

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.2918 of 2011**

- Devendra Kumar Sharma S/o Lt. Shri D.P. Sharma, Occ. Service, Working As Research Officer Library, C.G. Vidhan Sabha Raipur, R/o Beside Arvind Memorial School, Near Pandt Colony, Byron Bazar, Raipur, Cg

---- Petitioner**Versus**

1. Secretariat C.G. Legislative Assembly, through the Secretary, Chhattisgarh Vidhan Sabha, Raipur (CG)
2. Secretariat C.G. Legislative Assembly, through the Additional Secretary, Chhattisgarh Vidhan Sabha, Raipur (CG)
3. Principal Secretary, Higher Education Department, Govt. Of C.G., Dks Bhawan, Mantralaya, Raipur, Cg

---- Respondents**WPS No.2947 of 2011**

- R.K. Agrawal S/o Dr. M. N. Agrawal, aged about 48 years, Occupation-Service, Working as Deputy Secretary, Chattisgarh Vidhan Sabha, Raipur, CG, R/o A-14, Sector-I, Opposite Bilasa Blood Bank, Shankar Nagar, Raipur (CG)

---- Petitioner**Versus**

1. Secretariat C.G. Legislative Assembly, through the Secretary, Chhattisgarh Vidhan Sabha, Raipur (CG)
2. Secretariat C.G. Legislative Assembly, through the Additional Secretary, Chhattisgarh Vidhan Sabha, Raipur (CG)
3. Additional Chief Secretary, Man Power and Planning Department, Government of Chhattisgarh, DKS Bhawan, Mantralaya, Raipur (CG)
4. Director, Directorate of Employment and Training, Women Polytechnic Premises, Byron Bazar, Raipur CG

---- Respondents**W.P.(S)No.2918 & 2947 of 2011**

For Petitioners : Shri Prateek Sharma and Shri Manoj Paranjpe, Advocates

For Respondent/State : Shri Alok Bakshi, Additional AG with Shri Vaibhav Singh, Panel Lawyer

For Respondent/Vidhan Sabha: Shri Jitendra Pali, Advocate

S.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****12/03/2020**

1. This order shall govern disposal of W.P.(S)Nos.2918 & 2947 of 2011, which are based on similar facts and grounds, in which, the orders of repatriation impugned in this two writ petitions, have been passed.

2. An advertisement was issued by the respondent No.1 on 09-06-2001 inviting applications for appointment by way of deputation on various posts including post of Research Officer (Library) and Administrative Officer. Pursuant to the said advertisement, the petitioners in the aforesaid two writ petitions, who were working permanently in their respective department, applied for the afore-stated posts. Petitioner-Devendra Kumar Sharma was working as Librarian, Higher Education Department and petitioner-R. K. Agrawal working as District Employment Officer in the Manpower and Planning, Government of Chhattisgarh, applied for the post of Research Officer (Library) and Administrative Officer. Petitioner-Devendra Kumar Sharma was appointed vide order dated 15-02-2002 on the post of Research Officer (Librarian). The State Government passed an order on 18-03-2002, allowing deputation. Later on, this petitioner was absorbed on the post of Research Officer (Library) vide order dated 21-12-2004. Pay scale was also granted vide order dated 24-04-2009.

3. As far as other petitioner-R. K. Agrawal is concerned, he was appointed as Administrative Officer vide order dated 19-02-2002. The petitioner was relieved and permission was granted by the parent department i.e. Directorate, Employment and Training, Chhattisgarh, vide order dated on 04-03-2002 to join at the Chhattisgarh Vidhan Sabha Secretariat. Vide order dated 01-01-2005, this petitioner was also absorbed on the post of Administrative Officer. He was

granted proper pay scale upon absorption vide order dated 05-06-2007 and later on, time scale of pay was also given on 24-04-2009. Vide order dated 17-06-2010, this petitioner was further promoted to the post of Deputy Secretary, followed by fixation of pay vide order dated 16-11-2010.

While the aforesaid two writ petitioners were continuing in service, after having been absorbed on the post of Research Officer (Library) and Administrative Officer, one of them also further promoted to the next higher post, impugned orders were passed in both the cases on 19-05-2011. Both the orders contained identical reason that as no steps have been taken towards resignation, earlier order of absorption is cancelled and the services are repatriated to their respective department in the government of chhattisgarh. The petitioners in their respective petitions, have challenged the order of their repatriation and cancellation of their absorption and consequences of their repatriation.

4. Common submissions have been made by learned counsel for the respective petitioners for assailing correctness and validity of the impugned orders, are as below:-

(A) The impugned order suffers from violation of principles of natural justice. At the time, when the impugned orders were passed, the petitioners already stood absorbed in the services of respondent-Vidhan Sabha. One of the petitioner-R. K. Agrawal has also been promoted to the next higher post. The petitioners having acquired right to hold their respective posts, it could not be taken away without affording them opportunity of hearing.

