

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

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DATED THIS THE 28TH DAY OF SEPTEMBER, 2020

PRESENT

THE HON'BLE MR.JUSTICE KRISHNA S. DIXIT

AND

THE HON'BLE MR.JUSTICE P.N.DESAI

WRIT PETITION NO.226384/2020(S-KAT)

BETWEEN:

SRI.C.B. CHIKKALAGI
(CHANNAMALLAPPA BASANNA CHIKKALGI)
S/O BASANNA, AGED ABOUT 55 YEARS
ASSISTANT EXECUTIVE ENGINEER
RURAL DEVELOPMENT AND PANCHAYAT RAJ
DEPARTMENT, PROJECT SUB-DIVISION
VIJAYAPURA, R/AT. ANUGRAHA, AISHWARYANAGAR
ASHRAM ROAD, VIJAYAPURA

... PETITIONER

**(BY SRI. M. MADHUSUDAN, M.VENUGOPALA &
SRI S.V. BIRADAR, ADVOCATES)**

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS PRINCIPAL SECRETARY
TO GOVERNMENT, RURAL DEVELOPMENT AND
PANCHAYAT RAJ DEPARTMENT

M.S. BUILDING, BENGALURU – 560 001.

2. THE STATE OF KARNATAKA
REPRESENTED BY ITS PRINCIPAL SECRETARY
TO GOVERNMENT, PUBLIC WORKS,
PORTS AND INLAND WATER TRANSPORT
DEPARTMENT
VIKASA SOUDHA, BENGALURU – 560 001
3. SRI. PRABHAKAR KALLAPPA DASHYAL
ASSISTANT EXECUTIVE ENGINEER
MINOR IRRIGATION SUB-DIVISION
BAGALKOT ROAD, VIJAYAPURA – 586 101

... RESPONDENTS

**(SRI PRASANNA DESHPANDE, AAG FOR R1 & R2,
SRI. MAHANTESH PATIL, ADV. FOR R3)**

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI BY QUASHING THE ORDER DATED:12.08.2020 IN APPLICATION NO.1270/2020 (VIDE ANNEXURE-D) PASSED BY THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL, KALABURAGI BENCH, CONSEQUENTLY ALLOW THE APPLICATION FILED BY THE PETITIONER BEFORE THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL, KALABURAGI BENCH IN APPLICATION NO.1270/2020.

THIS PETITION COMING ON FOR PRELIMINARY HEARING B GROUP THIS DAY, **KRISHNA S. DIXIT J.**, MADE THE FOLLOWING:-

ORDER

This writ petition by a Civil Servant of the State lays a challenge to the order dated 12.08.2020 made by the Kalaburagi Bench of Karnataka State Administrative Tribunal (hereafter 'KSAT') in his Application No.1270/2020 denying relief against the unilateral termination of his deputation by the borrowing department (RDPR) on the ground of efflux of time.

2. After service of notice, the official respondents have entered appearance through the learned Additional Advocate General and the private respondent is represented by his learned advocate; both they make submission in justification of the impugned judgment & order.

3. Brief fact matrix of the case:

a) Both the petitioner and the third respondent are borne on the service of Public Works Department i.e. (PWD), the second respondent herein which vide

Notification dated 09.05.2017 (Annexure-A1) had lent the services of the petitioner on deputation to the first respondent-RDPR Department, which in turn issued a Notification dated 02.06.2017 (Annexure-A2), posting him as the Assistant Executive Engineer in the Project Sub-Division, Vijayapur; the petitioner took the charge vide Charge Transfer Memo dated 14.06.2017 (Annexure-A3); all this is not in dispute.

b) The borrowing RDPR Dept. vide Notification dated 15.07.2017 (Annexure-A4) had shifted the petitioner as Technical Assistant, Project Division at Bagalkot, which he had called in question in Application No.4434/2017 and the KSAT had continued him in the earlier post by granting an interim order of stay against this displacement; however, this case came to be disposed off vide order dated 03.10.2019 (Annexure-A5) as having become infructuous by passage of time; be that as it may;

c) The borrowing dept. vide Notification dated 27.02.2020 (Annexure-A6) unilaterally cancelled the deputation of the petitioner and sent him back to his parent department i.e., PWD; the petitioner had laid a challenge to this Notification in Application No.1270/2020, which came to be negated by the KSAT vide impugned order; that is how the petitioner is knocking at the doors of Writ Court.

