

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

SWP No. 2608/2018
CM No. 5243/2021
c/w
SWP No. 2271/2018
IA No. 01/2018
CPSW No. 44/2019
[CCP(S) No. 67/2019]
CM No. 4919/2022

Reserved on : 26.05.2023
Pronounced on: 21.07.2023

Ravinder KumarAppellant(s)/Petitioner(s)
Through: Mr. Rohit Kohli, Advocate

Vs
State of J&K and ors. Respondent(s)
Through: Mr. M.A Bhat, Advocate

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

PRAYER IN SWP NO. 2608/2018

1. The petitioner through the medium the present writ petition is seeking quashment/setting aside of the order No. JKSRTC/GMA/1435 dated 30.10.2018 issued by the respondent No. 3 whereby the respondent No. 4 has been directed to look after the duties of Incharge JKSRTC Pathankot in addition to his own assignments as Incharge JKSRTC Lakhanpur being patently illegal, unconstitutional and against the settled law. Besides, the petitioner is also seeking a Writ of Mandamus commanding the respondents particularly the respondent No. 3 to allow/permit the petitioner to work as Personal Assistant in the office of respondent No. 2 and also seeking release of salary.

FACTS IN SWP NO. 2608/2018 AND SWP NO. 2271/2018**i) SWP No. 2608/2018 (Arguments on behalf of the petitioner)**

2. The brief facts giving rise to the filing of the present petition is that the petitioner was appointed as Helper in J&K State Forest Corporation in the year, 1996. The further case of the petitioner is that he was sent on deputation in the office of then Minister of Food Supplies and Transport for his further duty vide communication No. S/MOS/F/126-27 dated 20.01.1997 with the direction that the salary of the petitioner be withdrawn from the corporation. On the strength of the aforesaid communication, the petitioner started working as Junior Assistant in the office of the Chairman, Jammu and Kashmir State Road Transport Corporation [hereinafter referred to as "JKSRTC"].

3. Further case of the petitioner is that while working as Junior Assistant in the office of the Chairman, JKSRTC, the petitioner made request to the respondent No. 2 i.e. Managing Director, JK SRTC for his permanent absorption in the Corporation. The petitioner was asked to get "No Objection Certificate" from the State Forest Corporation for his absorption in JKSRTC. Pursuant thereto, the State Forest Corporation issued "No Objection Certificate" vide communication dated 24.03.2018. Since the petitioner had not been permanently adjusted/absorbed in JKSRTC and the petitioner used to withdraw his salary from the State Forest Corporation while performing his duties on deputation post, accordingly, in the month of April, 1999, it was decided by the Managing Director that the petitioner who was on deputation with the Corporation would be permitted to withdraw his salary against the post of Junior Typist. Pursuant to the request made to the JKSRTC to send LPC and Service Book of the petitioner to the respondent No. 2 with a view to enable him to draw his salary from JKSRTC, the State Forest Corporation vide communication dated 02.05.1999 sent LPC and Service Book of the petitioner to respondent No.

2 and thereafter, the petitioner started withdrawing his salary from the office of respondent No. 2.

4. Further case of the petitioner is that the petitioner was permanently absorbed in the JKSRTC by the competent authority as the NOC was already submitted to respondent No. 2 by the State Forest Corporation and said proposal was approved by the Chairman, JKSRTC. The petitioner, accordingly, was permanently absorbed in JKSRTC after complying with all the requisite formalities and thus, has become an employee of the JKSRTC. Pursuant thereto, the petitioner vide order dated 08.12.1999 was temporarily promoted to the post of Senior Typist.

5. Further case of the petitioner is that since there was no separate cadre for Junior Typist and Senior Typist, as such, the petitioner raised the issue with the Grievance Committee of the respondent No. 2 which took a decision to prepare a separate cadre for both Senior Typist as well as Junior Typist. Since the petitioner was permanently absorbed in JKSRTC, way back in the year, 2010, the then Chairman of the Corporation i.e. JKSRTC on the basis of recommendation of Departmental Promotion Committee had approved the promotion of the petitioner from Senior Typist to Stenographer by virtue of order dated 04.09.2010. The petitioner, in the month of April, 2018 was again promoted from the post of Stenographer to the post of Personal Assistant vide order dated 17.04.2018 pursuant to the recommendation of DPC by the competent authority. That despite the fact that the petitioner has been permanently absorbed in respondent No. 2 and has been granted various promotions from time to time by the competent authority on the recommendations of the Departmental Promotion Committee yet, the respondent No. 3 without considering the aforesaid fact, passed the order No.

JKSRTC/GMA/1428 dated 30.10.2018 by virtue of which the petitioner was repatriated back to the State Forest Corporation after a period of 21 years from the date the petitioner was sent on deputation and 08 years from the date the petitioner was permanently absorbed.

