

Neutral Citation No.-2024:AHC-LKO:76778-DB

RESERVED

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 175 of 2024

Appellant :- State Of U.P. Thru. Prin. Secy. Urban Development Deptt. Lko. And 2 Others

Respondent :- Munna Kumar Pasi And 25 Others

Counsel for Appellant :- C.S.C.

Counsel for Respondent :- Gaurav Mehrotra, Anand Mani Tripathi, Utsav Mishra

ALONGWITH

Case :- SPECIAL APPEAL No. - 117 of 2024

Appellant :- Naveen Kumar Rai And Others

Respondent :- State Of U.P. Thru. Prin. Secy. Urban Development Deptt. U.P. Govt. Lko. And Others

Counsel for Appellant :- Abhilasha Pandey

Counsel for Respondent :- C.S.C.

ALONWITH

Case :- SPECIAL APPEAL No. - 105 of 2024

Appellant :- Ram Chandra Maurya And Others

Respondent :- State Of U.P. Thru. Prin. Secy. Urban Development Deptt. U.P. Govt. Lko. And Others

Counsel for Appellant :- Utsav Mishra, Gaurav Mehrotra

Counsel for Respondent :- C.S.C.

ALONGWITH

Case :- SPECIAL APPEAL No. - 104 of 2024

Appellant :- Akshay Kumar Singh And Another

Respondent :- State Of U.P. Thru. Prin. Secy. Urban Development Deptt. U.P. Govt. Sectt. Lko. And Others

Counsel for Appellant :- Gaurav Mehrotra, Utsav Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Jaspreet Singh, J.

(Per:- Jaspreet Singh, J.)

1. A bunch of six writ petitions have been decided by a common judgment dated 16.04.2024, passed in Writ A No.4926 of 2023 (being the leading petition), whereby the learned Single Judge while examining the order of repatriation segregated the writ petitioners in two categories (i) those deputationists, who were appointed by means of appointment letter dated 31.01.2019 and their writ petitions were dismissed; (ii) deputationists who were appointed vide appointment letters dated 26.02.2019 and

09.03.2019 and their writ petitions have been allowed.

2. It is in this backdrop that Special Appeal No.175 of 2024 has been filed by the State assailing the judgment of the learned Single Judge dated 16.04.2024 insofar as it allowed the writ petition of those who were appointed vide letter dated 26.02.2019 and 09.03.2019. While three other connected Special Appeal No.104 of 2024, Special Appeal No.105 of 2024 and Special Appeal No.117 of 2024 have been filed by those writ petitioners who were deputationists appointed vide letter dated 31.01.2019 and their writ petitions were dismissed.

3. Since all the four special appeals involve common questions of both law and fact and all the four special appeals assail the common judgment dated 16.04.2024, passed by the learned Single Judge, for different reasons, hence, all the four special appeals were clubbed and heard together and this judgment shall decide all the four special appeals.

4. To put the controversy in a perspective, certain brief facts relevant for an effectual adjudication of these appeals are being noticed hereinafter.

5. The writ petitioners had responded to an advertisement issued on 20.10.2018, which was in pursuance of a letter issued by the State Government dated 05.11.2018, seeking recruitment and selection by deputation on various posts in the local bodies. The advertisement clearly indicated that the appointments sought to be made on the basis of deputation would be for a period of one year or till regular selection is made, whichever was earlier.

6. All the writ petitioners had applied and were selected for such

deputation, however, their respective appointment letters were issued on 31.01.2019, 26.02.2019 and 09.03.2019. Insofar as writ petitioners whose appointment letter was dated 31.01.2019 are concerned, their appointment letters carried a stipulation which was in consonance with the stipulation enumerated in the advertisement that the deputation was for a period of one year or till regular selection is made whichever was earlier. However, the appointment letters issued on 26.02.2019 and 09.03.2019 did not contain such a stipulation of one year rather it indicated that the appointment by deputation was till regular selections are made.

7. The dispute emerged with the issuance of letter by the State addressed to the Director, Local Bodies conveying the decision taken by the State to repatriate the officers appointed on deputation to their parent department. In furtherance of letter dated 05.07.2023, the Director, Local Bodies issued an order repatriating the deputationists to their parent departments by means of the order dated 07.07.2023.

8. The writ petitioners being aggrieved assailed the two orders dated 05.07.2023 and 07.07.2023, by joining together and six writ petitions were filed, Writ-A No.4926 of 2023 was made the leading petition and five other writ petitions bearing WRIT-A No.5014 of 2023; WRIT-A No.5056 of 2023; WRIT-A No.5111 of 2023; WRIT-A No.5116 of 2023; and WRIT-A No.5204 of 2023 were connected. After hearing the parties, the learned Single Judge on the basis of the letter of appointment issued to the writ petitioners carved two categories: (i) those writ petitioners who were governed by the appointment letter dated 31.01.2019. (ii) those who were appointed vide letters issued on 26.06.2019 and 09.03.2019.

9. The impugned orders dated 05.07.2023 and 07.07.2023 were also assailed by another set of writ petitioners before this Court at Allahabad in WRIT-A No.11172 of 2023 (Dinesh Kumar Singh v. State of U.P. and Ors.), which was connected with Writ-A No.11275 of 2023 (Namita Chaudhary And 13 Others v. State of U.P. And Another).

