

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

Date of decision: March 18th, 2016

+ W.P.(C) 2299/2016 & C.M. APPL. No.9916/2016

DR. PROFESSOR SANTOSH PANDA

..... Petitioner

Through: Mr. V.K. Garg, Sr. Advocate with Mr.
N. Pradeep Sharma, Advocate.

versus

INDIRA GANDHI NATIONAL OPEN UNIERSITY

..... Respondent

Through: Mr. Aly Mirza, Advocate.

CORAM:

HON'BLE MR. JUSTICE VED PRAKASH VAISH

VED PRAKASH VAISH, J. (ORAL)

1. The petitioner is aggrieved by letter dated 02nd March, 2016 issued by respondent whereby the extention for deputation in the National Council for Teacher Education (NCTE) of petitioner namely Prof. Santosh Panda has been rejected.

2. With the consent of learned counsel for both the parties the matter is taken up for final disposal.

3. Briefly stated the facts necessary for determination of present petition are that the petitioner joined the respondent University in the year 1987 and became professor in the year 1997.

4. Pursuant to advertisement dated 12th June, 2013 issued by the Departent of School Education and Literacy, Ministry of Human Resource

Development, Government of India, the petitioner applied for the post of Chairperson, National Council for Teacher Education. As per the advertisement the said post was for a fixed tenure of four years or attainment of 60 years whichever is earlier. The name of the petitioner was duly forwarded by the respondent.

5. The petitioner was appointed as Chairperson of NCTE vide letter dated 25th November, 2013. The petitioner has stated that in the 119th meeting of the Board of Management of the respondent held on 30th November, 2013, it was resolved that the petitioner be allowed to avail of period over and above the period of five years to complete his tenure of four years in NCTE as Extraordinary Leave (EOL) as per the Leave Ordinance of the University. The said minutes of the 119th meeting were confirmed in the 120th meeting held on 12th April, 2014 wherein it was also observed that in order to avail extension of EOL beyond five years with a view to complete his tenure as Chairperson, the petitioner should request three months in advance as per the provisions in the Leave Ordinance of the University for consideration of Board of Management.

6. The petitioner was relieved to join NCTE on deputation vide letter dated 27th November, 2013 initially for a period of one year only i.e. upto 27th November, 2014. The petitioner vide letter dated 18th November, 2014 applied for extension of the deputation for rest of the tenure i.e. three years w.e.f. 27th November, 2014. However, the respondent extended the deputation of the petitioner from 28th November, 2014 to 17th March, 2015 vide letter dated 17th December, 2014.

7. Vide letter dated 02nd January, 2015 Deputy Secretary (Estt.) of NCTE

requested extension of deputation period of the petitioner for the entire tenure period, but the respondent vide letter dated 09th February, 2015 extended the deputation only for one year i.e. from 18th March, 2015 to 17th March, 2016. The NCTE again requested the respondent for extension of the deputation of the petitioner for the period upto 27th November, 2017, when it was informed that the extension was placed before the Board of Management of the University and the Board after considering the request did not agree for further extension and the NCTE was directed to relieve the petitioner w.e.f. 17th March, 2016 to enable him to rejoin the University, vide letter dated 02nd March, 2016.

8. Learned senior counsel for the petitioner contends that the refusal of extension of deputation of petitioner by the respondent will hamper the plans and projects designed by NCTE during his term. It is further stated that the post of Chairperson of NCTE is a fixed tenure post for a period of four years and as such tenure of the petitioner cannot be curtailed.

9. The petitioner has also alleged biasness and arbitrarily ignoring public interest on the Members of the Board of Management, who considered the extension in the meeting of 23rd January, 2016.

10. Learned senior counsel for the petitioner further submits that the Board of Management has declined the extension of deputation without assigning any reason which is against the principles of natural justice. In support of his contention he has relied upon judgments in '**Maharashtra State Board of Secondary and Higher Secondary Education vs. K.S. Gandhi and Ors.**', (1991) 2 SCC 716; '**Rajesh Kumar and Ors. vs. Dy. CIT and Ors.**', (2007) 2 SCC 181 and '**East Coast Railway and Anr. vs.**

Mahadev Appa Rao and Ors.’, (2010) 7 SCC 678.

11. The respondent has filed the counter affidavit along with copy of agenda note and extracts of the minutes of the meeting of the Board of Management held on 23rd January, 2016.