PRAYER IN SWP NO. 2271/2018

6. The petitioner through the medium of the present petition seeks quashment of the order No. JKSRTC/GMA/1428 dated 30.10.2018 issued by the respondent No. 3 whereby the petitioner is said to be on deputation and as per the petitioner, has been repatriated back to State Forest Corporation being patently illegal, unconstitutional & against the settled law. The petitioner further seeks a direction commanding the respondents particularly the respondent No. 3 to allow/permit the petitioner to work as Personal Assistant in the office of respondent No. 2 and also seeks release of salary in his favour.

ii) SWP No. 2271/2018 (Arguments on behalf of the petitioner)

7. Mr. Rohit Kohli, learned counsel for the petitioner further submits that the order dated 30.10.2018 issued by respondent No. 3 was illegal and was not sustainable in the eyes of law, feeling aggrieved of the same, the petitioner was constrained to approach this Court by way of filing a writ petition in the earlier round of litigation which was registered as SWP No. 2271/2018 before this Court and this Court after considering the relevant facts of the case, was pleased to grant interim order in favour of the petitioner on 03.11.2018, whereby the order mentioned supra dated 30.10.2018 was kept in abeyance.

8. The specific case of the petitioner is that the interim order passed by this Court dated 03.11.2018 passed in SWP No. 2271/2018 was passed in presence of learned counsel for respondent No. 2, as such, the petitioner was allowed to work as Incharge Depot JKSRTC, a fact which is evident from a bare perusal of the communication dated 22.11.2018 and 23.11.2018. In the

meantime, on 19.11.2018 it has been urged that the petitioner was telephonically informed by Divisional Headquarter, JKSRTC Jammu that from 20.11.2018, the petitioner will have to work in the Divisional Office/Administration Wing, JKSRTC Jammu although no such order was issued and accordingly, the petitioner requested the concerned to provide a written order. Pursuant to the request made by the petitioner for providing him the written order, the petitioner was directed to approach the Administration Wing of the Corporation. The petitioner, in furtherance of the aforesaid instruction, approached the Administration Wing on 20.11.2018 and the petitioner was verbally directed to work in the Administration Wing of JKSRTC, Jammu. The specific case of the petitioner is that since no written order was issued by the competent authority for transfer of the petitioner from JKSRTC Pathankot to Administration Wing, JKSRTC, as such, the petitioner again requested for issuance of the written order so that he could join the Administration Wing. However, but in spite of repeated requests, no order was provided to the petitioner and the petitioner continued to perform his duties as Incharge Depot JKSRTC, Pathankot. Subsequently, the petitioner was furnished a copy of yet another order dated 30.10.2018 by virtue of which respondent No. 4 (Gurjeet Singh) was assigned to look after the duties as Incharge JKSRTC Pathankot till further orders pursuant to the repatriation of the petitioner to his parent department i.e. State Forest Corporation.

9. The specific case of the petitioner is that since the basic order of repatriation of the petitioner was kept in abeyance by this Court in SWP No. 2271/2018 and any further order including order dated 30.10.2018 vide No. JKSRTC/GMA/1435 which is impugned in subsequent petition bearing SWP No. 2608/2018 and in continuation to the order of repatriation, cannot be given effect to by the respondents.

10. Feeling aggrieved of the same, the petitioner filed yet another petition which has been registered as SWP No. 2608/2018 and this Court by virtue of order dated 21.12.2018 has been pleased to stay the order impugned No. JKSRTC/GMA/1435 dated 30.10.2018 besides, directing the respondents to release the salary of the petitioner for the said post.

11. It is a matter of fact that both the interim orders passed by this Court in the aforesaid two writ petitions continue to be operative as on date and since the respondents did not implement the same and the petitioner, feeling aggrieved of the same filed a contempt petition before this Court which was registered as CPSW No. 44/2019 which is also clubbed with the present petitions and is being disposed of by virtue of common order. The contempt petition came to be listed before this Court along with the present writ petitions latest on 18.11.2022. in which the Court after hearing counsel for the parties has observed as under:-

“.....For what has been stated hereinabove coupled with the reasons stated in the application, the same is dismissed. Respondents, as such, are directed to implement the order passed by this Court dated 03.11.2018 passed in SWP No. 2271/2018 (which has assumed finality as the LPA filed by the respondents stands dismissed) within a period of one week, failing which, respondent No. 1 (Managing Director, JKSRTC) shall appear in person before this court on the next date of hearing.”

ARGUMENTS ON BEHALF OF THE RESPONDENTS

12. *Per contra*, the objections have been filed by Mr. M.A Bhat, Advocate in both the petitions and has also filed compliance report in the contempt petition.