10. Learned Single Judge at Allahabad by means of its judgment and order dated 18.01.2024 dismissed both the writ petitions i.e of Dinesh Kumar Singh and the connected petition of Namita Chaudhary and 13 others. The said judgment passed by the learned Single Judge at Allahabad in case of **Dinesh Kumar Singh** (supra) was placed before the learned Single Judge [who heard Writ A No.4926 of 2023 along with the connected petitions] at Lucknow, who distinguished the said judgment on the premise that the deputationists appointed vide appointment letters dated 26.02.2019 and 19.03.2019, their term of appointment indicated that they were to continue in deputation, till such time, the regular posts are filled, hence, since that contingency had not yet occurred, in such circumstances, all those writ petitioners, who were appointed vide letter dated 26.02.2019 and 09.03.2019 were permitted to continue till regularly selected candidates are available on the posts on which the writ petitioners were working.

11. Learned Single Judge, while dealing with the case of the writ petitioners who were appointed vide letter dated 31.02.2019, accepted the reasoning given by the Coordinate Bench in the case of **Dinesh Kumar Singh** (supra) decided at Allahabad. Since their appointment letters contained a stipulation that they were appointed for a period of one year or till such time, regular selection is made whichever is earlier and the period

of one year had expired, hence, such writ petitioners did not have a right to continue as deputationist, accordingly, their writ petitions were dismissed.

12. In the aforesaid backdrop, the State has come up in special appeal assailing the judgment of the learned Single Judge in so far as it carved two categories treating the deputationists differently even though all the deputationists were appointed under the same advertisement and despite the discrepancy in the language used in the appointment letters, yet they should not have been treated differently, moreso when similar writ petitions were dismissed at Allahabad on merits.

13. Three other connected special appeals have been filed by such writ petitioners who were appointed vide letter dated 31.01.2019 and on the basis of the term of appointment which had come to an end their writ petitions were dismissed.

14. Sri Tushar Verma, learned Additional Chief Standing counsel has primarily attacked the judgment of learned Single Judge dated 16.04.2024, which was corrected by the order dated 11.07.2024, on the ground that the learned Single Judge has created an artificial distinction in respect of deputationists on the basis of the language contained in their appointment letters. It is urged that all the deputationists were appointed in pursuance of the same advertisement and mere change in the language of the letter of appointment could not give them a right to be treated differently specially when it was not disputed that all of the writ petitioners were appointed under the same advertisement which clearly indicated that the selection was for 107 posts lying vacant, through deputation, for a period of one year or till the time regular selections were made whichever was earlier.

15. It was further urged that the advertisement issued clearly indicated that the deputationists were being considered for 107 posts which were lying vacant in the department of local bodies. Material was placed on record to indicate that regular selections have been made by the Selection Board and regular appointees have been appointed, however, learned Single Judge erred in holding that till all posts are filled by regular selection till then, the writ petitioners will continue on deputation.

16. It is further urged that the deputationists did not have any vested right in respect of vacancies occurring in future. Since selections were for 107 vacant posts and 94 selected persons were regularly selected, hence, the stance of the writ petitioners that since all vacant posts have not been filled, they cannot be repatriated to their parent department, is against the basic concept of deputation as understood in service jurisprudence.

17. It has also been urged by the learned Additional Chief Standing Counsel that the learned Single Judge did not take note of the amendment made in the Uttar Pradesh Palika (Centralised) Service Rules, 1966. It has been submitted that the Rules of 1966 came to be amended in the year 2016 by virtue of the Uttar Pradesh Palika (Centralized) Service (26th Amendment) Rules, 2016 wherein in Rule 6 an amendment was incorporated which permitted that the State could make a temporary appointment by deputation from amongst the officers serving under the Government or keeping in view the exigencies in functioning of the municipalities, the State could make any interim and temporary arrangement from amongst the officers of the State Government having pay scales equal to or higher than the pay scale of posts till the availability of

officers through the sources as recognized in the Rules of 1966.

18. It is urged that this amendment conferred powers on the State to make such temporary arrangements and it is in furtherance thereof, the State had written a letter to the Director, Local Bodies noticing the exigencies of service which were prevalent in the municipalities and in order to tide over the crises authorized the Director, Local Bodies to make appointment on deputation.

19. It is further urged that in exercise of such powers, the State issued necessary directions and relying upon the same, the appointment on deputation was made. As a corollary, if the State has the power to make such arrangements then it also has the power to recall and in such circumstances, the letter issued by the State dated 05.07.2023 requesting the Director, Local Bodies to repatriate the officers appointed on deputation cannot be termed to be bad. Consequently, the order issued by the Director, Local Bodies dated 07.07.2023 repatriating the writ petitioners to their parent department also cannot be said to be *mala-fide* exercise of jurisdiction vested in him by law.

20. Learned Additional Chief Standing counsel has further urged that once the entire controversy had been decided by the Coordinate Bench at Allahabad in the case of **Dinesh Kumar Singh** (supra) and even though the said order passed at Allahabad was made the subject matter of a Special Appeal bearing No.197 of 2024 (Dinesh Kumar Singh v. State of U.P and Ors.) which came to be connected with Special Appeal No.122 of 2024 (Namita Chaudhary and Ors. v. State of U.P. and Ors.), but there was no interim order, hence, the same ought to have been considered as a binding

precedent by the learned Single Judge and in case, if the learned Single Judge did not concur with the decision in **Dinesh Kumar Singh** (supra) it could have referred the matter to a larger Bench but by passing the impugned order distinguishing the case of **Dinesh Kumar Singh** (supra) it has vitiated the judgment dated 16.04.2024.

