

AFR

Neutral Citation No. - 2025:AHC:147928

Reserved on 20.08.2025

Delivered on 26.08.2025

Court No. - 5

Case :- WRIT - A No. - 3925 of 2025

Petitioner :- Amit Kumar Gautam

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Sandeep Kumar

Counsel for Respondent :- Vishakha Pande, C.S.C.

Hon'ble Saurabh Shyam Shamshery, J.

1. Petitioner, an employee of Irrigation and Water Resource Department, was sent on deputation to U.P. Project Corporation Limited vide order dated 07.02.2024. For reference said order is reproduced hereinafter:

"उत्तर प्रदेश शासन

सिंचाई एवं जल संसाधन अनुभाग-10

संख्या 23/2024/335/27-10001 (002)/5/2023-10

लखनऊ: दिनांक 07 फरवरी, 2024

कार्यालय ज्ञाप

तात्कालिक प्रभाव से सिंचाई एवं जल संसाधन विभाग के यांत्रिक संवर्ग के श्री अमित कुमार गौतम, नवप्रोन्नत सहायक अभियन्ता (यां०) को उत्तर प्रदेश प्रोजेक्ट कारपोरेशन लिमिटेड में प्रतिनियुक्ति पर निम्नलिखित शर्तों के अधीन एतद्द्वारा नियुक्त/पदस्थापित किये जाने की श्री राज्यपाल सहर्ष स्वीकृति प्रदान करते हैं:-

1. श्री अमित कुमार गौतम, नवप्रोन्नत सहायक अभियन्ता (यां०) की प्रतिनियुक्ति की अवधि 03 वर्ष से अधिक नहीं होगी। 03 वर्ष की अवधि पूर्ण होने के उपरान्त श्री गौतम को पैतृक विभाग में तत्काल वापस कर दिया जायेगा।
2. श्री गौतम को प्रतिनियुक्ति पर लेते समय उनके मूल वेतन में किसी भी प्रकार का परिवर्तन नहीं किया जाएगा।
3. प्रतिनियुक्ति की अवधि में श्री गौतम को वही वेतन और मंहगाई भत्ता प्राप्त होंगे जो उन्हें पैतृक विभाग में रहते हुए प्राप्त होते।
4. उक्त प्रतिनियुक्ति के फलस्वरूप श्री अमित कुमार गौतम, नवप्रोन्नत सहायक अभियन्ता (यां०) को कोई अतिरिक्त लाभ भत्ता देय नहीं होगा।"

2. Petitioner has worked at U.P. Project Corporation Limited only for about one year and by means of impugned order dated 20.02.2025 he was repatriated to his parent department. Said order is also reproduced hereinafter:

"पत्र सं०: 8749/पी०सी०एल० /मुख्यालय/T-19 दिनांक: 20/02/2025

कार्यालय ज्ञाप

उत्तर प्रदेश शासन सिंचाई एवं जल ससाधन अनुभाग 10 के कार्यालय आदेश संख्या 23/2024/335/27-10001 (002)/5/2023-10 लखनऊ दिनांक 07.2.2024 एवं वरिष्ठ स्टाफ अधिकारी (ई-10) कार्यालय प्रमुख अभियन्ता के पत्र सं० जी-33/ई-10/नवप्रोन्नत स०अ० (यॉ०) /कार्यभार ग्रहण लखनऊ दिनांक 14.02.2024 द्वारा श्री अमित कुमार गौतम, सहायक अभियन्ता (यॉत्रिक), सिंचाई एवं जल संसाधन विभाग को यू०पी० प्रोजेक्ट्स कारपोरेशन लि० में प्रतिनियुक्ति पर पदास्थापित किया गया था, जिसके अनुपालन में इनके द्वारा दिनांक 23.02.2024 के पूर्वान्ह में कार्यभार ग्रहण किया गया था, को तत्कालिक प्रभाव से उनके पैतृक विभाग सिंचाई एवं जल संसाधन विभाग, उ० प्र० में एतद्वारा प्रत्यावर्तित किया जाता है।

