



IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)
PRINCIPAL SEAT

W.P(C) No.6895/2021

Sofiul Alom,

Son of Late Abu Bakkar Siddique,

Deputy Director (Training), Office of
the Commissioner, Panchayat & Rural
Development, Assam, Juripar,
Guwahati-781037 and Resident of
House No. 85, Madhurjya Enclave, Flat
No. 202(B) near Hatigaon Police
Station, Police Station: Hatigaon,
Guwahati-781038, District: Kamrup(M),
Assam

.....Petitioner

-Versus-

- 1. The State of Assam** represented by the Principal Secretary to the Government of Assam, Panchayat & Rural Development Department, Dispur, Guwahati-781006
- 2. Principal Secretary to the Government of Assam,** Personnel (B) Department, Dispur, Guwahati-781006
- 3. Principal Secretary to the Government of Assam,** Finance Department, Dispur, Guwahati-781006
- 4. Accountant General (A&E), Assam** Maidamgaon, Beltola, Guwahati-781029
- 5. Commissioner, Panchayat & Rural Development Department,** Juripar, Panjabari, Guwahati-781037

.....Respondents

- B E F O R E -
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

Advocate for the petitioner : Mr. P.K. Tiwari, Sr. Advocate assisted by
Mr. R. Rahman, Advocate

Advocate for the respondents : Mr. K. Konwar, Addl. Adv. General assisted by
Mr. P. Handique, SC, P&RD
Mr. A. Chakrabarty, G.A. for the R-2
Mr. R.K. Talukdar, SC, Accountant General for R-4

Date of Hearing : **07.09.2023, 14.09.2023 & 07.03.2024**

Date of Judgment & Order: : **04.06.2024**

JUDGMENT AND ORDER(CAV)

The petitioner is before this Court seeking a direction from the Court for giving effect to his permanent absorption in the post of Deputy Director (Training) with effect from 13.03.1999 namely the date he was absorbed under the Panchayat & Rural Development Department (*hereinafter referred to as "P&RD Department"*) along with his consequential seniority and other service benefits. The petitioner is also aggrieved by the communication dated 28.08.2020 whereby the P&RD held that the absorption of the petitioner under the P&RD Department is with effect from the date he was permanently absorbed against the sanctioned post w.e.f. 01.10.2016.

2. The petitioner was appointed as Agriculture Extension Officer in the Irrigation Department, Government of Assam in the year 1994 under Section 3(f) of the APSC (Limitation of Function)

Regulation 1951. He was subsequently regularized with effect from 26.02.1996 in the post Agriculture Extension Officer in the Irrigation Department. On 04.02.1999, the petitioner was sent on deputation to the P&RD Department to an equivalent post of Assistant Project Officer (Agriculture) for a period of one year. He was posted on deputation against an existing vacancy under DRDA, Golaghat. The petitioner joined in the post of Assistant Project Officer (Agriculture) under the P&RD Department on 13.03.1999. In the year 2001, NOC was sought for permanent absorption of the petitioner by the P&RD Department from the Irrigation Department. The said NOC was accordingly granted by the Irrigation Department. However, in the year 2005 notwithstanding the NOC being granted, the petitioner was repatriated to his parent department. He approached the High Court by filing writ petition being W.P.(C) No. 1109/2005. By operation of an interim order granted by the Court, his repatriation was stayed. Subsequently, the writ petition was disposed of on 23.08.2010 giving the petitioner the liberty to file application for regular absorption in the borrowing Department namely the Department of P&RD. In terms of the leave granted to the writ petitioner, he filed an application in the borrowing department, namely the P&RD Department. Thereafter, a Cabinet

Memorandum was issued with the views of the relevant Departments namely, Personnel, Finance and P&RD Department for permanent absorption of the writ petitioner in the P&RD Department. On 27.07.2016, the Cabinet approved the proposal for permanent absorption of the writ petitioner in the establishment under the P&RD Department. Thereafter, by Notification dated 12.09.2016 issued by the Additional Chief Secretary, Government of Assam, P&RD department, the petitioner was absorbed in the post of Deputy Director (Training) with effect from the date joining in the P&RD Department. The petitioner took charge of the Deputy Director (Training) on 01.10.2016. The petitioner thereafter filed representation before the Office of the Accountant General bringing to its notice that he had been permanently absorbed in the P&RD Department w.e.f 13.03.1999. On receipt of the representation from the petitioner, the Office of the Accountant General raised certain queries seeking the exact date from which the petitioner has been permanently absorbed as Deputy Director (Training) in the P&RD Department. The P&RD Department responded by stating that the post was lying vacant since 01.03.1999 and as such the absorption of the petitioner as Deputy Director (Training) was w.e.f 13.03.1999 in the P&RD Department. In response to the