21. It is further urged that some of the deputationists have already joined their parent department in furtherance of the order impugned in the writ petitions. It has also been pointed out that an interim order was passed in the connected Special Appeal No.104 of 2024, by a Coordinate Bench of this Court dated 16.05.2024 and the operation of the order impugned was stayed. However, in the connected Special Appeal No.105 of 2024, a Coordinate Bench vide its order dated 16.05.2024 provided that such appellants who have worked on appointment by deputation and are entitled to salary for the said period, for them their salary be released by the next date. Similar direction was given by this Court in the other connected Special Appeal No.117 of 2024 by means of the order dated 22.05.2024.

22. It is lastly urged that insofar as the deputation is concerned, unless and until there is the consensus between the parent department, the borrowing department as well as the employee till then the deputation cannot continue. In the instant case, the State as well as the Director, Local Bodies who is the parent department has already passed the order of repatriation, hence, it no more open for the writ petitioners to state that the repatriation order is bad. Moreover, the appointment was purely temporary and for a period of one year or till the regular selection is made and in this regard twice the period of one year was extended as shall be evident from

the letter issued by the State dated 04.05.2020 and 24.08.2021. Thereafter, there has been no extension, hence, the deputationists were required to abide by the order of repatriation.

23. It has further been pointed out that in the letter of extension dated 04th May, 2020, there was a clear reference made to the appointment orders dated 22.02.2019, 08.03.2019 and 06.06.2019 which covered all persons belonging to the department and were working on deputation. Hence, the artificial distinction created by the learned Single Judge on the basis of the language contained in the appointment letter of the deputationists is not well founded and for all the aforesaid reasons the impugned order dated 16th April 2024 as corrected vide order dated 11.07.2024 is liable to be set aside and the writ petition of all the writ petitioners be dismissed after allowing this special appeal of the State and the three connected appeals of the writ petitioners covered by the appointment letter dated 31.01.2019, be dismissed.

24. Shri Gaurav Mehrotra, learned counsel appearing for the respondents in Special Appeal No.175 of 2024 and for the appellants in Special Appeal No.104 of 2024, Special Appeal No.105 of 2024 had lead the arguments on behalf of the writ petitioners while Ms. Abhilasha Pandey, learned counsel for the appellants in connected Special Appeal No.117 of 2024 has adopted the submissions of Shri Mehrotra.

25. The contention put forward by Shri Mehrotra is that there is distinction between the deputation on transfer and deputation by appointment. In the instant case, it urged that the Director, Local Bodies had issued an advertisement in pursuance whereof all the writ petitioners

had applied and after proper screening of their eligibility, the writ petitioners were given appointments.

26. It is urged that the appointment order clearly stated that the appointment on deputation is for a period of one year or till regular selections are made. The order of appointment was extended from time to time and in the aforesaid backdrop it would also be seen that the selection on regular posts have yet not been done and there are still a large number of vacancies and even the work is available. In this view of the matter, it was incorrect on part of the State-Authorities including the Director, Local Bodies to have passed the order of repatriation as it was contrary to the terms of appointment. Unless and until the regular posts are filled up, the writ petitioners could not be recalled by the parents department especially when there was no complaints against the writ petitioners on account of dereliction of duties or otherwise.

27. It is further submitted that the order passed by the Director, Local Bodies dated 07.07.2023 is nothing but in consequence of the order passed by the State Government dated 05.07.2023. It is submitted that the advertisement for appointment on deputation was issued by the Director, Local Bodies, who was the appointing authority and the order of recall on deputation was also required to be passed independently by the Director, Local Bodies. However, from a perusal of the order impugned dated 07.07.2023, it would indicate that no reason has been given rather it is only in consequence of the order passed by the State Government dated 05.07.2023 and it amounts to succumbing to the dictates of the State and such an order is per se, arbitrary and bad in the eyes of law.

28. It is urged that any Executive Officer entrusted with statutory duties and powers have to exercise the same in accordance with law and it is not permissible to delegate such powers to any other Authority nor any Authority can usurp and exercise powers on behalf of the statutory body/Authority.

29. It is also urged that in the instant case, it is apparent that the impugned order passed by the Director, Local Bodies is in consequence to the order passed by the State Government which amounts to delegating the powers to the State Government or in other words it can be said that the State has usurped the powers of the Director, Local Bodies which cannot be sustained in law. Consequently, the orders dated 05.07.2023 and 07.07.2023 are against the settled principles and are liable to be set aside.

30. It is further urged by the learned counsel appearing for the writ petitioners that the reference made, by the learned counsel for the appellant, to the amendment made in Rules of 1966 in the year 2016, if examined, will reveal that the amendment to Rule 6 of the Rules of 1966, especially its proviso, is in two parts. It is submitted that the posts mentioned in Schedule-3 of Rules of 1996 are to be filled up from two sources i.e. by direct recruitment or by promotion **or** a temporary appointment can be made by deputation from amongst the officers serving under the Government **or** keeping in view the exigency in functioning of the municipalities, the State Government may make any temporary arrangement from amongst the officers of the State Government having pay-scale equal to or higher the pay-scale of the post till availability of officers through the sources.