13. The specific case of the respondents in SWP No. 2608/2018 is that at the instructions of the then Minister, Food, Supplies and Transport State of J&K, the petitioner was deputed by State Forest Corporation to work in the

Personal Section of Minister for Food Supplies and Transport vide order No. PS/MOS/F/126-27 dated 02.01.1997. However, the deputation was limited to his posting only and the salary was ordered to be drawn from State Forest Corporation and, therefore, the petitioner cannot be treated as on deputation at the relevant point of time. The further case of the respondents is that the petitioner was assisting in the office work of the office of Minister for Transport & Food Supplies and he was asked to work as Junior Assistant vide order NO. JKSRTC/MD/RHQ/1/690-92 dated 30.04.1999 and that time he was allowed to draw his salary from JKSRTC in the pay scale of 3050-90-3680-95-4820 and treated as on Deputation till he worked in the personal section of the then Minister. The petitioner before issuance of order for allowing him to work as on deputation was drawing his salary from Forest Corporation and to facilitate his future salary to be drawn from JKSRTC, the LPC and service book were called from the Forest Corporation. The further case of the respondents is that in view of close proximity with the then Transport Minister who happened to be the Ex-Officio Chairman of the Corporation, the petitioner earned his posting as Senior Typist within 8 months from the date of his initial deputation order dated 30.04.1999 and he was adjusted as Senior Typist in JKSRTC vide order No. JKSRTC/MD/RHOJ/3099 dated 08.12.1999 in the pay scale of 4000-110-6090. Learned counsel for the respondents further submitted that the promotion was totally unwarranted and against the rules governing deputation of a Government Employee. The petitioner has again been given undue benefit of further promotion as Stenographer in the pay scale of 4650-160-7050 vide order No. JKSRTC/GMA/EC-III/887 dated 04.09.2010. The respondents further submit that the petitioner earned the promotions not because he was due for promotion but because of the political clout he was enjoying in the Corporation.

14. The further case of the petitioner is that the then Managing Director JKSRTC, few months after the petitioner was formally treated as on Deputation in the SRTC, moved a proposal for his permanent absorption in the Corporation at the request of the petitioner and under the orders of Chairman of the Corporation. The proposal of his absorption was immediately approved by the Chairman JKSRTC on 07.12.1999 with a further direction to promote the petitioner as Senior Typist. The direction to promote the petitioner was immediately complied with and promotion order was issued in his favour on 08.12.1999 but with regard to his permanent absorption, no order was issued by the competent authority i.e. the Managing Director. It is the specific stand of the respondents that despite approval, the proposal of the permanent absorption of the petitioner has only remained a proposal and no formal order of his absorption has been taken by the Corporation though the petitioner has managed his promotion and inclusion in seniority list in the Corporation. The stand of the petitioner is that the complaint started pouring in against the petitioner that he is being illegally retained in the SRTC without any formal absorption and was given undue benefit of promotion de hors the rules. The complaints were even filed in the Chief Minister's Grievance Cell and Government's Grievance Cell wherefrom these were forwarded to respondents for necessary action. Learned counsel further submits that an inquiry committee was also constituted to look into the matter which observed that the petitioner has never been absorbed in the JKSRTC as per the provisions of Rules regarding Deputation and there is no formal order of the competent authority to that effect and the deputation of the petitioner has been continued beyond the period of 04 years as allowed under Rules without any reason and order of competent authority. The Committee also observed that the petitioner has been given promotion de hors the deputation

Rules without following the provisions of Article 52-C of the J&K CSR. As per the stand of the respondents, after considering the service record of the petitioner and the report of the Committee, the respondent Corporation decided to repatriate the petitioner back to his parent department and accordingly, an order of his repatriation was passed by the Corporation vide order No. JKSRTC/GMA/1428 dated 30.10.2018, whereby, the petitioner was repatriated back to his parent organization viz. State Forest Corporation Jammu. The further stand of the respondents is that the order of repatriation had a clear stipulation that the petitioner is deemed to have been relieved from JKSRTC with effect from 31.10.2018 and his legitimate dues shall be released in due course in his favour. It is further submitted by the respondents that respondent-Corporation has passed another order being order No. JKSRTC/GMA/1435 dated 30.10.2018, whereby, consequent to the repatriation of the petitioner to his parent department, respondent No. 4-Gurjeet Singh in addition to his own assignment, was directed to look after duties of Incharge JKSRTC Pathankot till further orders.