actual date of absorption in the P&RD Department, several communications were exchanged amongst the Office of the Accountant General, the P&RD, the Finance and the Personnel Department. The representations were also filed by the writ petitioner claiming the fixation of the exact date of absorption w.e.f 13.09.1999. Finally the communication dated 28.08.2020, the Principal Secretary, Government of Assam, P&RD Department responded to the queries raised by the Accountant General that the petitioner joined as Deputy Director (Training) on 01.10.2016 at 10 AM (FN) after permanent absorption against the sanctioned post. Hence the date of absorption of the petitioner in the Department is 01.10.2016 as the same can only be pursuant to the approval of the Cabinet which decision came on 27.07.2016.

3. The learned Sr. counsel for the petitioner submits that the denial of the petitioner of his date of absorption with effect from the date he joined the Department is contrary to the provisions of law. It is submitted that the writ petitioner had joined in the post of Assistant Project Officer (Agriculture) on 13.03.1999 in the P&RD Department. The Cabinet of the Government of Assam at the relevant point in time had approved the Cabinet Memorandum which was in respect of the permanent absorption of the

petitioner in the P&RD Department. Pursuant to the Cabinet decision, by order dated 12.09.2016, the Department of P&RD issued the order that the petitioner is permanently absorbed against the vacant sanctioned post of Deputy Director (Training) which was created vide No. CPES.29/56/P.II/35 dated 22.03.1957 and retained permanently vide No. PDB.330/60/73 dated 10.09.1969 under the establishment of Commissioner, P&RD in the scale of Pay Band-4 of Rs. 12,000-40,000/- with Grade Pay of Rs. 6300/- P.M as per RoP, 2010 w.e.f the date of joining in P&RD Department. He took over the charge as the Deputy Director (Trainee) under P&RD Department on 01.10.2010. It is submitted by the learned Sr. counsel for the petitioner that the petitioner was placed under the P&RD Department on deputation by the Irrigation Department and he joined the services of the P&RD Department and was posted at DRDA, Golaghat on 13.03.1999. It is submitted that the DRDA is a Scheme/Agency under the P&RD Department. His borrowing department is the P&RD Department and not the DRDA which is evident from the NOC issued by the Irrigation Department at the time he was sent on deputation. Subsequently, inspite of the NOC being granted by the Irrigation Department for his permanent absorption, he was repatriated which order came to be challenged before this Court and by way

of an interim order passed on 23.02.2005 in W.P.(C) No. 1109/2005, his repatriation order was stayed. It is submitted that since the petitioner was under on deputation and he joined under the Department of P&RD on 13.09.1999, his date of absorption in the Department has to be given effect from 13.09.1999 and not from 01.10.2016 as has been done now. The petitioner is entitled to his rightful claim of the benefit of services rendered earlier as well as the services rendered under the P&RD Department along with all financial benefits. The learned Sr. counsel for the petitioner has referred to the Judgment of the Apex Court rendered in *Sub-Inspector Rooplal and Anr. Vs. Lt. Governor, through the Chief Secretary, Delhi and Ors*, reported in (2000) 1 SCC 644 as well as the Judgment of the Apex Court in *R.K. Makashi and Ors. Vs. I.M. Menon and Ors*, reported in (1982) 1 SCC 379 and *Wing Commander J. Kumar Vs. Union of India*, reported in (1982) 2 SCC 116, the petitioner has been unjustly denied his right to get his past services counted for the purposes of fixation of his seniority in the borrowing department. The learned Sr. counsel strenuously urges that the petitioner was not sent on deputation to DRDA, he was sent on deputation to the P&RD Department and the NOC issued by the Irrigation Department was for his deputation to DRDA. As such where his

permanent absorption is to be counted from the date he was absorbed against the sanctioned vacant post, his services rendered from the date he was sent on deputation is required to be counted for the purposes of fixation of seniority. The views of the department that his seniority is to be counted w.e.f 01.10.2016 namely the date in which he was allowed to join him as Deputy Director (Training) pursuant to the Cabinet approval is erroneous and contrary to the law laid down by the Apex Court.