31. It is urged that as per Rule 6 of the Rules of 1966, even prior to the amendment, the department could fill up the Schedule-3 posts either by direct recruitment or by promotion and the deficiency could still be made good through temporary appointment made by deputation from amongst the officer serving the Government. It is in exercise of the aforesaid powers that the appointments were made of the writ petitioners through deputation. It is further urged that the term of appointment of the writ petitioners clearly indicated that it was for a period of one year or till the regular selections are made whichever is earlier.

32. It is urged that in the instant case, as there are large number of posts still vacant and there is availability of work, accordingly, the writ petitioners who have been appointed as deputationist by appointment, hence, their term cannot be curtailed without proper reasons and moreso when there is no complaint against the writ petitioners. Since, the order passed by the Appointing Authority i.e. the Director, Local Bodies mentions no reason and the order passed is per se on the dictates of the State Government, hence, the order cannot be sustained and it is contrary to the dictum of the Apex Court in **Anirudhsinhji Karansinhji Jadeja and another v. State of Gujarat (1995) 5 SCC 302** and noticing it, the impugned orders have rightly been set aside by the learned Single Judge while allowing the writ petitions.

33. It is further submitted that the learned counsel for the State and the Local Bodies has filed a supplementary affidavit and brought on record certain documents relating to number of vacancies including the letter dated 19.10.2023 indicating that there are still large number of posts vacant

and this letter is addressed to the U.P. Subordinate Services Selection Board for filling up of vacancies of 238 posts which was not available before the learned Single Judge, but nevertheless it is reflective of the fact that the vacancies still exists and till such time the posts are filled up by regular appointment till then the repatriation order could not have been passed.

34. It is further submitted that the persons who have been appointed on deputation have a right to be considered fairly and equally and such an employee who is appointed on deputation after proper selection along with a letter of appointment then the same cannot be cancelled except on the ground of non-suitability or unsatisfactory work. Admittedly, the writ petitioners did not incur any of the exceptions, hence, the order impugned could not be passed and it has rightly been set aside by the learned Single Judge.

35. It has lastly been pointed out by Shri Mehrotra that in view of the interim order granted by this Court in one of the connected appeals where the impugned judgment has been stayed, the State has not permitted the writ petitioners to continue to work at their posting. It is urged that the work is available and all the writ petitioners are willing to work but it is the State who is not permitting the writ petitioners to work, hence, they cannot be deprived of their salaries on the principles of 'no work, no pay'. Though this Court had passed an interim order directing the State and the Director, Local Bodies to pay the salaries yet the same was not complied with. Such a direction was also given by the learned Single Judge which needless to say was not complied with. In the aforesaid circumstances, the writ petitioners invoked the contempt jurisdiction, but the orders have not been

complied with. Hence, it is urged that for all the reasons, the appeal filed by the State be dismissed.

36. Shri Mehrotra also referred to an order passed by the Apex Court dated 28.11.2023 in SLP (C) No.026360 of 2023 wherein the statement of the learned counsel for the State was recorded that they would not disturb the writ petitioners till the regular appointments were made, hence, the act of the State and Director, Local Bodies is contrary to the stand as recorded in the order passed by the Apex Court.

37. At this stage, learned Additional Chief Standing Counsel has pointed out that against the interim order passed by the learned Single Judge dated 12.07.2023 whereby the order dated 07.07.2023 was stayed it was assailed by filing a SLP (C) No.026360 of 2023 (Diary No.47235 of 2023) which came to be disposed of by means of the order dated 28.11.2023 by the Apex Court wherein it was observed that the process of regular appointment is going on and the authorities will not repatriate the respondents as a stop-gap arrangement, however, this statement which was incorporated in the order was also recalled as the State had moved an application before the Apex Court and the same was recalled vide order dated 22.01.2024 passed by the Apex Court.

38. Shri Mehrotra submits that insofar as the special appeals filed by such writ petitioners who are governed by the letter of appointment dated 31.01.2019 and their petitions were dismissed, are concerned, it is submitted that mere difference in the language used in the letter of appointment will not create any difference insofar as the nature of deputation is concerned, as the advertisement clearly indicated that the

applications were invited for selection on deputation for a period of one year or till such time regular appointments are made, hence, the appellants of the connected special appeals (who were writ petitioners before the learned Single Judge), their case is similarly situate with that of such writ petitioners, who were appointed vide appointment letters dated 26.02.2019 and 09.03.2019. In this view of the matter, the discrimination made in respect of the writ petitioners on the basis of the date of issuance of the appointment letter and difference in language will pale into insignificance.

39. As all the writ petitioners whether appointed by the letter dated 31.01.2019 or by letters dated 26.02.2019 and 09.03.2019, they all would be similarly situated and they all were appointed as deputationists by appointment, hence, for all the reasons as applicable to writ petitioners governed by appointment letters dated 26.02.2019 and 09.03.2019, the writ petitioners appointed by letter dated 31.01.2019 would be benefited and the order impugned being bad in the eyes of law is liable to be set aside insofar as it dismissed the writ petitions of such writ petitioners by allowing the Special Appeal No.117 of 2024, Special Appeal No.104 of 2024 and Special Appeal No.105 of 2024 respectively.

