

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 03 of 2008

P.D.Manikpuri S/o Jivrakhan Das Manikpuri, aged about 49 years, R/o Panchshil Nagar, Raipur, Tahsil and District Raipur (C.G.).

---Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, General Administrative Department, D.K.S. Bhawan, Raipur (C.G.).
2. Chhattisgarh State Election Commission, Through Secretary, Mahanadi Khand, Mantralaya Parishar, Raipur (C.G.).
3. The Secretary, Department of Revenue, D.K.S. Bhawan, Raipur (C.G.).
4. Collector, Raipur, District Raipur (C.G.).

---Respondents

For petitioner	:	Shri Shikhar Sharma, Advocate.
For respondent No.2	:	Shri B.D.Guru, Advocate.
For State	:	Shri Syed Majid Ali, Dy.G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

01/08/2018

1. The challenge in the present Writ Petition is to the order Annexure-P/2 dated 13/09/2006 whereby the services of the petitioner has not been absorbed with services of respondent No.2 and vide order Annexure-P/8 dated 13/09/2006, he was repatriated to the parent department.
2. The grievance of the petitioner is that, the petitioner was initially appointed in the office of the Commissioner, Raipur as an Assistant Grade-III on 18/05/1983. The said office of the Commissioner stood abolished on 23/11/2002.

3. Subsequently, the services of the petitioner was sent on deputation to the State Election Commission vide Annexure-P/3 dated 01/04/2003.

4. The contention of the counsel for the petitioner is that, the petitioner had been sent to the office of the State Election Commission against the sanctioned vacant post and he continue to work on the said department for a considerable period of time and in between there were also process initiated for absorbing the services of the petitioner. He further submits that, had the department absorbed the services of the petitioner, there would not be any grievance of the petitioner. However, the respondents did not act on the proceedings for absorbing the services of the petitioner, rather subsequently published a list Annexure-P/2 dated 13/09/2006 whereby except for the petitioner of other persons who had been sent on deputation as Assistant Grade-III along with the petitioner had been absorbed in the services of the Election Commission.

5. Subsequently, vide Annexure-P/8 dated 13/09/2006, the services of the petitioner has also been repatriated back to his parent department and since then he has been working in his parent department.

6. The contention of the counsel for the petitioner is that, on account of the fact that the petitioner has been repatriated to his parent department, the persons who were appointed either along with the petitioner or subsequent to the petitioner in the department and who had been sent on deputation to the State Election Commission and where their services have been absorbed, have by efflux of time received couple of promotions and today

they are placed in a much higher level than the post which the petitioner is presently holding. He further submits that, the petitioner has been malafidely repatriated to his parent department and that there was no reason whatsoever explained by the authorities concerned for sending only the case of the petitioner back to the parent department and absorbing all the other candidates.

7. So far as the right of deputationist is concerned, unless the services of deputationist stands absorbed to the borrowing department, he does not have any indefeasible right claiming for absorption.

8. In the instant case, in addition of the petitioner not being absorbed in his parent department, it is also a case where the petitioner has been repatriated to his parent department in the year 2006 and for the last 12 years, the petitioner has been discharging his duties in the parent department.

9. Now, at this juncture, the relief sought for by the petitioner cannot be awarded, neither can the respondents be directed to absorb the services of the petitioner at this juncture.

10. Only because of the fact that, the persons who were sent on deputation along with the petitioner have been absorbed by the State Election Commission and they by efflux of time have got a couple of promotions and have been placed at a much higher level than the petitioner in the absorbed department by itself would not be a ground for questioning the order of repatriation which has been passed 12 years ago.

11. So far as the right of deputationist is concerned, it is by now well settled by a catena of decisions.

12. In Kunal Nanda v. Union of India & Anr.[2000 5 SCC 362], the Supreme Court held thus :

“6.....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.....”

13. The Supreme Court in Union of India & Anr. v. V.Ramakrishanan & Ors. [2005 8 SCC 394], held thus :

“32. Ordinarily, a deputationist has no legal right to continue in the post. A deputationist indisputably has no right to be absorbed in the post to which he is deputed. However, there is no bar thereto as well. It may be true that when deputation does not result in absorption in the service to which an officer is deputed, no recruitment in its true import and significance takes place as he is continued to be a member of the parent service. When the tenure of deputation is specified, despite a deputationist not having an indefeasible right to hold the said post, ordinarily the term of deputation should not be curtailed except on such just grounds as, for example, unsuitability or unsatisfactory performance. But, even where the tenure is not specified, an order of reversion can be questioned when the

same is mala fide. An action taken in a post haste manner also indicates malice.”

14. In *Ratilal B. Soni & Ors. v. State of Gujarat & Ors.*[AIR 1990 SC 1132], it has been held by the Supreme Court that an employee on deputation can be repatriated to the parent cadre at any time as he does not have any right to continue on the deputation basis.

15. In this context, it is profitable to refer to the decision of the Supreme Court rendered in *Umapati Choudhary v. State of Bihar & Anr.*[1999 4 SCC 659], wherein their Lordships have observed thus :

“8. Deputation can be aptly described as an assignment' of an employee (commonly referred to as the deputationist) of one department or cadres or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of 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 services by the borrowing employer. It also involves the consent of the employee to go on deputation.....”

16. Under the circumstances, this Court does not find any strong case made out by the counsel for the petitioner calling for an interference with the impugned order.

17. The Writ Petition thus being devoid of merits deserve to be and is accordingly dismissed.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit