

REPORTABLE

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA NOS. 1897 AND 1835 OF 2006

% Date of Decision : 4th March, 2008.

MR. RAVI KR. MATHUR Appellant in **LPA No. 1897/2006.**

Through Mr. Sanjay Gupta with Mr.A.K. Mathur,
Advocates.

MR. KISHAN LAL SHARMA Appellant in **LPA No. 1835/2006.**

Through Mr. Ajay Dahiya, Advocate.

VERSUS

UNION OF INDIA & ANR. Respondents.

Through Mr. P.P. Malhotra, Additional Solicitor General with Mr.Rajeev Mehra, Mr.Digit Saikia, Mr. Chetan Chawla, Mr.Gaurav Sharma and Mr. S. Bajaj, Advocates for UOI.

Mr. Sunil K. Jain with Mr. S. Borthakur and Mr.Ajay K. Bhatia, Advocates for Rajasthan High Court.

CORAM:

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

1. Mr. R K Mathur and Mr. K L Sharma are members of Rajasthan Higher Judicial Services (hereinafter referred to as RHJS, for short). Both of them were appointed as Presiding Officers of Debt Recovery Tribunal at Delhi. Notifications appointing them as Presiding Officers stipulated that they were appointed for a period of 5 years from the specified dates or till they attained age of 62 years, whichever was earlier.
2. By two separate letters dated 6th July, 2006 and 21st July, 2006, High Court of Rajasthan sought repatriation of Mr. R K Mathur and Mr. K L Sharma,

respectively from their posting as Presiding Officers to RHJS. Pursuant to these letters, the Central Government informed the appellants that their posting as Presiding Officers was terminated and they stand repatriated.

3. The appellants challenged their repatriation to RHJS by filing writ petitions. By the impugned judgment dated 7th September, 2006, the writ petitions have been dismissed. Learned Single Judge has held that the appellants had continued to retain their position as Judicial Officers of RHJS and being on deputation, the Rajasthan High Court could have recalled them at any time. It has also been held that Section 15 of the Recovery of Debts Due to Bank and Financial Institutions Act, 1993, (hereinafter referred to as “Act”, for short) relating to resignation and removal of Presiding Officer is not applicable as the tenure appointment of the appellants was subservient to the original appointment in RHJS. Reference was made to the concept of deputation “as expounded in the case of ***State of Punjab and Others versus Indersingh and others*** reported in (1997) 8 SCC 372.

4. Notifications issued for appointment of the appellants are identically worded. The appellants were appointed as Presiding Officers for a period of 5 years from the date mentioned in the notifications or till they attain the age of 62 years, whichever was earlier. A tenure appointment is “an appointment to a permanent post which an employee may or may not hold for more than a

limited period". Tenure means "the term during which the office is held". Once a person is appointed to a tenure post his appointment begins when he joins and it comes to an end on the completion of the tenure (See, ***L.P.Agarwal Versus Union of India***, reported in (1992) 3 SCC 526 and ***S. K. Kacker (Dr.) Versus All India Institute of Medical Sciences***, reported in (1996) 10 SCC 734). In ***S. K. Kacker (Dr.) case*** (Supra), the Supreme Court also examined concept of lien of a Government servant on appointment to a tenure post. It was observed that when a Government servant is appointed substantively to a permanent post or a tenure post, he becomes a Government servant for the purpose and for the period of tenure and is entitled to retain his lien unless the same is curtailed or shortened in accordance with law.

5. Our attention was also drawn to Rule 17 of the Rajasthan Higher Judicial Services Rules, which provides that on appointment to a tenure post, the lien of the judicial officer on the permanent post which he was holding shall stand suspended. The lien of the appellants as Officers in RHJS, therefore, does not get terminated. On appointment as Presiding Officers (DRT) the appellants did not cease to be members of RHJS and their lien continued, though it remained under suspension. Meaning of the term "lien" has been explained by the Supreme Court in ***Triveni Shankar Saxena Versus State of UP and Others*** reported in (1992) Suppl 1 SCC 524. In different contexts the word

“lien” can refer to 'contractual lien, equitable lien, specific lien, general lien etc.'. In legal sense 'lien' means “right of a man to retain it rightfully and continuously in his possession belonging to another until the present and accrued claims are satisfied. (Refer, Halsbury's Law as quoted in the said judgment). Lien implies that there is something in existence to which it attaches. It includes right of retention. Lien was defined in ***Paresh Chandra Nandi Versus Controller of Stores*** reported in (1970) 3 SCC 870 with reference to Railway Fundamental Rules as title of a railway employee to hold substantively a permanent post to which he has been permanently appointed.

