the Bihar Finished Leathers Ltd. found suitable. He was deputed to Muzaffarpur Treasury by the said letter dated 14-3-1997. The further case of the petitioner is that Treasury Officer, Muzaffarpur allotted work of different treasury heads amongst Accounts Clerks as per duty charge and the petitioner discharged his functions as per the roster honestly, sincerely and to the satisfaction of superior officers. In the year 2001 four fraudulent withdrawals against fake bills amounting to Rs. 10,34,368/- appertaining to Primary Health Centre, Daudpur Paroo, took place. An enquiry was held by Deputy Development

Commissioner. The petitioner was asked to explain certain acts of omission and commission relating to the said withdrawals. He submitted explanation. However, without considering the same, the impugned order was issued initiating departmental proceeding against him and repatriating him to his parent organisation i.e. Bihar Finished Leathers Ltd.

3. On behalf of the respondents counter-affidavit affirmed by Treasury Officer, Muzaffarpur has been filed wherein it has been stated that the petitioner was found prima facie involved in the fraudulent withdrawals of money and accordingly departmental proceeding was initiated against him on 3-4-2003 followed by charge memo on 31-5-2003. As already indicated above, validity of the disciplinary proceeding is not under challenge and therefore, it is futile to refer to facts relating to the fraudulent withdrawals.

4. As regards his repatriation, the case of the petitioner is that as Bihar Finished Leathers Ltd. is virtually non-existent, his repatriation cannot be said to be in accord with the purpose for which the petitioner was deputed to the district Treasury, namely, rehabilitation of the employees of that as a deputationist the petitioner has no right to remain on deputation post. He referred to the case of Ratilal B. Soni v. State of Gujarat, AIR 1990 SC 1132. As regards the instant case, he submitted that the petitioner has been repatriated on account of his misconduct. It was pointed out that the Government order contained in letter dated 1-3-96 (Supra) envisaged screening of the employees for finding out their suitability. In the letter of deputation dated 14-3-97 (Supra) too it was made clear that the deputation was subject to quarterly review of the employees and only on their work being found satisfactory at the end of the year, they could be considered for extension of their deputation. After the Directorate of Treasuries was abolished and the employees of the Treasury were brought under the control of the concerned District Magistrate, fresh guidelines were framed by the Finance Department vide letter No. 6749 dated 7-10-1999 wherein also it was stipulated that continuance of the employees in the Treasury/Collectorate would depend on satisfactory service during the period of deputation and that it would be open to the District Magistrate/Deputy Commissioner to repatriate such employees whose work was not found satisfactory during deputation period, which too implies that

continuance of the deputed employees was dependent on their satisfactory work.

7. It is relevant to mention here that a policy decision was taken on 16-11-1999 not to make any deputation from the Boards and Corporation of the State Government and in the light of said policy decision, on 9-8-2002 by letter No. 6403 the Finance Department cancelled the said letter dated 7-10-1999. The letter states that services of the Board/Corporation employee deputed in Treasuries after 16-11-1999 be immediately returned to their parent Board/Corporation. The direction was reiterated by letter No. 7752 dated 25-9-2002 of the Finance Department. A Division Bench of this Court in LPA No. 482/2003 and analogous (State of Bihar v. Gopal Prasad and Ors.) has accordingly held that deputation in Government treasuries made after 16-11-1999 was not in accordance with the said Government Order and repatriation of the concerned employees did not warrant any interference. The order of the learned Single Judge by which such repatriation had been cancelled was set aside.

8. Shri Ganesh Prasad Singh submitted that deputation of the petitioner being prior to 16-11-1999, the petitioner is not covered by the resolution dated 16-11-1999 and/or letters dated 9-8-2002 and 25-9-2002 or decision of this Court in LPA No. 482/ 2003 and analogous. The submission to this extent appears to be well founded. However, in my opinion, the real issue involved in the present writ petition is whether notwithstanding the misconduct allegedly committed by the petitioner he is entitled to continue on deputation post in the Government Treasury. It may be that deputation was intended to provide better opportunities to the petitioner described by him as 'rehabilitation', while filling the vacant posts of Accounts Clerk, in the treasury at the same time, the deputation however was not on absolute terms, it was subject to the scrutiny of performance in every quarter and therefore, where the work/performance of the concerned employee was not found to be satisfactory in terms of letter dated 14-3-1997 (Supra), the authority would certainly be competent entitled to return him to his parent organisation. Besides the express terms of deputation, the position in law is well settled that a deputationist has no right to continue on the deputation post. Being permanent employee of the respective Board and Corporation the deputationists hold lien in the concerned Boards/Corporation and cannot claim an equivalent status on the

deputation post in the Government Treasury. The petitioner thus cannot claim any vested right that he cannot be repatriated to his parent organisation notwithstanding his alleged misconduct.

9. Shri Ganesh Prasad Singh submitted that the petitioner has no objection to the initiation of the departmental proceeding and if the charge is proved against him, he may be dismissed from service. Learned Standing Counsel submitted that though departmental proceeding has been initiated against the petitioner, no major penalty can be awarded to him by the District Magistrate, which can be done only by his principal employer. Thus if the petitioner is not allowed to be repatriated to his parent organisation, the result would be that he may have to be let off with some minor punishment - in the event charge against him is proved in the enquiry, which would not be in the interest of justice. The submission of the Counsel appears to be well founded. In the facts of the case it is not necessary to go into the larger question as to effect of repatriation on the petitioner's livelihood - considering which in some of the cases this Court interfered with repatriation orders, Even if it is accepted that the petitioner's deputation to Government Treasury was a measure of rehabilitation, in order to provide him livelihood, this cannot be stretched to give a carte blanche to commit misconduct and yet remain on deputation post on the plea that he was brought on deputation as a rehabilitatory measure, and if the deputation is cancelled it would affect his livelihood.

10. The repatriation in the instant case being sequel to misconduct, the decisions cited on behalf of the petitioner are of no avail to him. It is true that the resolution dated 16-11-1999 does not affect the deputation made in the past and therefore, they are not covered by decisions as contained in letters dated 9-8-2002 and 25-9-2002 directing cancellation of all deputations of the Corporations/Boards employees in the Government Treasuries or the order in LPA No. 482 of 2003. The present case stands on a different footing inasmuch as the petitioner has been repatriated not pursuant to resolution dated 16-11-1999 or decisions/letters referred to above, but on account of his misconduct, if the continuance of deputation was subject to satisfactory performance, having been found prima facie involved in the fraudulent withdrawals of Government money to the tune of Rs. 10

lacs on the basis of fake bills, the petitioner cannot claim any right to remain in the Government Treasury. I thus do not find any merit in the grievance of the petitioner.

11. In the result, the writ petition is dismissed but without any order as to costs.

B.N.P. Singh, J.

12. I agree.

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