

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(214)

CWP-2111-2023

Date of decision:- 17.03.2023

Manu Kapur**...Petitioner****Versus****State of Haryana and another****...Respondents****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Mr. Anil Kumar Lamdharia, Advocate for the petitioner.

Mr. Harish Nain, AAG, Haryana.

SUVIR SEHGAL, J. (Oral)

Instant petition has been filed *inter-alia* seeking issuance of a writ of certiorari for quashing impugned office order dated 27.12.2022, Annexure P-3, and order dated 24.01.2023, Annexure P-5, whereby the petitioner has been directed to join as Private Secretary in the office of Lokayukta, Haryana, on deputation basis.

Counsel for the petitioner urges that the petitioner is serving the Haryana Government and is discharging duties on the promotional post of Private Secretary since the year 2017. He submits that the respondents circulated a letter dated 20.12.2022, Annexure P-2, inviting willingness from the Personal and Private Secretaries in the Haryana Civil Secretariat for being posted as Personal Assistant and Private Secretary in the office of Lokayukta, Haryana, but concurrence was not given by any employee. He submits that despite this fact, vide impugned office order, Annexure P-3, petitioner has been posted by way of a transfer as Private Secretary and by subsequent order, Annexure P-5, he has been directed to join the office of Lokayukta, Haryana with immediate effect.

Upon notice, writ petition has been contested by the respondents by filing a written statement, wherein stand taken is that when no eligible employee opted for being posted in the office of the Lokayukta, Haryana and petitioner, who was awaiting posting orders, has been transferred as Private Secretary in the office of Lokayukta, Haryana. It has been submitted that vacancy can be filled by transfer and since 2008, when the office of Lokayukta was established, a number of employees from Haryana Secretariat Service Cadre have been posted by transfer.

I have heard counsel for the parties at considerable length.

Institution of Lokayukta has been established in the State by the Haryana Lokayukta Act, 2002 and Section 19 of the Act provides for the appointment of the staff in consultation with the State Government. By virtue of Section 26 of the Act, the Haryana Lokayukta (Functions, Powers, Inquiry and Investigation) Rules, 2008, Annexure R-2, (for short “the 2008 Rules”) have been framed. Rule 11, *ibid*, provides that the procedure of recruitment and appointment of officers/staff and their conditions of service has been laid down in the Schedule appended to the 2008 Rules. Entry 5 to Appendix B to the Schedule provides that the method of recruitment to the post of Private Secretary is by deputation from amongst staff of Haryana Secretariat Service-II Cadre. It is, therefore, evident that the post of Private Secretary is a deputation post.

The concept of deputation has been explained by the Hon’ble Supreme Court in *Umapati Choudhary Versus State of Bihar, 1999 (4) SCC 659* and it has been observed as under:-

“8. Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not...”

Deputation by its very nature involves a tripartite agreement between the parent department, borrowing authority and the deputationist. The consent of all the three must coexist and in case any of the three parties does not agree or withdraws the consent, deputation cannot be given effect to or continue. It is the specific case of the petitioner that he never expressed his willingness to proceed on deputation and has even submitted a representation on 02.01.2023, Annexure P-4, to respondent No.1 for cancellation of the deputation order. The rule does not stipulate posting of Private Secretary by transfer and just because since its inception, postings are being done by transfer does not remedy the situation. As the consent of one of the parties to the deputation is lacking, impugned orders cannot be sustained.

In view of the above discussion, writ petition is allowed. Impugned orders, Annexures P-3 and P-5, are quashed.

17.03.2023
Kamal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No