HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.265/2020

Smt. Bharati Debbarma

…….. *Petitioner(s).*

Vs.

The State of Tripura and ors.

…….. *Respondent(s).*

For Petitioner(s) : Mr. P Roy Barman, Advocate,
Mr. Kawsik Nath, Advocate.
For Respondent(s) : Mr. Debalaya Bhattacharjee, Govt. Adv.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

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11/12/2020

Petitioner has challenged an order dated 4th May, 2020 passed by the District Magistrate & Collector, West Tripura District, by which the petitioner has been placed under the office of Registrar of Co-operative Societies from her existing place of posting under the office of Sub-Divisional Magistrate, Sadar, West Tripura, after being repatriated.

In brief, the case of the petitioner is that she was appointed on the post of Sales Girl/Office Assistant under Tripura State Consumers Federation Ltd. Subsequently, the petitioner was appointed under Secretary to the Government of Tripura, Revenue Department, in March, 2006 along with several other Group-C employees of Tripura State

Consumers Federation. The petitioner was posted in the office of Sub-Divisional Magistrate, Santirbazar. In the year 2019, the department raised a recovery of a sum of Rs.1,09,190/- allegedly overpaid to the petitioner. The petitioner challenged the said action of the Government by filing WP(C) No.655/2020. Pending such petition the petitioner is sought to be repatriated to the office of Registrar of Cooperative Societies. The petitioner has challenged this order *inter alia* on the grounds that in the year 2006, she was not sent on deputation but was absorbed in Government service after obtaining her option. Since then she is working as a Government servant. After such a long period of time thereafter, therefore, there is no question of her repatriation in any case.

It is undisputed that similar issues came up for consideration before this Court first in case of ***Sri Mrinal Kanti Ghosh Vrs. The State of Tripura and Ors, WP(C) No.1263/2016*** *and other connected petitions* in which by a detailed judgment dated 9th July, 2020 the Court held and observed as under :

> **“** * * *
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> ***[17]*** *Further, it is well settled in series of judgments of the Supreme Court that a deputationist does not have a vested right of absorption in the service of the borrowing organization. In case of* ***Kunal Nanda Vs. Union of India and Anr****., reported in* ***(2000) 5 SCC 362*** *it was held and observed as under :*

> *"6. On the legal submissions made also there are no merits whatsoever. It is well settled that unless the claim of the deputationist 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 deputationist cannot assert and succeed in any such claim for absorption. 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. The reference to the decision reported in Rameshwar Prasad Vs M.D., U.P. Rajkiya Nirman Nigam Ltd. and Others [1999 (8) SCC 381] is inappropriate since, the consideration therein was in the light of statutory rules for absorption and the scope of those rules. The claim that he need not be a graduate for absorption and being a service candidate, on completing service of 10 years he is exempt from the requirement of possessing a degree need mention, only to be rejected. The stand of the respondent department that the absorption of a deputationist being one against the direct quota, the possession of basic educational qualification prescribed for direct recruitment i.e., a degree is a must and essential and that there could no comparison of the claim of such a person with one to be dealt with on promotion of a candidate who is already in service in that department is well merited and deserves to be sustained and we see no infirmity whatsoever in the said claim."*

[18] *In case of* ***Ratilal B. Soni and Ors. Vs. State of Gujarat and Ors., 1990 (Supp.) SCC 243,*** *it was observed as under :*

> *"5. The appellants being on deputation they could be reverted to their parent cadre at any time and they do not get any right to be absorbed on the deputation post. We see no infirmity in the judgment of the High Court and as such we dismiss the appeal. There shall be no order as to costs."*

[19] *In case of* ***Dilip Kumar Saha Vs State of Tripura and Ors., WP(C) No.237/2020,*** *in an judgment dated 20th March, 2020 Single Judge of this Court had observed as under :*

> *"As per settled law, a deputationist has no right of absorption in the borrowing department. The petitioner was an employee of the*

said Federation and strictly speaking, was not a Government servant. It was only because the Federation ran into acute financial difficulties that the Government in order to obviate the difficulties of the staff of the Federation, out of sympathetic consideration called for options and protected the services of those who were willing to work in other Government organizations or departments. This option itself clearly provided that those who are not so willing, may apply for VRS. In other words, if the petitioner or any other staff member of the Federation at the relevant time had shown disinclination to work in any other Government organization or department, the Federation would have had no choice but to terminate the service through voluntary retirement. It was only in order to protect the petitioner and other similarly situated employees of the Federation from such premature termination, that the Government out of sympathetic consideration decided to take work from them in other Government organizations or departments. The petitioner thus continued from 2006 till date on deputation basis. Absorption of a deputationist must depend on range of factors, principally the policy of the borrowing department. Therefore, the petitioner has no legal right to insist on being absorbed.

One isolated incident of the year 1999 of absorption of one such deputationist is cited before me. Such considerations and situation prevailing in the year 1999, cannot be applied after two decades. No directions for absorbing the petitioner, therefore, can be passed."