4. Per contra, the learned counsel for the respondents opposes the submissions made by the learned Sr. counsel for the petitioner. He submits that the DRDA is a scheme under the Central Government and the P&RD Department, Government of Assam is the implementing department. Notwithstanding the petitioner being sent on deputation to DRDA, he was appointed as Agriculture Extension Officer and was posted in DRDA, Golaghat. He continued to work under the DRDA and was finally repatriated which order he came to challenge before the High Court and under operations of the interim order, he continued to rendered his services under the DRDA. The writ petition finally came to be disposed of permitting the petitioner to file a representation before the competent authority seeking permanent absorption.

The respondent submits that the petitioner's first posting was at the DRDA. The DRDA is a Scheme or an Agency under the Government of India of which the P&RD Department is only the implementing authority. Under such circumstances, his claim if at all will lie against the DRDA and not against the P&RD Department. The services rendered under the DRDA cannot be accepted to be the services rendered under P&RD Department. He submits that the DRDA is a scheme and therefore not juristic person against which no writ lies. In support of his contention, he has placed reliance on the following Judgments:

(i) State of Assam Vs. Barak Upatyaka D.U. Karmachari Sanstha, reported in (2009) 5 SCC 694;

(ii) Steel Authority of India Ltd. & Anr. Vs. National Union Waterfront Workers, reported in (2001) 7 SCC 1;

(iii) Sub-Inspector Rooplal and Anr. Vs. Lt. Governor through Chief Secretary, Delhi and ors., reported in (2000) 1 SCC 644; and

(iv) Mahadeo and Ors. Vs. Sovan Devi and Ors, reported in (2023) 10 SCC 807.

5. It is further submitted on behalf of the respondents that in terms of the order dated 23.08.2010 passed in W.P(C) No. 1109/2005, the petitioner filed his representation and finally the matter was placed before the Cabinet by way of a Cabinet Memorandum. It is submitted that the Cabinet Memorandum

clearly reflects that the proposal is in respect of a decision taken by the competent authority to absorb the petitioner against any vacant equivalent post under the establishment of the Commissioner, P&RD Department. This Cabinet Memorandum after obtaining the views of the Finance and the Personnel Department was placed before the Cabinet on 27.07.2016. The Memorandum was accordingly approved. Consequently by order dated 12.09.2016, the Department of P&RD issued order permanently absorbing the petitioner against the vacant sanctioned post of Deputy Director (Training) under the establishment of the Commissioner, Panchayat w.e.f the date of joining in P&RD Department.

6. Pursuant to this order passed, the petitioner joined in the Department on 01.10.2016 as Deputy Director (Training). He submits that this order for issuance of permanent absorption vide order dated 12.09.2016 categorically mentions that the petitioner will be permanently absorbed in the post of Deputy Director (Training) with effect from the date of his joining in the P&RD Department and in pursuance to this order, he had joined in the post of Deputy Director (Training) on 01.10.2016. As such, the claim of the petitioner that he is required to be absorbed

permanently w.e.f 13.03.1999 namely the date on which he joined under DRDA, Golaghat is to be considered the date of his permanent absorption is contrary to the Cabinet Memorandum and the approval given. There is no challenge to the Cabinet Memorandum or to the consequential order dated 12.09.2016 pursuant to which the petitioner joined in his services as Deputy Director (Training) w.e.f. 01.10.2016. It is submitted that only with effect from the date he joined as Deputy Director (Training) under the P&RD Department he was considered as an employee of the Department. His services rendered under the DRDA cannot be considered to be services rendered under the P&RD as DRDA is a scheme of the Central Government and not a part of the department. The P&RD is merely the implementing agency.

7. The learned counsel for the respondents submits that S.I Rooplal (Supra) has been distinguished by the Apex Court in Indu Shekhar Singh and Ors. Vs. State of U.P. and Ors, reported in (2006) 8 SCC 129. He submits that S.I. Rooplal (Supra) does not lay down the universal proposition to be followed and it has to be decided on a case to case basis. The case of the petitioner is squarely covered by the law laid down by the Apex Court in Indu

Sekher Singh (Supra) and wherein the Apex Court has distinguished the ratio laid down in S.I. Rooplal's (Supra) case.

