

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO.562 OF 2016.

Shri Dipak Bhajekar,
major of age, Indian National,
presently working as Chief Electrical
Engineer, Electricity Department,
Government of Goa, Vidyut Bhawan,
Panaji, Goa.

Permanent address B/904, Paloma,
Hiranandani Estate G. B. Road,
Thane, Maharashtra 400 607.

.....Petitioner.

Versus

1. State of Goa,
Through the Chief Secretary,
Secretariat, Porvorim, Goa.
2. Power Grid Corporation of
India Ltd. Through, the
Director (Personnel), Corporate
Office At "Saudamini" Plot
No.2, Sector-29, Gurgaon- 122 001.Respondents.

Shri N. Sardessai, Senior Advocate with Shri L. Raghunandan,
Advocate for the petitioner.

Shri S. D. Lotlikar, Advocate General with Shri P. Dangui,
Addl. Government Advocate for the respondent no.1.

Coram:-F. M. REIS,
NUTAN D. SARDESSAI,JJ.

Date: 8th September, 2016.

ORAL JUDGMENT (Per F. M. REIS, J)

Heard Shri N. D. Sardessai, learned Senior Advocate for the petitioner and Shri S. D. Lotlikar, learned Advocate General for the respondent no.1.

2. Rule.

3. Heard forthwith with the consent of the learned Counsel appearing for the respective parties. Mr. P. Dangui, learned Addl. Government Advocate waives notice on behalf of the respondent no.1.

4. The above petition, as originally filed, prays for the following reliefs:-

- a. Issue a writ of mandamus or a writ in the nature of mandamus or appropriate writ, order or direction to the Respondent no.1 to pay the salary and other statutory allowances due to the Petitioner as the Petitioner would have drawn in Respondent No.2 organization in terms of the option exercised by the Petitioner provided in the Office Memorandum dated 17.06.2010 till

final disposal of petition starting from 14.09.2015;

- b. Issue a writ of mandamus or a writ in the nature of mandamus or appropriate writ, order or direction to the Respondent no.1 to relieve the petitioner for one day for the purpose of accepting proforma promotion to the post of General manager in the Respondent No.2 organization as mentioned in letter dated 02.03.2016 and join back to the post of Chief Electrical Engineer.
- c. Issue a writ of certiorari or a writ in the nature of certiorari or appropriate writ, order or direction to quash and set aside the impugned order dated 19.05.2016 and service of the petitioner be continued till completion of deputation period;

5. During the pendency of the above petition, the prayer clause (b) came to be deleted and prayer clause (d1) was inserted which reads thus:-

"d1. Issue a writ of certiorari or a writ in the nature

of certiorari or appropriate writ, order or direction to quash and set aside the second impugned order dated 01.07.2016 and service of the Petitioner may be continued till completion of deputation period i.e. till 11.9.2017.”

6. It is the case of the petitioner that the respondent no.1 by its letter requested the Secretary (Power) Government of India to identify top level Electrical Engineers with sufficient experience for either deputation or contractual appointment in the Electricity Department in the State of Goa, somewhere on 24.7.2014. It is further contended that on 24.11.2014 the Government of Goa, forwarded a copy of the letter dated 24.7.2014 to the respondent no. 2 seeking applications from interested candidates fulfilling the criteria specified therein. Consequently, applications were received by the Ministry of Power, Government of India which included the application of the petitioner for the said post in the Electricity Department in the State of Goa which were forwarded to the respondent no.1 on 3.2.2015. It is further contented that the said post was also advertised inviting applications for the post of Chief Electrical Engineer, Electricity Department with the

respondent no.1 somewhere on 15.2.2015. The petitioner in addition to the above application forwarded another application dated 21.7.2015 applying for such post. The Goa Public Service Commission on 21.7.2015 held an interview and the name of the petitioner was recommended. On 31.7.2015, the petitioner was offered the post to be appointed on transfer by deputation in the Electricity Department of the State of Goa on the pay band of ₹ 37400/- ₹67000/- + G.P. ₹8700/-. The petitioner accepted the offer on 4.8.2015 for appointment to the said post. The respondent no.2 also granted no objection to the respondent no.1 to place the services of the petitioner to the respondent no.1 for appointment to the said post of Chief Electrical Engineer on deputation for a period of two years. It is further contended that the respondent no.1 informed the petitioner that the petitioner's pay and allowances will be fixed as per the Office Memorandum dated 17.6.2010. The petitioner thereafter reported for duties on 14.9.2015 upon being relieved by the respondent no.2 organization and started performing his duties as Chief Electrical Engineer in the Electricity Department in the State of Goa. There was further correspondence by the petitioner for fixation of the pay and allowances as provided in the

