



CWP-14922-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

270

CWP-14922-2024
Date of Decision: 17.07.2024

Sharmila Kumari @ Sharmila

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Ravinder Malik (Ravi), Advocate for the petitioner
Mr. Puneet Gupta, Advocate for respondents no.1 to 4
Mr. Jagbir Singh, Advocate for respondent no.5

TRIBHUVAN DAHIYA, J. (Oral)

The petition has been filed seeking a writ of *certiorari* quashing the 'relieving order' dated 14.06.2024, Annexure P-21, whereby the petitioner was relieved from the post of Assistant Librarian (on deputation) 'in compliance of the orders passed by the Vice-Chancellor'. Further, a writ of *mandamus* has been sought directing respondents no.2 and 3 to allow the petitioner to continue on deputation to complete the tenure.

2. Briefly, facts relevant to adjudicate the matter are, the petitioner, who was working as Restorer in Chaudhary Devi Lal University, Sirsa, (hereinafter referred to as 'the parent University') requested the second respondent/Vice-Chancellor, Indira Gandhi University, Meerpur, Rewari (hereinafter referred to as 'the University') vide letter dated 15.03.2022,

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Annexure P-3, to consider her for the post of Assistant Librarian on deputation basis, keeping in view her qualification and experience. A Committee, consisting of Dean Academic Affairs, Registrar, Professor of Mathematics and Librarian, was constituted to examine the petitioner's request for deputation in the University. The Committee submitted its report dated 24.03.2022, Annexure P-4, observing that she fulfilled all the requisite qualifications, and had earlier applied for the post also in response to advertisement no.04/2019. She was shortlisted for interview, which had to be cancelled due to technical reasons. There was dire need of an Assistant Librarian in the University Library as there was shortage of staff. She was accordingly recommended by the Committee for appointment on deputation for a period of one year. Pursuant thereto, the matter was placed before the Executive Council in its meeting held on 30.03.2022; it resolved to take the petitioner on deputation as Assistant Librarian by borrowing her services from the parent University for a period of one year. A letter of appointment dated 01.04.2022, Annexure P-5, was issued to the petitioner, and she joined as such on 05.04.2022, after the parent University allowed her to go on deputation vide office order dated 04.04.2022, Annexure P-6. While working as Assistant Librarian, she was given additional charge of Warden of a Girls Hostel also, vide notification dated 30.08.2022, Annexure P-9.

2.1. After working for some time, the petitioner made a request for absorption against the vacant post of Assistant Librarian vide letter dated 22.11.2022, Annexure P-10. In that regard, the third respondent/Registrar sent a letter dated 21.12.2022, Annexure P-11, to the petitioner's parent University requiring 'No Objection Certificate' (NOC) and certain other documents. The

NOC along with attested copies of petitioner's service book was sent to the

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University, vide letter dated 28.12.2022, Annexure P-12. As the period of one year deputation was coming to an end, it was extended for another year with effect from 05.04.2023 to 04.04.2024 or till regular appointment, whichever was earlier, vide letter dated 05.04.2023, Annexure P -14.

2.2. Meanwhile, the University issued advertisement no.58 of 2023, dated 24.10.2023, Annexure P-15, inviting applications for regular appointment against the post of Assistant Librarian. The petitioner applied for it, was called for interview vide letter dated 05.03.2024, Annexure P-16, but not selected. In between, she received a letter dated 20.11.2023, Annexure P-19, informing that her request for absorption against the post of Assistant Librarian had not been acceded to by the University authorities.

2.3. The period of petitioner's deputation as Assistant Librarian was again extended for a period of one year from 05.04.2024 to 04.04.2025 or till regular appointment on the post, whichever was earlier, vide letter dated 12.04.2024, Annexure P-18, and she continued working as such.

