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

+ **CONT.CAS(C) 489/2018**

DR V. VENKATESWARAN

..... Petitioner

Through: Mr.Saket Sikri with Mr.Ajay Pal
Singh & Ms.Niyati Patwardhan,
Advocates.

versus

SHOBHANA K PATTANAYAK & ANR

..... Respondents

Through: Ms.Maninder Acharya, ASG with
Mr.Anil Soni, CGSC with Mr.Sahil
Sood, Mr.Harshul Choudhary &
Mr.Viplav Acharya, Advocates for
UOI.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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28.11.2018

CM.APPLs.40471-40472/2018 (Delay)

1. For the reasons stated in the applications, the delay in filing reply and rejoinder is condoned. The applications are disposed of.

**CONT.CAS(C) 489/2018, CM.APPLs.26165 /2018 (Stay) & 32941/2018
(Vacation of Stay)**

2. This contempt petition was filed on 3rd July 2018 by Dr V. Venkateswaran alleging that the Respondents i.e. the Secretary and Under-Secretary in the Department of Agriculture and Co-operation and Farmer's Welfare (DoAC&FW), Ministry of Agriculture and Farmers Welfare

(MoAFW), Respondent Nos.1 and 2 respectively, had wilfully disobeyed an order dated 22nd May 2017 passed by this Court in WP (C) 984 of 2017. The further prayer in the present contempt petition is that the Respondents should be directed to “recall/quash the order dated 13th June 2018” relieving the Petitioner and repatriating him to the Ministry of Food Processing Industry (MoFPI). The third prayer is to extend the Petitioner’s period of deputation in the post of Extension Officer with the MoAFW till final disposal of WP (C) 984 of 2017.

3. The background facts are that the Petitioner applied for the post of Extension Officer under a reserved category pursuant to an advertisement of the Union Public Service Commission (UPSC) in the month of June 2013 for two vacancies in the post of Extension Officer - one OBC and the other unreserved category for New Delhi with liability to serve anywhere in India. In September 2013, the DoAC&FW in the MoAFW issued a vacancy circular for one post of Extension Officer in the Directorate of Extension (DoE) in the DoAC&FW on deputation basis. The Petitioner, who is otherwise working in the MoFPI, applied for the said appointment on deputation basis as well.

4. Meanwhile, UPSC declared the results of direct recruitment to the post of Extension Officer in the DoAC&FW, MoAFW in November 2013. The Petitioner was not selected and instead Ms. Gayatri Devi Konda was selected for the said post. Aggrieved by his non-selection, the Petitioner filed OA No.282 of 2015 in the Central Administrative Tribunal (CAT).

5. Meanwhile, the Petitioner was appointed as Extension Officer on deputation basis for a period of three years with effect from 20th May 2014 up to 19th May 2017. It must be recalled here that the Petitioner's parent cadre is the MoFPI whereas the borrowing department was the DoAC&FW.

6. The Petitioner succeeded before the CAT. By a decision dated 14th December 2016, the CAT set aside the selection of Ms. Gayatri Devi Konda and directed that the Petitioner should be appointed against the post of Extension Officer on direct recruitment with effect from the same date that he was appointed as Extension Officer on deputation.

7. Aggrieved by the above decision of the CAT, Ms. Gayatri Devi Konda filed WP (C) 984 of 2017 in this Court, whereas the UPSC filed WP (C) 3253 of 2017. The order passed on 6th February 2017 in WP (C) 984 of 2017 in which Ms. Gayatri Devi Konda had also filed application being CM No.4542 of 2017 for interim relief reads thus:

“W.P.(C) 984/2017 & C.M. No.4542/2017

Prima facie, we are not inclined to interfere with the impugned order on the question of eligibility of the respondent No.1.