6. Supreme Court in its recent decision in ***Union of India Versus Shardinu*** reported in (2007) 6 SCC 276 dealt with a case of the Chairperson, National Council of Teachers Education (NCTE) who had been appointed for a period of 4 years or till he attains age of 60 years, whichever falls earlier. It was held that the Chairperson could not be summarily removed on the ground that FIR was registered against him for his alleged earlier misconduct as an Officer of the State Government. There was no allegation that the Chairperson was guilty of any misconduct for the period after his appointment as a Chairperson and in the absence of any statutory provisions in the National Council for Teachers Education Act, 1993 it was held that the tenure appointment could not be curtailed unless the petitioner had incurred the qualifications mentioned

in the said Act. This decision is heavily relied upon by the counsel for appellants. However, we may notice here in the same case, the appellant Department i.e. the State of U.P. had not asked for repatriation. The Supreme Court also observed that strictly speaking the post of the Chairman was not a deputationist post as in case of an All India Service person who can be sent on deputation to the Central Government, State Government or other organizations.

7. Decision in ***Shardindu case*** (Supra) is also distinguishable for another reason. The appellants herein are officers of RHJS. The Rajasthan High Court exercises control over them in accordance with Articles 233 to 235 of the Constitution of India. The word 'control' used in Article 235 of the Constitution, has been used in the comprehensive sense. Control and superintendence of High Court over the subordinate courts and the person manning them both on judicial and administrative side is contemplated by the said Articles. In ***Guwahati High Court versus Kuladhar Phukan*** reported in (2002) 4 SCC 524) it was held that an officer belonging to State Judicial Service, who was sent on deputation can be recalled by the concerned High Court. It was also observed that the plea of the State Government that the lien of a State Judicial Officer in the Judicial Service had come to an end without consultation of the High Court cannot be accepted. Officers belonging to the

State Judicial Services are sometime lent and sent on deputation but the High Court continues to have control over the said Officers in view of Articles 233 and 235 of the Constitution. In ***Kuladhar Phukan*** (Supra) Supreme Court referred to the doctrine of Separation of Powers and need to insulate subordinate judiciary from the hands of the Executive or the Legislature. All matters touching the service carrier of incumbents of subordinate judiciary it was held are subject matter of control of the High Court.

8. We may also note our disappointment and concern on the file notings and the comments of the Ministry of Finance. DRTs have been formed as a substitute for Civil Courts and perform judicial functions. To ensure independence of the Presiding Officers, several provisions have been made to this effect in the Act. The Act provides for establishment of an Appellate Tribunal which is presided over by a Chairperson who is qualified to be a Judge of a High Court or has been a Member of the Indian Legal Service in Grade-I for atleast three years or has been a Presiding Officer of a Tribunal for atleast three years. Security of tenure and for term of office ensures independence. Section 15 of the Act provides that a Presiding Officer of the Tribunal or Chairperson of the Appellate Tribunal shall not be removed from office except on the ground of proven misbehaviour or incapacity after enquiry conducted in case of a Presiding Officer of the Tribunal by a Judge of a High

Court and in case of a Presiding Officer of the Appellate Tribunal by a Judge of the Supreme Court. The Chairperson of the Tribunal has general power of superintendence and control over the Tribunals including appraisal of work and recording of confidential reports of the Presiding Officers. Even if there were complaints against the appellants, the proper course was to forward these complaints to the Chairperson of the Appellate Tribunal of the Rajasthan High Court for further action. However, it appears that the complaints of some members of the staff and others were entertained and examined by the Ministry of Finance. This should have been avoided. We may refer here to the observations of the Supreme Court in ***Ajay Gandhi versus Bir Singh*** reported in (2004) 2 SCC 127, a case relating to Income Tax Appellate Tribunal and the administrative control of the Central Government. It was opined :

“**10.** The submissions of the respondent on the other hand are: (1) The Central Government has the necessary administrative control over the Tribunal having regard to the power to constitute the same. (2) The power of appointment of a member of the Tribunal would include a power of his transfer and posting. (3) Such a power of the Central Government is implicit from the scheme of the Act.

11. There are a large number of instances where such power of the President has been misused and having regard thereto, the impugned decisions had been taken.

12. The Income Tax Appellate Tribunal exercises judicial functions and has the trappings of a court.

13. It may be true that the Tribunal functions under the Ministry of Law and Justice and the Law Secretary is the member of the Selection Board. The Ministry of Law and Justice, Department of Legal Affairs, it is accepted, exercises a disciplinary power over the members of the Tribunal. The Allocation of Business Rules of the Government of India in respect of the Tribunal is placed under the Department of Legal Affairs, Ministry of Law and Justice. Does it mean that the Ministry of Law and Justice exercises a supervisory jurisdiction over the Tribunal? Supervisory control under the rules of allocation of business relates to the administrative matters and not the judicial ones. The functions of the Tribunal being judicial in nature, the public have a major stake in its functioning, for effective and orderly administration of justice. A Tribunal should, as far as possible, have a judicial autonomy. The provisions of Sections 252, 254 and 255, as noticed hereinbefore, confer a statutory power upon the President to constitute Benches. The Appellate Tribunal is a national Tribunal. The President, subject to delegation of powers to Senior Vice-President or the Vice-President, exercises administrative control over the members thereof. The Benches are to be constituted only by the President. No other authority is empowered to do so.”

