

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6884 of 2017

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Shahshi Bhushan Kumar, Son of Ram Shish Singh, resident of Village- Khamhar,
P.O.- Khamhar, P.S. Begusarai, District- Begusarai.

.... Petitioner/s

Versus

1. The Union of India.
2. The University Grant Commission, New Delhi.
3. The Principal Secretary, Ministry of Human Resources Development, Govt. of India, New Delhi.
4. The Vice Chancellor, Central University of South Bihar, B.I.T. Campus, Patna.
5. The Registrar, Central University of South Bihar, BIT Campus, Patna.
6. The Finance Officer Central University of South Bihar, B.I.T. Campus, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anjani Kumar, Sr. Advocate with
Mr. Hansraj, Advocate

For the Respondent/s : Mr. S.D. Sanjay, Sr. Advocate
Mr. Aloc Kumar Agrawal, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 04-08-2017

Heard Mr. Anjani Kumar, learned senior counsel appearing on behalf of the petitioner who appears with Mr. Hansraj, the Advocate on record and Mr. S.D. Sanjay, learned senior counsel appearing for the Central University of South Bihar and its authorities assisted by Mr. Alok Kumar Agrawal.

With the consent of the parties the writ petition has been heard with a view to its final disposal at the stage of admission itself.

The petitioner prays for quashing of the speaking order dated 7.4.2017 of the Registrar, Central University of South Bihar (hereinafter referred to as 'the Central University') whereby the petitioner who was appointed as Internal Audit Officer on deputation



to the 'Central University' has been repatriated to his parent organization i.e. the Finance Department of the Government of Arunachal Pradesh, Itanagar with all consequential benefits. A copy of the order is impugned at Annexure-10 to the writ petition.

Primarily three issues have been raised by Mr. Anjani Kumar, learned senior counsel appearing for the petitioner to question the repatriation order, namely:

- (a) Whereas the stipulations present at clause 9 of the office memorandum dated 17.6.2010 which finds reference in the appointment order of the petitioner, a copy of which is enclosed at Annexure-3 to the writ petition, inter alia, provides a notice period of three months before any premature order of repatriation is to be passed but this obligation has not been discharged;
- (b) The order of repatriation is without any notice or hearing to the petitioner and thus is in violation of the principles of natural justice; and
- (c) The order is mala-fide and is an outcome of the interaction in between the petitioner and the Registrar as spelt out in paragraphs 8 to 10 of the writ petition as also in the representation filed before the Vice-Chancellor, a copy of which is present at Annexure-4.

According to Mr. Anjani Kumar, the order of



appointment present at Annexure-3 refers to the office memorandum dated 17.6.2010 for the purpose of determination of salary and other allowances admissible to the petitioner and includes the provision relating to the procedure to be followed in cases of premature repatriation at paragraph-9 thereof. He submits that since the petitioner was not agreeable on the opinion of the Registrar in relation to a file relating to an Associate Professor namely Dr. H.K. Nigam that the whole exercise has been generated. He further submits that in any event the petitioner was entitled to an opportunity of hearing before the order of repatriation was passed.

The argument of Mr. Kumar, learned senior counsel appearing for the petitioner has been contested by Mr. S.D. Sanjay, learned senior counsel appearing for 'the Central University' to submit that even though the office memorandum dated 17.6.2010 present at Annexure-14 at page 86 of the proceedings (wrongly mentioned as Annexure-10) finds noted in the appointment order at Annexure-3 and is also annexed at Annexure-15 to the interlocutory application but the reliance is restricted to the pay and allowances payable to the petitioner. He submits that in so far as the terms and conditions of deputation is concerned, the appointment order has clearly mentioned that his service shall be governed by the Act, Statutes and Ordinances of the University and the conditions stipulated in the appointment order, the complete copy of which is



present at Annexure-15.

Opposing the reliance of Mr. Kumar on the office memorandum dated 17.6.2010 for the purpose of premature repatriation, he submits that it is only applicable to Central Government employee sent on deputation on an ex-cadre post under the Central Government, State Government, Public-Sector Undertakings, Autonomous Bodies, Universities, etc. and vice-versa but not to an employee of the State Government of Arunachal Pradesh on deputation to the Central University.