40. The Court has heard learned for the parties and also perused the material on record.

41. The record indicates that the State by means of its letter dated 05.11.2018 noticing that there were large vacancies in the Local Bodies and it was an impediment to achieve smooth operations regarding the Schemes of the Government, hence, it was thought expedient to fill up some posts as a temporary measure through deputation. This letter dated 05.11.2018

addressed to the Director, Local Bodies indicated that in Category-III post of Executive Officer, 107 posts were vacant and it be filled by deputation.

42. The Department of Local Bodies in furtherance of the order dated 05.11.2018 issued an advertisement dated 20.12.2018 indicating that 107 posts were vacant for which appointments were sought from amongst the officers working under the Government on deputation.

43. The office order dated 31.01.2019 issued by the Director, Local Bodies by which some of the writ petitioners were appointed contained a stipulation that till such time the regular appointments are made or for a period of one year whichever is earlier, the said officers were appointed on deputation. However, a perusal of the office order appointing the other writ petitioners on deputation dated 26.02.2019 and 09.03.2019 indicates that the said writ petitioners were appointed on deputation on temporary basis till regular appointments were made. However, these two letters did not mention that the appointment would be for a period of one year. Thus, there is a difference in the language in the appointment orders issued on 31.01.2019 and the appointment orders issued on 26.06.2019 and 09.03.2019.

44. There is no dispute that the advertisement issued on 20.12.2018 clearly indicated that the appointments are on temporary basis till the regular appointments are made or for a period of one year whichever is earlier.

45. It is also not disputed that the State had issued a letter of extension dated 04.05.2020 where it was indicated that all the persons who have been

appointed on deputation, their term is being extended and this was followed up by another letter dated 24.08.2021. Apparently, there is no order of extension post the letter of extension dated 24.08.2021.

46. In the aforesaid backdrop, insofar as the writ petitioners, who were appointed by the letter dated 31.01.2019, their appointments letter clearly stated that they are being appointed on temporary basis for a period of one year or till regular selections are made, whichever is earlier. Apparently, insofar as the writ petitioners, who were appointed on 31.01.2019 are concerned, there is no further extension in their favour. The order of repatriation issued by the Director, Local Bodies dated 07.07.2023 if seen would indicate that the temporary appointment given has been recalled and in their cases it cannot be said that there is any violation inasmuch as their appointment was for a period of one year which was extended twice but not thereafter. Hence, such writ petitioners cannot claim that they must continue on deputation. This aspect has been considered by the learned Single Judge by relying upon the decision rendered by the Single Judge at Allahabad in case of **Dinesh Kumar Singh** (supra) and their writ petitions were dismissed.

47. A fact which is not disputed by the learned counsel for the writ petitioners that their initial appointment was for a period of one year which after taking note of the extension has also expired. It is also not disputed that regular direct appointments were made against 107 posts and 93 persons have been selected and 85 of such Executive Officers have already joined.

48. In this light, it will be appropriate to first consider the case of those

writ petitioners, who were appointed vide letter dated 31.01.2019. Apparently, the period of one year with two extensions is over so also 85 persons have also been appointed by direct recruitment, hence, it is clear that the writ petitioners who were appointed under the letter dated 31.01.2019 cannot claim that they should continue to work on deputation beyond their period of appointment.

49. At this stage, the observations of the Apex Court in **Sarita Singh v. M/s. Shree Infosoft Private Limited, 2022 SCC OnLine SC 65** can be gainfully invoked and it reads as under:-

"11. The respondent as a claimant and plaintiff had to discharge the initial burden of establishing that the appellant was sent on deputation overseas. Significantly, while the terms and conditions of employment have been reduced to writing, there is no valid evidence on the basis of which it can be deduced that the appellant was sent on deputation overseas. On the contrary, it is the contention of the appellant that she was sent overseas for a business meeting. It is true that the appellant was represented in the proceedings in the suit by her spouse as the holder of a power of attorney. That however did not obviate the legal requirement that the burden must be discharged by the plaintiff of establishing its own case. There is no material evidence on the record to indicate that the appellant was sent on deputation. Deputation has a definite connotation in law. A two-judge Bench of this Court in *State of Punjab v. Inder Singh, (1997) 8 SCC 372* has clarified the concept of deputation and stressed on the particular rights and liabilities that are associated with a deputation, which occurs only with the consent of the employee. Justice D P Wadhwa, speaking for the Court, held:

"18. The concept of "deputation" is well understood in service law and has a recognised 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 also seen in various judgments which we have referred to above..."

(emphasis supplied)

12. A deputation would also involve a third party - the borrowing employer who discharges specific rights and obligations towards the employee and the lending employer. A three-judge Bench of this Court in *Umapati Choudhary v. State of Bihar*, (1999) 4 SCC 659 clarified the tripartite nature of a deputation in the following terms:

“8. Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not. In the case at hand all the three conditions were fulfilled...”

50. The reasons recorded by the learned Single Judge in **Dinesh Kumar Singh** (supra) which were relied upon by the learned Single Judge at Lucknow to dismiss such writ petitions which were filed by the persons appointed vide letter dated 31.01.2019, are being reproduced hereinafter:-

"19. The question that falls for determination in this case is: Whether the deputation appointment in the petitioners' favour confers some kind of a right upon them, which cannot be curtailed by the orders impugned, relieving them of their position as Executive Officers, Nagar Panchayat and asking them to join their substantive posts in the parent department?