8. In rejoinder, the learned Sr. counsel for the petitioner has submitted that in Indu Sekher's case has not watered down the proposition of the ratio laid down in the S.I. Rooplal's rather in Indu Sekher's case, there was a Rule for seniority on absorption while in the facts of the S.I. Rooplal's case there was no such rule for seniority. It was under these circumstances that the Apex Court held that the proposition in S.I. Rooplal's case was not applicable in the facts and circumstances of Indu Sekher's case inasmuch as in Indu Sekher Singh's case, there is a Rule for seniority on absorption which clearly defines as to how the seniority is to be conferred and to that extent the Apex Court held that the proposition in S.I. Rooplal(Supra) is not applicable. However, in the facts of the present proceedings, there is no such Rule curtailing the seniority in so far as the employees who are absorbed on deputation are concerned.

9. Under such circumstances, where the Cabinet has already approved the proposal of permanent absorption of the petitioner in the post of Deputy Director (Training), then the petitioner's absorption will have to be given effect to from the date he has

joined under the P&RD Department which is on 13.03.1999. The Department has erroneously restricted his claim for seniority w.e.f 01.10.2016 namely the date on which the petitioner was permanently absorbed as Deputy Director (Training).

10. The learned counsel for the parties have been heard. Pleadings on record have been perused. Judgments cited at the bar have been carefully taken note of.

11. The peculiar facts in the present proceedings are that notwithstanding the NOC granted by the parent department namely the Irrigation Department in which the petitioner was originally employed, the P&RD department repatriated the petitioner. The petitioner was deputed to P&RD Department and was posted in under the DRDA, Golaghat as Agriculture Extension Officer.

12. Perusal of these orders reveal that the deputation of the petitioner was not specifically to DRDA but to the P&RD Department. The P&RD Department had borrowed the petitioner after due clearance and NOC received from the parent department namely the Irrigation Department. Therefore, it cannot be claimed that the petitioner was sent on deputation to DRDA. Once an Officer is sent on deputation to the borrowing

department, how and where the borrowing department places the officer giving due consideration to his pay, seniority and equivalents in posting, it is upto the borrowing department to decide. There is not dispute on facts that the DRDA is a scheme or an agency which is monitored and implemented under the DRDA department. Most of the Officers responsible for implementation of the various scheme under DRDA are employees of the P&RD Department. Therefore, when the P&RD Department had borrowed the petitioner with due sanction and approval from the parent department, it has to be held that the petitioner was on deputation to the P&RD Department.

13. There is nothing on record to show that on any point in time the petitioner applied for or was requisitioned for his services by the DRDA independently. The papers on record show that the deputation was made to the P&RD Department. Therefore, it cannot be accepted that the services of the writ petitioner which was placed at the disposal of the DRDA were not to be considered as services rendered under the P&RD Department. The Judgments referred to by the learned counsel for the respondents are therefore not applicable in the facts of this case.

14. However, notwithstanding the NOC given by the parent department for permanent absorption of the petitioner in the borrowing department, the petitioner was repatriated by the borrowing department. This repatriation order came to be challenged by the petitioner being W.P.(C) No. 1109/2005. By the interim order dated 23.02.2005 passed in the said writ petition, the repatriation order was stayed and the petitioner continued to render his services under the P&RD Department at DRDA during currency of the interim order. Subsequently, the writ petition came to be disposed of where the Court held that the deputationist does not have any legal right seeking absorption in the borrowing department. It is for the borrowing department to decide whether the deputationist is to be permanently absorbed or repatriated. However, the Court had granted a liberty to the petitioner to file a representation before the competent authority seeking permanent absorption in borrowing department. In terms of the liberty granted by the writ Court, the petitioner filed his application dated 14.11.2011. However, it is to be noted that notwithstanding there being no interference with the repatriation order or that there being no recall of the repatriation order by the borrowing department, the petitioner continued to render his services under the P&RD at DRDA. The representation of the writ

petitioner came to be considered at different levels and finally a Cabinet Memorandum was prepared which came to be placed before the State Cabinet and on 27.07.2016, the Cabinet approved the memorandum.