15. The further stand of the respondents is that the petitioner challenged the order dated 30.10.2018 in SWP No. 2608/2018 after about 2 months of passing the order and this Court has stayed the order dated 30.10.2018 and also directed to release the salary of the petitioner for the post of Incharge Dept. JKSRTC Pathankot. The specific stand of the respondents is that since the petitioner at no point of time has been absorbed in the corporation as per law and no formal order of absorption has ever been issued by the Competent Authority in the Corporation therefore, the order of repatriation passed by the respondents do not suffer any illegality or impropriety and the order of adjustment of any other person to look after the work of the job which

was entrusted to the petitioner prior to his repatriation cannot be termed as illegal.

16. The specific stand of the respondents in SWP No. 2271/2018 is that the writ petition filed by the petitioner is not maintainable because admittedly, the petitioner was an employee of J&K State Forest Corporation and having been deputed by the J&K State Forest Corporation to the personal section of Minister for Food, Supplies and Transport in the year, 1995 and though the petitioner having been allowed temporary adjustment as Senior Typist, Stenographer and Personal Assistant in JKSRTC yet at no point of time, the petitioner has been permanently adjusted in the respondent Corporation by way of any formal order. The further case of the respondents is that the contention of the petitioner projected in the writ petition regarding approval for his permanent adjustment in the JKSRTC is nothing but distortion of facts. The petitioner as claimed by him in the writ petition that approval was accorded for his permanent absorption in JKSRTC was supposed to substantiate his claim by supporting the documentary evidence in the shape of official order, if any issued to confirm the validity of claim. The respondents also submit that the document referred to him as confirmation for his placement in JKSRTC permanently is nothing but a document of proposal. In the case of the petitioner, no formal order for his permanent absorption was issued except consideration of his promotion as Senior Typist which was issued after receiving nod from Chairman, JKSRTC. It is also submitted that if the JKSRTC would have considered his absorption, it was compulsory to fulfil all requirements including calling fresh "No Objection Certificate" from State Forest Corporation to confirm his absorption which has not been done in the case of petitioner. It is also submitted that the JKSRTC in the light of Clause 52-C of JKCSR was under an obligation to seek consultation

in the case of deputation of the petitioner from Administrative Department, Civil Secretariat and when the period of deputation crossed beyond prescribed four years and complaints started pouring in from different quarters against unjustified prolonging of deputation period of the petitioner, the matter was taken up with Administrative Secretariat, Transport Department. It is submitted that the petitioner during the period of his deputation in JKSRTC was promoted from time to time, however, the promotion does not substantiate his claim that he was permanently absorbed in JKSRTC.

17. Statement of facts/Compliance report also stands filed stating therein that the respondents have not committed any contempt of the orders of this Court.

18. Heard learned counsel for the parties at length and perused the record.

19. With the consent of learned counsel for the parties, the present writ petitions along with contempt petition has been taken up for final disposal and both the writ petitions are accordingly, admitted and are disposed of by virtue of common order along with contempt petition.

LEGAL ANALYSIS

20. After going through the submissions, it appears that this is peculiar case where the petitioner who stood absorbed way back in the year 2010 is being repatriated after a period of more than 21 years from the date of his deputation and 8 years from the date, the petitioner stood absorbed as such. The petitioner although was absorbed w.e.f from the date the competent authority i.e. Chairman, JKSRTC had accorded approval to the proposal put forth by the then Managing Director, JKSRTC which finds mention in the aforesaid proposal and

has been placed on record as Annexure-E with SWP No. 2271/2018. For facility of reference, the aforesaid order is reproduced as under:-

“Subject:- Personal case of Ravinder Kumar

Shri Ravinder Kumar Sharma, who is working in the personal section of the Hon’ble Minister for Transport, has been drawing pay against the post of a Junior Assistant from JKSRTC under the ordese of the Hon’ble Chairman J&K SRTC. The incumbent is in-fact on the establishment of State Forest Corporation and has been transferred on deputation to Secretariat.

The incumbent has requested for permanent absorption in JKSRTC. The Corporation shall have no objection in utilizing his services as Junior Typist subject to the condition that State Forest Corporation issue No Objection Certificate (NOC) in his favour and approval to his permanent adjustment in the Corporation is accorded by the Chairman, JKSRTC.

*Sd/-
Managing Director
JKSRTC*

*Hon’ble Minister
For Transport, J&K
(Chairman) JKSRTC”*

21. The record reveals that the respondents in their reply affidavit has admitted with respect to the assertion of the petitioner of his absorption by the competent authority in JKSRTC.

