

Albert Vs. State of Kerala

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Court : Kerala

Decided On : Jan-12-1993

Reported in : (1994)IILLJ445Ker

Judge : G.H. Guttal, J.

Acts : Kerala State and Subordinate Service Rules, 1958 - Rule 9B

Appeal No. : O.P. No. 12057/1993

Appellant : Albert

Respondent : State of Kerala

Advocate for Def. : G. Krishnakumari, Govt. Pleader

Advocate for Pet/Ap. : K.P. Kylasanatha pillay, Adv.

Disposition : Petition dismissed

Judgement :

G.H. Guttal, J.

1. The petitioner, a Junior Superintendent in the establishment of the Directorate of Public Instruction, the respondent No. 3 herein, is currently working as Junior Superintendent in the offices under the control of the Director of Higher Secondary Education, the respondent No. 2. He is on deputation to the office under the

Director of Higher Secondary Education. He has since been promoted as Superintendent in his parent department, namely, the Directorate of Public Instruction. Therefore the respondent No. 1 the State of Kerala proposes to terminate his deputation with the respondent No. 2. By order No. D3/9051/93/DPI dated January 28, 1993, the State of Kerala extended the deputation of all employees except the petitioner. In this petition under Art. 226 of the Constitution of India the petitioner seeks an order (i) directing the State of Kerala the respondent No. 1 to stop all proceedings to transfer the petitioner from the office of the 2nd respondent where he is on deputation and (ii) a direction to the respondents 1 and 2 to complete the formalities of absorption and regularisation of the service of the petitioner in the office of the respondent No. 2 before filling up the vacancy of the Joint Director (Examinations).

2. In a nutshell, the petitioner's case is this. He has been on deputation in the Directorate of Higher Secondary Education where he expects to be promoted to higher positions like the Joint Director (Examinations). The State of Kerala has set afoot the process of absorption and regularisation of the employees on deputation. The petitioner, if continued on deputation has a 'right' to be so absorbed and promoted to a higher post created in the Directorate of Higher Secondary Education. The proposed action of the respondents in bringing on deputation employees from the Universities will harm the petitioner's prospects of promotion in the Directorate where he seeks absorption.

3. In order to appreciate the submissions made herein the facts in regard to the petitioner's deputation and the reason for the action of the respondents may be set out. The facts are in the counter-affidavit of the State of Kerala. The National Education Policy envisages re-organisation of the Secondary and Collegiate Education, whereunder the Pre-degree Course or the 11th and 12th standards would become a part of the organisation of the Higher Secondary Education. In other words, the Pre-degree education would be transferred to the schools. In order to effectuate the policy the Directorate of Higher Secondary Education was constituted. It commenced its work with a nuclear staff consisting of a Special Officer, a Junior Superintendent and clerks. The petitioner, a deputationist, belongs to this nuclear staff. The deputationists were initially taken from the

Directorate of Public Instruction. As and when the Pre-degree course is transferred from the Universities and is made a part of Higher Secondary Education, the ministerial staff in the Universities may be rendered surplus. The employees of the private colleges affiliated to the University have also staked their claims for absorption in the Higher Secondary Education Department which the Government is committed to consider. With the twin object of protecting the interest of surplus staff of the Universities and protecting the existing deputationists working in the Directorate of Higher Secondary Education the posts have been allocated to different units. One post each of Junior Superintendent has been allotted to the deputationists from the Directorate of Collegiate Education and the Directorate of Public Instruction. The petitioner occupies one such post. The only post of Senior Superintendent has been re-allotted to the staff of the Kerala University which may be rendered surplus. The post of Joint Director of Examination has been reserved for the personnel from the universities. The petitioner is proposed to be repatriated to the parent department because he has been promoted as senior superintendent in the parent department and the post of Senior Superintendent in the Directorate of Higher Secondary Education has been allotted to the Kerala University.

4. The legality of the respondents' action has to be considered against the background of the facts set out in paragraphs 2 and 3 above.

5. The Government's authority to depute its officers or receive officers on deputation is contained in Rule 9B of Part II of the Kerala State and Subordinate Service Rules, 1958. The Government's authority encompasses the power to:

(i) depute or transfer its officers

(a) from one service to another

or

(b) from one department to another within the same service

and

(ii) send to or take in officers

(a) from other Governments

or

(b) from statutory bodies.

