

\$~18

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

Decided on: April 17, 2017

+ W.P.(C) 3295/2017, CM Nos. 14368-14369/2017

HARISH GUPTA

..... Petitioner

Through: Mr. Anil Sapra, Sr. Adv. with Mr.
Pratik Malik, Mr. Rudra Nath Sinha
& Ms. Piyusha Singh, Advs.

versus

UOI AND ANR

..... Respondents

Through: Mr. Sanjay Jain, ASG with Mr. Dev
P. Bhardwaj, CGSC, Ms. Rhea Verma
& Mr. Kautik Rai, Advs. for the
respondent No. 1

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

%

17.04.2017

CM No. 14369/2017

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 3295/2017

1. In this writ petition, the challenge is primarily to the order/circular

dated March 21, 2017, April 3, 2017 of the respondent No. 1 and to the letter dated June 3, 2016 of the Registrar General of the High Court of Punjab and Haryana (respondent No.2) to the respondent No.1.

2. Vide order dated April 3, 2017, the petitioner has been repatriated to his parent cadre and has been directed to report to Registrar General, High Court of Punjab and Haryana Chandigarh after being relieved on April 19, 2017, which would be subject to the outcome of W.P.(C) 5733/2016. The Circular dated March 21, 2017 is for filling up of the post of the Presiding Officer of the Tribunal, New Delhi on deputation/Direct Recruitment basis and the communication dated June 3, 2016 of the Registrar General, High Court of Punjab and Haryana, was, calling upon the respondent No. 1 to relieve the petitioner to enable him to join in the Punjab and Haryana High Court at Chandigarh.

3. The facts, as noted from the writ petition and contended by Mr. Anil Sapra, learned Senior Counsel appearing for the petitioner are, an advertisement on August 6, 2014 inviting applications from eligible candidates for filling up the post of Presiding officer in Employees Provident Fund Appellate Tribunal, New Delhi through proper channel, was issued. The petitioner, who is an officer of Haryana Super Judicial Service

also applied for the said post. The respondent No. 2 i.e. the Registrar General, Punjab and Haryana High Court forwarded the application of the petitioner to the respondent No.1. On March 10, 2015, the respondent No. 1 appointed the petitioner on the post of Presiding officer of the Tribunal, New Delhi for a period of five years with effect from the date of assumption of the charge of the post or until he attains the age of 62 years, whichever is earlier. On April 1, 2015, the respondent No. 2, the Registrar General of the High Court of Punjab and Haryana, on a consideration of the letter dated March 10, 2015 of the respondent No. 1 spared the petitioner on his appointment as Presiding Officer of the Tribunal in New Delhi on deputation basis initially for a period of one year, subject to the condition that the officer will be recalled from the deputation at any time if required.

4. Mr. Sapra would also contend that the petitioner tendered resignation from the Haryana Super Judicial Service as he intended to continue as Presiding Officer of the Tribunal, New Delhi. According to him, it was necessitated because of his indifferent health. The same was not accepted. Be that as it may, on March 22, 2016, the respondent No. 2 extended the deputation of the petitioner on the post of Presiding Officer, Tribunal, New Delhi from March 31, 2016 to March 30, 2017, subject to the condition that

the officer will be recalled from the deputation at any time if required. It is contended by Mr. Sapra that the respondent No. 1, in its letter dated May 17, 2016, and referring to the provisions of Section 7D(3) of the E.P.F. & M.P.Act, 1952 and Section 7E of the said Act and also referring to the fact that the matter has been examined, wherein, it was advised that the provisions of the Act, would prevail over the provisions of any rules and regulations covering the field, has sought comments from the respondent No. 2 on the resignation letter of the petitioner dated January 27, 2016. The respondent No. 2, in its communication dated June 3, 2016 (the communication impugned herein) has informed the respondent No. 1 that the request of the petitioner for resignation was declined and it has been decided by Full Court to recall the petitioner from the deputation. The respondent No. 1 was asked to relieve the petitioner for his joining in the Punjab and Haryana High Court, Chandigarh. He would state, accordingly, the decision was taken by the respondent No. 1 to relieve the petitioner prematurely to his parent cadre. Mr.Sapra, would state, a PIL being W.P.(C) 5733/2016 was filed, wherein, this Court had stayed the repatriation of the petitioner unless already so relieved. He also draws my attention to the order dated March 8, 2017 passed in the said PIL. According to him, it is