15. A careful perusal of the Cabinet Memorandum reveals that the Cabinet Memorandum had made a proposal for permanent absorption the writ petitioner in the post of Deputy Director (Training) under the Office of the Commissioner, Department of P&RD. Accordingly, it has to be accepted that the proposal which was accepted by the Cabinet on 27.07.2016 is with regard to the proposal of permanent absorption of the writ petitioner in a vacant sanctioned post of Deputy Director (Training) under the Office of the Commissioner, P&RD. The Cabinet Memorandum is extracted for ready reference:

"CABINET MEMORANDUM"

(Circulated under Rule 17 of Assam Rules of Executive Business, 1968)

Subject: Permanent absorption of services of Sri Sofiul Alom, Assistant Project Officer (Agri), DRDA (HQ), Nagaon under the establishment of the Commissioner, Panchayat and Rural Development, Assam.

1. The service of Sri Sofiul Alom, Agriculture Extension Officer, Irrigation Department was initially placed at the disposal of the Panchayat and Rural Development Department on deputation vide notification No. IGN(E)201/90/Pt/56, dated 04.02.99 (Annexure-A)

and accordingly, he was posted as Assistant Project Officer (Agri) at DRDA (HQ), Golaghat vide notification No. RDD.397/91/361 dated 25.02.99 Sri Sofiul Alom has been working under the Panchayat and Rural Deveopment Department till date since 13/03/1999 (Annexure-B).

2. In exigencies of public services, the Panchayat and Rural Development Department decided to permanently absorb the services of Sri Sofiul Alom, Asstt. Project Officer (Agri) and sought NOC from his parent department i.e. the Irrigation Department vide letter No. RDD.247/2001/8, dated 25.09.01 (Annexure-C) with due approval of the Personnel (B) Department vide their U/O 1974, dated 19/09/01. Accordingly, the Irrigation Department vide letter No. IGN(E)2/95/32, dated 29/09/01 (Annexure-D) intimated that the Department have no objection for the permanent absorption of the services of Sri Sofiul Alom, Agriculture Extension Officer who is presently working under the Panchayat and Rural Development Department on deputation.

3. In the meantime, vide notification No. RDD.201/99/74, dated 27/01/05, the Panchayat and Rural Development Department placed his services at the disposal of Irrigation Department for which Sri Sofiul Alom, Asst. Project Officer (Agri) approached the Hon'ble High Court vide W.P.(C) No. 1109/2005.

The Hon'ble High Court vide an interim order dated 23.02.05 passed in the aforesaid writ petition kept the notification dated 27/01/05 in abeyance with a direction not to disturb the incumbent with an observation that the petitioner has completed more than 5(five) years of service in the deputed department and as per Finance Department O.M. No. FEF 13/92/Pt/14, dated 19.07.97 he ought to have been permanently absorbed in the deputed department (Annexure-E).

The Hon'ble High Court vide order dated 23/08/10 disposed of the W.P.(C) No. 1109/2005 with a direction that the petitioner may file a representation to the Panchayat and Rural Development Department for his regular absorption (Annexure-F).

4. In the light of order dated 23/08/10 passed by the Hon'ble High Court in W.P(C) No. 1109/2005, Sri Sofiul Alom, Asstt. Project Officer (Agril) submitted a representation for his permanent absorption to the post of Deputy Director in the establishment of the Commissioner, Panchayat and Rural Development, Assam in view of the precedent cases of absorption under the establishment of the Commissioner, Panchayat and Rural Development,, Assam.

5. Under the above stated circumstances, the Panchayat and Rural Development Department considered the representation submitted by Sri Sofiul Alom, Asstt. Project Officer (Agril) and initiated process for permanent absorption of the officer concerned. But since Sri Sofiul Alom was on deputation as Asstt. Project Officer (Agril) in DRDAs, which is a society post; it has been decided to absorb him against any vacant equivalent post under the establishment of Commissioner, Panchayat and Rural Development, Assam.

6. In this connection, views from Finance Department and personnel Department were sought for, which are re-recreated as followed:

A. Views of Finance (Estt-A) Department:

Principal Secretary

P&RD Department-U/O

Department's endt. At pre-page, please

Finance Department has no objection to absorption of Sri Sofiul Alom, AEO, Irrigation Department in the P&RD Department if the

said absorption is agreeable to both the lending and the borrowing Departments, subject to there being no liabilities outstanding against him in the Irrigation Department and subject to approval of Personnel (B) Department as it is an administrative matter.

