

A     RAM GANGA COMMAND AREA DEVELOPMENT AUTHORITY  
          AND ANR.

v.

SHEETAL KUMAR VAISH AND ORS.

MARCH 12, 2003

B

[SHIVARAJ V. PATIL AND ARIJIT PASAYAT, JJ.]

*Service Law:*

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*Appointment on deputation—Borrowing Authority conferred temporary status on the employee—Repatriation/relieving of employee on the request of Parent Department—Challenge to—Writ petition allowed by the High Court holding that employee was working in substantive capacity with the borrowing Authority—On appeal, Held, since employee was sent on deputation, his temporary appointment by the borrowing Authority cannot be considered as substantive appointment—Hence order of repatriation does not suffer from any infirmity.*

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**Respondent-employee was appointed as Assistant Sales Officer/Field Officer by the Milk Board. He was later sent on deputation to the appellant-authority. Appellant appointed the respondent-employee on temporary basis on an equivalent post and his pay was fixed after granting five increments. Subsequently, State Government abolished all posts in the appellant authority except direct recruits. At this junction, the Milk Board requested for the repatriation of the respondent-employee and he was relieved by the Authority. Relieving order was challenged by the employee by filing a writ petition in the High Court. High Court allowed the writ petition, holding that he been working with the Authority in substantive capacity. Hence the present appeals.**

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**It was contended for the appellants that since both the employee as well as the Milk Board admitted that the employee joined the Authority for employment on deputation basis and he was repatriated on the request of the Milk Board, it is not open for them to take different stand later on; and that since State Government while fixing pay of the respondent-employee did not determine his status of employment and he was appointed purely on temporary basis, he cannot be retained with the**

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**Authority after abolition of all posts by the State Government.**

**On behalf of the respondents, it was submitted that in view of varying stands about the status and employment of the employee taken by the appellant and the State Government, they are estopped from taking a different stand that he was on deputation with the Authority.**

**Allowing the appeals, the Court**

**HELD: 1.1. Right from the beginning, the employee and the Milk Board as well as the appellant Authority proceeded on the footing that the employee was on deputation. This becomes clear from the stand taken by the employee asserting that he was on deputation. The Milk Board initiated action for repatriation of the employee by writing to the Authority, clearly indicating that the employee was on deputation. In response the Authority acted. Therefore, it is not open to the Milk Board to take a contrary stand. [966-G, H]**

**1.2. The State Government order dated 4.6.1982 was not directly on the question of deputation, but primarily related to fixation of pay. Therefore, that letter was not of any conclusive or determinative value so far as the controversy as to the status of appointment of the employee is concerned. The inevitable conclusion is that the employee was on deputation from the Milk Board and appointment on temporary basis with the Authority can, by no stretch of imagination, be considered to be substantive appointment. Abolition of posts is an aspect which cannot be lost sight of. Therefore, the order of repatriation does not suffer from any infirmity. [967-A-C]**

**CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2048-2049 of 1999.**

**From the Judgment and Order dated 15.7.1997 of the Allahabad High Court in W.P. Nos. 618/83 and 557 (S/B) of 1994.**

**WITH**

**C.A. No's. 2119-2120 of 1999.**

**Gopal Subramaniam, Dinesh Dwivedi, S.C. Maheshwari, R.B. Mehrotra, Prashant Kumar, Arvind Verma, Ms. Sandhya Goswami, M.P.S. Verma, Ravi P.Mehrotra, Garesh Kabra, Pradyot Kumar Chakravarty, Ajay K. Agrawal,**

A Narendra Kumar Roy and Ms. Alka Agrawal for the appearing parties.

The Judgment of the Court was delivered by

**ARIJIT PASAYAT J.** These appeals are classic examples of how simple controversies can be turned into confusions galore. The chameleonic somersaults in stands taken by the concerned authorities has added to the confusion in no less measure. The controversy related to simple question as to whether Seethal Kumar Vaish (hereinafter referred to as 'the employee') was on deputation, and if not, what was his status in employment. The High Court rightly noted that there has been great shift of stands by the parties and ultimately came to the conclusion that the employee was in substantive employment with Ram Ganga Command Area Development Project (hereinafter referred to as the 'Project') and thereafter in the Ram Ganga Command Area Development Authority (hereinafter referred to as 'the Authority'). He was not liable to be treated as employee of the Kanpur Sakkari Milk Board Limited (in short 'Milk Board').

D As the stand has shifted and there is no consistency therein, it would be appropriate to cull out the basic features so that the controversy can be best resolved. The judgment of the High Court has been assailed by both the authority and the State of Uttar Pradesh.

