

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 30.01.2023

% **Judgment delivered on: 09.02.2023**

+ **LPA 66/2023 and CM APPL. 4306/2023**

K. Z. KHAN Appellant

Through: Mr. Abhik Chimni, Mr. Ch. Animes
Prusty, Mr. Mukul Kulhari, Advocates

versus

NATIONAL COMMISSION FOR WOMEN & ORS Respondents

Through: Mr. Vivek Goyal, CGSPC with
Mr. Gokul Sharma, Advocates for R-1
to R-3
Ms. Monika Arora, CGSC with
Mr. Subhrodeep Saha, Advocates

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present LPA has been filed under Clause 10 of the Letters Patent Act arising out of an order dated 24.01.2022 passed in W.P.(C.) No. 2622/2022 titled *K. Z. Khan VS. National Commission For Women And Ors.*
2. The facts of the case reveal that the Appellant was appointed on the post of Junior Stenographer–Cum–Clerk–Cum–Typist in the National

Projects Construction Corporation Limited (Respondent No. 5 herein) on 03.01.1990, and while serving the Corporation he was posted on deputation by an order dated 24.04.2020 for a period of two years as Private Secretary to the Chairperson of National Commission for Women (Respondent No.1 herein).

3. The Appellant reported on duty as Private Secretary with effect from 24.04.2020 for a period of two years.

4. The facts of the case further reveal that the Appellant on 05.11.2020 got infected with COVID-19, and, as stated by him, he was discharging his duty online. He was on sick leave from 05.11.2020 to 30.11.2020.

5. The Appellant while he was working on deputation was promoted by his Parent Organization by an order dated 29.09.2021 from the Post of Senior Assistant Grade-1 (PA) to the Post of Assistant Manager (HR) with effect from 01.10.2021.

6. The Appellant again got infected, as stated by him, with COVID-19 infection, and he was ill with effect from 19.02.2022 to 31.01.2022. He submitted an application on 20.01.2022, and informed the National Commission for Women that COVID Report dated 20.02.2022 is positive and finally got a negative report on 31.01.2022.

7. The Appellant submitted a formal leave application to the Authorities of National Commission for Women for sanctioning special casual leave on 02.02.2022. However, by an order dated 02.02.2022, he was repatriated by the National Commission for Women.

8. The Appellant being aggrieved by his repatriation before completion of two years period, preferred a writ petition before this Court i.e. W.P.(C.) No. 2622/2022 and raised various grounds including a ground that he should have been given three months' mandatory notice, and should have been informed valid reasons for repatriation.

9. The Appellant also submitted a representation to his Parent Organization in respect of his repatriation, which was prior to completion of two years period.

10. The Appellant kept on representing the matter raising various grounds and grievances before the Authorities.

11. Finally, the Learned Single Judge vide judgement dated 21.04.2022 dismissed the Petition filed by the Appellant.

12. The order dated 21.04.2022 passed by this Court dismissing the writ petition reads as under:

“1. This petition has been filed by the petitioner with the following prayers:

“It is therefore, in view of the fact and circumstances mentioned above, this Hon'ble Court may graciously be pleased to:-

- i. Issue an order, direction or writ in the nature of certiorari whereby quashing the Office Order No. 12/2021-2022/Establishment dated 02.02.2022 vide which the petitioner has been repatriated and relieved from deputation without adhering the DoPT Norms, and/or*
- ii. issue an order, direction or writ in the nature of Mandamus whereby directing Direct Respondent to immediately restore the services of the*

petitioner from the date of his reliving with entire benefits as per the guidelines of DoPT for premature repatriation of employees pertaining to deputations and to issue three months' notice prior to premature repatriation of any employee in future. And /or

iii. issue an order, direction or writ in the nature of Mandamus whereby directing the respondents to regularize all Leaves as per COVID Norms as special leave as per directives of Ministry of Health fixed for COVID Victim in services. And/or

iv. Direct the respondents to pay Cost of litigation as well compensation to the petitioner for causing greave mental agony arises out of noncompliance of the slated guidelines by the Competent Authority of NCW which shows the incompetency in issuance of any order abusing the office of powers and thinking it the self's organization rather than the organization of the Government of India. And/or

v. Issue direction to the respondents to cler the Gratituty for held up period as per norms of Gratituty Act and pay it to the parent Department of the Deputationist Officer, and/or vi. Issue an interim order vide which the petitioner be resumed the office of NCW during the pendency of present writ petition, and/or

i. Grant any other relief or reliefs which this Hon'ble Court may deem fit and proper under the facts and grounds mentioned herein below, in the present case, in the interest of justice."

2. In effect the petitioner is challenging the order of his repatriation by respondent No.1 to his parent office, i.e., National Project Construction Corporation Limited ('NPCCL', for short).