pursuant thereto, the circular dated March 21, 2017 and the order dated April 3, 2017 impugned herein, have been issued. It is his submission that under the scheme of the E.P.F. & M.P. Act, 1952, a Presiding Officer is necessarily to be appointed for a period of five years or till the age of 62 years, whichever is earlier. He states, that, initially, in the order dated March 10, 2015, the respondent No. 1 has rightly appointed the petitioner as Presiding Officer of the Tribunal on deputation basis for a period of five years or until he attains the age of 62 years, whichever is earlier. He states, vide the subsequent communication dated April 1, 2015, where the deputation has been made for a period of one year, is not in accordance with Section 7E of the E.P.F. & M.P. Act, 1952 and cannot be read against the petitioner. That apart, he states, similar is the position with regard to the extension of the deputation of the petitioner for a further period of one year from March 31, 2016 to March 30, 2017 vide communication dated March 22, 2016. According to him, the application of impleadment in the PIL has not been decided. He states that the Division Bench of this Court has said that the PIL was not to be considered as an adversarial litigation. In other words, the appointment of the petitioner to the post of Presiding Officer was a non issue. The only issue was that the post of Presiding Officer of the

Tribunal should not be vacant. That apart, he would state, the petitioner has also filed a writ petition being W.P.(C). 9694/2016 before this Court which was disposed of by this Court on November 4, 2016, wherein, a stand was taken by the respondent No. 1 that the petitioner's apprehension that he will be relieved from his present assignment, is unfounded. That apart, this Court has left it to the petitioner to pursue his remedy before appropriate forum. Mr. Sapra states, the remedy is the present petition. He would rely upon the judgments of the Supreme Court in the case reported as **(2007) 6 SCC 276 Union of India and Anr. Vs. Shardindu, Union of India and Anr. Vs. S.M.Maityi and Anr. Civil Appeal No. 5983/2007 decided on January 6, 2015** and the judgment of the High Court of Madras in **M.K.Stalin Vs. The Secretary, Tamil Nadu Legislative Assembly and Ors., W.P. C. 33077/2016 decided on November 23, 2016**, in support of his contention.

5. On the other hand, Mr. Sanjay Jain, learned Additional Solicitor General would submit that the appointment of the petitioner as Presiding Officer of the Tribunal would be governed by the Recruitment Rules, notified on August 16, 2005, which clearly stipulates, the method of recruitment to be on deputation basis. He has placed before me the said notification. He would state, that the respondent No. 1 has keeping in view

the decision of the Full Court of the Punjab and Haryana High Court as conveyed to the respondent No. 1 vide communication dated June 3, 2016, has issued the impugned order dated April 3, 2017. According to him, the circular dated March 21, 2017, is for filling up the post of Presiding Officer of the Tribunal and till such time, the appointment is made, the charge of the Presiding Officer of the Tribunal has been given to Mr. B.V.Balram Das, Presiding Officer of the Tribunal, Bengaluru. According to him, the decision of the Full Court of the Punjab and Haryana High Court would prevail upon the provisions of the E.P.F.& M.P. Act, 1952. He states, that the petitioner has come on deputation by which, he continues to hold the lien in his parent cadre and there is no severance of relationship of the petitioner with his parent cadre. The attempt on the part of the petitioner to seek severance by resigning from the service was disallowed by the Punjab and Haryana High Court. He would distinguish the judgments referred to by Mr. Sapra, stating that the same are not applicable to the facts of this case and seeks the dismissal of the writ petition.