(B) The petitioners were not transferred, but appointed on the post

through the process of recruitment, initiated by a clear advertisement, in which, clear representation was made that those, who have been appointed by way of deputation, may be absorbed also. It was this clear and unequivocal representation made by respondent-Vidhan Sabha that the petitioners altered their position to their serious detriment by not only applying for appointment by way of deputation, but also expressed their willingness for being absorbed and after having been relieved from their respective department, their services have been repatriated. In view of above, the respondents are estopped by application of principle of promissory estoppel.

(C) The order impugned proceeds on incorrect factual premise in as much as the petitioners had actually submitted their resignation, which was processed in their parent department and parent department had also given no objection on that basis. These facts were fully within the notice and knowledge of the respondent, yet the impugned order contained factual incorrect ground that steps towards resignation were not taken.

(D) The impugned order is without jurisdiction. Specific grounds have been raised in the petitions that the orders have been passed by the incompetent authority. There is no specific reply and what has been stated in the reply to the grounds in this regard, is completely evasive. The respondent has not placed on record any material to show that the impugned orders were passed after obtaining approval of the competent authority on note sheets and files.

(E) The action of the respondent is highly discriminatory as there are large number of persons, who have been appointed by way of deputation

and later on, absorbed and their cases are similarly situated as the petitioners in the present case, but the petitioners have been selectively discriminated for being repatriated where as those persons are still continuing in service of the respondent-Vidhan Sabha.

In respect of petitioner-R. K. Agrawal, during the course of arguments, it has been brought to the notice of the Court that during the pendency of this petition, he has been further promoted to the post of Additional Secretary, vide order dated 20-02-2020.

In respect of other petitioner-Devendra Kumar Sharma, it is submitted that he has also been promoted twice, firstly on 21-08-2018 on the next higher post of Under Secretary and thereafter, vide order dated 02-03-2020, promoted on the post of Director.

In support of their submissions, learned counsel for the respective petitioner placed reliance on the decisions of the Supreme Court in the case of ***T. Shantharam vs. State of Karnataka and others***¹, ***National Buildings Construction Corporation vs. S. Raghunathan and others***², ***Ashok Kumar Ratilal Patel vs. Union of India and another***³, ***State of Punjab vs. Bandeep Singh and others***.⁴

5. Per contra, learned counsel for the respondent-Vidhan Sabha would argue that the petitioners were appointed by way of deputation on their respective posts of Research Officer and Administrative Officer, looking to the requirement of manning those posts, but it did not create any right in favour of the petitioners to claim absorption on the post of Research Officer or

1 (1995) 2 SCC 538

2 (1998) 7 SCC 66

3 (2012) 7 SCC 757

4 (2016) 1 SCC 724

Administrative Officer. According to him, these two posts, under the statutory orders, known as Chhattisgarh Vidhan Sabha Secretariat (Bharti tatha Sewa Sharte Aadesh, 1990) were required to be filled up by way of promotion and not in the manner they were appointed. While passing the order of absorption of the petitioners, rules were violated. This mistake was, later on, corrected by cancelling the order of absorption and directing their repatriation. Further submission is that absorption of the petitioners were otherwise in violation of the government circular dated 06-04-1986, in as much as, the rule require submission of resignation within the maximum period of deputation, but the petitioners claimed to have submitted their resignations after that period, therefore, for that reason also, the petitioners could not have been absorbed. His next submission is that the petitioners were absorbed on their respective post, subject to fulfillment of certain conditions including a condition that they have to take necessary steps towards resignation from their parent department. The respondents were not apprised of any such steps taken by the petitioners, until the impugned orders were passed. Therefore, the respondent was left with no other option, but to cancel the order of absorption and repatriate the services of the petitioners to their respective departments. Replying to other two grounds i.e. without jurisdiction and violation of principles of natural justice, learned counsel for the respondent-Vidhan Sabha would argue that the challenge to the order on the ground of jurisdiction is misplaced in law, because the impugned order contains clear recital that the impugned orders have been passed under the directions of competent authority and therefore, there is a presumption that the orders were passed with due approval of the competent authority. Drawing attention of this Court to the orders of absorption passed in favour of the petitioners, it is contended that earlier also, when the orders of absorption were issued, similar kind of orders have been passed, therefore, now the petitioner

cannot be heard by saying that the orders were passed without due approval of the competent authority. As far as challenge on the ground of violation of principles of natural justice is concerned, learned counsel for the respondent-Vidhan Sabha would argue that the petitioners absorption is not absolute, but based on certain conditions. As these conditions were not fulfilled, it was not necessary to afford any opportunity of hearing.