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38. Considering the matter on all possible vantage, the respondents are not right in saying that the principle of the normal deputation period for three years, as laid down in the Government Order dated 16.03.1999 being over, the petitioners would, in any case, have to be repatriated. They are also not right in saying that permitting a deputationist to continue up to five years, requires the approval of the Finance Department. These principles regarding the upper limit of the tenure of three years and the maximum of five years with the Finance Department's approval, appear to govern cases of 'transfer on deputation'; not 'appointments on deputation' made in accordance with Rules. Nevertheless, the advertisement relating to the post of Executive Officers, against which the petitioners applied, selected and appointed, shows that it is unequivocal about the terms and the tenure. It is a protem arrangement till regular selections and appointments are made. The term is one year or until a regular appointment is made, whichever is earlier.

39. The fact that it has been extended does not confer any kind of a right on the appointee on deputation to function beyond the term or the contingency of a regular arrangement being made. In this case, both contingencies have fallen. In the case of all the writ petitioners in the leading writ petition, they have served for more than a year on extended terms and the extended terms too have ended with efflux of time. Also,

regular arrangements have been made with the selection of Executive Officers, Nagar Panchayat by the Commission. Hundred and seven Executive Officers have already been appointed, out of whom, 85 have joined. The appointments of others are said to be underway. In these circumstances, the writ petitioners in the leading writ petition, notwithstanding the fact that their's is a case of appointment on deputation, as distinguished from a transfer on deputation, have no right to continue beyond their term of appointment, which they have accepted with open eyes. They have, in any case, no right to continue in either contingency, both of which have fallen bringing to end their respective appointments.

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41. It cannot be lost sight of that the term of the appointment in this case also was one year or till regular arrangement was made. This fact is evident from a perusal of a memo dated 8th March, 2018 issued by the Director, Local Bodies to advertise the posts for deputation appointment. Thus, regular appointments, that have now been undertaken, would make the second contingency fall, curtailing the deputation appointment in its term. Also, in any event, now the term of one year is over, and, for the said reason, no relief on account of the curtailment of the petitioner's term, a few days before one year, can be a realistic basis to grant the relief of reinstatement. In the above conspectus of facts, the principle about the distinction between an 'appointment on deputation' and a 'transfer on deputation' laid down in Ashok Kumar Ratilal Patel and S.N. Maity would not come to the petitioners' aid.

42. There is still the other submission by the learned Senior Counsel to be answered, common in both matters, and that is, that the order dated 07.07.2023, determining the petitioners' deputation appointment has been passed on the dictate and command of the State Government. The repatriation, no doubt, has been directed on the command of the State Government carried in the Government Order dated 05.07.2023. There is no serious dispute raised that the competent Authority to order repatriation is the Director, Local Bodies and not the Government. The principle, therefore, in Anirudhsinhji Karansinhji Jadeja certainly applies and would have vitiated the order passed by the Director, but for the fact, that on an overall conspectus of the petitioners' rights and the manner and for the reasons that these have been determined, repatriating them, quashing the orders of the Director, would not make any material difference to the petitioners' right to relief. The reason again is that the term of appointment for each of the petitioners, that is limited to one year or until a regularly selected candidate joins, is a self-determining term with the passage of time. There is no quarrel about the fact that the petitioners' term of one year, last extended in each case, has expired. Also, regular arrangements have either been already made or in the process. Since this is the undisputed position, quashing the order dated 07.07.2023 passed by the Director, Local Bodies, would not entitle the petitioners to be reinstated in service or to any other relief, whatsoever. It is for the said reasons that there is no force in the contention of the learned Senior Counsel for the petitioners on this premise."

51. Apparently, those deputationists, who were appointed vide letter dated 31.01.2019 cannot as a matter of right claim to continue in the borrowing department as the repatriation order was passed after the

completion of one year and by then some regular appointments were also made, hence, the condition as mentioned in the advertisement as well as in the appointment letter stood complied with. The deputationist cannot claim any right which is contrary to the concept of deputation as noticed by the Apex Court in **Sarita Singh** (supra).

52. As a consequence, this Court holds that the writ petitions filed by those writ petitioners, who were appointed under the appointing order dated 31.01.2019, were rightly dismissed and accordingly their Special Appeals No.104 of 2024, 105 of 2024 and 117 of 2024 shall also stand dismissed.

53. Now the stage is set to examine the case of those writ petitioners who were appointed vide letters dated 26.02.2019 and 09.03.2019. The learned Single Judge while allowing the writ petitions of such writ petitioners, noticed that in their appointment letters it was mentioned that they are being appointed till such time regular appointments are made. It also noticed that there are clear vacancies available and the regular appointee have not been appointed coupled with the fact that work is still available, hence, all factors taken together their deputation could not be recalled.

54. This Court upon careful examination of the material on record finds that while issuing the advertisement dated 20.12.2018, it was clearly mentioned that temporarily 107 vacant posts are sought to be filled up by deputation from amongst such officers working for the Government and the advertisement also indicated that the appointment would be for a period of one year or till such time regular appointments are made.

55. It is an undisputed fact that initially the period of one year for which the present writ petitioners were appointed has expired. It is also not disputed that subsequently direct regular appointments have been made and 85 persons have already joined on the posts of Executive Officers in the Local Bodies and the record further indicates that process to fill up more vacancies by direct appointment has been initiated by the Department of Local Bodies.

56. It is trite law that the deputationists cannot claim as a right over the existing and future vacancies. Undisputedly, the deputationists were appointed on temporary basis and a temporary measure cannot have the impact of permitting the deputation in perpetuity.

