

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9000 of 2008

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Kapildeo Prasad, son of late Babulal Yadav, resident of village Sarsu, P.S. Atari,
District Gaya

.... Petitioner

Versus

1. The State of Bihar
2. The Director, Bihar State Education Project Council, Beltron Bhawan,
Shastrinagar, Patna.
3. The District Education Programme Co-ordinator-cum-District
Superintendent of Education, Bihar Education Project Council, Purnea
4. The District Officer-cum-Chairman, District Executive Committee, Bihar
Education Project, Purnea.

.... Respondents

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Appearance:

For the Petitioner : Mr. Kedar Nath Tiwari, Advocate

For the Respondents : Mr. Girijish Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 07-07-2017

Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The present writ petition has been filed for quashing the
order dated 08.05.2008 issued as office order by the District
Superintendent of Education-cum-District Programme Co-ordinator,
Bihar Education Project, Sarva Shiksha Abhiyan, Purnea, by which the
petitioner ceased to be on deputation and was directed to go back to
his parent Department; and for connected reliefs.

3. The short facts of the case according to the petitioner are
that he is the permanent employee of Bihar Spun Silk Mills, Bhagalpur.
He was deputed to the Bihar Education Project at Complex, Gurudwara
Road, Purnea vide letter dated 09.01.1999 issued by the District



Programme Co-ordinator, Bihar Education Project, Purnea with effect from 26.02.1999 in Class IV. The deputation of the petitioner was extended from time to time year-wise from 26.02.2000 onwards in the Department of Bihar Education Project Council (hereinafter referred to as the "BEPC"), Purnea. In the year 2004 the petitioner along with other employees working on deputation were asked to return to their parent department by order dated 04.03.2004. The aggrieved employees approached this Court in CWJC No. 5714 of 2004 in which the above order of repatriation was quashed, observing as follows :-

" In the opinion of this Court in a matter of deputation, the contract of deputation may be terminated, if the department which has sent its employee on deputation, demands their services back or the loanee department is not in need of their services or by the very conduct of the deputationist, he is not required to be continued in service. The present is not a case where these petitioners are sought to be repatriated on any one of the aforementioned grounds. According to the respondents, they are repatriating these petitioners to create vacancy so that they may observe the policy of the State Government.

In the opinion of this Court such procedure is not permissible under the law. When the posts are occupied by the deputationists and the reservation policy would apply prospectively, then to apply the policy from a future date, the persons who are on deputation, cannot be sacrificed under the garb of repatriation. The respondents would not be entitled to repatriate the petitioners on the ground that they want to observe the policy of the State Government."



4. In due course however, the respondent no. 3 passed the impugned order dated 08.05.2008 whereby once again the services of three employees were repatriated in an attempt to implement the reservation policy of the Government. Against five posts earlier available there were only three sanctioned posts, against which two persons, Subodh Kumar Yadav and Arvind Kumar Singh, were adjusted while three persons namely, Suresh Prasad Sharma, Sukhde Oraon and the petitioner were repatriated to the parent Department. The aforesaid Suresh Prasad Sharma approached this Court in CWJC No. 8527 of 2008 which was allowed by order dated 04.05.2011 and as such the order dated 08.05.2008 as concerns Suresh Prasad Sharma stood quashed.

5. Learned counsel for the petitioner submits that the respondents have acted arbitrarily in giving retrospective effect to the reservation policy of the Government as evident from the impugned order dated 08.05.2008 which is in the teeth of the decision of the Court laid down in CWJC No. 5714 of 2004 (Annexure-2). This Court clearly enumerated the three situations in which repatriation was permissible and none of the three was applicable in the case of the petitioner. It is further submitted that the petitioner's co-employee Suresh Prasad Sharma in almost identical circumstances has been allowed to continue on deputation pursuant to the orders of this Court in CWJC No. 8527 of 2008. The respondents have accepted the said



order in the case of Suresh Prasad Sharma which has since attained finality. It is submitted that the petitioner is entitled to similar relief as granted to Suresh Prasad Sharma, and allowing the impugned order to operate against the petitioner would result in discrimination against him.

