

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

WEDNESDAY, THE 22ND DAY OF MARCH 2023 / 1ST CHAITHRA, 1945

WP(C) NO. 8235 OF 2023

PETITIONERS:

- 1 AJIN K.A
AGED 40 YEARS
S/O. AUGUSTINE,
SECURITY ASSISTANT/GRADE ON DEPUTATION,
PIS NO: 181312, BUREAU OF IMMIGRATION,
COCHIN INTERNATIONAL AIRPORT,
NEDUMBASERRY, PIN - 683585**
- 2 VIMAL JOS
AGED 39 YEARS
S/O. K.V JOS,
SECURITY ASSISTANT/GRADE ON DEPUTATION,
PIS NO: 190012, BUREAU OF IMMIGRATION,
COCHIN INTERNATIONAL AIRPORT,
NEDUMBASERRY, PIN - 683585**
- 3 DOLLY C.R
AGED 49 YEARS
W/O. RADHAKRISHNAN,
SECURITY ASSISTANT/GRADE ON DEPUTATION,
PIS NO: 190153, BUREAU OF IMMIGRATION,
COCHIN INTERNATIONAL AIRPORT,
NEDUMBASERRY, PIN - 683585**
- 4 HAINE MANEESH KADAVIL R, AGED 42 YEARS
S/O. RAVEENDRAN,
SECURITY ASSISTANT/GRADE ON DEPUTATION,
PIS NO: 201035, BUREAU OF IMMIGRATION,
COCHIN INTERNATIONAL AIRPORT,
NEDUMBASERRY, PIN - 683585**

**BY ADVS.
JOSEPH GEORGE
P.A. REJIMON
SAJEEV JOHN T.**

RESPONDENTS:

- 1 THE JOINT DEPUTY DIRECTOR
BUREAU OF IMMIGRATION, MINISTRY OF HOME AFFAIRS,
MONT FORT HOUSE, THIRUVANANTHAPURAM, PIN - 695014
- 2 FOREIGN REGIONAL REGISTRATION OFFICER
BUREAU OF IMMIGRATION,
COCHIN INTERNATIONAL AIRPORT,
NEDUMBASERRY, PIN - 683585
- 3 THE ASSISTANT DIRECTOR
BUREAU OF IMMIGRATION,
COCHIN INTERNATIONAL AIRPORT,
NEDUMBASERRY, PIN - 683585
- 4 THE ASSISTANT DIRECTOR
BUREAU OF IMMIGRATION, MINISTRY OF HOME AFFAIRS,
MONT FORT HOUSE, THIRUVANANTHAPURAM, PIN - 695014
- 5 STATE OF KERALA
REPRESENTED BY PRINCIPAL SECRETARY TO GOVERNMENT,
HOME DEPARTMENT, GOVERNMENT SECRETARIATE,
THIRUVANANTHAPURAM, PIN - 695001
- 6 THE DISTRICT POLICE CHIEF THRISSUR RURAL
AYYANTHOLE P.O, THRISSUR, PIN - 680631
- 7 DISTRICT POLICE CHIEF THRISSUR CITY
THRISSUR P.O, PIN - 680001
- 8 DISTRICT POLICE CHIEF KOCHI CITY
MARINE DRIVE, KOCHI,
ERNAKULAM DISTRICT, PIN - 682011

BY ADV MANU S. DSG OF INDIA- R1 TO R4
SMT. K.G.SAROJINI-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 22.03.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

C.R

JUDGMENT

Dated this the 22nd day of March, 2023

The petitioners, who are Civil Police Officers under the Kerala Police and are deputed to the Bureau of Immigration under the Ministry of Home Affairs, Government of India, have approached this Court seeking to set aside Ext.P1 and to command respondents 1 to 4 to permit the petitioners to continue on deputation till the expiry of their period of deputation.

2. The petitioners state that petitioners 1 to 3 have been working on deputation with the Bureau of Immigration for more than three years. Petitioners 1 to 3 were granted extension of deputation after the expiry of the initial three year period. The 4th petitioner is yet to complete his three year tenure.

3. On 07.03.2023, the petitioners were served with Ext.P1 Office Order which stated that the petitioners stand repatriated to their parent Units and relieved of their duties from the Bureau of Immigration with effect from the dates as shown against their names.