2. Counsel for the respondent No.1 has in fact drawn our attention to the file notings and submits that this is a case in which the said respondent was initially shortlisted as per the enhanced criteria, but for some strange reasons was not called for interview. Our attention is also drawn to the reasons given for calling the present petitioner for interview in the category of 'better candidates', though she did not meet the shortlisting criteria.

3. Counsel for the petitioner, on the other hand, submits that the Tribunal could not have acted as a selection/appointing

authority and directed the official respondents to appoint the first respondent as the Extension Officer.

4. On the second aspect, we would like the counsel for the parties to address arguments. On the first issue also, counsel for the petitioner will meet the contention raised by the counsel for the respondent No.1.

5. However, as we are issuing notice, status quo as it existed before the impugned order was passed will be maintained as far as the petitioner is concerned.

6. The Union Public Service Commission will produce their original records. The pleadings before the Tribunal would be considered for disposal of the present writ petition.

7. Relist on 13th April, 2017.”

8. It is seen, therefore, that at that stage the interim order that was passed in the said writ petition was to maintain the status quo *qua* the Petitioner i.e. Ms. Gayatri Devi Konda..

9. The writ petition along with application CM No. 4542 of 2017 came up for hearing next on 13th April 2017 when the following order was passed:

“Learned counsel for Union of India is not present when the Writ Petition is called for hearing. Learned counsel appearing for the UPSC states that they have also filed a writ petition and the present matter may be adjourned.

Learned counsel for the first respondent submits that the deputation period comes to an end on 19th May, 2017. However, the second respondent has sent a request letter to the parent department for extension of the deputation period.

If required, the first respondent is at liberty to file an interim application.

Relist on 14th July.

Original record will be produced by the UPSC at the time of hearing.

Interim order to continue.”

10. A letter was written on 19th May 2017 by the Under Secretary in the MoFPI to the DoAC&FW as under:

“Officer Memorandum

Subject-Extension of deputation tenure of Dr.Venkateswaran V., Technical Officer, MoFPI as Extension Officer in Ministry of Agriculture & Farmer’s Welfare. -reg.

The undersigned is directed to refer to Department of Agriculture, Cooperation & Farmer’s Welfare’s letter no.19-358/2014-Extn dated 24.03.2017 on the subject cited above and to convey that Ministry of Food Processing Industries is facing acute shortage of staff and not in position to extend the deputation tenure of Dr. Venkateswaran V., Technical Officer, MoFPI for one year beyond 19.05.2017.

2. However, in light of Writ Petition 984/2017 Gayatri Devi Konda vs Dr. Venkateswaran V. pending before Hon'ble High Court of Delhi in which the Court has orally instructed Department of Agriculture, Cooperation & Farmer's Welfare not to repatriate Dr. Venkateswaran V. to his parent Ministry, it has been decided that the extension of tenure of Dr. Venkateswaran V. in Ministry of Agriculture & Farmer's Welfare may be considered till Hon'ble High Court's decision in respect of the above mentioned writ petition.

3. This issues with the approval of Competent Authority.”

11. Thus, it will be seen that the basis of the above decision regarding the

extension of the Petitioner in the MA&FW was some ‘oral’ instructions by this Court to the DoAC&FW not to repatriate the Petitioner. Since the hearing previous to the above letter was the one held by the Court on 13th April 2017, the letter was purportedly referring to what transpired in that hearing. However, from the reading of the order dated 13th April 2017, it does not appear that there were any such instructions by the Court. What the Court appears to have been told was that Respondent No. 2 in WP (C) 984 of 2017 i.e. the MoAC&FW had already sent a request letter to the MoFPI (the parent department of the Petitioner) for extension of his deputation. Factually, it appears that this was not correct since such a request appears to have been made only on 19th May 2017.

12. It is important at this stage to recapitulate the two different modes of service in the post of Extension Officer - one by way of direct recruitment for which the Petitioner here had unsuccessfully applied but later succeeded before the CAT and the other by deputation. The Petitioner’s deputation which was for 3 years was coming to an end on 19th May 2017 and what was being considered was the extension of his deputation.