2.4. She approached this Court by filing a writ petition, CWP-14259-2024, *inter alia*, seeking quashing of the communication/letter dated 20.11.2023, as also the advertisement no.58/2023 for the post of Assistant Librarian, and sought absorption in service on the ground that similarly placed employees had already been absorbed in the University service. Notice of motion was issued vide order dated 31.05.2024, Annexure P-20, and the University was permitted to continue the process of selection for the post, but restrained from declaring the result without leave of the Court.

2.5. Soon thereafter, the impugned order, dated 14.06.2024, was issued, relieving the petitioner of her duties as Assistant Librarian. This order

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has statedly been issued in compliance of the orders passed by the second respondent.

3. In this factual background, learned counsel for the petitioner has contended that the impugned relieving order is arbitrary and has been passed for extraneous reasons, only as a measure of punishment to the petitioner for approaching this Court seeking absorption in service vide earlier writ petition, leading to passing of interim order dated 31.05.2024. It is further contended that the petitioner was taken on deputation with the approval of Executive Council for one year, and her term has been extended by two years vide separate orders dated 05.04.2023 and 12.04.2024, up to 04.04.2025 or till regular appointment, whichever was earlier. Therefore, she has a right to continue on deputation till 04.04.2025. There was no reason or basis to relieve her abruptly. This has been done in the absence of any order to that effect having been passed by the competent authority, including the second respondent. Therefore, the impugned relieving order is not sustainable.

4. Learned counsel for the University, on the contrary, contends that the petitioner was working on deputation, and had no right to continue in service. Her deputation could have been terminated any time, and it has been done under orders of the Vice-Chancellor, leading to passing of the impugned relieving order dated 14.06.2024. In support of the contentions, learned counsel has referred to the file noting, dated 14.06.2024, recorded by the second respondent that *“In suppression of earlier order regarding extension, her services are no more required in the University on deputation in view of the Noting pages 9 & 10 and hence be relieved with immediate effect. Hostel warden charge of Girls hostel be given to Mrs. Mamta Agarwal. The relieving of Mrs. Sharmila with immediate effect being manipulation of attendance*

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record & subject to EC approval.” On this basis, it is contended that the order has been passed by the second respondent that the petitioner’s services were no longer required. It was in exercise of emergency powers of the Vice-Chancellor under the University Act, subject to approval of the Executive Council. Therefore, due procedure was followed in relieving the petitioner, and she has no right to continue on deputation in the University in these circumstances.

5. Heard.

6. Undisputed facts on record are, the petitioner was taken on deputation as Assistant Librarian after finding her eligible for the post, and also keeping in view the fact that the University was in need of her services, as opined by the Committee, which was specifically constituted for the purpose, vide its proceedings/report dated 24.03.2022. The proposal to take the petitioner on deputation was approved by the Executive Council. She had been working to the satisfaction of the University authorities, and was given the additional charge of Hostel Warden as well on 30.08.2022. Her initial period of one year deputation, was extended for another year vide letter dated 05.04.2023, and for yet another year vide letter dated 12.04.2024. Accordingly, she was allowed to remain on deputation up to 04.04.2025 or till regular appointment, whichever was earlier; but was abruptly relieved from duty on 14.06.2024, leading to termination of her deputation period.

7. The University, vide Executive Council Resolution dated 07.02.2014, has adopted ‘various statutes, ordinances, rules and regulations and service conditions of teaching and non-teaching staff of the Maharshi Dayanand University till such time these are framed by the Indira Gandhi University’. Foreign Service Rules of MD University, Annexure P-23, will



accordingly be applicable to the respondent University. There is no specific denial to this fact; rather, the University has tried to justify the impugned order by referring to sub-rule (ii) of Rule 7 of the Rules, which reads as under:

Chapter 34

[FOREIGN SERVICE RULES]

1. to 6. xxx xxx xxx

7. Period of Deputation / Foreign Service

i) Employment on Foreign Service shall initially be sanctioned for a period of one year which may be further extended by not more than one year at a time.