4. The petitioners would contend that no notice of repatriation was issued to the petitioners. Ext.P1 did not disclose any reason warranting such premature repatriation. The respondents have not made any arrangements to fill up the vacancies that will arise consequent to the repatriation of the petitioners by making alternate appointments.

5. The petitioners state that the repatriation is presumably done on the alleged deficiency in the service rendered by the petitioners. There are 80 counters in the Bureau of Immigration at Cochin International Airport. About 25 to 28 counters will be functioning every day. The entire work in the Bureau of Immigration in the International Airport is supervised by an Assistant FRRO. The said Assistant FRRO

is assisted by two senior officers and counter officers. A General Diary is maintained at the Bureau of Immigration. The General Diary should disclose any misconduct or omission on the part of the petitioners in the matter of discharge of their duties. No adverse remarks or reports were made in the Diary in respect of the petitioners at any point of time.

6. On the other hand, Exts.P2(a) to P2(c) would show that the 1st petitioner has been given good service entries. Exts.P3(a) and P3(b) would show that the 2nd petitioner's service was satisfactory and excellent. Ext.P4 is a similar certificate in respect of the 3rd petitioner.

7. The premises of the Bureau of Immigration in the International Airport is covered by IVFRT Software, which would record the entire activities in the Bureau. There are CCTV cameras to monitor the work in the Bureau of Immigration area. An examination of the Software and CCTV would disclose that the petitioners have not defaulted in any manner in the discharge of their duties. Each CPO deputed at

the Bureau of Immigration will be handling around 250 passengers. The petitioners have also adhered to the said target.

8. Deputy Solicitor General of India entered appearance on behalf of respondents 1 to 4 and resisted the writ petition, filing a Statement. On behalf of respondents 1 to 4, it is pointed out that petitioners 1 to 3 have already completed their tenure period of three years and they are continuing on extension. A person on deputation to another department cannot insist as of right that he should be permitted to continue at the deputed station. The 4th petitioner would be completing his tenure soon. There is no rule or regulation which states that a deputationist cannot be repatriated before the expiry of the tenure period or before the expiry of the extended period. Under Service Law, premature repatriation of deputationists is permitted. Such premature repatriation would not amount to reversion. It would not amount to imposition of any penalty. Nor it would cast any

stigma on the employees.

9. Pointing out the details of the leave availed by the petitioners, the Deputy Solicitor General of India submitted that the petitioners had the habit of taking frequent leave. Even though there may be leave to their credit, that does not mean that the petitioners can avail the entire leave, oblivious of the requirements in the Bureau. They have to take care of the interest of the administration.

10. It is further argued by the Deputy Solicitor General of India that Bureau of Immigration area in the International Airport is a very sensitive area. Constant surveillance is required for 24 hours in all the 365 days in an year, in the area. Trained and committed personnel are required in the area. The persons deputed at the BOI Centres in the International Airports have to show a higher degree of dedication and commitment to work.

11. As regards serving of notice to the petitioners, the Deputy Solicitor General of India submitted that as per the

extent O.M, an employer has to give one month notice before repatriating a deputationist. Ext.P1 office order was passed on 09.02.2023. Office orders were served on the State Police Chief, DPC-Kochi City, Accountant General, etc., soon thereafter. The notice of repatriation was published in the office of the Bureau of Immigration on 09.02.2023 itself. The Deputy Solicitor General of India emphatically denied the allegation made by the petitioners that notices were served on the petitioners only on 07.03.2023.

12. The counsel for the petitioners denied all the allegations made on behalf of the respondents. The counsel for the petitioners pointed out that there is no instance of any misconduct or negligence on the part of the petitioners so far. As long as there is no negligence in work or misconduct on the part of the petitioners, the petitioners are entitled to complete the tenure period. The petitioners have only taken leave permitted under the Service Rules. There is no allegation of unauthorised leave taken by the petitioners.

13. The APAR in respect of all the petitioners would show that their services were certified as excellent by their superior officers. The duties discharged by the petitioners are for nine hours duration in day time and 15 hours duration in the night time. They have no weekly off permissible. The petitioners have been discharging their duties earnestly and efficiently. Therefore, repatriation of the petitioners before the tenure period or extended period, cannot stand the scrutiny of law.

14. I have heard the learned counsel for the petitioners, the learned Deputy Solicitor General of India representing respondents 1 to 4 and the learned Government Pleader representing respondents 5 to 8.

