

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

+ W.P.(C) No. 932/2015

% **30th January, 2015**

RAJESH KUMAR GUPTA Petitioner

Through: Mr. Amitesh Kumar, Ms. Priti
Kumari and Mr. Shashank Shekhar
Singh, Advs.

versus

NATIONAL COUNCIL FOR TEACHER EDUCATION & ORS.
..... Respondents

Through: Mr. A.K.Behera, Adv. for R-1.

Mr. Amit Mahajan, CGSC with Mr.
Nitya Sharma, Ms. Nidhi Raman and
Ms. Nikita Khetrapal, Advs. for R-2.

Mr. Sandeep S. Duggal, Mr. Yogesh
Saini for Mr. V.K.Tandon, Adv. for
R-4.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, petitioner impugns the order dated 22.1.2015 whereby the petitioner has been relieved of his duties from National Council for Teacher

Education/respondent no.1, and which is the deputationist employer, and the petitioner has thereby been asked to report to his parent department. Petitioner seeks the relief of continuation on deputation with the respondent no.1 for six months w.e.f 1.2.2015 as per the arguments addressed before this Court.

2. Petitioner applied for working as an Under Secretary/Research Officer with the respondent no.1 on deputation and he was employed by the respondent no.1 on deputation with it for a period of one year w.e.f 17.7.2013 on the basis of the letter of the respondent no.1 dated 17.7.2013. This letter dated 17.7.2013 reads as under:-

“F.No.5-6/2012/NCTE/Estt.

July 17,2013

To
The Deputy Director of Education
Distt. North West-A
B L Block, Shalimar Bagh
Delhi

Sub: Recruitment to the post of Under Secretary/Research Officer in the PB III 15600-39100 alongwith Grade pay scale of Rs. 6600/- in the National Council for Teacher Education on deputation/short term contract basis (on Foreign Service terms)

Sir,

I am directed to invite your kind attention to your letter No.F.DNWA/Admn/2011/7033 dated 28th January, 2013 vide which application of Dr. Rajesh Kumar Gupta, Lecturer (Pol. Science), was forward for the post mentioned above and to say that Dr. Gupta has

been selected for appointment as Under Secretary/Research Officer in the PB III 15600-39100 along with Grade pay scale of Rs.6600/- in the National Council of Teacher Education on deputation basis, initially for a period of one year, extendable upto three years on year to year basis.

The terms and conditions for the deputation will be governed by the provisions contained in the Department of Personnel & Training OM No. 6/8/2009-Estt (Pay-II) dated 17th June, 2010. Dr. Rajesh Kumar Gupta can be posted at NCTE (Hqrs.) Delhi or in any of the offices of the Regional Committees, located at Jaipur, Bangalore, Bhubneswar and Bhopal.

3. Dr. Gupta may be relieved so as to enable him to join the above mentioned post and he may be advised to report to the Member Secretary, NCTE, Wing II, Hans Bhawan, 1, Bahadur Shah Zafar Marg, New Delhi-110002, latest by 12th August, 2013.” (underlining added)

3. A reading of the first para of the aforesaid letter dated 17.7.2013 makes it clear that deputation was initially for one year and which was extendable up to three years on year to year basis. Petitioner has acted in terms of this letter and therefore in my opinion, it is not permissible for the petitioner to approbate and reprobate and claim that petitioner has in fact an automatic right of continuing deputation for three years as was originally argued and which argument was given up to argue that the petitioner should now get extended period of deputation of six months from 1.2.2015 in view of the fact that extension could only have been on year to year basis on the basis of the aforesaid letter dated 17.7.2013.

4. The initial period of deputation of one year of the petitioner came to an end on 31.7.2014 and petitioner at that stage appeared that he was not interested to continue with the deputation and he had requested for repatriation to his parent department, however, the respondent no.1 vide its office order dated 4.8.2014 extended the deputation tenure of the petitioner for six months till further orders whichever is earlier.

