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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision-04.10.2018

1. CWP-23548-2014 (O&M)

Nirmal Singh and others

...Petitioner(s)

Vs.

State of Punjab and others

...Respondent(s)

2. CWP-5023-2015 (O&M)

Ranjit Singh and another

...Petitioner(s)

Vs.

State of Punjab and others

...Respondent(s)

3. CWP-2132-2015

Gurbhej Singh

...Petitioner(s)

Vs.

State of Punjab and others

...Respondent(s)

4. CWP-22768-2014 (O&M)

Kashmir Singh and another

...Petitioner(s)

Vs.

State of Punjab and others

...Respondent(s)

5. CWP-22709-2017

Harjinder Singh

...Petitioner(s)

Vs.

State of Punjab and others

...Respondent(s)

6. CWP-22710-2017

Rajinder Singh and others

...Petitioner(s)

Vs.

State of Punjab and others

...Respondent(s)

7. CWP-21294-2014 (O&M)

Ashok Kumar and others

...Petitioner(s)

Vs.

State of Punjab and others

...Respondent(s)

8. CWP-20740-2014 (O&M)

Sukhwinder Singh

...Petitioner(s)

Vs.

State of Punjab and others

...Respondent(s)

9. CWP-21284-2014

Ramesh Chander

...Petitioner(s)

Vs.

State of Punjab and others

...Respondent(s)

10. CWP-21521-2014 (O&M)

Pritpal Singh and others

...Petitioner(s)

Vs.

State of Punjab and others

...Respondent(s)

11. CWP-378-2015

Balbir Singh and others

...Petitioner(s)

Vs.

State of Punjab and others

...Respondent(s)

12. CWP-1714-2018

Bhupinder Singh and others

...Petitioner(s)

Vs.

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. R.K.Arora, Advocate for the petitioner(s).

Ms. Monica Chhibber Sharma, Sr.DAG, Punjab.

JITENDRA CHAUHAN, J.

By way of this common judgment, a batch of 12 writ petitions mentioned above are being decided as common question of facts and law are involved therein. However, for the sake of brevity, the facts are being derived from CWP No.23548 of 2014.

By way of instant writ petition filed under Articles 226/227 of the Constitution of India, the petitioners seek issuance of a writ in the nature of certiorari for quashing the impugned orders dated 16.09.2014 (Annexures P-8 and P-9) and dated 07.10.2014 (Annexure P-10), whereby, the petitioners have been returned/repatriated to their parent department in a discriminatory and pick and choose manner.

It is the case of the petitioners they were recruited as Constable Drivers in Armed Battalions/District Police in different districts. Subsequently, they were transferred/shifted to the State Transport Department on deputation basis and they have been working with the State Transport Department from the last 17-18 years. The petitioners were transferred and posted at different places from time to time and no

deputation allowance was being paid to them. Now, by virtue of the impugned orders, the petitioners are sought to be repatriated to their parent department on administrative grounds.

It is contended that in the year 2006, the claim of some of the similarly situated employees for their permanent absorption in the State Transport Department was considered. Office of respondent No.2 had also issued 'No Objection' vide letter dated 24.05.2006 (Annexure P-3). It is further contended that the petitioners were allowed to remain on deputation and continue in the State Transport Department for a number of years. The petitioners, who have been allowed to continuously work for a number of years, have been vested with a right to be permanently absorbed in the State Transport Department. Furthermore, while passing the impugned orders dated 16.09.2014 (Annexures P-8 and P-9), no reason whatsoever has been cited for terminating the deputation of the petitioners. It is further averred that the respondents have adopted a pick and choose policy as many similarly situated employees including those junior to the petitioners have been retained and permanently absorbed by respondent No.3. Lastly, it is submitted that on account of long and continuous period of stay on deputation, the petitioners have transferred their families at the place of their posting and most of them have also been allotted government accommodation. The petitioners got their children admitted in the schools/colleges situated at the place of their posting. Therefore, a great prejudice would be caused to the petitioners in case they are repatriated to their parent department at this belated stage.

Learned State counsel on the other hand has vehemently argued that the petitioners being on deputation have no legal or vested right to continue on deputation even for the period stipulated in the orders taking them on deputation. It is further contended that all the deputationists have been repatriated, therefore, there is no question of favouritism.

Heard.

In the instant case, Additional, DGP Armed Battalion, Jalandhar issued letter No.34538-60/PAP/CR/J dated 08.09.2014 (Annexure R-3/1) to all Commandants of the Armed Battalions, Punjab to the effect that 141 employees were deployed by the State Transport Department as driver on deputation. They were to be immediately recalled after consultation with the concerned department and in their place, new experienced and dedicated driver employees were to be sent after being selected by the battalion commandant. A copy of this letter was sent to respondent No.3.

Respondent No.2, vide letter dated 09.09.2014 (Annexure R-3/2) replied to the following effect:-

“As desired by you, a list of Security Drivers of your office, who have been posted as drivers with vehicles of Chief Minister, Deputy Chief Minister, Ministers and Chief Parliament Secretaries, is enclosed for taking further necessary action. It would be appropriate to transfer the drivers mentioned in the list. Being their posting with V.V.I.Ps it is requested that their substitute drivers may be sent immediately, so that drivers already posted could be sent back. It is also intimated that in Minister Car Branch, 9 posts of Security Drivers are lying vacant. The Department has already

sent request in this regard. It is therefore, again requested that Constable Drivers may also be sent on deputation for filling up these vacant posts to avoid complication in posting the drivers with V.V.I.Ps.”

Accordingly, the drivers working on deputation with the State Transport Commissioner-Respondent No.3 were recalled to their parent units vide impugned orders Annexures P-8 and P-9 and their substitute drivers were provided.

The concept of deputation is based on consent and voluntary decision of the employer to lend services of the employee, corresponding acceptance of such service by the borrowing employer and the consent of the employee concerned. It is a kind of tripartite agreement revocable at the instance of any of the parties to such agreement. If one party to the agreement repudiates it, the other two have no legally enforceable right to insist upon continuance of deputation. Even otherwise, repatriation of the employee who is on deputation to the parent department cannot be said to be a punishment. Hon'ble the Supreme Court in “***State of Haryana Vs. Kashmir Singh and another***” Civil Appeal Nos.8690-8701-10, decided on 06.10.2010 (Annexure R-3/3) has held as under:-

“Transfer ordinarily is an incidence of service, and the Courts should be very reluctant to interfere in transfer orders as long as they are not clearly illegal. In particular, we are of the opinion that transfers and posting of policemen must be left in the discretion of the concerned State authorities, which are in the best position to assess the necessities of the administrative

requirements of the situation. The concerned administrative authorities may be of the opinion that more policemen are required in any particular district and/or another range than in another, depending upon their assessment of the law and order situation and/or other considerations. These are purely administrative matters, and it is well-settled that Courts must not ordinarily interfere in administrative matters and should maintain judicial restraint vide Tata Cellular Vs. Union of India-AIR 1996 SC 11.”

The assertion of learned counsel for the petitioners that the respondents have adopted pick and choose policy is negated in view of the stand of the respondents that all the employees on deputation with respondent No.3 have been ordered to be repatriated. In the instant case, the period of deputation has not been mentioned in the orders. Even if the period of deputation is specified in the orders, the employee has no legal or vested right to continue on deputation even for the said period.

From the above facts and circumstances of the case, this Court finds no merit in the instant petition(s) and the same are hereby dismissed.

04.10.2018

atul sethi/vanita

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No