

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 22850/2024

UNION OF INDIA

..... APPELLANT(S)

VERSUS

PHANI BHUSAN KUNDU & ORS.

..... RESPONDENT(S)

O R D E R

Leave granted.

2. Despite service, none has entered appearance on behalf of respondent No. 1, Phani Bhusan Kundu. Accordingly, he is set *ex parte*.
3. Respondent No. 1, Phani Bhusan Kundu, was a permanent employee of the State of West Bengal, who had joined service in the year 1968. He was working as the Director of Veterinary Services under the Government of West Bengal in 1991. He applied for deputation to the post of Animal Husbandry Commissioner, Ministry of Agriculture, Government of India. By the notification published by the Union Public Service Commission, he was appointed/posted on deputation as the Animal Husbandry Commissioner in the Department of Animal Husbandry and Dairying with effect from 24.06.1991. The letter appointing him to the said post clearly stated that the appointment was by transfer on deputation basis for a period up to 31.08.1992 or till further orders, whichever is earlier.
4. Respondent No. 1, Phani Bhusan Kundu, retired from the service

of the State of West Bengal with effect from the afternoon of 30.09.1992. Due to an error, the appellant, Union of India, did not repatriate respondent no. 1, Phani Bhusan Kundu, to his parent department in the State of West Bengal. However, his pension papers were processed and he has been receiving a pension from the State of West of Bengal on the basis of the substantive post, which he was holding in the State, that is, as the Director of Veterinary Services under the Government of West Bengal.

5. Thereupon, respondent no. 1, Phani Bhusan Kundu, filed O.A. No. 1409/2001 before the West Bengal Administrative Tribunal, Kolkata, which dismissed the said application. However, on an order passed in his writ petition, WPST No. 1019/2008, respondent no. 1, Phani Bhusan Kundu, again approached the Central Administrative Tribunal¹, Kolkata. The CAT allowed Original Application No. 350/01256 of 2014, *vide* order dated 11.02.2016, directing that his pension should be fixed on the basis of the central pay scale of the post of Animal Husbandry Commissioner and such pension would be payable under the Central Civil Services (Pension) Rules, 1972², instead of The West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971³.
6. By the impugned judgment, the High Court of Calcutta has dismissed the writ petition preferred by the Union of India, *inter alia*, observing that, by the appointment on deputation

1 Hereinafter, "CAT."

2 Hereinafter, ""CCS (Pension) Rules".

3 Hereinafter, "WB Pension Rules."

an indefeasible right was created in favour of respondent no. 1, Phani Bhusan Kundu, and, further, he had continued to work in the post of Animal Husbandry Commissioner till his superannuation. Accordingly, respondent no. 1, Phani Bhusan Kundu, was held to have acquired a right to be absorbed in the said post.

7. Aggrieved, the appellant, Union of India, preferred the present appeal. The State of West Bengal also supported the appellant, Union of India.
8. In our opinion, the view expressed by the CAT, and upheld by the High Court, is contrary to the law and is unsustainable. The scope and meaning of the word 'deputation' in service law was explained by this Court in *State of Punjab and others v. Inder Singh and Others*⁴, means service outside the cadre or outside the parent department, that is, in another department on a temporary basis. After the expiry of the period of deputation, such an employee reverts to his parent department to occupy the same position unless, in the meanwhile, he earned a promotion in his parent department as per recruitment rules. The depute does not become a regular employee in the borrowed service/department. The depute's lien on the post in the parent department continues. Deputation does not result in absorption in the borrowed department/service.
9. The expression "appointment on deputation" and "transfer on deputation" may be different, but this does not mean that any vested right would accrue to respondent no. 1, Phani Bhusan

4 (1997) 8 SCC 372.

Kundu, unless he is absorbed in the borrowing department/ service.

10. Reliance placed by the High Court on the judgment of this Court in *Ashok Kumar Ratilal Patel vs. Union of India and another*⁵, in our opinion, is wrong and fallacious, for the reason that the said decision examined whether a person, who is being appointed on deputation can be denied such appointment on deputation without valid grounds. When we turn to the factual position presently, it is clear that respondent No. 1, Phani Bhusan Kundu, was never absorbed in any post by the Government of India and his lien in the State of West Bengal on the post of Director of Veterinary Services continued till he retired from service.
11. The post of Animal Husbandry Commissioner, as per the recruitment rules, was to be filled by transfer on deputation basis. The rules do not visualize any absorption in the said post. It is, therefore, not possible to hold that respondent No. 1, Phani Bhusan Kundu, was a permanent employee and has qualifying service, to be eligible to get pension under the CCS Pension Rules.
12. As far as the State of West Bengal is concerned, our attention has been drawn to the WB Pension Rules, and in particular, Rule 18, which stipulates the conditions for pension. The Rule states that an employee would not qualify for pension unless he conforms to the conditions, that is, (a) the service must be under Government; (b) the employment must

5 (2012) 7 SCC 757.

be - (i) Substantive and permanent or (ii) of permanent status, or quasi-permanent and (c) the service must be paid by Government.

13. The rules position would reflect that unless the respondent no. 1, Phani Bhusan Kundu, is treated and regarded as an employee of the State of West Bengal, he would lose his pension both as a state employee and from the Union of India.
14. We are informed that the State of West Bengal has been paying a monthly pension to respondent no. 1, Phani Bhusan Kundu, as per the calculations made in terms of the existing rules, as per which an amount of ₹66,803/- (Rupees sixty six thousand eight hundred and three only) was paid to respondent no. 1, Phani Bhusan Kundu, in September 2024.
15. In view of the aforesaid position, the impugned judgment is set aside and the appeal is allowed. Resultantly, O.A. No. 350/01256 of 2014 preferred by respondent no. 1, Phani Bhusan Kundu, will be treated as dismissed. However, respondent No. 1, Phani Bhusan Kundu, will continue to get his pension as payable under the WB Pension Rules.
16. Pending application(s), if any, shall stand disposed of.

.....CJI.
(SANJIV KHANNA)

.....J.
(SANJAY KUMAR)

NEW DELHI;
DECEMBER 18, 2024.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SPetition for Special Leave to Appeal (C) No. 22850/2024

[Arising out of impugned final judgment and order dated 15-02-2019 in WPCT No. 24/2017 passed by the High Court at Calcutta]

UNION OF INDIA

Petitioner(s)

VERSUS

PHANI BHUSAN KUNDU & ORS.

Respondent(s)

Date : 18-12-2024 This matter was called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJAY KUMAR

For Petitioner(s) Mr. K. M. Nataraj, A.S.G.
Mr. Kamendra Mishra, Adv.
Ms. Ruchi Kohli, Adv.
Mr. Sharath Nambiar, Adv.
Mr. Anuj Udupa, Adv.
Mr. Digvijay Dam, Adv.
Dr. N. Visakamurthy, AOR

For Respondent(s) Ms. Archana Pathak Dave, A.S.G.
Mr. Sudarshan Lamba, AOR
Ms. Ankita Chowdhary, Adv.
Mr. Jagdish Chandra, Adv.
Mr. Rishi Kapoor, Adv.
Mr. Bhuvan Kapoor, Adv.

Mr. Ashok Kumar Panda, Sr. Adv.
Mr. Chanchal Kumar Ganguli, AOR
Mr. Raja Chatterjee, Adv.
Mr. Aniruddha Purushotham, Adv.
Mr. Shashwat Panda, Adv

UPON hearing the counsel, the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(BABITA PANDEY)
COURT MASTER (SH)

(R.S. NARAYANAN)
ASSISTANT REGISTRAR

(Signed order is placed on the file)