*Sd/- (dtd. 24.12.2013)
Finance (Estt-A) Department,
Dispur"*

16. As such, the proposal which was placed before the Cabinet is with regard to the permanent absorption of the writ petitioner in the post of Deputy Director (Training) under the Office of the Commissioner, P&RD. The proposal clearly reflects that the permanent absorption on the writ petitioner is to be made by absorbing the writ petitioner in the post of Deputy Director (Training). The said proposal came to be approved on 27.07.2016 by the Cabinet. Subsequent to the approval of the Cabinet, the Department issued the consequential order dated 12.09.2016 permanently absorbing the petitioner in the vacant sanctioned post of Deputy Director (Training) in the pay scale and pay band mentioned in the said order as per RoP, 2010 with effect from the date of joining in the P&RD Department.

17. The claim of the writ petitioner that his permanent absorption has to be given effect to from the date of his joining in the P&RD Department and which is on 13.03.1999 cannot be

accepted for more than one reason. Notwithstanding that the deputation of the petitioner and his posting in the DRDA is a deputation to the P&RD Department and not DRDA as has been discussed above, the petitioner came to be repatriated, which was stayed by order dated 23.02.2005 passed in W.P(C) 1109/2005 and the writ petition came to be disposed of with a liberty to the petitioner to file appropriate representation. Therefore, there was officially no order permanently absorbing the writ petitioner pursuant to the order whereby the petitioner was repatriated till after the Cabinet decision. The order dated 27.01.2005 repatriating the petitioner was also not recalled. However, the petitioner continued to render his services under the P&RD Department while being posted at the DRDA. It is perhaps in these peculiar circumstances and on the basis of his representation filed pursuant to the liberty given by this Court, that the department moved a proposal before the Cabinet for permanent absorption of the petitioner. The proposal clearly mentioned that the petitioner may be permanently absorbed in the post of Deputy Director (Training) under the P&RD Department. Admittedly, till the proposal was moved, the approval granted by the State cabinet and the consequential order dated 27.07.2016 issued by the department, the petitioner

was not posted as Deputy Director (Training). He joined in the said post only on 01.10.2016 pursuant to the order dated 12.09.2016 issued by the P&RD Department. Therefore, the decision of the Cabinet is not only to accord approval to the proposal for permanent absorption of the writ petitioner under the P&RD Department but for accordingly approval for permanent absorption under the P&RD Department as Deputy Director (Training) and which post admittedly the petitioner was not holding prior to the Cabinet Memorandum and the approval.

18. The petitioner pursuant to the leave granted by the Court in W.P.(C) No. 1109/2005 by the order dated 23.08.2010 approached the authorities for absorption by filing the representation as permitted. The fact remains that by the order passed in W.P.(C) No. 1109/2015, repatriation was not interfered with and it remained in force. Notwithstanding the order of repatriation, the petitioner continued to render his services in the borrowing department. Such service the petitioner continued to render is not pursuant to any such orders passed by the borrowing department requiring the services of the petitioner. Hence, the services which the petitioner continued to render inspite of the repatriation order being declined to be interfered

with by this Court and notwithstanding the representation filed upon such liberty granted by the Court, cannot be held to be services rendered in public interest¹. It is perhaps on sympathy expressed by the borrowing department that he continued to render his services in the borrowing department even after the repatriation order was issued. The petitioner has approached this Court seeking a mandamus to compel the respondent P&RD Department to give effect to the permanent absorption of the petitioner in the post of Deputy Director (Training) w.e.f 13.03.1999 with his entitled seniority and consequential promotion. In order to issue a writ in the nature of a mandamus as prayed for, the petitioner must demonstrate that he has a legal and a judicially enforceable right in respect of performance of a legal duty required to be performed by the party against whom the mandamus is sought and that such a right is still subsisting on the date when the petitioner has approached this court. The existence of a judicially enforceable right which is required to be performed by the party against whom the mandamus is sought for is distinguishable from a duty which he may be performed with a discretion. The legal right to compel performance of public duty must reside in the petitioner himself. It will not be sufficient

¹ (2020) 3 SCC 803

to merely show that the petitioner has an interest in the performance of the duty. The petitioner must show that he himself has a legal right to insist upon such performance of a legal duty by the respondents. The writ Court should not issue a writ in the nature of mandamus only on the basis of sympathy. A mandamus has to be issued only upon a satisfaction which has been reached upon by the Court that there is a judicially enforceable right available to the writ petitioner and which the respondents have neglected or deliberately avoided to perform without just reasons and the action or inaction of the respondents have thereby infringed upon such legal right of the writ petitioner. A writ of mandamus is only granted to compel performance of duties of a public nature or in certain cases to enforce private right when the duties of public nature specifically effect to private rights. The legal duty which may be require to be performed by a party may be the one which may be imposed by the constitution, a statute by rules or by orders having which is capable of being judicially enforced.