terms and conditions with the respondent no.1 organization. It is further contended that in the meanwhile the respondent no. 2 by an order granted proforma placement/promotion of the petitioner from the post of Additional General Manager in E-7A grade to the post of General Manager in E-8 grade with immediate effect and consequently the petitioner requested the respondent no.1 to relieve him for one day to enable him to take charge of such post and to report back to perform the duties as Chief Electrical Engineer with the respondent no.1. The schedule of joining and relieving from the parent organization was also submitted by the petitioner. It is further contended that the petitioner being dissatisfied by the inaction on part of the respondent no.1 in fixing the pay scale or allowances requested the respondent no.1 to communicate to the respondent no.2 rejecting the proposal to relieve the petitioner for one day and immediately on the same day i.e 19.5.2016, the respondent no.1 issued the impugned order relieving the petitioner permanently curtailing the period of deputation by giving one month notice and directing the petitioner to handover charge to the Superintendent Engineer, Working in the Electricity Department of the Government of Goa.

7. Being aggrieved by the said decision the petitioner filed the above petition praying *inter alia* to quash and set aside the impugned decision passed by the respondent no.1 and contended that curtailment of the term of deputation period permanently without issuing three months notice to the petitioner and the respondent no. 2 in terms of Clause 9 of the Office Memorandum dated 17.6.2010 is illegal and bad in law. Consequently, the petitioner made a representation to the respondent no.1 on 26.5.2016 with that regard and ultimately filed the above petition seeking the aforesaid reliefs.

8. The respondent no.1 filed their reply *inter alia* contending that the respondent no.1 was justified to curtail the deputation period permanently considering the terms on which the petitioner was appointed on deputation. It was further pointed out that as the petitioner wanted to be relieved from the office of the respondent no.1 for one day to enable him to take charge on promotion by the respondent no.2 and as such, the respondent no.1 permanently relieved the petitioner and curtailed his deputation period. It is further pointed out that considering the salary paid to the petitioner,

the respondent no.1 could not afford the services of the petitioner. It is further pointed out that considering the terms on which the petitioner was appointed the respondent no.1 is justified to relieve the petitioner permanently.

9. The petitioner in the meanwhile filed a rejoinder *inter alia* contending that the representation made by the petitioner to allow him to continue for a period of three months has been withdrawn and as such according to the petitioner there is no justification to curtail the deputation period and consequently the petitioner is entitled for the reliefs claimed in the petition.

10. Shri Sardessai, learned Senior Counsel has pointed out that though the petitioner has been deputed on deputation his appointment was accepted after going through the requisite process and on recommendation of the Goa Public Service Commission. The learned Senior Counsel further points out that perusal of the impugned order reveals that there are no reasons given therein to justify the contentions raised in the reply. It is further submitted that the reason in the reply that the respondent no.1 cannot afford to pay the

salary to the petitioner is misconceived as it was duly agreed by the respondent no.1 at the time of the appointment of the petitioner on deputation. The learned Senior Counsel further submitted that the promotion to the petitioner would not give any additional financial benefits to the petitioner and in any event the petitioner would not claim any further allowances from the respondent no.1 due to such promotion. It is further contended by the learned Senior Counsel that the only request of the petitioner was to relieve him for one day to enable him to take charge of office of the respondent no.2 situated at Mapusa and thereafter he would be relieved to enable him to join the office of the respondent no.1 to continue to complete his tenure on deputation. The learned Senior Counsel further pointed out that as there are no reasons recorded in the impugned order nor any contentions raised by the respondent no.1 with regard to the suitability of the petitioner, the impugned order permanently relieving the petitioner is arbitrary, unconstitutional and without any justification. The learned Senior Counsel further points out that though the petitioner was appointed on deputation it does not mean that the respondent no.1 can act arbitrarily or unfair with the petitioner and curtail the deputation period of

two years as specified in the terms of the appointment of the petitioner. The learned Senior Counsel further points out that the whole action on the part of the respondent no.1 is arbitrary and deserves to be quashed and set aside.