22. The petitioner has specifically pleaded in para No. 7 of SWP No. 2271/2018 that the petitioner stood permanently absorbed in JKSRTC in the light of NOC issued by the State Forest Corporation and the approval accorded by the competent authority i.e. the then Chairman, JKSRTC after complying with all the requisite formalities and there is no such specific denial by the respondents while filing reply to the aforesaid assertion in para No. 7 of the writ petition. The petitioner even after his absorption has been accorded various promotions from time to time in JKSRTC on the recommendations of the Departmental Promotion Committee constituted in this regard by the JKSRTC

and the petitioner has always been treated as an permanent employee of JKSRTC. Had the petitioner not been absorbed in JKSRTC, then there was no question of allowing the petitioner to continue in JKSRTC beyond the period of deputation i.e. 4 years or allowing the petitioner to earn further promotions in the Corporation in pursuance to the recommendation of the Departmental Promotion Committee of JKSRTC. The petitioner, however, on the other hand has been repatriated by virtue of order impugned dated 30.10.2018 after a period of 21 years which is not permissible under law and rightly so, this Court has been pleased to keep the aforesaid order in abeyance on the very first date of hearing by showing indulgence vide order dated 03.10.2018.

23. Despite the fact that the aforesaid order of repatriation has been kept in abeyance by this Court which continues to be operative as on date, the respondents issued yet another order on the same date by virtue of which the respondent No. 4 has been asked to look after the duties of Incharge JKSRTC Pathankot till further orders in pursuance to the repatriation of the petitioner and the said order also was stayed by this Court by virtue of order dated 21.12.2018, besides, directing the respondents to release the salary of the petitioner for the said post. In spite of categoric direction issued by this Court in SWP No. 2608/2018, the respondents did not permit the petitioner to discharge his duties and even the salary was also not released. Feeling aggrieved of the same, the petitioner filed the contempt petition, which has been listed along with the present petition in which this Court passed a detailed order on 18.11.2022.

24. The plea of the respondents that the petitioner has never been absorbed is factually incorrect and contrary to the record, more particularly, in the light of Annexure-E, whereby the proposal of the petitioner for permanent absorption subject to the condition that State Forest Corporation issues NOC in

his favour **stood approved by the Chairman JKSRTC being the competent authority.**

25. From the perusal of the aforesaid Annexure, which has been placed on record, it is apparently clear that even the competent authority i.e Chairman has also accorded approval to the permanent absorption of the petitioner in JKSRTC pursuant to the NOC issued by the State Forest Corporation

26. Merely that formal order was not issued by the respondents, it can be construed that the petitioner was not absorbed in JKSRTC. This admitted position of absorption of the petitioner was never disputed all along these years either by the parent or borrowing department till issuance of impugned orders and the petitioner continue to be promoted for various higher posts pursuant to the recommendations of DPC. It is not so, even the Departmental Promotion Committee has accorded subsequent promotions to the petitioner in the SRTC and thus, it cannot be construed that the petitioner who was sent on deputation way back in 1997 has not been absorbed as such, when under the Civil Services Regulations, the maximum period of deputation cannot exceed beyond four years.

27. Under Article 52-C of the J&K Civil Services Regulations, Volume-I, deputation cannot exceed three years and at the most can be further extended for one year on the request of the borrowing agency. However, in any case, the total period of deputation cannot exceed the period of 4 years at a time. For facility of reference, Article 52-C of J&K Civil Services Regulations is reproduced as under:-

“52-C Conditions and terms of deputation:-

All deputation cases involving deputation of Government servants to non-Government Organisations, including Corporations, Companies, Autonomous Bodies etc. within or outside , the State or to Centr_1 Government or other State Governments _hall be decided by the concerned Administrative Department on the

standard terms and conditions of deputation contained in Schedule XVIII. Any relaxation of the said terms will require prior consultation of the General Department and the Finance Department.

In addition to the standard terms the following conditions shall be observed by the competent authorities in regulating cases of deputation:

- (i) *The period of deputation in any case should not exceed three years. It may, however, be extended further by one year on the request of the borrowing agency but in any case the total period of deputation shall not exceed a period of 4 years at a time.*

*[12] [(ii) [***]]*

*[13] [(ii) [***]] An employee placed on deputation may elect to draw either the pay in the scale of pay of deputation position or the Basic Pay and pay scale of the Parent cadre plus Personal Pay if any;*

The borrowing agency should obtain the option of the employee within one month from the date of joining the deputation post unless the employee has himself/herself furnished the said option.

The option once exercised shall be final; however, the employee may reverse his/her option under the following circumstances which shall be effective from the date of occurrence of the same.

