

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.3720 of 2018 (O&M)

Date of Decision :08.04.2019

Nirmal Singh and others

.....Appellants

Versus

State of Punjab and others

..... Respondents

and other connected matters:

LPA Nos.1901, 1904, 3717, 3718, 3719, 3721, 3722, 3723 and 3724 of
2018

CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI, JUDGE

Present : Mr. R.K.Arora, Advocate with
Mr. Abhilaksh Grover and Mr. Kirpal Singh Thakur,
Advocates for the appellants.

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

ARUN PALLI, J.

These are *intra Court* appeals under Clause-X of the Letters Patent against a common judgment rendered by the learned Single Judge dated 4.10.2018, vide which the writ petitions filed by the appellants to set aside the orders of their repatriation to the parent department and commanding the respondents to absorb them in the State Transport Department, have since been dismissed.

The facts are being derived from **LPA No.3720 of 2018.**

In brief the case set out by the appellants has been that they were recruited as Constable Drivers in Punjab Armed Battalions/District Police on different dates. Subsequently they were transferred to the State

Transport Department on deputation and where they have been working for the past 17-18 years. However, vide orders dated 16.09.2014 (Annexures P-8 and P-9) and 7.10.2014 (Annexure P-10), they were sought to be repatriated to their parent department. Thus, the appellants who have been working, though on deputation, continuously for a substantially long time were vested with a right to seek permanent absorption in the State Transport Department. Further, the respondents had adopted a pick and choose policy, for, many similarly situated employees, including those who were juniors to the appellants, were retained and permanently absorbed by respondent No.3. And, lastly, owing to the long and continuous period of stay on deputation the appellants had even shifted their families to the place of their posting and even got their children admitted in the local schools/colleges. Thus, it was urged that in the event they are repatriated, at such a belated stage, a great prejudice would be caused to them.

The defense set out by the respondents in their respective written statements was that the appellants had no legal or vested right to continue on deputation and since all the deputationists were repatriated, there was no question of the appellants having been discriminated.

Upon a consideration of the matter and the material on record, learned Single Judge concluded:

“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.

We have heard learned counsel for the appellants and perused the records.

Ex facie, the appellants joined as Constable Drivers in Punjab Armed Battalions and were the regular confirmed employees of the Punjab Police Department. It is not disputed either that they were transferred to the State Transport Department on deputation. Records show that vide letter dated 8.9.2014 (R-3/1), the Additional Director General Police, required all the commandants to recall the 141 employees of the Armed Battalion posted in Transport Department immediately after consultation with the concerned department and they be substituted with the new, experienced and dedicated Drivers. As a copy of the said letter was sent even to respondent No.3, in response thereto, vide letter dated 9.9.2014 (Annexure R-3/2) the State Transport Department Commissioner submitted a list of Security Drivers serving the Transport Department on deputation to the Additional Director General of Police, Armed Battalions for taking further and necessary action and requested to provide their substitutes at the earliest.

A Division Bench of this Court in **Gurinder Pal Singh v. State**

of Punjab and others 2005 (1) RSJ 340 to which a reference has also been made in the written statement filed on behalf of respondent No.3, it was concluded that a deputation subsists as long as the parties to the tripartite arrangement do not abrogate it. However, if one of the parties repudiate the agreement, the other two have no legally enforceable right to insist upon continuance of the deputation. An affidavit dated 18.12.2018, filed on behalf of the State Transport Commissioner, Punjab further reveals that the appellants have even been relieved from duty and were asked to join their parent department. The plea set out by the appellants that they were discriminated as many identically situated employees and even those juniors to the appellants have since been retained and absorbed by respondent No.3 was duly controverted, for, it was maintained that all the deputationists had since been repatriated. Not just that after the appellants were recalled to their parent department, respondent No.3 had even been provided with the substitute Drivers. Further, the reliance placed by the learned counsel for the appellants upon the decision of the Supreme Court in **State of Punjab Vs. Inder Singh 1997 (8) SCC 372** is also misplaced. Undoubtedly considering the fact situation obtaining in the matter at hands the Supreme Court observed that it was really harsh upon the respondents therein to be sent back after they had served the CID for number of years in higher rank though on *ad hoc* basis and now when they go back to their parent department they have to work either as Constable or Head Constable. But upon an analysis of the matter in issue and the settled position of law on the subject it was concluded:

“19. Concept of "deputation" is well understood in service law and has a recognised meaning. ‘Deputation’ has a different connotation in service law and the dictionary meaning of the word ‘deputation’ is of no help. In simple ‘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 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 as 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.

20. It is no doubt really harsh on the respondents to be sent back after they have served the CID for number of years in higher rank though on ad hoc basis and now when they go back they have to work either as Constables or Head Constables. It was submitted before us that an employee could seek voluntary retirement after putting in 20 years of qualifying service and that the High Court in the impugned judgment gave option to the respondents to

seek voluntary retirement while still working in the CID and holding higher ranks. This option can, however, be limited to only those respondents who have put in 20 years of qualifying service as per the relevant Rules. In our opinion, the High Court was justified in giving such an option to the respondents to seek voluntary retirement. At the time when special leave petitions were filed against the impugned judgment of the High Court, this Court directed that status quo by this Court. In this view of the matter, the respondents continued to be in the CID. We affirm the impugned judgment of the High Court to the extent that the respondents who put in 20 years of qualifying service in their parent departments and in CID would be entitled to seek voluntary retirement from the ranks they are holding in CID and the period of qualifying service would be counted upto the date of this judgment. These options the respondents shall give within 30 days from the date of this judgment. The respondents who do not give such option and those respondents who have not put in 20 years of qualifying service would have to revert back to their parent departments.”

Rather, the Supreme Court in **Kunal Nanda Vs. Union of India and another 2000(5) SCC 362** had held that unless the claim of the deputationists for permanent absorption in the department, where he works on deputation is based upon any statutory Rule, Regulation or Order having the force of law, a deputationists cannot assert and succeed in any such claim for absorption.

Upon being pointedly asked, learned counsel for the appellants

failed to refer to any such Statutory Rule, Regulation that would entitle them to seek permanent absorption in the Transport Department and once repatriated to their parent department they have no vested right to insist to continue on deputation.

In the wake of the above, we are dissuaded to interfere with the impugned order and judgment rendered by the learned Single Judge, the appeals being devoid of merit, are accordingly dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

08.04.2019

Manoj Bhutani

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No