3. Some of the facts as noted from the petition are that the petitioner, is a permanent employee of the NPCCL. While working as Assistant Grade-I he went on deputation as Private Secretary of the Chairperson of the National Commission for

Women ('NCW', for short) for a period of two years on Foreign Service term and conditions. I have been informed that otherwise, the deputation was to expire on April 23, 2022.

4. It is the case of the petitioner that he was working sincerely and with dedication and never gave any opportunity of any complaint to anyone. No adverse report has ever been communicated from the Administration Wing of NCW to the petitioner about any deficiency in his performance/duty. During the entire period, he had taken leaves on two occasions, that too because of illness. On November 05, 2020, the petitioner was infected with COVID-19. Due to co-morbidities, he was constrained to go on sick leave and even during his sick leave he was discharging his duties, online.

5. On January 19, 2022, the petitioner was again infected with COVID- 19 and was on leave between January 19, 2022 to January 31, 2022. The petitioner gave a formal application dated January 20, 2022 and simultaneously sent positive report of COVID-19 on January 22, 2022 and January 27, 2022 to the concerned authority in NCW. He received a negative report on January 31, 2022 and received the fitness certificate from the treating doctor for joining his duties on February 01, 2022 when the office was not working physically.

6. On February 02, 2022 a formal request was made by the petitioner for sanctioning Special Casual Leave as per the directives of DoP&T as well as Ministry of Health Guidelines for COVID victims. On February 02, 2022, the petitioner joined his office and was handed over the impugned communication repatriating him from deputation.

7. The submission of the learned counsel for the petitioner is that the repatriation of the petitioner is in violation of the DoP&T OM which provide that an advance notice of three months shall be served on the employee, as well as the parent office. He also states that being aggrieved by the order, the petitioner submitted an application requesting the authority to follow the DoP&T instructions. But the same were not followed, rather the petitioner was relieved and was directed to report to his parent office/NPCCL.

8. That apart, no reasons have been spelt out by the respondents to repatriate the petitioner to his parent office. In support of his submission, he had drawn my attention to DoP&T office memorandum dated February 17, 2016 and also OM dated April 15, 2010.

9. On the other hand, Mr. Vivek Goyal, learned counsel appearing for the respondent Nos.1 to 3 would justify the action. He states, the petitioner has concealed a very material document from this Court, inasmuch as the petitioner himself had given an undertaking on January 25, 2021 wherein he requested the Chairperson, NCW for his continuance. The petitioner also stated that if he commits any mistake, the Competent Authority can repatriate him immediately. In other words, it is his submission that the performance of the petitioner in the office of the Chairperson was not found satisfactory. It is in this background, the petitioner had given an undertaking in the month of January 2021. He states even thereafter, the petitioner could not meet the performance expected of him, resultantly, the petitioner has been repatriated to his parent office.

10. He also contests the plea of the learned counsel for the petitioner about issuance of notice of three months before being repatriated to his parent office by stating that the same shall not be applicable, in the facts more so in view of the undertaking given by the petitioner himself.

11. In support of his submission, he has drawn my attention to the undertaking at Annexure-R1 to the counter affidavit filed by the respondent No.1. He states that in any case, the deputation period being of two years is coming to an end on April 23, 2022. The interim relief sought by the petitioner was not granted by this Court in the hearing dated February 24, 2022. Even in an Intra Court Appeal filed by the petitioner, the request for granting interim protection staying the impugned relieving order was also denied. Hence, this Court would not interfere with the impugned order.

12. On the other hand, Mr. Siddharth Khatana, learned counsel appearing for the respondent Nos.4 to 6 would state that after the impugned order was passed, the petitioner has not joined

the parent office, i.e., NPCCL. He also states that a show cause notice has been issued to the petitioner for not joining the parent office after February 02, 2022.

13. He has also tried to highlight the conduct of the petitioner in the past by drawing my attention to the order passed by the High Court of Punjab and Haryana High dated June 06, 2017.

14. Having heard the learned counsel for the parties, the issue which arises for consideration is whether the respondent / NCW could have permanently issued the relieving order of the petitioner, asking him to report to his parent office. There is no dispute that the petitioner was sent on deputation to the NCW / respondent No.1 for a period of two years having been appointed as Private Secretary to the Chairperson of the NCW vide letter dated April 15, 2020.

15. The plea of the learned counsel for the petitioner is primarily two fold, that no reasons have been assigned for repatriating the petitioner to his parent office and three months notice, as required under DoPT, OM dated June 17, 2010 has not been given. No doubt, learned counsel for the petitioner is justified to say that there should be some reasons for prematurely repatriating the petitioner before the expiry of two years, in view of the judgment of the Supreme Court in the case of P. Venugopal v. Union of India, (2008) 5 SCC 1, but in view of stand of the respondent No.1 that the service of the petitioner was unsatisfactory, there is a reason for repatriation.