19. As discussed above, upon a careful analysis of the facts which have evolved during the submission made at the bar and upon the materials available in the case records, after the

petitioner was repatriated by the order dated 27.01.2005, he approached the writ Court wherein an interim order was granted. During the currency of the interim order, the petitioner continued to render his services in the borrowing department on deputation. When the writ petition came to be finally disposed of, the repatriation order was not interfered with rather a Co-ordinate Bench of this Court held that it is the prerogative of the borrowing department to decide whether to grant absorption or repatriate an employee on deputation. The Court however granted liberty to the petitioner to file necessary representation before the authorities seeking permanent absorption in the borrowing department. This finally culminated into the Cabinet Memorandum pursuant to which the Cabinet decision was taken. Therefore, in the given facts and circumstances as have been presented before the Court, it is evident that there was no order of the borrowing department requiring the continued services of the petitioner on deputation. The right of the petitioner to be permanently absorbed was created only on the Cabinet including Cabinet Memorandum.

20. To decide on the question of whether the petitioner is entitled to his claim of seniority with effect from 13.03.1999, it

has to be seen whether the petitioner has been able to demonstrate that he has a right which has been refused or denied to be considered by the respondents and whether there was a legal duty on the respondents which he failed to perform or comply and thereby infringe on the right projected by the writ petitioner and whether such action or inaction by the respondent authorities will amount of infringement of a legally enforceable right of the writ petitioner.

21. As discussed above, the Cabinet Memorandum was for absorption of the petitioner in the post of Deputy Director (Training) with effect from the date he has joined in the services of the department. At the cost of repetition, it is seen that on a date when the Cabinet Memorandum was placed and the State Cabinet had taken a decision, petitioner was not rendering his services as Deputy Director (Training) under the said Department.

22. Under such circumstances, the reliance placed by the writ petitioner in the case of S.I. Rooplal (Supra) and other Judgments will have no effect as in the case of S.I. Rooplal (Supra), the question before the Apex Court was the consideration of the past services rendered by the Government Servant therein pursuant to his absorption while fixation of his seniority. The facts of S.I.

Rooplal(Supra) are not applicable to the facts of the present proceedings. The claim of the writ petitioner for permanent absorption arises only pursuant to a Cabinet decision on the basis of the Cabinet Memorandum placed before the State Cabinet. The Cabinet Memorandum moved a proposal for permanent absorption of the writ petitioner in the post of Deputy Director (Training) with effect from the date of his joining. As such the term "*with effect from the date of his joining*" will have to be understood to be the date of joining of the writ petitioner in the post of Deputy Director (training). It cannot be interpreted to mean that it will have the effect of joining in any post under the P&RD Department with effect from the date the petitioner was placed under the borrowing department. Such interpretation will be completely contrary to the Cabinet Memorandum itself and the facts which are not disputed in the present proceedings.

23. Under such circumstances, the claim of the writ petitioner that his benefit of services rendered earlier w.e.f 13.03.1999 are to be given, cannot be granted in view of the fact that petitioner has already accepted the consequential order passed pursuant to the order of the Cabinet. The Court rejects the submissions of the petitioner towards of his claim of past services not because the

petitioner did not render services under the P&RD Department while being posted under the DRDA but because of the approval of the Cabinet to the Cabinet Memorandum where the proposal for his permanent absorption is specifically to the post of Deputy Director (Training) and in which post the petitioner did not join prior to 01.10.2016.

24. In view of the discussions above, it is not necessary to refer to the Judgments relied upon by the respondent counsel and therefore not discussed.

25. In view of all the discussions above, the claim of the writ petitioner fails. The writ petition is accordingly dismissed. No order as to cost. Interim order if any stands vacated.

JUDGE

Comparing Assistant