Provided that the competent authority may extend the deputation for a maximum period of 3 years. The period may be extended for another two years in very exceptional cases. The benefit of foreign service to promotions under C.A.S. will, however, be limited only for a period not exceeding three years.

Provided further that the period spent on deputation on other than teaching/ research assignment, will not be counted for determining the eligibility for promotion under Career Advancement Scheme.

Provided still further that in no case the period of deputation and extraordinary leave (without pay) shall exceed 3 years + 2 years in very exceptional cases during the whole tenure of service of an employee.

In case an employee is appointed as Vice-Chancellor/Pro Vice-Chancellor/Registrar of central/state university than such an employee may be given deputation for the period equivalent to the tenure of his/her appointment as Vice-Chancellor/Pro Vice-Chancellor/Registrar.

ii) The competent authority may, however, recall an employee before the expiry of the period of deputation, if the exigencies so require. Similarly, the foreign employer may also make a request to the University to recall the concerned University employee from deputation.

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7.1. A perusal of Rule 7(i) shows an employee can be taken on deputation initially for a period of one year which can be extended for a period of three years; and to another two years in exceptional cases. Sub-rule (ii) provides, the competent authority can recall an employee before the expiry of deputation period, if the exigencies so require. In the petitioner's case, she was in the extended third year of deputation, as granted by the competent authority which was valid up to 04.04.2025. The deputation was abruptly ended by relieving her from duty vide impugned order dated 14.06.2024, which was issued in purported compliance of orders passed by the second respondent. No such order was ever conveyed to the petitioner, nor has it been placed on record.

7.2. Learned counsel for the University has tried to explain it by contending that noting on the office file by the second respondent, dated 14.06.2024, as reproduced hereinbefore, is the order passed by him, in supersession of earlier orders of extension given to the petitioner, that her services were no longer required on deputation. The contention is without substance and cannot be accepted because, *firstly*, in the facts and circumstances of the case, noting on the office file cannot substitute the order that was required to be passed by the competent authority in terms of sub-rule (ii) to Rule 7. It provides, an employee can be recalled from deputation before expiry of the extended period *if the exigencies so require*. It is thus clear and explicit that tenure of deputation can be terminated prematurely, provided exigencies so require. The nature of power conferred, therefore, mandates recording of reasons by the competent authority spelling out the exigency. This, in turn, would also require conveying the reasons to the affected person/the employee on deputation. It is mandatory to meet the requirement of reasonableness and fairness of administrative action as well. Recalling an employee from deputation before



authority is required to take; hence notings on file cannot substitute the requirement of passing a reasoned order and conveying it too. In the case at hand, however, there is no order recalling the petitioner from deputation. And as already discussed, file noting by the second respondent ordering to relieve the petitioner in supersession of the order extending her deputation, cannot serve the mandatory requirements under the Rule. Further, even the file noting does not spell out any exigency; it only records, *‘her (petitioner’s) services are no more required in the University on deputation in view of the Noting pages 9 & 10 and hence be relieved with immediate effect’*. Contents of noting pages 9 and 10 have not even been disclosed in the written statement. Resultantly, the mandatory requirements of recalling an employee before expiry of the period of deputation, as contained in Rule 7(ii), have not been met.

8. *Secondly*, the petitioner was taken on deputation pursuant to an order passed by the competent authority/Executive Council, and the period of deputation was also duly extended vide two separate orders having been passed in that regard, as aforementioned, up to 04.04.2025. She was recalled from deputation as the second respondent directed to relieve her in supersession of earlier order extending the deputation, *subject to approval of the Executive Council*. Evidently, the order was passed in exercise of emergency powers vested in the Vice Chancellor in terms of Section 11(7) of the Indira Gandhi University, Meerpur Act, 2013 (hereinafter referred to as ‘the University Act’), which reads as under:

Vice-Chancellor

11. (1) to (6) xxx xxx xxx

(7) The Vice-Chancellor may, if he is of the opinion that immediate action is necessary on any matter, exercise any power conferred on any authority of the University by or



under this is Act, except in the matters involving creation or abolition of a Faculty, Department or Post and the matter involving appointment or removal of an employee.