6. Learned Additional Advocate General appearing for the State, while adopting all other arguments, as raised by learned counsel for the respondent-Vidhan Sabha, would additionally submit that as far as the aspect of resignation is concerned, the records of the respondent did not speak that the petitioner had submitted any resignation in the office and therefore, the petitioners contention that they had submitted their resignation is not accepted, being factually incorrect.

7. Replying by way of rejoinder, learned counsel for the respective petitioners would argue that the stand of the respondents is contrary to their own records, which is evident from the documents filed along with the rejoinder, that the note sheets were initiated on the basis of resignation only and therefore, the affidavit sworn in before this Court by the Officer-Incharge is false to his knowledge. It has also been argued that the respondent having issued advertisement giving representation for absorption, having absorbed, now cannot turn around to say that the petitioners could not be appointed by way of deputation. It is further submitted that the legality of the order could be judged on what has been stated in the order and therefore, on other grounds, the respondent could not justify the order on any ground except the ground which has been stated in the order that the resignation were not submitted and that no steps were taken towards resignation.

8. I have heard learned counsel for the parties and perused the records and I have given my anxious consideration to the respective submissions made by learned counsel for the parties.

9. Amongst various considerations, which have been raised by the petitioner to assail the impugned orders, one of the foremost ground raised by the petitioner is violation of principles of natural justice. On this aspect, there is no denial on the part of the respondent. The factual backdrop, in which, the impugned order came to be passed, which are floating on the surface of the case are that the petitioner had applied pursuant to the advertisement issued by the respondent. After selection, they were appointed by way of deputation. It was not a case of transfer on deputation, but appointment by way of deputation. In course of time, the petitioners were considered for absorption and absorbed also. Their pay scales were fixed on the appropriate pay scale and higher pay scale was granted to the petitioners as they have been absorbed on the post and acquired right to hold the post. Acting on the representation made by the respondent, the petitioners had left their own department. These facts are sufficient to come to the conclusion that the impugned order resulted in civil consequences against the petitioner. It is too well settled legal position as held by the Supreme Court in the case of ***Mohinder Singh Gill and another vs. Chief Election Commissioner, New Delhi and others***⁵, that the orders visiting civil consequences are required to be preceded by opportunity of hearing. Submission of learned counsel for the respondent that the conditions, which were required to be fulfilled, were not fulfilled, is not a basis to come to the conclusion. It is otherwise seriously disputed matter. From the contents of the petition and documents annexed thereto, it is found that both the petitioners have come out with the case that they submitted their resignations, in one case,

5 (1978) 1 SCC 405

it was processed and in other case, the resignation was duly considered and accepted and thereafter, their own department duly communicated to Vidhan Sabha Secretariat regarding their being no objection on their part regarding joining of two petitioners. Ample material has been brought on record by learned counsel for the petitioners that they had submitted their resignations. Therefore, it is not a case of foregone conclusion. Principles of natural justice have been blatantly violated in the present case. Time and again, despite repeated declaration of law in plethora of decisions, it is found that the Officers in high positions have indulged in passing orders involving serious civil consequences, without adhering to one of the most essential element of fairness in administrative action. The petitioners were working as permanent employee, having been absorbed in service after long drawn process.

10. The other ground with regard to competence also appears to be made out. The petitioner-R. K. Agrawal in para 9.5 of the ground raised in the petition and petitioner-Devendra Kumar Sharma in para 9.4 of the ground raised in the petition, have specifically raised the issue of jurisdiction, challenging the order of authority, who passed the order.

11. True it is that the presumption has to be drawn that the order must have been passed by the competent authority. However, once it is put to specific challenge, it is the burden on the authority, who passed the order to satisfy as also place on record, specific material that the order was passed after due approval of the competent authority. Mere use of word “आदेश से”, once it is challenged, does not result in proof of exercise of power by approval of competent authority. Argument of learned counsel for the respondent that appointment/absorption orders were passed in favour of similarly situated persons, does not come to their aid, because, those orders were not challenged

before this Court. As there is no rebuttal to specific grounds contained in the aforesaid two petitions, certainly, such arguments could not be countenanced. In the absence of specific material placed before this Court, the order is liable to be declared as bad for want of jurisdiction and void ab initio. Though, other submissions were also made before this Court, having considered the aforesaid two grounds, one relating to competence and other relating to violation of principles of natural justice, the orders impugned in two petitions cannot be sustained in law.

12. In view of foregoing, this Court is inclined to set aside the orders impugned in both the petitions.

13. In the result, both the petitions are allowed. Impugned orders passed in both the petitions are set aside.

SD/-
(Manindra Mohan Shrivastava)
Judge