



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 10043 / 2017

Vikram Singh Chouhan S/o Shri Hamir Singh Chouhan, Aged
About 42 Years, R/o D-114, 5th Road, Shakti Nagar, Paota, "C"
Road, Jodhpur.

----Petitioner

Versus

1. The Rajasthan State Consumer Dispute Redressal Commission,
Rajasthan, Jaipur Through Its Secretary.

2. The District and Session Judge, Jodhpur, Metropolitan, Jodhpur

3. The President, District Consumer Forum-I, Jodhpur, Rajasthan.

----Respondents

For Petitioner(s) : Mr. Kuldeep Mathur

For Respondent(s) : Mr. N.K. Mehta, AGC
Mr. Lekha Ram Bishnoi, Dy. Govt. Counsel

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

Order

05/02/2018

1. The petitioner has preferred this writ petition under for
the following reliefs :-

"a) by an appropriate writ, order or direction, the impugned
order dated 10.8.2017 (Annex.12) issued by the respondent
no.1 for absorption of the petitioner services in State
Commission/ District Consumer Forum may be declared
illegal and the same may be quashed and aside.

b) by an appropriate writ, order or direction, the
respondent no.1 and 3 may be directed to repatriate the
petitioner in his parent department i.e. office of respondent
no.2.



c) by an appropriate writ, order or direction, the respondent no.2 may be directed to not to struck out his name from the service rolls and may ask respondent no.1 and 3 to relieve the petitioner for joining in his parent department.

d) Any other appropriate writ, order or direction which this Hon`ble Court may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the petitioner.

e) Writ petition filed by the petitioner may kindly be allowed with costs."

2. The facts of the case in brief is that the petitioner was appointed as LDC after undergoing selection process on 23.8.2003. He was transferred by District & Sessions Judge, Sikar vide order dated 17.11.2004 to Jodhpur Judgeship. The petitioner was sent on deputation as LDC in District Consumer Forum-I, Jodhpur vide order dated 21.8.2013 (Annex.3). The petitioner was asked about his willingness for absorption in State Commission/District Consumer Forum. Vide his application dated 07.12.2016 (Annex.6) the petitioner submitted his willingness for absorption with State Commission/District Consumer Forum. The application 07.12.2016 (Annex.6) was withdrawn by the petitioner vide another application dated 22.2.2017 (Annex.7). The Authorities meanwhile issued a letter dated 03.4.2017 (Annex.8) to District & Sessions Judge, Metropolitan, Jodhpur under the subject "Regarding



deputation of staff of Subordinate Courts" by which the deputationists were called back and in pursuance of letter dated 03.4.2017 the petitioner was asked to be relieved for joining in parent department. Vide letter dated 06.4.2017 the petitioner was to be relieved for joining in parent department. Petitioner again vide representation dated 19.6.2017 (Annex.11) requested to relieve him for joining in the parent department. The petitioner thereafter was absorbed vide order dated 10.8.2017 (Annex.12) with the State/District Consumer Forum. Hence, being aggrieved by order dated 10.8.2017, the petitioner is filing this writ petition.

3. Counsel for the petitioner states that the petitioner was and is not at all willing to continue on deputation with the District Consumer Forum, as such, the order impugned dated 10.8.2017 absorbing his services in State Commission/ District Consumer Forum is bad. He has relied upon decision of this Court dated 17.1.2007 rendered in the case of **Vijay Saraswat Vs. State of Rajasthan & Ors.**, reported in WLC 2007(3) page 251, which reads as follows :-

"1. By the instant writ petition under Articles 226 and 227 of the Constitution of India, the petitioner seeks to quash the orders impugned Annex. 4 dated 3.9.2005, Annex.5 dated 13.9.2005 and Annex.7 dated 3.10.2005.

2. I have heard learned Counsel for the parties.



3. The facts and circumstances giving rise to the instant writ petition are that the petitioner was initially appointed on the post of Teacher Gr. III vide order Annex. 1 dated 24.3.1989, however, the petitioner was appointed as Senior Teacher (Mathematics) vide order Annex.2 dated 17.6.1992 and as such the petitioner is an employee of the respondent Education Department and his services are governed by the Rajasthan Educational Subordinate Service Rules, 1971 (for short 'the Rules of 1971' hereinafter). During his service tenure, the petitioner was transferred to various places i.e. Government Secondary School Barwada, Udaipur (Rural) and Government Senior Secondary School Ambamata, Udaipur (Urban). The respondent No. 4 by an advertisement Annex.3 dated 19.4.2005 published in Rajasthan Patrika, Udaipur Edition on 20.4.2005, advertised for appointment of Senior Teachers working in the Education Department in Residential School/Ashram Chhatravas run by respondent No. 4 namely Janjati Upyojna in Udaipur. A note was appended below the advertisement Annex. 3 that the requisite qualification holders and those employees who are willing, may apply on a plain paper for the said purpose to the Project Officer, Tribal Area Development Department, Udaipur by 29.4.2005 at 10.30 A.M. The petitioner did not apply in pursuance of the said advertisement Annex. 3. However, by order Annex.4 dated 3.9.2005, the respondent No. 2 accorded sanction to post the petitioner from Government Senior Secondary School, Ambamata, Udaipur to Residential School, Kotda and in compliance of the order Annex.4, the petitioner was relieved from Govt. Senior





Secondary School, Ambamata, Udaipur vide order Annex. 5 dated 13.9.2005 to join at Residential School, Kotda under the scheme run by Tribal Area Development Department, Udaipur. This order came to be challenged by the petitioner before Rajasthan Civil Services Appellate Tribunal, Jaipur (for short 'the appellate tribunal' hereinafter) by way of an appeal being Appeal No. 1008/05. By order Annex.7 dated 3.10.2005, the appeal filed by the petitioner came to be dismissed by the appellate tribunal. Hence this writ petition.