5. No doubt, extension of tenure in terms of the original appointment letter dated 17.7.2013 could have only been made on yearly basis however, it is noted that the petitioner acted upon the extension order of six months dated 4.8.2014. It was perfectly possible for the petitioner to reject the extension of six months at that stage in August 2014 itself on the ground that it was only for six months and not one year, but, the petitioner did not seek repatriation then and instead acted upon the extension order of six months dated 4.8.2014. Once the petitioner takes benefit of appointment and continues on deputation only for six months in terms of the office order dated 4.8.2014, thereafter the petitioner cannot blow hot and cold at the same time by taking benefit of extension of six months given vide office order dated 4.8.2014 but at the end of the period of six months, thereafter to claim that extension for six months is not valid because extension had to be

for one year. Therefore, this argument of the petitioner is rejected on account of the petitioner having taken the benefit of six months deputation tenure in terms of the office order of respondent no.1 dated 4.8.2014.

6. Learned counsel for the petitioner argued that in fact the petitioner should be continued in tenure on deputation with the respondent no.1 at least for six months w.e.f 1.2.2015 and which extension is not granted because of the malice attributable to the Chairman of the respondent no.1 inasmuch as petitioner has raised issues of financial irregularities in certain departments of respondent no.1. Reliance is placed by the petitioner upon para 32 of the judgment of the Supreme Court in the case of ***Union of India through Govt. of Pandicherry and Another Vs. V. Ramakrishnan & Ors. (2005) 8 SCC 394***, to argue that ordinarily there is no right to extension of tenure however, the order of reversion can be questioned when the same is *malafide*.

7. I cannot agree with the argument urged on behalf of the petitioner because of various reasons. Firstly, an averment made of malice, by itself, does not mean that factually malice automatically and unnecessarily exits. Malice in the present case would be a disputed question of fact requiring trial and this Court cannot in the facts of the present case

undertake trial to determine whether or not malice exists as alleged by the petitioner. Self serving averments of irregularities as alleged by the petitioner, even if taken to be true, cannot mean that that was the only basis for not continuing of the tenure of the petitioner for another period of six months. I also fail to understand that how the petitioner can raise this argument because the petitioner, as stated above, has been approbating and reprobating because if the petitioner was having no desire to continue with the respondent no.1 after the original period of one year, then the petitioner then should have at that stage itself after expiry of one year not taken the benefit of the extended period and should have gone back to his parent department but the petitioner did not do so and even now seeks extension of tenure though simultaneously claiming that he was not interested in continuing on deputation.

8. The second reason for rejecting the argument of the petitioner is that observations of the Supreme Court in the case of ***V. Ramakrishnan (supra)*** which have been made were made in a case where actually during the period of deputation tenure, the deputationist was sought to be reverted on the ground that a promotion was being made in the post in which the deputationist was working and in the facts of the said case it was found that

promotion was wrongly being effected in violation of the promotion rules and therefore there was an issue of existence of malice and *malafides* in reverting the deputationist before the end of the period of tenure. In the present case however the extension period of six months has come to an end and it is only on completion of the six months extended period coming to an end that the petitioner is asked to go back to his parent department i.e petitioner is not reverted before completion of tenure as in **V. Ramakrishnan's** case (*supra*). Neither the parent department nor the petitioner suffers any loss in any manner if the deputationist employer or respondent no.1 after completion of the tenure period, does not seek extension of tenure of the deputation of the petitioner. This Court cannot substitute itself for the decision making authority in the respondent no.1 that the tenure of the petitioner should in fact be continued though the deputationist employer does not want extension of the tenure.

9. Petitioner at the end of the arguments relied upon a letter dated 29.1.2015 sent by his parent department for extension of deputation period for one year w.e.f 31.7.2014, however, besides the fact that this letter does not form part of the pleadings and the cause of action as urged on behalf of the petitioner, even if we look into the same, that will not change the

findings and conclusions in the present case that the petitioner did specifically act with an extension of tenure for six months, and therefore the petitioner now cannot claim that since his parent department has given extension of one year w.e.f 1.8.2014, petitioner should not be relieved w.e.f 1.2.2015. Also, as stated above, once the deputationist employer specifically gave extension of tenure only for six months, and the petitioner acted accordingly, today obviously petitioner cannot claim that extension should have been for one year merely on the ground that the parent department of the petitioner wants the tenure to be of one year.

10. In view of the above, I do not find any merit in the petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

JANUARY 30, 2015
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VALMIKI J. MEHTA, J