12. Learned counsel for respondent has opposed the petition by submitting that the petitioner has no legal right to continue in the post on deputation. He further submits that no reasons are required if the period of deputation of petitioner is not extended. He has placed reliance on judgment in ‘**Union of India and Anr. vs. Samar Singh and Ors.’**, (1996) 10 SCC 555 and ‘**Major General I.P.S. Dewan vs. Union of India and Ors.’**, (1995) 3 SCC 383.

13. I have heard learned counsel for both the parties and carefully perused the material placed on record.

14. The petitioner was sent on deputation by the respondent to NCTE and he joined the post of Chairperson, NCTE on 28th November, 2013. From time to time the deputation was extended by the respondent. However, in the meeting held on 23rd January, 2016 when the request of NCTE was considered by the Board of Management of the University, it was noted that the petitioner has already been sanctioned a total period of five years and eleven months of EOL. The Board of Management did not agree for further extension of EOL in respect of the petitioner beyond 17th March, 2016. Thus, the deputation of the petitioner was not extended.

15. In the Ordinances and Regulations of the University, sub-clause (iv) of Clause 8 relating to ‘Extraordinary Leave’, it is clearly mentioned that in

very exceptional and important assignment, the cases for grant of Extraordinary Leave beyond the sealing of five years would be considered by the Board on case to case basis, subject to the condition that application for leave is submitted prior to joining the assignment and the assignment is taken only after the approval of the Board. In case of extension of EOL beyond the initial approval, the employee must apply at least three months before the expiry of the period of sanctioned EOL.

16. In the instant case indisputedly, the petitioner had not applied for EOL three months before the expiry of the period of sanctioned EOL.

17. I have gone through the judgments relied upon by the petitioner. The same are not applicable to the facts and circumstances of the present case.

18. It is now well settled that deputation is just a transfer of a Government employee from one department to another. So in its very nature, the tenure of a deputationist is a precarious one. Of course, in some cases, it may be for a fixed term, but even then it is implicit that a deputationist can always be repatriated to his parent department. It is, thus, manifest that a deputationist has no right to the post held by him in the borrowing department and he can always be repatriated to his parent department. This right of the borrowing department to repatriate the employee and for that matter right of the lending department to recall their own employee sent on deputation, is well recognized in service jurisprudence.

19. The Hon'ble Supreme Court in '**Union of India vs. V. Ramakrishnan and Ors.**', (2005) 8 SCC 394 held that ordinarily, a deputationist has no legal right to continue in the post.

20. In case titled as '**Shailesh Singh vs. Union of India and Ors.**', W.P.(C) No.2034/2010 decided on 10th August, 2010, a Division Bench of this Court has opined that a person who proceeds on deputation for a fixed tenure, does not have any vested right to work in the transferee department for the period stipulated and in the exigency of the service, the tenure can be curtailed.

21. In another case '**State of Uttar Pradesh vs. Girish Bihari**', (Laws (SC-1997-100), it was held that there is no vested right for a deputationist to continue in the service of the institution which borrowed the service.

22. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation. The period of deputation of the petitioner is over. Whatever be the reason for non-continuation of the petitioner as a deputationist, the decision of the respondent University cannot be questioned, as the petitioner has no right to demand continuation of his service.

23. The rights of deputationist are very fortitious and he can be directed to come back to the parent department at any point of time without assigning any reason. Nature of deputationist's right has been considered in catena of decisions, some of which have already been referred hereinabove. In the case of '**Devi Kumar vs. Rajya Krishi Utpadan Mandi Parishad**', 2004, **3 UPLBC 2318**, the Court observed: -

“.....The period of deputation originally fixed can be cut short, if considering necessary, a deputationist has no right to continue in the deputation post.....”

24. The petitioner has not produced any material before this Court to show that he has a right to continue on deputation. In view of the decisions referred to hereinabove, it is crystal clear that a deputationist has no legally enforceable right to continue on deputation, this Court is not inclined to accept the petitioner's prayer for a direction to the respondent to allow the petitioner to continue on deputation till completion of the tenure.

25. In the light of aforesaid discussion and the settled provisions of law, the petition as well as application are dismissed.

Dasti.

MARCH 18th, 2016
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(VED PRAKASH VAISH)
JUDGE