Responding to the objection on absence of service of notice, he submits in reference to paragraphs 16 to 18 of the counter affidavit that since the work and performance of the petitioner was not found satisfactory that he was asked to submit a self appraisal report and alongside reports were also called for from the Finance Officer. It is stated that it is on consideration of the reports that it was decided to repatriate him which order was passed in consonance with rule 25 of the Central University of South Bihar, Cadre Recruitment (Non-Teaching Employees) Rules, 2016 (hereinafter referred to as 'the Rules') which inter alia, gives a discretion to the University to repatriate any employee prematurely on grounds of unsatisfactory performance or on grounds of integrity or conduct. According to Mr. Sanjay, it is protecting the interest of the petitioner that the repatriation order has been passed which merely refers to



his unsatisfactory performance as the reason for repatriation and for which he was given opportunity to submit his self appraisal report which was not found satisfactory. Responding to the argument of malice he submits that it is the self opinion of the petitioner.

I have heard learned counsel for the parties and I have perused the records.

There is no right vested in any employee to remain on deputation and law stands well settled on this issue. Reference is made to a Division Bench judgment of this Court reported in **2002(1) PLJR 707 (Lalit Kumar Vs. State of Bihar)** wherein the Division Bench specifically opining on the issue has held that a deputationist does not have any right to hold the post on deputation and that he can be there only till the requirement of the department and can be sent back at any time. Rule 25 of 'the Rules', a copy of which has been enclosed at Annexure R4/A vests jurisdiction in the University to prematurely repatriate any employee on deputation, on grounds, which can be anything in between unsatisfactory performance to integrity or conduct. In so far as the present case is concerned, it is on grounds of unsatisfactory performance that the petitioner has been repatriated in exercise of powers vested under rule 25 of the 'Rules'.

In my opinion, where the borrowing authority is not satisfied by the performance of an incumbent on deputation he



would be well within its jurisdiction to repatriate him and in such cases no exhaustive reason is required to be assigned. In so far as the present case is concerned, it is manifest from the speaking order present at Annexure-10 that a self appraisal report was called for from the petitioner and was considered in the backdrop of the report of the Finance Officer and was not found satisfactory leading to the repatriation order under rule 25 of 'the Rules'.

There is a distinction when the period of deputation is restricted on the basis of performance and when it is on the issue of conduct or integrity. The moment the foundation for a repatriation order rests on the questionable integrity or conduct of an incumbent on deputation, definitely he is entitled to a hearing on such stigma but that is not the case herein and the repatriation is on account of unsatisfactory performance of the petitioner which is regulated under rule 25 of 'the Rules'.

Mr. Anjani Kumar has very strenuously argued that the office memorandum dated 17.6.2010 a copy of which is placed at Annexure-14 to the writ petition as well as at Annexure A/1 to the rejoinder to the counter affidavit would apply to the case of the petitioner and even in the case of a repatriation on unsatisfactory performance, the incumbent would be entitled to a notice period as held by this Court in the judgment rendered in **CWJC No.6235 of 2017 (Lallan Kumar Pandey @ Lalan Kumar Pandey vs. The**



Ministry of Home Affairs, Government of India) but in my opinion the reliance of Mr. Kumar on the office memorandum dated 17.6.2010 as well as the judgment of this Court in the case of **Lallan Kumar Pandey** (supra), is completely misplaced.

It is eloquent from a reading of the subject of the office memorandum dated 17.6.2010 that it deals with the case of deputation of a Central Government employee to ex-cadre posts under the Central Government, State Government, Public-Sector Undertakings, Autonomous Body, University, Union Territory Administration, Local Bodies etc. and vice-versa. Meaning thereby it would cover the cases of all such Central Government employees who are posted on deputation within the Central Government or any State Government or to other bodies mentioned therein or when the Officers and employees in the Central Government, the State Government, Public Sector Undertakings, University etc. are sent on deputation to the Central Government but the office memorandum certainly does not extend to a State Government employee on deputation to the Central University. Even otherwise the reference of the office memorandum in the appointment order is merely in connection with emoluments and does not extend the provisions relating to deputation. In fact the appointment order very clearly informs that the service of the petitioner shall be governed by the Act, Statutes and Ordinances of the University and thus it is the



‘Rules’ present at Annexure R4/A which would regulate his deputation and not the office memorandum dated 17.6.2010.

For the reasons and discussions above, I am not persuaded to interfere with the order under challenge herein.

The writ petition is disposed of accordingly.

(Jyoti Saran, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	30.08.2017
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