

02 21.05.2024

Ct-08

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FMA 1023 of 2022

with

IA No. CAN 1 of 2022

Goutam Kumar Mondal

Vs.

The State of West Bengal & Ors.

Mr. Tulsi Das Ray

Mr. Santosh Kumar Chakraborti

... For the Appellant

Mr. Satyajit Talukdar

Ms. Rutika Verma

... For the K.M.D.A

1. By consent of the parties the appeal and the application are taken up together and disposed of by this common order. We have heard the learned counsel appearing for the parties.

2. The appeal is arising out of an order dated 7th June, 2022 passed by a learned Single Judge in a writ petition in which the appellant as writ petitioner has challenged the order of his transfer on deputation issued by the K.M.D.A.

3. Learned Single Judge on consideration of Regulation 67 of the Service Regulation of Kolkata Metropolitan Development Authority (in short K.M.D.A) held that the KMDA has fulfilled all the conditions mentioned in Regulation 67 in issuing the order of transfer of the petitioner on deputation and thereby dismissed the writ petition. The appeal is directed against the said order.

4. Mr. Tulsi Das Ray, learned counsel appearing on behalf of the appellant/petitioner submits that even if it is conceded that the KMDA has the authority to send the petitioner on deputation but it has to be within the same organization and in any event it has to be issued by the competent authority. He submits that the KMDA having failed to establish that any consent was obtained prior to such deputation and the competent authority has issued and approved the transfer on deputation of the writ petitioner to Bally Municipality. Learned Single Judge could not have refused to set aside the transfer order. In this regard, Mr. Ray has referred to the decision of the Hon'ble Supreme Court in the case of ***Umapati Choudhary Vs. State of Bihar & Anr.***, reported in **(1999)4 SCC 659** and another recent decision of the Hon'ble Supreme Court in the case of ***Ms. Sarita Singh vs. M/s Shree Infosoft Private Limited***, reported in **2022 LiveLaw (SC) 67** to argue that deputation being consensual in nature and without obtaining prior permission of the petitioner the petitioner could not have been deputed to another organization.

5. Mr. Satyajit Talukdar, learned counsel representing the KMDA has submitted that in the

instant case all the required provisions for deputation has been scrupulously followed. There was no requirement of consent of the petitioner under the relevant Regulation. Mr. Talukdar has placed before us a *note-sheet* to demonstrate that all formalities have been complied with before the writ petitioner was transferred on deputation to Bally Municipality.

6. The note-sheet produced at the time of hearing is taken on record. A copy of the said note-sheet is handed over to the learned counsel for the appellant in court.

7. In order to appreciate the argument made on behalf of the parties it is necessary to refer the definition of 'Deputation' in Regulation 5, sub-Regulation 12 and Regulation 67. Both the Regulations are stated below:-

“(12) ‘Deputation’ means releasing an employee from the duty of the post held by him for the purpose of special temporary duty under the Authority or under any other local or statutory body or public sector undertaking or Central Or State Government, or to undergo a course of training or instruction or to attend a conference or symposium in the interest of the Authority in or out of India;

“67. Deputation- (1) *The authorities mentioned in sub-regulation (2) may place an employee on deputation beyond the limits of his charge, provided that the approval of the*

Authority shall be necessary for the deputation of an employee out of India.

(2) Subject to the proviso to sub-regulation(1), the competent authorities for placing an employee on deputation shall be

(i) Vice-Chairman, in the case of class I employees, and

(ii) Secretary, in the case of other employees.

(3) An employee on deputation shall be deemed to be on duty in his post and shall be entitled to his full pay and allowances plus the cost of passage to and back from the place of deputation by road, rail, ship or air, and to such deputation allowance, which may be in foreign currency in the case of deputation out of India, as may be decided by the authority placing him on deputation.

8. On a plain reading of sub-Regulation 5(12) it appears that an employee can be sent on deputation for the purpose of establishing temporary duty to any other local or statutory body in the interest of the authority. The authority under Regulation 67, inter alia, would include Secretary. The note-sheet placed before us was generated by Deputy Secretary, KMDA and was finally approved on 22nd March, 2022 by the Secretary, KMDA and thereafter the C.E.O, KMDA. Hence the grievance of the petitioner that the transfer on deputation was not approved by the competent authority does not survive.

9. The next contention with regard to the consent of the petitioner before the petitioner could be transferred on deputation is to be considered in the light of the definition of “deputation” and Regulation 67.

10. The definition of ‘deputation’ clearly shows that consent of an employee is not required. However, it has to be seen whether it was in public interest. The service of the petitioner was transferred to Bally Municipality, which is a local authority, on temporary basis. In fact, the order of ‘deputation’ shows that earlier Sri B. Ghorai, Assistant Engineer (C) S.D.M Sector, KMDA was sent on deputation to Bally Municipality and now in his place the writ petitioner has been sent on temporary basis in the interest of public service.

11. On such consideration, we do not find any reason to interfere with the order passed by the learned Single Judge. However, before we conclude we may refer to the decisions cited on behalf of the appellant/writ petitioner. In **Ms. Sarita Singh (supra)** the issue was whether the appellant was on deputation or went for a business meet. It appears that she went to attend a business meeting in U.S.A. In that context the Hon’ble Supreme Court observed that *a deputation*

involves a tripartite consensual agreement between the lending employer, borrowing employer and the employee. Specific rights and obligations would bind the parties and govern their conduct. A transient business visit without any written agreement detailing terms of deputation will not qualify as a deputation unless the respondent were to lead cogent evidence to indicate that the appellant was seconded to work overseas on deputation. (emphasis supplied)

12. In the instant case there is no dispute that in terms of the service condition the writ petitioner can temporarily be sent on deputation to any local body or authority in the public interest. The factual scenario in **Ms. Sarita Singh (supra)** is completely different from the present case.

13. In **Umapati Choudhary (supra)** the issue was whether the repatriation of a deputationist is permissible after his permanent absorption. This is not the issue we are presently deciding in this appeal.

14. In view of thereof, none of the aforesaid two decisions would be of any help to the writ petitioner.

15. In view of the above, the appeal fails.

16. FMA 1023 of 2022 stands dismissed.

17. In view of dismissal of the appeal nothing remains to be decided in the application for stay being CAN 1 of 2022 and the same is accordingly dismissed.

18. However, there shall be no order as to costs.

19. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)

(Uday Kumar, J.)