4. The respondents have filed a reply to the writ petition stating therein that Rajasthan Janjatiya Kshetriya Vikas Vibhag is competent to send the employee on deputation in the residential or Aashram School. It has also been averred that the respondent No. 3 has issued direction for relieving the petitioner and deputation of the petitioner at Residential School, Kotda has been made in the interest of administrative exigency. In whole of the reply, the respondents have not come with a case that before sending the petitioner on deputation to Residential School/Aashram School run by Tribal Area Development, Udaipur, the petitioner ever consented. Whereas, the petitioner specifically came with a case in para 5 and 6 of the writ petition that in pursuance of the advertisement Annex.3 he neither applied nor consented for deputation and therefore, the order sending the petitioner on deputation impugned is erroneous.

5. Learned Counsel for the petitioner has relied on two decisions of Hon'ble Supreme Court in [State of Punjab and Ors. v. Inder Singh and Ors.](#) and [Umapati Choudhary v. State of Bihar and Anr.](#) .





6. *In State of Punjab and Ors. v. Inder Singh and Ors.* (supra) while considering the concept of "deputation", the Apex Court held as under:

18. The concept of "deputation" is well understood in service law and has a recognised meaning. "Deputation" has a different connotation in service law and the dictionary meaning of the word "deputation" is of no help. In simple words "deputation" means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The law on deputation and repatriation is quite settled as we have also seen in various judgments which we have referred to above. There is no scope for the respondents now to go back to their parent departments and working there as Constables or Head Constable as the case may be.

7. *In Umapati Choudhary v. State of Bihar and Anr.* (supra) Hon'ble Supreme Court held 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. In the case at hand all the three conditions were fulfilled. The University, the present department or lending authority, the Board, the borrowing authority and the appellant, the deputations, had all given their consent for deputation of the appellant and for his permanent absorption in the establishment of the borrowing authority. There is no material to show that the deputation of the appellant was not in public interest or it was vitiated by favouritism or mala fide. The learned Single Judge in the previous writ petition had neither quashed the deputation order nor issued any direction for its termination. Indeed the learned Single Judge had dismissed the writ petition. No material has been placed before us to show that between November 1987 when the judgment of the Single Judge was rendered and December 1991 when the Division Bench disposed of the writ petition filed by the appellant the petitioners of the previous case had raised any grievance or made any complaint regarding non-compliance with the directions made in the judgment of the learned Single Judge. In these circumstances the Division Bench was clearly in error in declining to grant relief to the appellant.





Further, the appellant has, in the meantime, retired from service, and therefore, the decision in the case is relevant only for the purpose of calculating his retiral benefits.

8. *In State of Punjab and Ors. v. Inder Singh and Ors.* (supra) the Apex Court held that there can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. *In Umapati Choudhary v. State of Bihar and Anr.* (supra) Hon'ble Supreme Court held that 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. Thus, the ratio laid down by Hon'ble Supreme Court in both the decisions is that before sending an employee on deputation, the consent of such employee is sine-qua-non.

9. In the instant case, the advertisement Annex. 3 also shows that the Senior Teacher Gr. II who are willing may apply for deputation which is in consonance with the law laid down by Hon'ble Supreme Court. However, since the petitioner did not apply in pursuance of the advertisement and therefore, it cannot be said that the petitioner consented to be sent on deputation and therefore, the order impugned Annex-4 dated 3.9.2005 and consequential order Annex. 5 dated 13.9.2005 are against the provisions of law and cannot be sustained and liable to be set aside and the order Annex. 7 dated 3.10.2005 passed by the appellate tribunal deserves to be set aside.





10. In the result, the writ petition is allowed. The order impugned Annex. 4 dated 3.9.2005, order Annex. 5 dated 13.9.2005 and order Annex. 7 dated 3.10.2005 are quashed and set aside. Stay petition also stands disposed of. There shall be no order as to costs.”

4. Counsel for the respondent does not dispute that the application for absorption required consent of petitioner and the consent was revoked on 22.2.2017 and admittedly order of absorption has been passed subsequently on 10.8.2017.

5. After hearing learned counsel for the parties, perusing record and the precedent law, this Court is of the opinion that the petitioner who joined as LDC and was stationed at Jodhpur was sought to be absorbed and for that his willingness was sought. Willingness was submitted by the petitioner vide his application dated 07.12.2016 for his absorption with State Commission/District Consumer Forum but before the application could be accepted, the petitioner withdrew his application on 22.2.2017, which is not disputed by the respondents. Once such application requesting for absorption was withdrawn, the respondents were not entitled to pass order of absorption on 10.8.2017, hence, the writ petition is allowed. The order dated 10.8.2017 (Annex.12) is quashed and set aside. Necessary compliance shall be made by the Authorities.

(DR. PUSHPENDRA SINGH BHATI)J.

Sanjay