

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 6811 of 2022

Gautam Kumar Mandal
Vs.
State of West Bengal & Ors.

Mr. Santosh Kumar Chakraborty
Mr. N.K. Ghosh
... For the petitioner

Mr. Satyajit Talukdar
Mr. Abhishek Sarkar
... For KMDA

Mr. Ayan Banerjee
... For Bally Municipality

Leave is granted to the petitioner to correct the description of respondent no.1 by incorporating service through the Secretary, Department of Urban Development, instead of service through the Secretary, Department of KMDA.

The petitioner is an Assistant Engineer, Civil in Water and Sanitation Sector of Kolkata Metropolitan Development Authority (in short "KMDA"). The petitioner has been served with a transfer order dated 24th March, 2022. By the said order which has been signed by the Additional Secretary, Establishment, KMDA, the petitioner has been placed on deputation at Bally Municipality on the terms and conditions mentioned in the said order. The petitioner says that for transferring the petitioner on deputation, a consent of the petitioner was required to be

obtained. Having not done so, the order is vitiated by illegality.

The petitioner cites a judgment delivered by the Hon'ble Supreme Court on 12th January, 2022 in Civil Appeal No.346 of 2022 (Ms. Sarita Singh v. M/s Shree Infosoft Private Limited). By relying upon paragraph 11 of the said judgment, the petitioner says that the transfer of the petitioner on deputation is illegal, inasmuch as no consent of the petitioner had been obtained prior to being transferred on deputation.

On behalf of KMDA, Service Regulations of KMDA have been relied upon to show that deputation is permissible. It is further submitted on behalf of KMDA that the petitioner was released from his present posting on 25th March, 2022 and thereafter he joined to the transferred place on 28th March, 2022.

Regulation 67 of the Service Regulation of KMDA clearly speaks about deputation. In case of class-I employees, the order of deputation is required to be passed by the Vice-Chairman, whereas in respect of other employees, the order is issued by the Secretary. In the instant case, the Additional Secretary, Establishment, KMDA, has issued the order of deputation with the approval of the competent authority. This may be an irregularity but not an illegality.

In Regulation 67, there is no provision for taking any consent of the employee before being transferred on

deputation far less prior consent. The service condition of an employee is governed by the applicable service rules and regulations.

In the instant case, since the Regulation 67 does not require for any consent, the petitioner joined KMDA by agreeing to be governed by the said Regulation. It cannot be, therefor, said that the order of transfer on deputation issued to the petitioner is an illegal one. In view of there being a specific provision in the service regulations for consent, the ratio laid down in the judgment of Ms. Sarita Singh (*supra*) relied upon by the petitioner has no manner of application.

The other conditions as laid down in Regulation 67 of the KMDA Service Regulations having been complied with, I find no illegality in the order of transfer of the petitioner.

The writ petition, therefor, is devoid of merit and is dismissed.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Arindam Mukherjee, J.)