57. That is to say, at a given time when the advertisement was issued, there were large number of vacancies and many of which have been filled and in future if some vacancies are still available, the deputationists cannot claim that till all vacancies are filled, the deputation should continue as there is no such stipulation.

58. Illustratively, if the strength of the sanctioned posts are 100 and there are 30 vacancies and as a temporary measure 10 vacancies are filled up by deputationists and similarly regular appointments are made against 10 posts and by the time 10 regular vacancies are filled up by then certain vacancies can still arise for different reasons such as superannuation or death of an employee, in such a case the deputationist cannot say that unless and until the entire strength is filled up their deputation must continue and cannot be recalled.

59. From a perusal of the impugned order passed by the learned Single Judge dated 16.04.2024, it would indicate that it has held that till regular selection is made on all such vacant posts, the order recalling deputation cannot stand. The relevant portion of the order is being reproduced hereinafter:-

"In view of aforesaid considerations, it is evident that the tenure of deputationists appointed vide appointment letters dated 26.02.2019 and 09.03.2019 are to continue till regular selection is made on the post on which they have been appointed through deputation and since admittedly regular selection has not yet been made in all such posts, the impugned order even otherwise are vitiated in law."

60. In the considered opinion of this Court such reasoning cannot be accepted as it amounts perpetuating the deputation. Moreover, in terms of Rule 6 of the Rules of 1966, a purely temporary measure was invoked and as per the advertisement, the period of deputation was for a period of one year or till regular appointments were made. Once the regular appointments have been made and admittedly one year has also lapsed, hence, it cannot be urged by the writ petitioners that the recall of their deputation is mired by malafide or otherwise. It is always open for the parent department to recall the deputation and once it is done unless and until a clear case of malafide is made out, the Courts usually do not interfere in exercise of such powers of the employer.

61. There is another reason to eschew the reasoning of the learned Single Judge and that is that the advertisement clearly indicated that deputation was sought for 107 vacant posts as a temporary measures. The discrepancy in the language of the appointment letter cannot enlarge the period or the scope of appointment/employment. In this regard, the observations of the

Apex Court in **National Institute of Technology v. U. Dinakar and Another, (2014) 13 SCC 180** will be gainful and the relevant portion reads as under:-

"21. We do not intend to go into the question whether Respondent 1 manipulated and inserted the word promoted in the letter of appointment. Admittedly, the appointment order has been issued pursuant to the notification of direct recruitment, therefore, it should be treated as direct recruitment. Mistake if any committed by clerical staff or any other authority in mentioning the word "promoted and appointed" in place of "appointed" and showing higher scale of pay of Rs 3000-100-3500-125-4500, it is always open to the competent authority to correct the mistake.

22. However, before such correction it is incumbent on the part of the authority to inform the officer concerned that there is a mistake in his order of appointment and competent authority intends to correct the same so as to enable the officer to submit an effective reply and show that it was not a mistake but the order was genuine and in accordance with law.

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25. The bias or mala fide plea is generally raised by an interested party, the Court cannot draw any conclusion unless allegations are substantiated beyond doubt. In this connection, one may refer to the decision in *M.V. Thimmaiah v. UPSC* [(2008) 2 SCC 119 : (2008) 1 SCC (L&S) 409] . So far as the allegation of mala fide against Dr Balaveera Reddy is concerned, though he was impleaded as a party, no specific allegation was made to substantiate such allegation. The appellant Institute when discovered that Respondent 1 was drawing salary in a higher scale of pay than the scale of pay to which he was entitled constituted a five member Enquiry Committee to look into the matter headed by Dr Balaveera Reddy. Though allegation of bias has been made against Dr Balaveera Reddy, no allegation has been made against rest of the four members of the Committee. Even the other members were not impleaded as a party. In this background, it was not open for the High Court to give finding of bias against one or the other member of the Committee, who decided the issue pursuant to which the notice was issued to Respondent 1. The Division Bench of the High Court while wrongly held that the enquiry was tainted with bias, erred in holding that Respondent 1 was entitled to the Central scale of pay."

62. Thus, the appointment letter cannot have the effect of enlarging the scope of appointment. Even if there was an apparent mistake in the language used in the appointment letter yet it cannot be gainfully used to perpetuate the deputation moreso when it is not the case of the writ petitioners that the order impugned in the writ petitions were issued *mala-fide*.

63. Moreover, to subscribe to the view of the learned Single Judge that the employment is in nature of a contract, hence, the advertisement is merely an invitation to an offer while the appointment letter is a concluded contract and then the employer cannot resile from it, cannot be upheld, as this position may be true in the pure realm of contract but insofar as employment under the State and governed by Statutory Rules are concerned, it may not be permissible to enhance the period and scope of employment de-hors the Rules governing the service.

64. The Rules of 1966 even after amendment in 2016 permits the Employer Department to tide over the vacancies by adopting temporary measure. In furtherance of the Rules, the process of filling up post by deputation as a temporary measure was initiated by issuance of an advertisement. The writ petitioners also applied for the said vacancy knowing well that it was a temporary measure and for a period of one year or till regular selection is made whichever is earlier. This could not be enlarged merely on account of discrepancy in the appointment letter especially when all appointments were made under the same advertisement. By creating an artificial distinction on the basis of the language used in the appointment letter would amount to creating an unreasonable classification and that too without any basis as there is no averment that the impugned orders passed by the Director, Local Bodies or the State was effectuated by *mala-fide*. Hence, the discrepancy in the appointment letter could not assume a larger proportion than as mentioned in the advertisement under which the appointments were made.

