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

% *Date of Judgment: 6th August, 2018*

+ LPA 429/2018

LALIT NARAYAN

..... Appellant

Through: Mr Nikhil Bhardwaj, Adv

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr Bhagvan Swaroop Shukla, CGSC
with Mr Kamaldeep, Adv for R-1&2

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CM Nos. 31340-41/2018 (exemptions)

Exemptions are allowed subject to all just exceptions.

Applications stand disposed of.

LPA 429/2018 and CM No. 31339/2018 (stay)

1. The appellant is aggrieved by the order dated 03.08.2018 passed by a learned Single Judge wherein the application filed by the appellant along with the writ petition for interim relief has remained undecided. Counsel for the appellant submits that reading of the order dated 03.08.2018 would show that neither the application has been heard nor the prayer rejected. He

submits that the effect of this order would be that the writ petition would become infructuous. The respondents propose to repatriate the appellant to his parent cadre i.e., post of Lecturer (Occupational Therapy) in Occupational Therapy Department with effect from 06.08.2018 from his present post of Deputy Director (Administration). Although we propose to remand the matter back before the Single Judge to hear the application on merits and on completion of pleadings but it would be necessary for us to notice some facts which have given rise to the filing of the writ petition and the present appeal and as to why we are remanding the matter back for hearing.

2. The appellant herein had joined the respondent in the Department of Occupational Therapist in the year 1995. He was promoted from time to time and lastly promoted in the year 2014 as a Lecturer (Occupational Therapist). An advertisement was published on 2nd to 08th August, 2014 for one post of Deputy Director (Admn.) on direct recruitment / deputation basis. It is the case of the appellant that since he was working with the institute, he applied for the post under the category of 'direct recruitment'. He submits that not only was his understanding that he made an application under the 'direct recruitment' but this was also the understanding of the respondent which is evident from reading the following documents:-

- i. Communication dated 17.06.2015 where there is no mention of the word 'deputation'.
- ii. The minutes of the meeting of the Selection Committee for the post of Deputy Director dated 07.07.2015.

- iii. The minutes of the meeting of the Committee held on 09.09.2014 wherein the following details have been noticed:-

“The details of advertised post are as under:-

Sr. No.	Name of Post	No. of Post(s) Advertised	Age limit	Mode of Recruitment	Pay Band + Grade pay
1.	Deputy Director (Admn.)	01 (UR)	45 years	Direct Recruitment Basis	Rs. 15600-39100+ Grade Pay Rs.6600 (PB-III)

The Committee was informed that the PDUIPH has received 42 applications for the above-said post.”

- iv. List of eligible candidates prepared to be called for written test / interrogation. Reliance is placed on the column which has been prepared which we reproduce below:-

“List of Eligible candidates to be called for Written Test/Interaction:

Sr. No.	Reg. No.	Candidate Name with Father/Husband Name & DOB	Category	Direct/Deputation	Qualification acquired by the applicant	Remarks
16.	1725	Sh. Lalit Narayan S/o Late Sh. Bisheshwar Swarnkar 09.10.1966	UR	Direct	B.SC (64%) MOT (73%) M.SC (65%) B.ed (68%) BOT (67%)	Eligible (As per DOPT order No. G.I, D.P. & A.R., O.M. No. 4/4/74 – Estt. (D), dated 9 th April, 1981 and G.I Dept. Of Per. & Trg. O.M. No. 15012/8/87 – Estt (D) dated 15 th October, 1987 in regard of age relaxation for departmental candidates)”

3. Learned counsel for the appellant further submits that no doubt the offer of appointment was made on 06.08.2015 whereby the appointment was on deputation basis which was accepted by him but under protest and a protest letter was issued on the same date, copy whereof has also been placed on record. Counsel has further submitted that post his protests, the relevant file notings, copies whereof has been placed on record, would also indicate that the case of the appellant was being considered favourably and approval was being sought from the competent authority for correction of the appointment letter from deputation to direct recruit. Counsel further submits that the appellant could not be sent on deputation to his own department which is unheard of in service jurisprudence and for this proposition he has drawn the attention of this Court to ground F of his appeal which we reproduce below:-

(f) Because Hon'ble Supreme Court has held in ***State of Punjab v. Inder Singh, (1997) 8 SCC 372:***

“The concept of “deputation” is well understood in service law and has a recognized meaning. “Deputation has a different connotation in service law and the dictionary meaning of the word “deputation” is of no help. In simple words “deputation” means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the

employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The law on deputation and repatriation is quite settled and we have also seen in various judgments which we have referred to above. There is no escape for the respondents now to go back to their parent departments and working there as Constables or Head Constables as the case may be.”

4. Counsel also submits that as the appellant was being assured that his representations are being actively considered and thus he continued to work at the post and did not deem it appropriate to approach the Court till his representation was decided or rejected.

5. Mr Shukla, learned counsel for the respondent, has opposed this writ petition, firstly, on the ground that the appointment to the present post in question is to be made either by transfer or deputation failing which direct recruitment is to be made and thus the appellant could not be appointed. Mr Shukla further submits that appointment letter is crystal clear that the appellant was appointed on deputation basis. Merely because he made representations cannot be a ground to explain the delay. Mr Shukla also submits that the appellant had accepted his appointment letter without any protest, thus he cannot challenge the same at a later stage.

6. We have heard the learned counsel for the parties.

7. Reading of the advertisement would show that the same pertains to direct recruitment as also on deputation basis. The communications which we have extracted in the foregoing paragraph 2 would show that the appellant herein was being considered as direct recruit and not on deputation basis except the letter of appointment. The respondent, in our view, is

required to explain as to the reasons why he was being considered as a direct recruit and why the letter of appointment talks about deputation. These questions, in our view, can only be answered once the pleadings are complete and the matter is taken up for hearing. However, since the appellant has already worked at the post of Deputy Director (Admn.) and accordingly, the appellant will continue to carry out his duties as Deputy Director (Admn.). This is subject to final orders which may be passed either in the stay application or in the writ petition. No special equity will accrue in favour of the appellant and in case the appellant does not succeed, dues of salary will also be refunded by him as has undertaken by him in Court today.

8. With these directions, the appeal along with all pending applications are disposed of.

9. Counter affidavits be filed within one week. Rejoinder(s), if any, be filed within one week thereafter. The date of 29.10.2018 is cancelled.

10. List on 10.09.2018 before the learned Single Judge.

11. *Dasti.*

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

AUGUST 06, 2018

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