15. It is well settled that a person sent on deputation does not have a right to claim that he should be permitted to complete the entire tenure period. Repatriation of a deputationist does not amount to reversion. It need not be by way of penalty also. A perusal of Ext.P1 would show that it is

not a stigmatic order. The petitioners have not pointed out any bias in the decision taken by the respondents in repatriating them.

16. The statement filed by the respondents would indicate that the petitioners have been taking frequent leaves. The statement would show that the 1st petitioner has taken 75 days leave in the year 2022. The 2nd petitioner has taken 118 days leave. Petitioners 3 and 4 have availed 60 and 62 days leave respectively. A deputationist working in a sensitive establishment like the Bureau of Immigration cannot avail frequent leaves ignoring the requirement of the Institution and sensitivity of the work, though leaves may be available to his credit. Statement filed on behalf of the Deputy Solicitor General of India would also show that the actual number of duties done by the petitioners in the year 2022 are 140, 154, 117 and 147 days respectively.

17. Be that as it may, the respondents, after considering the over all work of the staff in the Bureau of

Immigration, found that the Bureau of Immigration requires a higher degree of commitment and dedication from the field staff. Though the discharge of duties by the petitioners may not amount to misconduct, it is taking into consideration the sensitive nature of BOI activities in the Kochi International Airport, that the respondents have taken the decision.

18. Concept of repatriation is inherent in the concept of deputation as long as the deputationist has not been permanently absorbed in the borrowing Department. A deputationist does not have indefeasible right to continue in the borrowing Department. Repatriation can be resorted to on the grounds of unsuitability or unsatisfactory work. As long as the repatriation of the petitioners does not amount to reversion or imposition of penalty and as long as the decision is not vitiated by bias, the petitioners cannot have any legal grievance in the matter.

19. The law relating to deputation is well settled now. A deputationist does not have an indefeasible right to insist his

continuance in the borrowing Department, when his service is no longer required in exigencies of service. In ***Ratilal B. Soni and others v. State of Gujarat and others*** [AIR 1990 SC 1132], the Hon'ble Apex Court held that a deputationist can be reverted to his parent cadre at any time. In ***Kumar Nanda v. Union of India and another*** [JT 2000 (6) 574], the Hon'ble Apex Court held that the basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent cadre to serve in his substantive position at the instance of either of the Departments and there is no vested right in such a person to continue for long or to get absorbed in the Department to which he is deputed.

20. In the case of the petitioners, the repatriation is not in violation of any statutory rules. The repatriation is for reasons which appear to be sound. The petitioners therefore cannot raise any legitimate legal grievance.

In the facts and circumstances of the case, the writ petition fails and it is dismissed. The respondents will ensure

that the salary in respect of the petitioners for the period of their work in the month of March, 2022 are paid promptly. The petitioners are permitted to rejoin duty in their parent Department by 27.03.2023.

sd/-

N.NAGARESH
JUDGE

hnh

APPENDIX OF WP(C) 8235/2023

PETITIONER EXHIBITS

EXHIBIT P1	THE PHOTOGRAPH OF ORDER NO:87/BOI/2023 DATED 09-02-2023 ISSUED BY THE ASSISTANT DIRECTOR, BUREAU OF IMMIGRATION, TRIVANDRUM
EXHIBIT P2 (A)	THE APPRECIATION CERTIFICATE RECEIVED BY THE 1ST PETITIONER FOR THE MONTH OF MARCH 2019.
EXHIBIT P2 (B)	THE APPRECIATION CERTIFICATE RECEIVED BY THE 1ST PETITIONER FOR THE MONTH OF APRIL 2019
EXHIBIT P2 (C)	THE APPRECIATION CERTIFICATE RECEIVED BY THE 1ST PETITIONER FOR THE MONTH OF AUGUST 2019
EXHIBIT P3 (A)	THE APPRECIATION CERTIFICATE RECEIVED BY THE 2ND PETITIONER FOR THE MONTH OF MARCH 2019
EXHIBIT P3 (B)	THE APPRECIATION CERTIFICATE RECEIVED BY THE 2ND PETITIONER FOR THE MONTH OF AUGUST 2019
EXHIBIT P4	THE APPRECIATION CERTIFICATE RECEIVED BY THE 3RD PETITIONER FOR THE MONTH OF MAY 2019

RESPONDENTS' EXHIBITS : NIL