

*** HIGH COURT OF DELHI: NEW DELHI**

+ Writ Petition (Civil) No.11032 of 2009

Judgment reserved on: August 20, 2009

% Judgment delivered on: September 01, 2009

Asif Iqbal, IRS
S/o Shri Abu Shahma Siddiqui
Secretary, MAEF (Maulana Azad Education Foundation)
Ministry of Home Affairs
Social Justice Science Centre
Chelmsford Road
New Delhi-110055

...Petitioner

Through Mr. Shyam Moorjani, Adv.

Versus

1. Union of India
Chief Secretary
Member of Minority Affairs
IInd Floor, Paryavaran Bhawan
CGO Complex, Lodhi Road
New Delhi-110003

2. Maulana Azad Education Foundation
Through its President
Member of Minority Affairs
IInd Floor, Paryavaran Bhawan
CGO Complex, Lodhi Road
New Delhi-110003

...Respondents

Through Mr. P.P. Malhotra, Additional
Solicitor General of India with
Mr. H.K. Gangwani, Adv.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE A.K. PATHAK

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

MADAN B. LOKUR, J.

By an order dated 10th July, 2007 the Petitioner was sent on deputation from the Department of Revenue, Ministry of Finance, Government of India to the Maulana Azad Education Foundation, Ministry of Minority Affairs, Government of India (for short “the Foundation”). The Petitioner was sent on deputation for a period of three years and was required to function as the Secretary to the Foundation.

2. Learned counsel for the Petitioner has placed before us the rules and regulations of the Foundation and the functions of the Secretary are as follows:

“IX. SECRETARY

1. There shall be a paid Secretary who shall be a full time employee.
2. The Secretary shall subject to such directions as the President may like to give in this regard, convene meetings of the Foundation and its Governing Body, circulate agenda and maintain records of the proceedings of these meetings. He/she shall see that decision of the Foundation and the Governing Body are implemented and shall make a report to this effect at the next meeting of the Foundation/or Governing Body, as the case may be.
3. The Secretary shall be responsible for the maintenance of the records of the Foundation.
4. He shall exercise such other powers and perform such other duties as may be conferred upon him by the Rules and Regulations or as the Foundation may from time to time determine by resolutions.
5. He shall be responsible for coordinating the activities of the different institutions under the control and supervision of the Foundation.
6. Subject to the powers and functions of the Treasurer as defined above, he shall satisfy himself that all moneys are expended for the purpose for which they are granted, sanctioned or allotted.”

3. By an order dated 13th July, 2009 the deputation period of the Petitioner was cut short and he was sought to be repatriated to his parent cadre. Feeling aggrieved, the Petitioner filed an original application

before the Tribunal being OA No.1850/2009 which was dismissed by the impugned order dated 31st July, 2009. The Petitioner has challenged the dismissal of his original application.

4. Learned counsel for the Petitioner contended, quite passionately, that the decision to repatriate his client was taken by the Government on the basis of the so-called “overall situation of inept handling of the affairs of the Foundation.....” He submitted that this cast a stigma on the abilities and efficiency of the Petitioner and the Petitioner should at least have been given a show cause notice or a proper hearing before any precipitate action is taken.

5. Learned Additional Solicitor General drew our attention to the fact that the deputation of the Petitioner was approved by the Appointments Committee of the Cabinet and his withdrawal from deputation was also approved by the Appointments Committee of the Cabinet for better and efficient working of the Foundation. It was pointed out that a replacement had already taken charge as Secretary on 14th September, 2009 and, therefore, there is no possibility of the Petitioner being permitted to rejoin as Secretary of the Foundation. It

was also contended that there is no stigma cast on the Petitioner.

6. On the issue whether a fixed period of deputation can be terminated prematurely, the law laid down by the Supreme Court is to be found in paragraph 32 of *Union of India v. V. Ramakrishnan & Others*, (2005) 8 SCC 394. The Supreme Court held that a deputationist has no legal right to continue in the borrowing department and ordinarily the term of deputation should not be curtailed except on grounds such as unsuitability or unsatisfactory performance. This is what the Supreme Court has said:

“Ordinarily, a deputationist has no legal right to continue in the post. 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)”

7. We find from a reading of the impugned order passed by the Tribunal as well as the pleadings before the Tribunal that there is clearly no intention to cast any stigma on the abilities or functioning of the

Petitioner. Indeed, this has been reiterated by the learned Additional Solicitor General.

8. It does appear from the reply filed in the Tribunal that the Foundation did not achieve its desired objectives. Review meetings were held on 21st March, 2007 (a few months after the Petitioner joined) and then again on 23rd October, 2007, 19th June, 2008 and 27th January, 2009. It is only then that a decision was taken to terminate the deputation period of the Petitioner. Therefore, it is not as if the decision was taken post-haste or without any application of mind.

9. It seems to us that even an efficient officer may turn out to be a misfit in a particular position or in a particular organization. Merely because an officer is not able to deliver goods due to factors which may or may not be within his control or his aptitude or his suitability to hold a particular post in a particular organization, does not mean that the officer can be tarred as inefficient or incompetent or unable to perform his duties satisfactorily. It does appear from a reading of the papers before us that the Petitioner, even though he may be an efficient officer with the Department of Revenue, happened to be not well suited for the

job of a Secretary of the Foundation. Having said so, it does not mean that the Petitioner can be painted black and generally referred to as an inefficient or incompetent officer. In any case, that is certainly not the intention of the Respondents as repeatedly stated by the learned Additional Solicitor General. It is merely fortuitous that the Petitioner is not well suited to the job of a Secretary to the Foundation requiring his repatriation to his parent cadre.

10. In our opinion, no stigma has been cast upon the Petitioner in this regard and, therefore, we do not think it appropriate to interfere with the impugned order of repatriation. We may mention that no mala fides have been alleged against anybody, least of all the Appointments Committee of the Cabinet.

11. We may also mention that learned counsel for the Petitioner took us through several documents to suggest that his client had done an exceptionally good job while working as a Secretary of the Foundation. We cannot comment on this one way or the other because this is a purely administrative matter in respect of which the Foundation is the best judge. If the Foundation is of the opinion, on the basis of the rules

and regulations framed by it with regard to the charter of duties of the Secretary, that the Petitioner was not well suited for the job, we cannot review that opinion.

12. There is no merit in the writ petition. Dismissed.

MADAN B. LOKUR, J

September 01, 2009
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A.K. PATHAK, J

Certified that the corrected copy of the judgment has been transmitted in the main Server.