श्री अमित कुमार गौतम, सहायक अभियन्ता (यॉत्रिक) / सहायक परियोजना प्रबन्धक को कार्यमुक्त करने से पूर्व यह सुनिश्चित कर लिया जाय कि इनके विरुद्ध कोई अभिलेख /सी०यू०जी०/ टी०एण्ड पी० आदि अवशेष तो नहीं है। यह आदेश तत्काल प्रभावी होंगे।"

3. Aforesaid order is impugned in present case. Sri Sandeep Kumar, learned counsel for petitioner, has made following arguments:

- (i) Petitioner was appointed on deputation with U.P. Project Corporation Limited by an order issued on behalf of Governor of State for a period of three years, therefore, any order to repatriate him to his parent department could be passed only by State Government on behalf of Governor.
- (ii) The borrowing department, i.e., U.P. Project Corporation Limited has no power to repatriate petitioner before the fixed period of three years.
- (iii) If the veil is lifted there are certain allegations levelled against the petitioner which are also reflected in counter affidavit filed by

respondents, therefore, impugned order is punitive and without any inquiry no such impugned order can be passed.

(iv) U.P. Project Corporation Limited is still asking parent department to send Officers on deputation, as such borrowing department has still need of Officers on deputation.

(v) He has placed heavy reliance on a judgment passed by this Court in **Ashok Kumar Pandey and others vs. State of U.P. and others, 2005 SCC OnLine All 600.**

4. Per contra, Ms. Vishakha Pandey, learned counsel appearing for Respondent-U.P. Project Corporation Limited, submitted that it is a case of transfer on deputation and not appointment on deputation, therefore, petitioner has no indefeasible right to continue on deputation for the period prescribed.

5. Learned counsel also submitted that U.P. Project Corporation Limited is an independent entity and can take decisions in terms of applicable regulations. Governor is not an authority to pass orders for employees of U.P. Project Corporation Limited, therefore, the borrowing department can pass an order for repatriation.

6. She further submitted that impugned order is not stigmatic since nothing adverse is mentioned therein though it has not been denied that work of petitioner was not satisfactory and except issuing certain notices to him, no proceedings were initiated against him.

7. Learned counsel has placed reliance on the judgments passed by Supreme Court in the cases of **Ratilal B. Soni and others vs. State of Gujarat and others, AIR 1990 SC 1132** and **Kunal Nanda vs. Union of India and another, AIR 2000 SC 2076.**

8. I have considered the above submissions and perused the material on record.

9. First issue before this Court to consider is, whether petitioner has any right to remain on deputation for the period prescribed in order.

10. Undisputedly, it is not a case where petitioner was appointed on deputation after participating a selection process. It was a simple order of deputation. Therefore, in view of a judgment passed by Supreme Court in **Union of India and another vs. S.N. Maity and another, 2015(4) SCC 164** the case of petitioner could not fall under appointment on deputation and it may be a case of only transfer on deputation. Therefore, petitioner has no indefeasible right and in that background it would be relevant to reproduce following paragraphs of **S.N. Maity (supra)**:

*“14. In the above backdrop, this Court made a distinction between 'transfer on deputation' and 'appointment on deputation' and proceeded to lay down thus:*

*"14. However, the aforesaid principle cannot be made applicable in the matter of appointment (recruitment) on deputation. In such case, for appointment on deputation in the services of the State or organisation or State within the meaning of Article 12 of the Constitution of India, the provisions of Article 14 and Article 16 are to be followed. No person can be discriminated nor is it open to the appointing authority to act arbitrarily or to pass any order in violation of Article 14 of the Constitution of India. A person who applies for appointment on deputation has an indefeasible right to be treated fairly and equally and once such person is selected and offered with the letter of appointment on deputation, the same cannot be cancelled except on the ground of non-suitability or unsatisfactory work.*