4. Having heard the learned counsel for the parties and having perused the petition papers, we are inclined to grant indulgence in the matter, for the following reasons:

i) Admittedly, petitioner and the third respondent as already mentioned, belong to the second respondent-PWD which has lent the services of the former to the first respondent-RDPR Dept., which by the Notification that was impugned before the KSAT has unilaterally terminated the deputation and thereby reverted him to

the parent department; this is bit difficult to countenance; learned author Samaraditya Pal in **“LAW RELATING TO PUBLIC SERVICE”** Third Edition (LexisNexis Publication) at paragraph-145.1 explains the concept of deputation as under and we agree with that:

“The concept of deputation in the law relating to public service is in essence derived from the significance of the word ‘deputy’ and the appropriate meaning of ‘deputy’ in this context would be ‘substitute’. From this pivotal sense of substitution, many of the incidents of deputation discussed here will follow logically. Although it is usually said that a person has been appointed on deputation, the better expression would be ‘assignment on deputation’. It would, therefore, be more proximate to accuracy to describe deputation as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organization (commonly referred to as the parent department or lending authority) to another department or cadre or organization (commonly referred to as the borrowing authority)...”

ii) The Hon'ble Supreme Court had an occasion to discuss the concept of deputation as obtaining in Service Jurisprudence in **State of Punjab vs. Inder Singh AIR 1998 SC 7**, observing as under:

"19. Concept of 'deputation' is well understood in service law and has a recognized 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 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 escape for the respondents now to go back to their parent departments and working there as Constables or Head Constables as the case may be."

iii) To put it shortly, the idea of deputation involves three ingredients namely, lending department, the borrowing department and the lent hand; ordinarily, a valid deputation envisages a consensus amongst all the three agencies involved, unless the law otherwise states; Rule 50 of KCS Rules provides for deputation of a Government servant from one department to another and his entitlement to the emoluments on such deputation; Rule 50 (1) reads as under:

“50. (1) When a Government servant is permanently transferred or deputed from one department to another under the provisions of Rule 16 of the Karnataka State Civil Services (General Recruitment) Rules, 1977, he will draw pay in the new post at the same stage in which he was drawing in the old post and earn the next increment on the date on which he would have earned it had he continued in the old post.”

Rules 15 & 16 of the KCS (CCA) Rules, 1957 provide for the disciplinary proceedings for the misconduct of deputationists; going by the text and context of these

rules, it can be safely stated that in the matter of deputation in Government service, an employee may not have much say; however, no department can thrust its employee on deputation to another, as a general rule; similarly, a borrowing department cannot cut short the tenure of the deputation unilaterally, in the absence of authorization.

(iv) In the present case, the borrowing department has unilaterally sent the petitioner back to the parent department abruptly and uncereemoniously, that too without any prior or post-consultation with the lending department; this according to us, apart from being contrary to rules, involves denigration of the civil servant who need to be treated with some respect; it hardly needs to be stated that the Government being a model employer cannot act like the East India Company of the bygone days when the conditions of service are broadly regulated by the Service Rules; thus, the

impugned action falls short of “fair standard procedures”; we gather an impression that the impugned action of the borrowing department is prompted by the act of petitioner in approaching the KSAT earlier and getting reprieve against his displacement.

(v) The learned Additional Advocate General Mr. Prasanna Deshpande, appearing for the State sought to justify the action of the first respondent by placing reliance on the decision in **Ashok Kumar Ratilal Patel Vs. Union of India, (2012) 7 SCC 757**; this case does not say anything inconsistent with what has been herein above stated; although the concept of deputation has been discussed, it was in the context of appointment by deputation as contradistinguished from deputation simplicitor; Lord Halsbury more than a century ago had observed in **Quinn vs. Leathem, 1901 AC 495** that a decision is an authority for the

proposition that it actually lays down and not for all that which logically follows from what has been so laid down. Thus, the said ruling does not help the respondents.

(vi) The deputationist has no legal right to the post/office to which he is deputed, as rightly argued by the respondents; but that is not the case here and therefore this decision does not come to the rescue of the respondents especially when Rule 50 of KCSR provides for a maximum period of five years for deputation; there are some Government Orders presumably issued under this Rule which broadly formulate the policy of deputation and its tenure; the Government Order dated 19.11.1981 (reproduced in the writ petition and not controverted by the official respondents), prescribes the consultation between the borrowing and the lending departments as a pre-condition for cutting short the tenure of or extending

the period of deputation; true it is that these Government Orders/Circulars arguably may not have force of law so as to give a concrete cause of action for a legal proceeding; but they provide the standards with which the validity of administrative action can be assessed; even these orders have not been borne in mind by the first respondent in issuing the impugned Notification.

(vii) The KSAT has disposed off the agitated cause of the petitioner without duly considering all the above aspects urged by him in the Application; the only reason for disposing off the same is that matter has become infructuous; what is stated at para-4 of the impugned judgment reads as under:

“4. Perused the materials. This application was filed in the year 2017 and as on today, the period claimed by the applicant of two years has already been expired (sic). Hence, the application becomes infructuous as on today.”

It is very difficult for us to appreciate the approach of the Hon'ble KSAT to the grievance of the civil servant, and with this observation, we part with this case, with no joy in heart.

In the above circumstances, this writ petition succeeds; a Writ of Certiorari issues quashing the impugned order of the KSAT; a direction issues to the respondent Nos.1 & 2 to restore the petitioner to the office which he had held on deputation immediately preceding the impugned Notification dated 27.02.2020 at Annexure-A6; time for compliance is 15 days.

Now, no costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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