[20] *It appears, as is stated by the petitioners in their rejoinders, that because of surplusage of employees in their parent organizations, the State Government had utilized the services of the petitioners on deputation. In plain terms, if the State Government had not intervened and utilized the services of the petitioners on deputation basis, in all likelihood, the petitioners would have faced possible retrenchment. It was an order to avoid such an unpleasant consequence for a sizeable number of employees of State-owned Corporations that this formula of utilizing the services of permanent employees of such Corporations on deputation seemed to have been devised by the State Government. At no stage, the petitioners ever opposed continued prolonged deputation. In other words, the petitioners never sought repatriation to their parent organizations.*

As is well settled, deputation is a method of temporarily borrowing the services of an employee of one organization or department by another organization or department. In the process, consent of all three agencies i.e. the employer as the lending organization, the borrowing organization where the employee would be sent on deputation and also that of the employee himself, is necessary. Thus the petitioners consented to be sent on deputation and to continue to work on deputation for long period of time. They now cannot turn around and claim regularization dehors statutory rules and in absence of Government policy.

[21] *In case of* ***Biplabendu Roy****(supra), the Division Bench of this Court did not lay down an absolute proposition that after long passage of deputation a deputationist would have a vested right for absorption. One of the significant aspects of the matter in the said case was that the State Government which was the borrowing department had refused to repatriate the petitioner to his parent organization when a request to that effect was made by the Corporation in which the petitioner was an employee. Even after completion of the period of deputation, he was not released, instead the Government went on utilizing his service. Thus the refusal of the State Government as a borrowing organization to release the petitioner from service even after the Corporation in which the petitioner was holding a lien had requested for his repatriation, was one of the main features of the case and which persuaded the High Court to hold that under such circumstances the Government would be estopped from denying absorption to the petitioner in Government service. No such fact emerges in the present group of petitions.*

[22] *In the office memorandum dated 3rd October 2013, the State Government has tried to streamline the procedure for appointment in Government services on deputation. It decided that the term of such deputation would be maximum up to 3(three) years in the first*

instance and extension beyond this period can be granted maximum to 1(one) year where such extension is absolutely necessary in public interest. It is true that these guidelines envisaged a maximum period of deputation. However, these are merely internal guidelines and do not vest any right in favour of a deputationist, to be absorbed in the Government service after completion of maximum period of deputation envisaged in the said office memorandum.

[23] *Further, as noted in many of these cases, the petitioners had not only served through the entire period of deputation but were also repatriated shortly before their retirements. They retired on superannuation from their parent organizations upon which they were also paid their post- retiral benefits such as gratuity and payable pension. The petitions were filed after retirement, in some cases, after several years.*

[24] *Considering all such aspects of the matter, I do not find that the petitioners have made out any case for granting the reliefs, as prayed for. All the petitions are, therefore, dismissed. Pending application(s), if any, also stands disposed of."*

Subsequently, in yet another case in case of ***Sri Nikhil Ch. Das Vs. State of Tripura, WP(C) No.309/2020*** this Court held and observed as under :

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9. I have no doubt in my mind that the petitioner was sent on deputation under the State Government service and that is how he continued to discharge his duties all throughout. It is true that in the memorandum dated 30.03.2006 and order dated 30.03.2006 the administration has loosely described the petitioner and other employees of TSCCF being appointed and posted under Santirbazar

and Teliamura Sub-Divisions. However, in the detailed order dated 02.06.2006 passed by the District Magistrate & Collector, South Tripura which contains the terms and conditions on which such employees were brought over to Government organization it is clearly specified that they would be on deputation for a period of two years. Even the intention of the Government from the outset was clear namely to send the existing staff of TSCCF who had given consent, on deputation to Government service. On 16.03.2006 the Chief Secretary to the Government of Tripura had conveyed the decision of the Chief Minister that in case of clerical staff of TSCCF who have so opted may be withdrawn and posted to the newly created Sub-Divisions of Teliamura and Santirbazar. On 15.05.2006 the Joint Secretary of Government of Tripura wrote to the District Magistrate & Collector, South Tripura that as per the Government decision appointment of the employee of TSCCF will be on deputation and they may be allowed to draw their existing salary. It was pursuant to such deliberations and decisions of the Government that the petitioner and other co-employees of TSCCF came to be brought over to Government service, on deputation. The petitioner has not pleaded ignorance of the said order dated 02.06.2006 passed by the District Magistrate & Collector, South Tripura. In fact, this order has been produced by the petitioner himself at Annexure-6 to the petition. Nor has the petitioner contended that he ever objected to his status being described as a deputationist in the said order. Thus, the petitioner clearly understood and accepted that he is discharging his duties in the Government office as a deputationist and not as a Government servant.

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11. As per settled law, a deputationist has no right of permanent absorption in the borrowing department. The same must depend on the policy of the lending and the borrowing organizations. As

pointed out by the Government Advocate, the State of Tripura has taken a conscious decision not to absorb any staff of the PSUs or the Boards who may be working in the Government on deputation. The provision that such official should be repatriated to the parent department at least six months before his retirement is directory and cannot be seen as mandatory, at any date giving a right to the petitioner to insist that if such a condition is breached, the same would result into crystallization of a right of absorption in his favour.

12. Similar issues had come up for consideration before this Court on number of occasions. In case of Mrinal Kanti Ghosh (supra), it was held and observed as under:-

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In the result, without recording separate reasons, this petition is also dismissed. Pending application(s), if any, also stands disposed of.

(AKIL KURESHI, CJ)

HIGH COURT OF TRIPURA
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