

D.Anbalagan Vs. 1.The Deputy Director of Health Services,

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Court : Chennai

Decided On : Nov-24-2014

Judge : T.Raja

Appellant : D.Anbalagan

Respondent : 1.The Deputy Director of Health Services,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 24.11.2014 CORAM THE HONOURABLE MR.JUSTICE T.RAJ.Writ Petition (Md.No.18620 of 2014 and M.P.(MD)No.1 of 2014 D.Anbalagan ..Petitioner versus 1.The Deputy Director of Health Services, Paramakudi, Ramanathapuram District.

2.Block Medical Officer, Government Primary Health Centre, Nainarkoil - District Office, Ramanathapuram District-623 705.

3.Dr.Porselvan, M.B.B.S., Block Medical Officer, Government Primary Health Centre, Nainarkoil - District Office, Ramanathapuram District-623 705..Respondent Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of certiorarified mandamus, calling for the records relating to the impugned order of deputation passed by the 1st respondent in his proceedings Na.Ka.No.1432-A1-2013, dated 13.10.14 (received on 30.10.14 only) and the consequential relieving order passed byt he 2nd respondent in his proceedings R.No.198/PHC/2014, dated 28.10.14 (received on 30.10.14

only).quashing the same as illegal and consequently directing the respondents to retain the petitioner as Driver at Government Primary Health Centre, Ariyankottai, Ramanathapuram District.

! For Petitioner : Mr.M.E.Ilango ^ For Respondents : Mr.R.Anandhraj, 1 & 2 Government Advocate.

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ORDER

This writ petition has been filed by the petitioner, challenging the impugned order of deputation passed by the 1st respondent, namely Deputy Director of Health Services, Paramakudi, in his proceedings Na.Ka.No.1432-A1- 2013, dated 13.10.2014 and the consequential relieving order issued by the 2nd respondent, namely the Block Medical Officer, Government Primary Health Centre, Nainarkoil - District Office, Ramanathapuram District, in his proceedings R.No.198/PHC/2014, dated 28.10.2014, as illegal and also seeking a consequential direction to the respondents to retain the petitioner as Driver at Government Primary Health Centre, Ariyankottai, Ramanathapuram District.

2.By consent, the main writ petition itself is taken-up for final disposal at the admission stage itself.

3.The impugned orders are challenged on the ground that when the petitioner has been working as a member of Tamil Nadu Ministerial Service, there is no enabling provision for deputation of his services in the same department, from one place to another place.

Again assailing the impugned ordeRs.the petitioner has stated that when there is no provision for deputation of a staff belonging to Tamil Nadu Ministerial Service, from one place to another, in the same department, the impugned orders posting the petitioner on deputation in the same department, without mentioning the specific period of deputation, clearly shows mala fide attitude on the part of the respondents.

To conclude, the learned counsel for the petitioner stated that when the petitioner has been deputed from Ariyankottai to Paramakudi, the 1st respondent does not have power to exercise deputation within the same department.

4. In support of his submissions, the learned counsel also pressed into service an unreported judgment of a Division of this Court, dated 06.06.2014, passed in W.P.No.7278 of 2014 - K.Raja Prabhu Doss and another versus Employees Provident Fund Organisation and 6 otheRs. to say that deputation means service outside the cadre or outside the parent department.

The learned counsel further stated that the Hon'ble Division Bench has relied upon a judgment of the Apex Court in the case of State of Punjab and others v.

Inder Singh & Others - (1997) 8 SCC372 wherein it has been held that deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis and it goes without saying that after the expiry of the period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules.

Therefore, according to the learned counsel for the petitioner, in the present case, the necessity for sending the petitioner on deputation has also not been mentioned.

He further submitted that 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 and as such it involves the consent of the employee to go on deputation or not.

5. Therefore, it is the contention of the learned counsel that it has been settled law that before the employer sends his employee on deputation outside his parent department, the employer has to obtain the previous consent of the employee.

But, in the present case, the 1st respondent, while effecting deputation, when there being no provision, has erroneously passed the impugned order and that too without obtaining the prior consent of the petitioner.

On that basis, the learned counsel for the petitioner prayed for setting aside the impugned orders.6.Learned Government Advocate appearing for the respondents, having taken notice to take instruction, has again sought for time to file counter.

But, this Court, considering that the impugned order of deputation has been effected by the 1st respondent posting the petitioner within the same department, is of the view that it is without any justification whatsoever, as the deputation always involves the prior consent of the concerned employee.

Further, in the present case, the FIRs.respondent has not even mentioned as to why the deputation of the petitioner was necessitated.

The deputation is nothing but deputing or transferring an employee to a post outside his cadre on a temporary basis and, therefore, it goes without saying that after the expiry of the period of deputation, the employee has to go back to the parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department.

But, in the present impugned order, the period of deputation is found missing.

As I mentioned above, no deputation can take place within the same department and hence the impugned order has been passed for extraneous consideration.

Therefore, in my considered view, the impugned order of deputation and the consequential relieving order, for the aforesaid reason, cannot stand to any reason and hence they are liable to be set aside.

7.Accordingly, the writ petition is allowed and the impugned orders are set aside.

However, it is left open to the respondents to pass appropriate orders.on administrative reasons, if so warranted.

No costs.

Connected miscellaneous petition is closed.

Index:yes/No.Internet:yes/No.24.11.2014 gb To: 1.The Deputy Director of Health Services, Paramakudi, Ramanathapuram District.

2.Block Medical Officer, Government Primary Health Centre, Nainarkoil - District Office, Ramanathapuram District-623 705.

T.RAJA,J gb Order in W.P.(MD)No.18620/2014 and M.P.(MD)No.1/2014
Dated:24.11.2014

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