

CWP-11112-2021

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HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**CWP No.11112 of 2021
Decided on : 27.09.2021**

Dr.Yameeka Chhikara & another

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr.Aman Chaudhary, Advocate, for the petitioners.

Mr.Rajneesh Chadwal, AAG, Haryana.

(The proceedings are being conducted through video
conferencing, as per instructions.)

G.S. Sandhawalia, J. (Oral)

Challenge in the present writ petition, filed under Articles 226/227 of the Constitution of India, is to the order dated 10.06.2021 (Annexure P-12) whereby deputation of the petitioners has been cancelled with respondent No.3-Institute. Resultantly, they have been sent back to their parent Institutes, which, in the case of petitioner No.1, at Government Polytechnic Education Society (GPES), Sampla and in case of petitioner No.2, at GPES, Uttawar.

Counsel for the petitioners has submitted that as per the impugned order, the reason for cancellation of deputation is only on account of some writ petition which was filed by the employees of the Societies being transferred and interim orders having been passed. It is submitted that the petitioners' valuable rights of being selected on higher posts for a period of 2 years has unnecessarily been curtailed on account of non-application of mind

by the State and therefore, the impugned order is not justified. It is submitted that on requests for extension of deputation period, the Government, after due application of mind, had extended the same till August, 2022 vide order dated 13.07.2020 (Annexure P-9) and in a knee-jerk reaction, it has undone the same, without having issued any notice to the petitioners.

State Counsel, on the other hand, has defended the said action on the ground that due to the rationalization of the diploma courses and restructuring of teaching posts in various Government Society Polytechnics, teaching posts, 30 faculty members of various Government Society Polytechnics became surplus and they were provisionally shifted to other Government Society Polytechnics. They had filed writ petitions challenging the orders of transfer/deputation/shifting of head-quarter of the employees and therefore, the matter had been reconsidered by the State.

In the considered opinion of this Court, the said action of the State is not justified, in any manner. It is not disputed that the petitioners were working as Lecturers with their parent GPES in the revised Pay-scales of Rs.9300-34,800+5400 Grade Pay. In pursuance of the notice dated 07.06.2017 (Annexure P-3), issued by respondent No.2, they had applied through proper channel for the post of Assistant Professors in the respondent No.3-Institute in the Pay Scale of Rs.15,600-39,100+6000 Grade Pay (unrevised). In the process of selection, they were appointed for a period of 3 years or till the joining of the regular appointees in the respondent No.3-Institute, whichever is earlier, as per the recommendation of the Committee dated 31.07.2017 (Annexure P-7). Respondent No.3, vide letter dated

28.05.2020 (Annexure P-8) had asked for the extension of deputation period by holding out that there were only 7 regular faculties and 3 non-teaching staff and the Institute was running mainly on the basis of those 10 employees and therefore, for the smooth functioning of the Institute, their services were required. Resultantly, vide letter dated 13.07.2020 (Annexure P-9), their period of deputation was extended till 31.08.2022.

It is settled principle that deputation is a tripartite agreement which is entered into and acted upon by all three parties. Once it is a tenure based appointment, the State was not within its jurisdiction to cut-short their tenure before August, 2022. It is not the case of the State that services of the petitioners were unsatisfactory or not up-to the mark which required curtailment of their tenure. Merely on account of the fact that there was a restructuring taking place on account of transfer of the employees of the Society and some interim orders passed by this Court, would not mean that petitioners' deputation was to be cancelled. In **Union of India through Government of Pondicherry & another Vs. V.Ramakrishnan & others (2005) 8 SCC 394**, the Apex Court held that ordinarily, the term of deputation should not be curtailed except on grounds of unsuitability or unsatisfactory performance and a decision taken in a post haste manner also indicates malice though deputationist might not have any indefeasible right to hold the said post. Relevant portion of the judgment reads as under:

“32. Ordinarily, a deputationist has no legal right to continue in the post. A deputationist indisputably has no right to be absorbed in the post to which he is deputed. However, there is no bar thereto as well. It may be true that when deputation does not result

in absorption in the service to which an officer is deputed, no recruitment in its true import and significance takes place as he is continued to be a member of the parent service. When the tenure of deputation is specified, despite a deputationist not having an indefeasible right to hold the said post, ordinarily the term of deputation should not be curtailed except on such just grounds as, for example, unsuitability or unsatisfactory performance. But, even where the tenure is not specified, an order of reversion can be questioned when the same is mala fide. An action taken in a post haste manner also indicates malice.”

Reliance can also be placed upon the judgment of the Apex Court in **Ashok Kumar Ratilal Patel Vs. Union of India & another 2012 (4) RSJ 567** wherein it was held that the respondent could not refuse to accept the joining of the most eligible selected candidate except for the ground of unsuitability or unsatisfactory performance especially where it is a case of appointment on deputation for which an advertisement had been issued. Relevant portion of the judgment read as under:

“11. Ordinarily transfers on deputations are made as against equivalent post from one cadre to another, one department to another, one organisation to another, or one Government to another; in such case a deputationist has no legal right in the post. Such deputationist has no right to be absorbed in the post to which he is deputed. In such case, deputation does not result into recruitment, as no recruitment in its true import and significance takes place as the person is continued to be a member of the parent service.

12. However, the aforesaid principle cannot be made applicable in the matter of appointment(recruitment) on deputation. In such case, for appointment on deputation in the services of the State or organisation or State within the meaning of [Article 12](#) of the Constitution of India, the provisions of [Article 14](#) and [Article](#)

16 are to be followed. No person can be discriminated nor it is open to the appointing authority to act arbitrarily or to pass any order in violation of Article 14 of the Constitution of India. A person, who applies for appointment on deputation has indefeasible right to be treated fairly and equally and once such person is selected and offered with the letter of appointment on deputation, the same cannot be cancelled except on the ground of non- suitability or unsatisfactory work.

13. The present case is not a case of transfer on deputation. It is a case of appointment on deputation for which advertisement was issued and after due selection, the offer of appointment was issued in favour of the appellant. In such circumstances, it was not open for the respondent to argue that the appellant has no right to claim deputation and the respondent cannot refuse to accept the joining of most eligible selected candidate except for ground of unsuitability or unsatisfactory performance.”

Thus, keeping in view the above, this Court is of the opinion that the orders of cancellation of deputation at the back of the petitioners, without taking into consideration the fact that they were enjoying higher pay facilities, is without any basis. Even otherwise, the respondent No.3-Institute itself had recommended continuation of deputation of the petitioners and therefore, the authorities have not taken into consideration these aspects while passing the cancellation order. Counsel for the petitioners has also placed on record transfer orders of employees to respondent No.3-Institute (Annexure P-16) and the advertisement (Annexure P-17) calling for Guest Faculties/Officiating Lecturers, which goes on to show that there is enough work at the said institute and therefore, it is apparent that the State has not taken these factors into consideration and the services of the petitioners are very much required.

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Accordingly, the present writ petition is allowed and the order dated 10.06.2021 (Annexure P-12) is quashed and the petitioners will be entitled for all their consequential benefits for the period the impugned order was in operation.

September 27, 2021
sailesh

(G.S.Sandhawalia)
Judge

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No