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Court : Guwahati

Decided On : May-17-2001

Judge : D. Biswas, J.

Appeal No. : WP(C) Nos. 118 and 119 of 2000

Appellant : Krishna Kumar Singh and ors.

Respondent : Union of India and ors.

Advocate for Def. : Mr. P.N. Choudhury, Addl. CGSC

Advocate for Pet/Ap. : Mr. G. Raju, Adv.

Disposition : Writ petitions dismissed

Judgement :

1. By this common judgment WP(C) No. 118/2000 and 119/2000 are proposed to be disposed of since they involve common question law.
2. The question to be answered in these petitions is whether an employee of a department has any indefeasible right to insist for his release on deputation to any other department.
3. Before the question is taken up for discussion, it would be necessary to place on record the facts of both the cases. The writ petitioners are working as Engineers in Border Roads Task Force, in short the GREF. By an order passed an

16.8.2000, this court directed the respondents to grant permission/no objection certificate to the petitioners for deputation/outside employment within a period of one month. The respondents complied with the aforesaid order and eventually the writ petitioner have been appointed. When the time came for their release from the GREF, objections have been raised on the ground that there is deficiency in the cadre strength and, as such, the writ petitioners cannot be spared for deputation.

4. Mr. G. Raju learned counsel for the petitioners argued that since the respondents did not come forward for cancellation/modification of the ad-interim order passed on 16.8.2000 and as they have complied with the same granting permission, now at this stage, they are estopped from raising objections to the release of the writ petitioners on the plea on deficiency in the cadre.

5. It may be mentioned here that aforesaid writ petitions were disposed of by the judgment and order dated 5.2.2001 directing the respondents to release the writ petitioners to enable them to join their new assignments with 28th February, 2001. The respondents preferred an appeal and a Division Bench of this court remanded the petitions back to this court for disposal afresh after taking into consideration the objections taken by the respondents in their affidavit-in-opposition.

6. The matter was heard at length. It would appear from the affidavit-in-opposition that the cadre of Engineers in the CREF is now having a deficiency to the extent of 25.33% out of the total authorized strength of the said cadre, and this is much above the permissible limit of 15%. No other ground was pleaded to defeat the claim of the writ petitioners.

7. At this stage, I would like to dispose of the first point advanced by Mr. Raju, learned counsel that once the ad-interim order was complied with without any objection, the respondents now cannot take the plea of cadre deficiency and they will have to release the writ petitioners. An ad-interim order, in my opinion, is an order which has all the facts of a final order till it is reversed, modified or made absolute. An interim order left un-challenged will not be determinative of the issue. It is the ultimate decision which is arrived at after hearing both the parties will be decisive of the matter. If the final order is contrary to, or not in tune with the interim order, in that event the interim order will lose all its efficacy. Therefore, the

argument that the respondents are estopped from raising any objection to the deputation on the ground of cadre deficiency is not acceptable in law. It, therefore, follows that the respondents are not debarring from resisting deputation.

8. Now, we are to consider the question whether an employee has any indefeasible right to go on deputation. It would be relevant to refer to the decision of the Supreme Court in *Ratilal B Soni & Ors, v. State of Gujarat & Ors.* AIR 1990 SC 1132 where the Supreme Court held as follows :-

The appellants being on deputation they could be reverted to their parent cadre at any time and they do not get any right to be absorbed on the deputation post.'

9. In (1997) 8 SCC 372, between the State of Punjab and Ors v. Inder Singh and Ors., the Supreme Court dealt with the concept of deputation and held as follows :

'The concept of 'deputation' is well understood in service law and has a recognized meaning 'Deputation' has a different connotation in service law and the dictionary meaning of the word 'deputation' is of no help. In simple words 'deputation' means service outside the cadre or outside the parent department. Deputation is 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 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. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would therefore, know his rights and privileges in the deputation post. The law on deputation and repatriation is quite settled as we have seen in various judgments which we have referred to above. There is no escape for the respondents now to go back to their parent departments and working there as Constables or Head Constables as the case may be.'

10. The above decision of the Supreme Court crystallises the position of a deputationist. He can neither insist to continue in the deputation post nor can insist

for his absorption in the borrowing department. Besides, the parent department has the powers to recall him back at anytime, even before expiry of the period of deputation. This otherwise means that the powers of the parent department to refuse deputation is engrained in the powers to repatriate at anytime before expiry of the term of deputation. That being the position, it is the parent department which is to take the final decision whether an employee would be allowed to go on deputation or not. This decision will obviously be based on a number of considerations including administrative expediency as well as the future carrier of the deputationist. The Court shall not normally interfere with such a decision of refusal when no case of discrimination is made out. The decision cannot be disturbed unless it is shown that it was for some oblique motive. The guidelines of the departmental authority on deputation produced by Mr. Choudhury, learned Addl. CGSC, clearly show that deputation is permissible despite cadre deficiency to the limit of 15% only. It is prohibited beyond that. But in the instant case deficiency is 25.33% which is higher than the minimum prescribed. This position postulates that the case at hand is one where no writ of mandamus could be issued to compel the respondents to release the petitioners to enable them to join their new assignments on deputation.

11. The writ petitions have merit and are dismissed. However, it is felt necessary to spell out that the authorities will be entitled to consider the case of the writ petitioners even though the petitions are dismissed if in the meantime, the cadre strength has undergone a favourable change or administrative expediency permits dispensation of the services of the writ petitioners.