Provided that the Vice-Chancellor before exercising powers under this section shall record in writing the reasons, why the matter cannot wait till the meeting of the authority concerned:

Provided further that if the authority concerned is of the opinion that such action ought not to have been taken by the Vice-Chancellor, it may refer the matter to the Chancellor whose decision thereon shall be final:

Provided further that any person in the service of the University who is aggrieved by the action taken by the Vice-Chancellor under this sub-section shall have the right to represent to the Executive Council within one month from the date on which decision on such action is communicated to him and thereupon the Executive Council may confirm, modify or reverse the action taken by the Vice-Chancellor. The employee shall be informed that the action has been taken under emergency powers.

8.1. Under Section 11 (7) of the Act, the Vice Chancellor can exercise the power vested in any authority, like the Executive Council, if in his opinion immediate action is necessary on any matter, except the ones relating to creation or abolition of a Faculty, Department or post, or appointment or removal of an employee. Proviso thereto mandates, before exercising the power reasons shall be recorded as to why the matter cannot wait till the meeting of the authority concerned. Second proviso to sub-section (7) provides that any person aggrieved against an action taken by the Vice-Chancellor, shall have the right to represent to the Executive Council within one month of the decision being communicated. It also requires that the employee shall be informed that the action has been taken in exercise of emergency powers. On considering the representation, the Executive Council



may confirm, modify or reverse the action taken by the Vice-Chancellor. Therefore, two pre-conditions for the Vice-Chancellor to exercise powers of any other authority are; (a) forming of an opinion that immediate action is necessary in the matter, and (b) recording of reasons as to why the matter cannot wait till next meeting of the authority whose powers are being exercised. Any exercise of emergency power in the absence of these two pre-requisites will be beyond jurisdiction.

8.2. In the instant case, though the second respondent was competent to exercise the emergency power as the matter did not involve abolition or creation of posts etc., the mandatory pre-conditions were not complied with. Neither an opinion regarding the necessity of immediate action to end the deputation has been formed by the second respondent, nor have any reasons been recorded as to why the matter cannot wait till next meeting of the Executive Council. These facts are apparent from a bare reading of the file noting, dated 14.06.2024, recorded by the second respondent which is the only basis to relieve the petitioner. The noting cannot be termed an order passed in compliance of Section 11 (7) of the Act. In fact, it amounts to misuse of the emergency powers vested in the second respondent. Further, though in terms of second proviso to sub-section (7) of Section 11, the person aggrieved against an action of the Vice-Chancellor has a right to appeal to the Executive Council within thirty days of communication of the decision/order, as also the information that the action has been taken under emergency powers. In the instant case, as already discussed, no order was passed by the second respondent, nor conveyed to the petitioner in any form; nor was it made known to her that the action had been taken in exercise of emergency powers.



Resultantly, she was robbed of her precious right to appeal as well. This is sheer high handedness, and shows arbitrary functioning of the respondents.

9. Accordingly, there is no escape from conclusion that the petitioner was arbitrarily recalled before expiry of deputation period in violation of the University Act and Rules which renders the impugned relieving order, dated 14.06.2024, illegal.

10. In view of the discussion, the petition is allowed with costs. The impugned order, dated 14.06.2024, is set aside. The University is directed to allow the petitioner to work as Assistant Librarian, as per terms of deputation/extension of deputation given to her vide letter dated 12.04.2024. She shall be entitled to all consequential benefits, including salary, for the period she has been illegally kept out of job. Costs of the petition are quantified as ₹50,000 (Rupees fifty thousand only), which shall be paid to the petitioner by the second respondent within two weeks of receiving a certified copy of the judgment. Proof of payment of costs be placed on the case file within four weeks therefrom.

(TRIBHUVAN DAHIYA)
JUDGE

17.07.2024
Payal

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No