9. The appellants herein have been recalled pursuant to orders passed by the Chief Justice of the Rajasthan High Court. We may note that in the case of Mr. K. L. Sharma proceedings of misconduct were initiated against him when he was working as a Judicial Officer in RHJS before his appointment as a Presiding Officer, DRT. The proceedings culminated in passing of the Order

dated 14th August, 2000 imposing punishment of stoppage of one annual increment with cumulative effect. This Order was approved by the Full Court of the Rajasthan High Court on 22nd July, 2006. Mr. K L Sharma after being recalled submitted an application seeking voluntary retirement w.e.f. 14th August, 2006, which was sent by fax on 3rd August, 2006. Mr. K L Sharma during the course of proceedings before this Court, after initial hesitation, admitted having sent this letter for voluntary retirement and his signatures thereon. We may also note here that enquiry proceedings have been initiated against Mr. K L Sharma for allegedly receiving illegal gratification while working as Presiding Officer of DRT and said proceedings are still pending. Files of Rajasthan High Court reveal that there are three other complaints and enquiries pending against Mr. K. L. Sharma. It was in these circumstances that the Chief Justice of Rajasthan High Court had recalled Mr. K. L. Sharma in the interest of administration.

10. Similarly, in the case of Mr. R. K. Mathur, several staff members had made serious complaints against him. Some of the women staff members had made allegations of harassment. There were also allegations of financial misconduct. These allegations were put up before the Chief Justice of the Rajasthan High Court who felt that in general public interest that Mr. R. K. Mathur should be recalled. We have refrained from mentioning in detail allegations made in these complaints. We may also note here that both the officers have now retired from RHJS. The appellants have also not been

performing functions as Presiding Officers since 2006 and their term in normal course would expire on 31st March, 2008 in the case of Mr. R. K. Mathur and 31st August, 2008 in the case of Mr. K. L. Sharma as they attain age of 62 years in the said months. It will not be in the interest of institution to permit them to work as Presiding Officers of DRT after such a long gap.

11. The appellants were always treated as deputationists of the Rajasthan High Court. The appellants also treated themselves to be deputationists. They were being paid deputation duty allowance in terms of Rule 4 of the Debt Recovery Tribunal (Salaries, allowances and other terms and conditions of service of Presiding Officer) Rules, 1993. The said Rule reads as under :

“If a person holding the post on a regular basis in the scale of pay of Rs.5900-200-6700 is appointed as Presiding Officer of a Tribunal on tenure basis and holds lien in his parent cadre, he shall be paid a salary in the scale of pay specified in rule 3 plus a deputation duty allowance at a rate as are applicable to Group 'A' officers of the Central Government drawing an equivalent pay.”

12. Deputation duty allowance was paid in terms of the said Rule to the appellants because they continue to hold lien in the appointment cadre i.e.

RHJS. We may refer here to decision of the Supreme Court in ***Union of India Versus V. E. Ramakrishnan*** reported in (2005) 8 SCC 394 in which it has been observed as under :

“**32.** Ordinarily, a deputationist has no legal right to continue in the post. A deputationist indisputably has no right to be absorbed in the post to which he is deputed. However, there is no bar thereto as well. It may be true that when deputation does not result in absorption in the service to which an officer is deputed, no recruitment in its true import and significance takes place as he is continued to be a member of the parent service. When the tenure of deputation is specified, despite a deputationist not having an indefeasible right to hold the said post, ordinarily the term of deputation should not be curtailed except on such just grounds as, for example, unsuitability or unsatisfactory performance. But, even where the tenure is not specified, an order of reversion can be questioned when the same is mala fide. An action taken in a post-haste manner also indicates malice. (See *Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia* (2004) 2 SCC 65; para 25.)”

13. In the said case the Supreme Court has observed that a deputationist can always be repatriated to his parent service. Even when tenure of deputation is specified, a deputationist does not have an indefeasible right to hold the post. Ordinarily, term of deputation should not be curtailed but when exceptional circumstances exist specified tenure can also be curtailed. In the present case we find that the Chief Justice of Rajasthan High Court had curtailed tenure in view of exceptional circumstances and in public interest.

14. In view of the above, we do not find any merit in the present appeal and the same is accordingly dismissed. DASTI.

(SANJIV KHANNA) JUDGE

(DR. MUKUNDAKAM SHARMA)

CHIEF JUSTICE

MARCH 4, 2008.

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