11. In support of his submission the learned Senior Counsel has relied upon the Apex Court judgments reported in **2005(8) SCC 394** in the case of **Union of India through Govt. of Pondicherry and another Vs V. Ramakrishnan and others** and **2015 (4) SCC 164** in the case of **Union of India and another Vs S. N. Maity and another.**

12. On the other hand Shri S. D. Lotlikar, learned Advocate General appearing for the respondent no.1 has pointed out that in terms of the memorandum dated 31.7.2015 the appointment of the petitioner can be terminated at any time by one month notice on either side. The learned Advocate General further points out that as the respondent no.1 could not afford the salary of the petitioner and in the public interest the respondent decided to curtail the deputation period. The learned Advocate General further contended that

the request of the petitioner to relieve the petitioner for one day and to join back to continue the deputation period is untenable and contrary to the Office Memorandum dated 17.6.2010. He further submitted that the respondent no.1 was also justified to permanently curtail the deputation period. The learned Advocate General further pointed out that the contention of the petitioner that there is arbitrariness in the decision of the respondent no.1 is totally unjustified and without any merit in law. The learned Advocate General further pointed out that when the petition was filed, the petitioner obtained an ad-interim order from this Court on the premise that the petitioner has made a representation to permit him to continue the deputation period up to 13.9.2016 but however, taking advantage of the interim order passed by this Court the petitioner without any justification had withdrawn such representation. The learned Advocate General further contended that this conduct of the petitioner itself would justify that no discretion should be exercised in favour of such petitioner under Article 226 of the Constitution of India. The learned Advocate General further points out that considering the contractual obligation as provided in the said Memorandum, which *inter alia* entitles the respondent no.1 to

terminate would itself justify the decision taken by the respondent no.1. The learned Advocate General further brought to our notice an office order dated 1.7.2016 *inter alia* passed by the respondent no.1 based on the representation of the petitioner to the effect that the petitioner would be relieved from 13.9.2016. The learned Advocate General, as such, points out that the petitioner had taken benefit of the interim order of this Court based on such representation, and as such, the conduct of the petitioner disentitles him any relief in the above petition.

13. During the course of hearing, the learned Advocate General has also brought to our notice the order dated 31.8.2016 *inter alia* confirming that the pay and allowances payable to the petitioner in terms and conditions of the deputation would be complied with and be paid to the petitioner in due course.

14 We have considered the submissions of the learned Counsel appearing for the respective parties and we have also gone through the records.

15. Before we proceed to examine the rival contentions, the deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department (commonly referred to as the lending authority) to another organization, (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of the 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 service by the borrowing employer. It also involves the consent of the employee to go on deputation. On perusal of the material on record, it clearly reveals that the appointment of the petitioner was purely on deputation basis and not a statutory deputation. On perusal of Clause 3 of the Memorandum dated 31.07.2015, it clearly provides that the appointment is on temporary basis and will not confer any title to permanent appointment.

Clause 3 (ii) of the said Memorandum reads thus :

"The appointment may be terminated at any time by a months notice given by either side viz. the appointee or the appointing authority, however, the appointing authority reserves the right of termination of the services of

appointee forthwith and on such termination, the appointee shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services or as the case may be, for the period by which such notice falls short of one month."

16. On plain reading of the said Clause, it clearly discloses that the appointment can be terminated at any time by a months notice given by either side. Even Clause 9 of the Office Memorandum dated 17.06.2010 which was sought to be invoked by the petitioner reads thus :

"9. Premature reversion of deputationist to parent cadre.

Normally, when an employee is appointed on deputation/foreign service, his services are placed at the disposal of the parent Ministry/Department at the end of the tenure. However, as and when a situation arises for premature reversion to the parent cadre of the deputationist, his services could be so returned after giving an advance notice of at least three months

to the lending Ministry/Department and the employee concerned.”

17. The said Clause clearly points out that the services of the deputationist could be returned after giving an advance notice of at least three months to the lending department and the employee concerned. In the present case, the respondent no.1 has exercised this right to terminate/curtail the period of deputation. The averments in the petition do not disclose any malafides or favouritism on the part of the respondent no.1 in exercising such right of termination which was otherwise reserved to even the petitioner. In fact on perusal of the reply filed by the respondent no.1, it *inter alia* states that the respondent no.1 had not anticipated that the financial burden was to the extent that a small State like Goa cannot afford the same. It further states at para 8 that vide letter dated 19.05.2016 the petitioner requested the respondent no.1 to curtail his deputation period from two years to one year i.e. till 13.09.2016 and requested to regularise his salary and other benefits like Provident Fund/Gratuity. It further states that since relieving the petitioner and permitting him to join back in the Electricity Department was not acceptable in terms of O.M. Dated 17.06.2010, vide Order dated 19.05.2016, the

respondent no.1 decided to relieve the petitioner from the post of Chief Electrical Engineer upon the expiry of one month notice period. It further states that vide letter dated 26.05.2016, the petitioner requested the respondent no.1 to withdraw the order dated 19.05.2016 issued by the Personnel Department and relieve him gracefully on 13.09.2016 after curtailing one year of the deputation period. The above petition was filed challenging the said order curtailing his deputation upon giving one month notice as referred to herein above. No doubt, vide letter dated 21.06.2016 the petitioner *inter alia* stated that he does not intend to join his parent organization before expiry period of deputation and would like to continue to the said post till 11.09.2017. He has also stated that out of sheer frustration he had written a letter dated 26.05.2016 requesting to be relieved gracefully. Even in the said letter at Clause (4), the petitioner seeks to be relieved from the post of Chief Electrical Engineer for just one or two days to enable him to accept the proforma promotion to the post of General Manager.