6. Having heard the learned counsel for the parties, there is no dispute, that, initially, the communication dated March 10, 2015 stipulated the appointment of the petitioner on deputation for a period of five years or until

he attains the age of 62 years, whichever is earlier. But subsequent thereto, the Registrar General of Punjab and Haryana High Court in a subsequent communication dated April 1, 2015 to the Under Secretary of the respondent No. 1, conveyed the decision of the Full Court of High Court of Punjab and Haryana High Court that the appointment of the petitioner as Presiding Officer of the Tribunal New Delhi on deputation basis initially for a period of one year, is subject to the condition that the officer may be recalled from deputation at any time if required. The said communication was sent to the petitioner, which as conceded by Mr. Sapra, has not been challenged. That apart, the period of deputation was extended vide communication dated March 22, 2016, from March 31, 2016 till March 30, 2017. Even this communication has not been challenged by the petitioner. The plea of Mr. Sapra that in view of the provisions of Section 7E of the E.P.F.&M.P. Act, 1952 that the Presiding Officer, shall hold the office for a term of 5 years from the date on which he enters upon his office or until he attains the age of 62 years, whichever is earlier, is not sustainable in the absence of challenge to the terms of appointment as referred to above and also, in terms of Section 21 (2)(a) of the E.P.F. & M.P. Act, 1952, Notification dated August 16, 2005, notifying Employees Provident Funds Appellate Tribunal

(Presiding Officer) Recruitment Rules, 2004 has been issued. Section 21

(2)(a) of the Act reads as under:

“21. Power to make rules – (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the salary and allowances and other terms and conditions of service of the Presiding Officer and the employees of a Tribunal

XXX

XXX

XXX”

A perusal of the notification dated August 16, 2005 reveals the method of recruitment is on deputation, without any stipulation with regard to the number of years a Presiding Officer can be on deputation. That apart, the vires of the Notification notifying the rules regulating the method of recruitment of Presiding Officer has not been challenged. The judgment relied upon by Mr. Sapra in the case of *Union of India and Anr. Vs. Shardindu (supra)* is concerned the same would not be applicable, in the present case, inasmuch as the in the said case, the Supreme Court was concerned with the appointment of Chairperson of the NCTE for a period of 4 years or till he attains the age of 60 years whichever is earlier. Section 4 of the NCTE Act stipulates the same conditions. In other words, there was no stipulation in the appointment letter of the respondent therein that, his

appointment as Chairperson of NCTE was on deputation. Unlike the case in hand, where not only such condition exists but the period of deputation has also been prescribed, in the communication dated April 1, 2015 and also communication dated March 22, 2016, which have not been challenged.

7. Insofar as the judgment of the Supreme Court in the case of *Union of India and Anr. Vs. S.M.Maity and Anr (supra)* is concerned, the same is not applicable to the facts of this case inasmuch as in the said case, the Supreme Court was concerned with the Notification dated August 7, 2003 whereby the respondent was appointed on deputation basis for period of five years w.e.f. forenoon of July 29, 2003 or until further orders, whichever is earlier. It was the said condition of deputation which was interpreted by the Supreme Court. In the case in hand, in the communication dated April 1, 2015, it was made clear that the appointment was on deputation basis for a period of one year, subject to the condition that the officer will be recalled from deputation at any time, if required. Even the communication dated March 22, 2016, says so. In other words, the employer has reserved its right to recall the officer from deputation at any time. The plea of Mr. Sapra that, it is a case of “appointment on deputation” and the case of the Supreme Court shall be applicable is also not appealing in view of the stipulation in

the letters dated April 1, 2015 and March 22, 2016, whereby the employer has reserved its right to recall the officer from the deputation at any time. The recall of the officer from the deputation as impugned, being in conformity with such a stipulation, the impugned letter/order/circular cannot be interfered with. Insofar as the judgment of the High Court of Madras in the case of *M.K.Stalin (supra)* is concerned, the same has been relied upon by Mr. Sapra to contend, the petitioner need not be reverted back to the parent department for the purpose of initiating disciplinary proceedings, is also not appealing. The said judgment has no relevance to the only issue raised by Mr. Sapra as noted above. That apart, when the discretion lies with the employer to recall the officer back from deputation at any time, the discretion exercised by the employer for recalling the officer cannot be said to be bad on that ground. I do not see any merit in the petition. The same is dismissed.

CM No. 14368/2017 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

APRIL 17, 2017/akb