- a. When he/she receives a proforma promotion or is appointed to any non-functional selection grade/any insitu promotion in his Parent cadre.*
- b. When he/she is reverted to a lower grade/post/scale in his Parent cadre.*
- c. When the scale of pay of the parent post on the basis of which his/her emoluments are regulated during deputation (or of the ex-cadre post) held by the employee on the deputation is either revised prospectively or from a retrospective date.*
- d. If the pay scale of the employee in his cadre post undergoes a downward revision, the pay in the deputation post is automatically liable to be re-fixed, on the basis of the revised pay and in accordance with the revised option.*

Note: The revision in the rates of DA, HRA, CCA, Monthly Medical Allowance, Ration Allowance, Washing Allowance, Non-practicing Allowance or any other Allowances shall not be any occasion for revision of the earlier option.

Pay fixation. When an employee on deputation elects to draw pay in the scale of pay attached to the ex-cadre post/deputation post his pay may be fixed as under:-

- I. When the pay scale of the post in the parent cadre and that attached to the ex-cadre/deputation post are identical, the pay should be fixed at same stage and without change in the dates of increments.*
- II. When the pay scale of the post in the parent cadre and that attached to the ex-cadre/deputations are non-identical, the pay shall be fixed at the stage below the pay drawn in the cadre post and the difference be granted in the shape of personal pay to be absorbed in future increased of pay of the ex-cadre/deputation post.*

III. When the pay scale of the post of ex-cadre/deputations is higher as compared to the cadre post in the parent Department, the pay should be fixed in terms of provisions of Note below Art. 77-B of these regulations.

Note. The pay of the officers/officials who are Presently on deputation is to be fixed accordingly as per the above rules.

(F) Fixation of the pay in the case of Appointments from one ex-cadre post to another ex-cadre post.

The above provisions of the rules shall apply mutatis mutandis in the case of appointments from one excadre post to another ex-cadre post thereby fixing the pay with reference of the pay which would have been drawn in the cadre post had he not been deputed to any ex-cadre post on deputations.

Note. The pay of the officers/officials who are presently on deputation is to be fixed accordingly.]

*(iv) When a person already on deputation is promoted to a higher post by the borrowing authority the concurrence of the lending authority should be obtained prior to such promotion. [14][***] Such promotion shall not however, confer any rights in the matter of compensation or emoluments on return to the parent organisation.*

*(v) Wherever any project allowance or other amenities are given by the appointing authorities to the deputationists besides their pay, [15][***] a report to this effect will invariably be made to the Administrative Department.*

(vi) It should be accepted as a general rule that all deputationists must be considered for promotion in their parent organisation should a vacancy occur. In such event if they are suitable they should be given the promotion and the borrowing agency should either be required to give them the additional pay or to return the Officials to their parent organisation.

*[16][(vii)***]*

*[17][***]*

28. Admittedly, significant aspect of the matter in the instant case is that the State Road Transport Corporation which was the borrowing department had refused to repatriate the petitioner to his parent organization i.e. State Forest Corporation even after the completion of period of deputation and he was not released and instead, the JKSRTC went on utilizing his services, uninterruptedly and without any hindrance.

29. Thus, the refusal of SRTC as a borrowing organization to relieve the petitioner from service was one of the feature of the present case which leads to the irresistible conclusion that the petitioner has since been absorbed in SRTC

and the lien of the petitioner in State Forest Corporation stood terminated and consequently, the petitioner has earned his promotions in the borrowing organization from time to time subject to the approval of DPC.

30. The fact of the matter is that the petitioner was never repatriated to his parent organization even after the expiry of initial period of deputation or the maximum period of deputation of four years as envisaged under 52-C of Civil Services Regulations and instead, has been allowed to continue in JKSRTC for 21 years till passing of order of repatriation and subsequently, the sudden repatriation by virtue of order impugned after such a long period without any objection from the parent department and absorption by the competent authority in 2010, the order impugned cannot sustain the test of law.

31. The stand of the respondents that the petitioner was not absorbed is factually incorrect and contrary to record and liable to be rejected. The order of repatriation which has been issued by the respondents after a period of 21 years from the date of his deputation and 8 years from the permanent absorption is liable to be quashed being not sustainable in the eyes of law. As a necessary corollary, the subsequent order of adjustment of respondent No. 4 also cannot sustain the test of law and is liable to be set aside.

32. The respondents have not denied in their objections that the approval has been accorded by the Chairman being the competent authority for permanent absorption of the petitioner and this aspect of the matter was never objected by the respondents in all these years. The stand of the respondents that the approval of the Chairman was only a consent and not an order has no legal basis and even if it is assumed that formal order was not issued pursuant to approval by the competent authority yet for inaction on part of the respondents, the petitioner can in no way be penalised.