*15. The present case is not a case of transfer on deputation. It is a case of appointment on deputation for which advertisement was issued and after due selection, the offer of appointment was issued in favour of the appellant. In such circumstances, it was not open for the respondent to argue that the appellant has no right to claim deputation and the respondent cannot refuse to accept the joining of most eligible selected candidate except on ground of unsuitability or unsatisfactory performance".*

*15. Eventually, taking note of the communications, this Court directed as follows:*

*"18. For the reasons aforesaid, the impugned order of withdrawal of appointment dated 11-3-2010 and the order of the Division Bench of the Gujarat High Court cannot be sustained and they are accordingly set aside. As the post of Director is vacant, in view of the interim order of this Court dated 9-5-2011, we direct the 2nd respondent to accept the joining of the appellant for a period of one year on*

*deputation which is to be counted from the date of his joining and other terms and conditions of deputation will remain same. North Gujarat University is directed to relieve the appellant with further direction to the 2nd respondent to accept the joining of the appellant within one week from the date of reporting by the appellant."*

11. In above background, the Court also takes note of the judgments relied by learned counsel for respondents in **Ratilal B. Soni (supra)** and **Kunal Nanda (supra)** wherein it was held that a deputationist has no vested right and he can be repatriated to his parent department at any time. Relevant part of aforesaid judgments are reproduced hereinafter:

**Ratilal B. Soni (supra):**

*"5. The appellants being on deputation they could be reverted to their parent cadre at any time and they do not get any right to be absorbed on the deputation post. We see no infirmity in the judgment of the High Court and as such we dismiss the appeal. There shall be no order as to costs."*

**Kunal Nanda (supra):**

*"6. On the legal submissions made also there are no merits whatsoever. It is well settled that unless the claim of the deputationist for permanent absorption in the department where he works on deputation is based upon any statutory Rule, Regulation or Order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation. The reference to the decision reported in Rameshwar Prasad vs M.D., U.P. Rajkiya Nirman Nigam Ltd. and Others, 1999 (8) SCC 381 is inappropriate since, the consideration therein was in the light of statutory rules for absorption and the scope of those rules. The claim that he need not be a graduate for absorption and being a service candidate, on completing service of 10 years he is exempt from the requirement of possessing a degree need mention, only to be rejected. The stand of the respondent department that the absorption of a deputationist being one against the direct quota, the possession of basic educational qualification prescribed for direct recruitment i.e., a degree is a must and essential and that there could no comparison of the claim of such a person with one to be dealt with on promotion of a candidate who is already*

*in service in that department is well merited and deserves to be sustained and we see no infirmity whatsoever in the said claim.”*

12. In view of above, considering the nature of order of deputation, this Court is of the opinion that petitioner can be repatriated before maximum period prescribed in order to his parent department. There is no bar that borrowing department cannot pass an order of repatriation.

13. It is also not in dispute that U.P. Project Corporation Limited is a separate entity and its orders are not passed on behalf of Governor and since impugned order is passed by Prabandh Nideshak of said Corporation, who is the appropriate authority, therefore, there is no ground to challenge the impugned order that it was passed by an Officer beyond its jurisdiction.

14. Impugned order is not an stigmatic order. There may be some reasons that working of petitioner was not found suitable by respondents but it does not reflect from impugned order. Even no inquiry was initiated by Corporation except few notices were issued. Therefore, there is no legal basis to challenge the impugned order on a ground, it being a stigmatic order.

15. It may be a case that Respondent-U.P. Project Corporation Limited is still require Officers from parent department of petitioner, on deputation but petitioner has no indefeasible right to consider for deputation. Therefore, the Court is of the opinion that all argument raised on behalf of petitioner are not legally sustainable and in view of **Kunal Nanda (supra)**, **Ratilal B. Soni (supra)** and **S.N. Maity (supra)**, the petitioner can be repatriated to his parent department at any time and even before prescribed period came to an end.

16. The writ petition is accordingly dismissed.

17. In the interest of justice, it would be necessary to observe that only on ground that petitioner is repatriated before expiry of maximum period, he would not be disentitled for consideration of fresh deputation, if circumstances so warrant.

**Order Date :- 26.08.2025**

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