18. We shall examine the conduct of the petitioner in withdrawing the said representation herein below but suffice it

so to say that the letter of the petitioner itself suggest that he has agreed for the curtailment of his deputation period as from 13.09.2016. The learned Senior Counsel appearing for the petitioner fairly could not point out based on the said O.M. dated 17.06.2010 how the petitioner could be relieved so as to avail of the proforma promotion and thereafter be reappointed in the Electricity Department. Though Shri Sardessai, learned Senior Counsel appearing for the petitioner contended that there would be no financial benefit of pay to the petitioner on account of such promotion nevertheless, on perusal of the averments in the petition there is material to suggest that the petitioner would have better benefit of pay on account of such promotion payable by the respondent no.2.

19. The learned Advocate General as such was justified to contend that the respondent no.1 was within its right to refuse to relieve the petitioner to avail of such promotion. The terms and conditions of the appointment on deputation of the petitioner have been unequivocally and unconditionally accepted by the petitioner and as such, it is not open to the petitioner to now contend that the respondent no.1 cannot curtail his deputation when the petitioner himself requested

the respondent no.1 to curtail his deputation up to 13.09.2016.

20. It is also to be noted that the respondent no.1 in their reply have claimed that a small State of Goa cannot meet the financial burden of the services of the petitioner and that the termination was in public interest. In such circumstances, we find that considering the facts and circumstances of the case, the decision of the respondent no.1 to curtail the deputation period cannot be said to be arbitrary, illegal or unlawful as contended by the petitioner. No doubt, such right to curtail the deputation period has to be seen in greater public interest. But however, in the present case considering the terms on which the petitioner was appointed and the stand being taken by the respondent no.1, we find that the exercise of jurisdiction under Article 226 of Constitution of India would not at all be justified in the present case.

21. As rightly pointed out by the learned Advocate General, the petitioner has raised the grievance that the notice period of one month to curtail the period of deputation is illegal and not justified. On the basis that a representation

was filed by the petitioner to curtail the deputation period to 13.09.2016, this Court has passed an ad-interim order on 16.06.2016 that no further action against the petitioner based on the impugned decision be taken without prior information to the Court. In such circumstances, the conduct of the petitioner in thereafter withdrawing the said representation after availing the benefit of an ad-interim order is not at all justifiable and fair in the circumstances of the case. This conduct of the petitioner itself would suggest that no discretion can be exercised in favour of the petitioner in exercise of our jurisdiction under Article 226 of the Constitution of India.

22. In any event, considering the terms on which the petitioner has been appointed on deputation and the grounds on which the respondent no.1 has decided to curtail the deputation period they cannot be said to be arbitrary or unjustified which would call for interference of this Court in such decision. But however, the petitioner is justified to contend that his pay/salary and all other allowances as stipulated in terms of his appointment on deputation would have to be paid by the respondent no.1. The terms of his

appointment clearly provide that his salary and allowances will be protected. The learned Advocate General has placed on record an order dated 31.08.2016 *inter alia* stating that the salary and other allowances would be duly paid to the petitioner in terms of his letter of appointment on deputation. In such circumstances, the grievance of the petitioner with that regard would no longer survive.

23. The judgment of the Apex Court relied upon by Mr. Sardessai, learned Senior Counsel appearing for the petitioner in the case of **S. N. Maity** (*supra*) would not be applicable to the facts of the present case. We have noted that the impugned action of the respondent no.1 was not arbitrary in the facts of the present case besides the conduct of the petitioner in accepting to curtail the deputation up to 13.09.2016 and thereafter withdrawing such representation during the pendency of the above petition is not at all justified.

24. In view of the above, we dispose of the above petition by accepting the statement of the learned Advocate General that the pay and all other allowances in terms of the appointment of the petitioner on deputation would be paid as

per the said order dated 31.08.2016. Rule stands disposed of accordingly.

NUTAN D. SARDESSAI J.

F. M. REIS, J.

25. At this stage, Mr. Sardessai, learned Senior Counsel appearing for the petitioner seeks stay of the operation of the above order. We have disposed of the above petition based on the representation of the petitioner and for the reasons stated herein above. Consequently, we find no reason to grant the stay. Considering the nature of the dispute, the prayer stands rejected.

NUTAN D. SARDESSAI J.

F. M. REIS, J.

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