33. From the record, it emerges that pursuant to the request of the petitioner for permanent absorption in JKSRTC, the Corporation did not have any objection in utilizing the services of the petitioner and his permanent absorption was subject to the condition that the State Forest Corporation issues no objection in his favour and approval to his permanent adjustment in the Corporation is accorded by the Chairman JKSRTC **and both the conditions have been fulfilled and rightly so, the petitioner was permanently absorbed in JKSRTC wherein, the proposal to absorb the petitioner was approved by the Chairman, JKSRTC i.e. the competent authority pursuant to the NOC issued by the State Forest Corporation.** This aspect of the matter was gladly and voluntarily accepted by the JKSRTC all along these years and no objection was ever raised by both the departments.

34. As per Civil Services Regulations, deputation can't exceed beyond a maximum period of 4 years and in the present case, since the petitioner has continued for more than 26 years in JKSRTC as on date, it cannot be construed that the petitioner still continue to be on deputation, when the petitioner stood absorbed permanently way back in 2010 and the respondents never raised any objection in this regard. Even if no formal order was issued by the competent authority as has been pleaded by the respondents, then for such discrepancy or deficiency on part of the respondents, the petitioner can in no way be penalized and be made to suffer more particularly, when the petitioner has earned various promotions in JKSRTC. It does not lie in the mouth of the respondents to agitate at this belated stage that there is no formal order by the competent authority regarding permanent absorption of the petitioner and in absence of the same, the absorption of the petitioner by the competent authority i.e Chairman, JKSRTC

in pursuance to the NOC granted by the State Forest Corporation, has lost its significance.

35. Keeping in view the peculiar facts and circumstances of the case, the petitioner who has been permanently absorbed in JKSRTC way back in 2010, cannot be repatriated at this stage for no fault of his, which result in his being employee neither of the parent department or the borrowing department, more particularly, when the permanent absorption of the petitioner was never objected by both the respondents for all along these years. The petitioner cannot be made to suffer for any discrepancy, if any, assuming there is any such deficiency, which is now pleaded as a reason by the respondents to repatriate the petitioner. Thus, the reasons now agitated by the respondents at this belated stage cannot sustain the test of law and are liable to be rejected being not tenable in the eyes of law. I am fortified with the view of the Hon'ble Supreme Court in a judgment titled Jamil Ahmed Vs. Industrial Development Commissioner & Principal Secretary and ors; (2004) 13 Supreme Court Cases 736, the operative portion of which is as under:-

“On the facts and circumstances of this case, we need not go in depth into the question sought to be urged on behalf of the Authority, for, we are of the view that the appellant having resigned from the Railways and having been absorbed in the Authority eight years back, cannot be put in a position for no fault of his, which results in his being an employee neither of the Authority nor of the parent department. The appellant cannot be made to suffer for the discrepancy, if any, assuming there is any such discrepancy which is now pleaded as a reason by the Authority. It is not the case of the respondents in the order dated 6-6-2002 that the appellant sought to enter the Authority from back door. Therefore, the question of cases, if any, where back-door entry into the service of the Authority may have been obtained, is of no consequence insofar as the facts and circumstances of the present case are concerned. Both the reasons stated in the order dated 6-6-2002, are, therefore, untenable.”

36. As per Regulation, 21, 37-A, a person after his permanent absorption in the borrowing department/organization and after his termination of lien in the parent organisation cannot be repatriated to his parent organization. Once the petitioner who has been sent on deputation is absorbed in the borrowing department/organization and his lien in the parent department stood terminated, his repatriation, subsequently, after 21 years by virtue of order impugned is de hors the service rules and is illegal.

37. The moot question that comes up for consideration in the present petitions is **whether an employee after his permanent absorption in the borrowing department/organization and after termination of his lien in the parent organization can still be repatriated to his parent organization after a period of 21 years.**

38. Rule 21 of CSR defines the lien of Government servant. The connotation/lien came to be interpreted by the **Hon'ble Supreme Court in Ram Lal Khurana Vs. State of Punjab reported in AIR 1989 SC 1985 in which the Apex Court ruled that lien is not a word of art, it just connotes the rights of the civil servants to hold the post substantively to which he/she is appointed.**

39. Rule 37-A to 37-J of the Civil Services Regulations deal inter-alia with acquisition, suspension and termination of lien. As per Rule 37-A of Civil Services Regulations, it is clear that Government servant shall acquire a lien on a post on his substantive appointment to a permanent post. Since the consent was given by the State Forest Corporation of the permanent absorption of the petitioner and once the lien of an employee on a particular post comes to an end, it cannot be revived. Thus, the legal position which emerges in the present case that once an employee on deputation is absorbed in the borrowing

department/organization and his lien in the parent department/organization stood terminated, his subsequent repatriation will be de hors the service rules and Civil Services Regulations and is not sustainable in the eyes of law being illegal. The order impugned, whereby the petitioner has been ordered to be sent back to the State Forest Corporation is de hors the rules and the same is illegal.