16. They have also relied upon the undertaking given by the petitioner himself on January 25, 2021 wherein he stated that he shall work diligently and further assured that if any further mistake is found on his part, then the Competent Authority can repatriate him immediately. A plea has been taken by the learned counsel for the petitioner that the same was taken by putting undue pressure on the petitioner. Such a plea is not borne out from the petition. In fact, the undertaking was not even referred to in the petition.

17. That apart, the said undertaking was given on January 25, 2021 and the repatriation is after more than one year, i.e., February 02, 2022. In other words, surely the performance of the petitioner must have been observed for one year after the

undertaking, resulting in the repatriation. So, there is some justification for the respondents to pass the order of repatriation.

18. Coming to the second issue raised by the learned counsel for the petitioner that the repatriation of the petitioner is without giving notice of three months as is contemplated in terms of the DoP&T OM dated June 02, 2016 and OM dated June 17, 2010 by drawing my attention to page 33 of the paper book, wherein Clause 9 reads as under:-

“Normally, when an employee is appointed on deputation / foreign service, his services are placed at the disposal of the parent Ministry / Department at the end of the tenure. However, as and when a situation arises for premature reversion to the parent cadre of the deputationist, his services could be so returned after given an advance notice of at least three months to the lending Ministry / Department and the employee concerned.”

19. The purpose of this Clause is, when an officer on deputation, is sought to be prematurely repatriated, the lending authority, i.e., the parent department, must have a sufficient notice of the officer coming back to the parent department, to ensure that a post is available in the parent department to accommodate the officer concerned. It is not the case of the petitioner that the NPCCL does not have any post to accommodate him. No doubt, the said OM also provides that the employee needs to be notified, but that condition is not required to be followed as it is the petitioner's own case in the undertaking that, if his work is not found satisfactory he be repatriated.

20. The petitioner, who is present in the Court, states that he has submitted a representation to his parent office for giving him an appropriate posting, and he has also been communicated the place of posting. If that be so, in view of the above discussion, I do not see any reason to interfere with the impugned order.

21. The writ petition is dismissed.”

13. This Court has carefully gone through the judgment delivered by the Learned Single Judge and the fact remains that the period of deputation was for a period of two years and the same has come to an end. This Court cannot direct the authorities to send the Appellant on deputation as prayed by the Learned Counsel while arguing the matter.

14. The Record of the case reveals that the performance of the Appellant was unsatisfactory. He himself gave an undertaking on 25.01.2021, and requested the Chairperson, National Commission for Women for his continuance, and also stated categorically in the aforesaid undertaking that, in case, in future if he commits any mistake, the competent Authority shall be free to repatriate him immediately.

15. It was brought to the notice of the Learned Single Judge that in spite of their being an undertaking given by the Appellant his performance did not improve, and he was finally repatriated to his Parent Organization.

16. It was brought to the notice of the Learned Single Judge that in spite of their being a repatriation order, the Appellant did not join his Parent Organization, and a show-cause notice was also issued for not joining the Parent Organization.

17. Learned Counsel for the Appellant has vehemently argued before this Court that the repatriation of the Appellant/ Petitioner is non est in law as no notice as required under the Department of Personnel and Training (DoP&T) Office Memorandum dated 02.06.2016, was issued to the Appellant.

18. This Court has carefully gone through the aforesaid Office Memorandum of the DoP&T.

19. The fact remains that the Learned Single Judge has dealt with the aforesaid Office Memorandum, and the present case is a case of an employee whose work was unsatisfactory. Who himself gave an undertaking to the borrowing department stating categorically that in case his performance is not satisfactory in future, he can be repatriated immediately. In those circumstances, the question of issuing a show-cause notice before repatriation does not arise as rightly held by the Learned Single Judge.

20. The Appellant before the Learned Single Judge has also prayed for issuance of appropriate writ, order or direction, directing the Respondents in the writ petition to pay gratuity for held up period. In the considered opinion of this Court the Appellant shall be at a liberty to file appropriate representation before the Authorities claiming gratuity, and other dues admissible, in accordance with law, and if such a representation is preferred, the authority shall decide the same positively within a period of 90 days from the date of receipt of certified copy of this order.

21. The record of the case further reveals that the Appellant was present in Court before the Learned Single Judge, and categorically stated that he has been assigned posting in his Parent Organization, and in those circumstances, the Learned Single Judge has declined to interfere with the order of repatriation especially in light of the fact that the two years period of deputation of the Appellant has already come to an end.

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22. This Court also does not find any reason to interfere with the judgment/ order passed by the Learned Single Judge in the peculiar facts and circumstances of the case.

23. Resultantly, the present LPA stands dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

FEBRUARY 09, 2023
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