13. It must, however, be recalled that the question of the Petitioner’s deputation was never the subject matter of litigation. There were no orders by the CAT or even by this Court in that regard. Specifically, there was no order by the Court either directing the DoAC&FW to continue the deputation or to restrain it from repatriating him to the MoFPI his parent department. The only interim order was concerning Ms. Gayatri Devi Konda. In her case the Court directed on 6th February 2017 that status quo be

maintained. It was this interim order which was continued on 13th April 2017.

14. It is in the above back ground that an order came to be passed on 13th June 2018 by the DoAC&FW repatriating the Petitioner to his parent department and that triggered the present contempt petition. When it first came up for hearing on 6th July 2018, the Court directed stay of the operation of the said order dated 13th June 2018. Immediately, thereafter, the DoAC&FW filed CM No. 32941 of 2018 for vacating of the stay. Pleadings were completed in both applications.

15. This Court has heard the submissions of Mr. Saket Sikri, learned Counsel for the Petitioner and Ms. Maninder Acharya, learned ASG appearing for the Respondents.

16. It must be noted that after the letter dated 19th May 2017 was written by the MoFPI to the DAC&FW, WP (C) 984 of 2017 came up for hearing before this Court on 22nd May 2017. The occasion for this listing was CM No.18721 of 2017 filed by the present Petitioner praying that his deputation which was coming to an end on 19th May 2017 should be continued by this Court. In other words, although WP (C) 984 of 2017 had nothing to do with the Petitioner's deputation, he filed such an application and when it was listed before the Court on 22nd May 2017 he produced the letter dated 19th May 2017 written by his parent Ministry i.e. MoFPI and withdrew his application. The order passed by this Court on 22nd May 2017 reads as under:

“C.M. No. 18721/2017

Learned counsel for the applicant states that the Ministry of Food Processing Industries has issued an order dated 19.05.2017 containing its decision to extend the tenure of the applicant in the Ministry of Agriculture and Farmers Welfare till this Court's decision is received in the present writ petition. The said communication is tendered in Court and is taken on record.

In view of the aforesaid, learned counsel for the applicant does not press the application any further.

Dismissed as withdrawn.”

17. It will, therefore, be seen that even this order was not in the form of any mandamus to the DoAC&FW not to repatriate the Petitioner to his parent Ministry i.e. MoFPI nor was it a mandamus to the MoFPI to agree to the extension of the Petitioner's deputation.

18. Strangely, the present contempt petition has been filed alleging disobedience of the above order dated 22nd May 2017 by virtue of the repatriation order dated 13th June 2018.

19. In the considered view of the Court, the contempt petition is itself misconceived. Therefore, even the Petitioner's application for interim relief being CM No.26165 of 2018 seeking stay of the order dated 13th June 2018 is also misconceived. By no stretch of imagination can the order dated 13th June 2018 repatriating the Petitioner to his parent Ministry i.e. MoFPI be construed to be in disobedience of the order dated 22nd May 2017 by this Court which contains no mandamus whatsoever.

20. In fact, the Court appears to have been unnecessarily dragged into the whole issue of extension of the Petitioner's deputation when there was no petition before it concerning that issue. What was before it was only the question of appointment to the post of Extension Officer by way of direct recruitment. This alone was the subject matter of WP (C) 984 of 2017. Consequently, the Court vacates the interim order dated 6th July 2018 and dismisses CM No.26165 of 2018. CM No.32941 of 2018 is accordingly allowed. Cont.Cas(C) 489/2018 is dismissed.

21. Nothing said in this order will influence the decisions in WP (C) 984 of 2017 (Gayatri Devi Konda v Dr.Venkateswaran V) and WP (C) 3253 of 2017 (UPSC v. Dr.Venkateswaran V. & Ors.) and the same will be decided in accordance with law.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 28, 2018

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