40. I am fortified with the observations made by this Court in the case titled Tariq Ahmed Kakroo Vs. State and anr. Reported in 2015 SLJ 933 and 2015 (3) JKJ(HC) 757. The relevant extract of the judgment is reproduced as under:-

“.....there is no quarrel with the well-settled principle of law that a deputationist has no legal right to be absorbed in the post to which he is deputed and he can at any time be repatriated to his parent department/organization. At the same time, however, possibility of absorbing a deputationist permanently in the borrowing organization is not ruled out. Supreme Court in Union of India and another v Ramakrishnan and others, (2005) 8 SCC 394, while restating the general principle that a deputationist has no legal right to continue or to be absorbed in the post, has held also that there is no bar thereto as well.

17. Petitioner by the medium of this writ petition is not claiming absorption in the post of the OSD to which he was transferred on deputation from the Corporation. Petitioner rather questions his sending back (repatriation) to the Corporation by the impugned order on the grounds that he has already been permanently absorbed in the borrowing department, that his relationship with his parent organization has ceased to exist with the termination of his lien by the Corporation and that his repatriation de hors the service rules.

32. The crucial question that now comes up for debate is whether a Government servant after his permanent absorption in the borrowing department/organization and termination of his lien in the parent organization can still be repatriated to his parent organization. Connected question mooted by respondent No. 1 is whether the termination of lien of the petitioner by the Corporation was illegal and non est because the Corporation should not have terminated the lien during probation period of the petitioner as no lien is acquired by a probationer.

34. The legal position, thus, emerging is that once a Government servant on deputation is absorbed in the borrowing

department/organization and his lien in the parent department/organization is terminated his repatriation de hors service rules and is illegal. The impugned order whereby the petitioner has been ordered to be sent back (repatriated) to the Corporation, therefore, de hors rules and is illegal. Even otherwise, respondent No.1, once having deliberately paved way for absorbing the petitioner in the post of OSD in the Chief Minister's office and acquire lien against that post cannot after five years be heard questioning the termination of lien and justifying direction for revival of the lien.”

41. This Court vide order dated 21.12.2018 has kept in abeyance the order impugned dated 30.10.2018 vide No. JKSRTC/GMA/1435 in SWP No. 2608/2018 and the respondents have been directed to release the salary of the petitioner but the same was not released and the petitioner could not discharge his duties from November, 2018 till November, 2022 due to the conduct of the respondents, and accordingly, the petitioner cannot be held liable for fault/inaction on the part of the respondents. Since the respondents wilfully and deliberately, did not allow the petitioner to perform his duties in spite of order passed by this Court for which the petitioner sought compliance by filing the contempt petition in which the personal presence of the Managing Director was also ordered vide order dated 18.11.2022, the petitioner can in no way be penalized for inaction on the part of the respondents and accordingly, the petitioner is held entitled for the back wages for the aforesaid period i.e. November, 2018 to November, 2022 in the light of the law laid down by the Supreme Court in catena of judgments.

42. Thus, I hold that an employee after his permanent absorption in the borrowing organization by competent authority pursuant to the approval of the parent organization and consequently, termination of his lien in the parent organization can't be repatriated to parent organization after 21 years of his deputation more particularly when the petitioner has earned various promotions

from time to time pursuant to the recommendations of DPC and his continuance in JKSRTC was never objected by the said organization.

CONCLUSION

43. In view of what has been discussed hereinabove coupled with the settled legal position, both the writ petition bearing SWP No. 2608/2018 and SWP No. 2271/2018 are disposed of by common order and are allowed and order No. JKSRTC/GMA/1435 dated 30.10.2018 issued by the respondent No. 3 impugned in SWP No. 2608/2018 and order No. JKSRTC/GMA/1428 dated 30.10.2018 issued by respondent No. 3 impugned in SWP No. 2271/2018 are quashed. The respondents are further directed to release the back wages of the petitioner from November, 2018 to November, 2022 and the respondents are also directed to treat the petitioner as permanent employee of SRTC in the light of proposal of MDSRTC which stood approved by the competent authority i.e. Chairman, JKSRTC and grant all the consequential benefits of such absorption by fixing his seniority in JKSRTC from the date of his absorption at an appropriate place in various cadres keeping in view his various promotions accorded form time to time pursuant to the recommendations of DPC.

44. In the light of the aforesaid directions passed in both the petitions, nothing remains to be adjudicated any further in the contempt petition and the same is also disposed of and the proceedings in the contempt petition are also closed.

(Wasim Sadiq Nargal)
Judge

Jammu:
21.07.2023
Tarun

Whether order is speaking? Yes
Whether order is reportable? Yes