65. Moreover, the nature of employment under the Government although

may be initially acquired by contract but then it is a matter of status and not contractual, hence, the period or tenure of deputation could not be relaxed or enlarged de-hors the Rules. In this regard, the Apex Court in **Union Public Service Commission v. Girish Jayanti Lal Vaghela and others, (2006) 2 SCC 482** held as under:-

"14. A private employer in India enjoys almost complete freedom to select and appoint anyone he likes and there is no statutory provision mandating advertisement of the post or selection being made strictly on merit, even where some kind of competitive examination is held. A private employer has absolute liberty to appoint a less meritorious person. Except those who are covered by the definition of "workman" and are governed by the provisions of the Industrial Disputes Act or any such allied enactment, an employee working in a private establishment normally does not enjoy any statutory protection regarding his tenure of service.

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16. The nature of right possessed by a government servant and also his status after his appointment to a post under the Government was considered by a Constitution Bench in *Roshan Lal Tandon v. Union of India* [(1968) 1 SCR 185 : AIR 1967 SC 1889] and it was held as under in AIR para 6 of the reports: (SCR p. 195 A-H)

"[6.] ... It is true that the origin of government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a government servant is more one of status than of contract. The hallmark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. The matter is clearly stated by *Salmond and Williams on Contracts* as follows:

‘So we may find both contractual and status obligations

produced by the same transaction. The one transaction may result in the creation not only of obligations defined by the parties and so pertaining to the sphere of contract but also and concurrently of obligations defined by the law itself, and so pertaining to the sphere of status. A contract of service between employer and employee, while for the most part pertaining exclusively to the sphere of contract, pertains also to that of status so far as the law itself has seen fit to attach to this relation compulsory incidents, such as liability to pay compensation for accidents. The extent to which the law is content to leave matters within the domain of contract to be determined by the exercise of the autonomous authority of the parties themselves, or thinks fit to bring the matter within the sphere of status by authoritatively determining for itself the contents of the relationship, is a matter depending on considerations of public policy. In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status.’

(*Salmond and Williams on Contracts*, 2nd Edn., p. 12.)”

17. In *Dinesh Chandra Sangma v. State of Assam* [(1977) 4 SCC 441 : 1978 SCC (L&S) 7 : AIR 1978 SC 17] the contention that the relationship between the government servant and the Government is contractual in nature was not accepted and was specifically repelled. It will be useful to reproduce para 11 of the reports where the conclusions were recorded: (SCC p. 446)

“11. Mr Niren De submits that Article 310(2) supports his submission that the relationship between the government servant and the Government is contractual. Sub-article (2) of Article 310 provides that

‘notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which a person, not being a member of a defence service or of an all-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor, as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post’.

The above is a special provision which deals with a special situation where a contract is entered into between the Government and a person appointed under the Constitution to hold a civil post. But simply because there may be, in a given case, a contractual employment, as envisaged under Article 310(2) of the Constitution, the relationship of all other government servants, as a class, and the Government, cannot be said to be contractual. It is well-settled that except in the case of a person who has been appointed under a written contract, employment under the Government is a matter of status and not of contract even though it may be said to have started, initially, by a contract in the sense that the offer of appointment is accepted by the employee.”

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19. It, therefore, follows that employment under the Government is a matter of status and not a contract even though the acquisition of such a status may be preceded by a contract, namely, an offer of appointment is accepted by the employee. The rights and obligations are not determined by the contract of the two parties but by statutory rules which are framed by the Government in exercise of power conferred by Article 309 of the Constitution and the service rules can be unilaterally altered by the rule-making authority, namely, the Government."

66. Thus the reasoning of the learned Single Judge to borrow the principles of concluded contract, as applicable in pure realm of contract and to extend it to the deputationists, in effect allows them to continue till all vacancies in the borrowing department are filled, is not well founded and it does not find favour with this Court.

67. In light of the aforesaid discussions, this Court comes to the conclusion that the writ petitioners could not have been granted the benefit to continue to serve till such time all the regular vacancies are filled, hence, the judgment dated 16.04.2024 to that extent is not sustainable and is accordingly set aside. It is further provided that in case if the writ petitioners join their parent department in pursuance of the impugned orders dated 07.07.2023, they shall be permitted to do so within three weeks from today and they may not be treated to be not working to deny them their salaries on the principles of no work, no pay.

68. Accordingly, writ petition bearing WRIT-A No.1926 of 2023 along with all connected writ petitions bearing WRIT-A No.5014 of 2023; WRIT-A No.5056 of 2023; WRIT-A No.5111 of 2023; WRIT-A No.5116 of 2023; and WRIT-A No.5204 of 2023 which were decided vide judgment dated 16.04.2023 and corrected order dated 11.07.2023 shall stand dismissed. As a result, the **Special Appeal No.175 of 2024** shall stand **allowed** and the

connected **Special Appeal No.104 of 2024, Special Appeal No.105 of 2024** and **Special Appeal No.117 of 2024** shall stand **dismissed**. Costs are made easy.

(Jaspreet Singh, J.) (Arun Bhansali, CJ.)

Order Date :- 21st November, 2024
Harshita_Rakesh/-