The exercise of the above power is subject to these limitations :-

(a) the deputation/transfer should be in public interest:

(b) for reasons to be recorded in writing-un-less the deputation/transfer is in the interest of security; and

(c) the Public Service Commission shall be consulted whenever such consultation has not been specifically excluded.

6. The language of Rule 9B shows that to depute an employee to another department or continue him on deputation is a power of the Government and not a right of an employee. If the public interest requires that an employee shall continue on deputation, the Government may do so subject to the provisions of the rule. As a necessary corollary it follows that if the Government finds that public interest does not require the continued deputation of any of its servants it may repatriate him to his parent department. Significantly the power under Rule 9B is not confined to deputing Government employees from one Department to another. It extends to 'taking in officers from other Government or statutory bodies into the establishment of the Government Departments. Therefore the Government possesses the power not only to depute the officers of one department to another but also to receive officers from the statutory bodies like the Universities. Rule 9B creates a discretion in the Government to depute officers or receive officers on deputation. The employee has no right to be deputed or to continue on deputation.

7. The petitioner claims a right to continue on deputation and seeks absorption in the Directorate of Higher Secondary Education. The status of an employee on deputation can be understood from the Supreme Court's decision in Ram Parkash Makkar v. State of Haryana (1993-11-LLJ-1053). Ram Parkash a steno-grapher in the Secretariat was appointed as Assistant in the Directorate of Local Bodies. His

request for absorption in the Directorate was rejected on the ground that he was on deputation. The appointment was on transfer basis. The order of appointment envisaged confirmation in the Directorate. Upon such 'opportunity by transfer' he was indeed placed under probation. These facts were held inconsistent with the idea of deputation and consistent with appointment. Therefore the Supreme Court held that Ram Parkash was entitled to be considered for absorption in the Directorate. The distinct features of appointment being probation and confirmation, the posting which lacks these features is deputation. This is the principle that emerges from the decision of the Supreme Court. Consider the meaning of the words. To appoint means to assign an office or job, to a person. For instance, a person is appointed as manager or secretary. One does not ordinarily say that Mr. X is deputed as manager. On the other hand, to depute a person is to delegate a task or job to him. He is a delegate or deputy of one department to another. He does not belong there. His assignment is by its very nature of a limited nature-limited by time or the fulfilment of the assignment. This transitory, passing, fleeting character of assignment makes it a deputation. The petitioner belongs to the Directorate of Public Instruction where he has since been promoted. His services were temporarily assigned to the Directorate of Higher Secondary Education during its infancy.

8. The fact that the petitioner, if he is continued on deputation in the Directorate of Higher Secondary Education, will have better prospects of promotion by virtue of his seniority and experience does not create a right in him to continue on deputation, for, being a deputationist, his assignment is transitory.

9. It was then urged that the exercise of discretion by the Government in deciding to repatriate the petitioner to the parent department is arbitrary. As I have already stated the Government's decision not to extend the petitioner's deputation is based on the consideration of allocating the opportunities of employment in the Directorate of Higher Secondary Education between members of the staff of the Directorate of Collegiate Education, the Directorate of Public Instruction and the Universities. The anticipated retrenchment of the ministerial staff of the universities and colleges demands consideration of their absorption in the Directorate of Higher Secondary Education. Bearing all these circumstances in mind the

respondents have apportioned the posts so that there is a fair distribution of jobs between the different departments of the Government and the universities. The considerations on which the discretion has been exercised by the Government may be summarised. Firstly it takes into account the fact that the petitioner is promoted as Superintendent in the parent department. Secondly it effects fair distribution of opportunities between employees of the Directorate of Public Instruction and the Directorate of Collegiate Education. Thirdly the consideration of fairness to the surplus staff from the universities entered exercise of the discretion. In my opinion the Government has exercised its discretion on sound considerations. The impugned decision of the Government is not arbitrary. It is fair and just to all concerned.

10. For all these reasons there is no merit in; this O.P. It is therefore dismissed.

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