6. Learned counsel for the respondents on the other hand, opposes the writ petition submitting that the claim of the petitioner is ill-conceived . At the outset it is pointed out that the petitioner had been sent on deputation in 1999 for a specific period of one year in the D.P.E.P. III Scheme being run by the BEPC which was funded by the Central Government and the State Government. The said scheme was a time bound scheme and was closed. Thereafter the BEPC was authorised to run time bound scheme known as “Sarva Shiksha Abhiyan” which was also aided by the Central Government and the State Government. It is submitted that the D.P.E.P. III scheme and the Sarva Shiksha Abhiyan are entirely distinct from each other and the latter came into existence after the former scheme terminated. It is submitted that the petitioner’s deputation was initially for the D.P.E.P. III Scheme but, subsequently the contract was extended under the Sarva Shiksha Abhiyaan Scheme periodically for one year at a time. By order dated 31.12.2005 the contract was extended from 01.10.2005 to 31.03.2006 and by letter dated 19.09.2007 the contract for deputation was extended on provisional basis with effect from 01.04.2006 till



completion of selection, as evident from the proceeding dated 07.07.2006 (Annexure-D to the counter affidavit) of the 17th meeting of the District Executive Committee.

7. It is submitted that the period of the contract of deputation under the last extension expired on 31.03.2006 and thereafter the deputation was extended only provisionally on and from 01.04.2006. It is therefore, not a case where the petitioner had been repatriated by terminating his contract for deputation before completion of its full term. Reliance has been placed on various decisions of the Hon'ble Supreme Court to submit that a deputationist has no right to continue on deputation indefinitely as also that there can be no absorption in a project which is limited in time.

8. Learned counsel for the respondents further submits that the ratio of the decision in CWJC No. 5714 of 2004 was rendered in the context of a contract of deputation having been terminated before its expiry whereas the petitioner has been repatriated after his contract for deputation terminated on 31.03.2006 and he was working on deputation merely on a provisional basis till roster clearance.

9. Learned counsel for the respondents further submits that the case of the petitioner is distinguishable from that of co-employee Suresh Prasad Sharma who was allowed to continue on deputation in terms of order passed in CWJC No. 8527 of 2008. It is pointed out from the order passed in that case, that the claim of Suresh Prasad Sharma



was allowed, having regard to the stand that he was the third senior-most person who ought to be retained in service rather than sent back to his parent Department. It is therefore, submitted that it was by reason of seniority of Suresh Prasad Sharma that he was allowed to be retained on deputation.

10. Having heard the parties and on consideration of the materials on record, this Court is in agreement with the submissions made on behalf of the respondents. It has been stated by the respondents that the petitioner was appointed on deputation in 1999 for a specific period of one year in the D.P.E.P. III scheme run by the B.E.P.C. which was closed. Thereafter another time bound scheme namely, Sarva Shiksha Abhiyan commenced in which the petitioner's deputation was extended from time to time for a period of one year which finally expired on 31.03.2006. The petitioner continued provisionally with effect from 01.04.2006 till completion of the selection. These facts as narrated in the counter affidavit have not been controverted by the petitioner and no rejoinder to the counter affidavit has been filed. The impugned order itself discloses that earlier there were five sanctioned posts, but after termination of the D.P.E.P.III scheme, there were only three sanctioned posts under the Sarva Shiksha Abhiyan. After adjustment of two persons namely, Subodh Kumar Yadav and Arvind Kumar Singh, the third employee Suresh Prasad Sharma was allowed to be retained on deputation on the basis



of his being the third senior most person, in terms of the order of this Court in CWJC No. 8527 of 2008. The petitioner therefore, cannot claim similar relief as granted to his co-employee Suresh Prasad Sharma as the two persons cannot be said to be similarly situated. The impugned order of repatriation dated 08.05.2008 has been passed after expiry of the period of deputation on 31.03.2006, whereafter the petitioner merely continued on provisional basis till selection. It was not a case where the contract of deputation was terminated midstream. It is well settled that a deputationist cannot claim statutory right to continue on deputation for an indefinite period nor can he be absorbed in a project floated for a limited time period.

11. The writ petition is therefore devoid of merit and stands dismissed.

(Vikash Jain, J)

Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	08.07.2017
Transmission Date	N.A.