E The factual scenario, keeping out the contradictions, as essentially are as follows:

F The employee was appointed by the Milk Board by order of appointment dated 5/9.4.1974 as Assistant Sales Officer on probation for six months, which period could be extended; the appointment was purely on temporary basis and could be terminated without notice and assigning any reason at any time even before the stipulated period. The authority requested the Area Development Department of the State Government for sending the employee on deputation, by its letter dated 6.2.1977, for being posted in the newly created Animal Husbandry Department. At that point of time, the employee was working as Field Officer. The Milk Board by its letter dated 25.2.1977/1.3.1977 acted on the said request. The letter of the Milk Board is of great significance in the present controversy. The same is reproduced:

H "Office of the Kanpur Cooperative Milk Board Ltd. Nirala Nagar, Kanpur.

Letter No. 2128/Admn. Dated 25.2.77/1.3.77

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The Administrator, Ram Ganga Block Development Authority, 3/A/  
245 Azad Nagar, Kanpur.

Subject: Deputation of the field officer Shri S.K. Vasya.

Sir,

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With reference to your letter No.15015/Est/77 dated February 8, 1977, it is respectfully submitted that Shri S.K. Vashya Field Officer has given his consent in writing for going to Ram Ganga Authority on deputation. Therefore, Mr. Vashya is being relieved from this Institute in the afternoon of 28.2.1977 so that he may submit his joining report as per the rules in the Authority Office. Rules regarding the deputation be sent separately.

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Yours

Sd/-

(Ram Janam Singh)

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Secretary.”

Employee submitted his joining report on 1.3.1977. On 13.6.1977 the State Government intimated the authority about the sanction to appoint the employee as live stock expert. There was a notification about the temporary appointment of the employee on purely *ad hoc* basis as Subject Matter Specialist (Pashudhan). Employee requested the State Government for extending benefits of service rendered by him in the Milk Board and prayed for grant of increments. The same was turned down by the State Government by letter dated 7.5.1979. The employee continued to write to the Milk Board that he was on deputation and, therefore, the benefits should be available to him. He also questioned the propriety of the Milk Board taking stand that he was not on deputation. Subsequently, the Authority in expectation of Government approval sent the employee on foreign service on deputation for a period of one year. Thereafter the Milk Board at different points of time accepted that the employee was on deputation to the Authority. On 26.5.1982 the Milk Board intimated the Agricultural Production and Rural Development Department that the employee was on deputation. The said department by letter dated 4.6.1982 considered the question regarding appointment of the employee in the Authority. This letter is also of great significance in the present controversy and reads as follows:

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A "Government Order No.2944/4.1.1982/Regional  
Department-1/

From

B Shri Shamshad Ahmed,  
Commissioner and Secretary,  
Agriculture Produce and Rural  
Development Department,  
Govt. of Uttar Pradesh  
Lucknow.

To

C Smt. Sumita Khandpal,  
Commissioner and Secretary,  
Ramganga Command Project,  
Azad Nagar,  
Kanpur.

D Regional Development Department Section-1

Dated Lucknow: June the 4th, 1982

E Subject: Regarding appointment in Kanpur Ramganga Command  
Authority of Shri S.K. Vaish, Subject Matter Expert, Dairy  
and Animal Husbandry, Ramganga Command Project.

Madam,

F Kindly refer to your demi official letter No.P.E.R.-2/V-11/405  
dated 4.5.1982 regarding the above said subject matter under  
consideration of the Government. In this regard I am directed to say  
that after examining the related documents placed before the before  
the Government it has come to the fore that Shri Vaish was appointed  
as Assistant Sales Officer in Kanpur Milk Board on basic post at the  
salary of Rs.300-900 by the order of Milk Board No. 4211/Admn./  
G Personal Letter/dated5/7.4.1974. The above pay scale was revised  
and Rs.300-900 was converted to Rs.550-1200 from 1.4.1974. Shri  
Vaish before joining Ramganga Command Project on the above said  
post was working on this pay scale from 1.4.1974 to 1.3.1977 in Milk  
Board.

H 2. The appointment of Shri Vaish in Ramganga Command Project

at the post of Subject Matter Expert, Animal Husbandry was done at the request of the then Administrator Shri Ramakrishna by Government Order No.3678/(2)/12(Regional Department 1)/77 dated 13.6.77. A

3. Before joining Ramganga Command Project, Shri Vaish was working at the salary of Rs.550-1200 in Milk Board and was getting Rs. 640 per month and on 1.4.77 his further increment in salary was due. However, when Shri Vaish demanded the enhancement in salary over Rs. 640 from 1.4.77 it was contended by the office that determination of salary of Shri Vaish was not to be done by the Head of the Department and was to be done by the Government. Therefore, after explaining the circumstances to Shri Vaish the proposal for determination of salary of Shri Vaish was sent. However, the Government does not agree with the basis of the above proposal that Shri Vaish has been appointed in Ramganga Command Project on deputation. On the other hand Shri Vaish was given fresh appointment in Ramganga Command Project by the Government. It has become a subject matter of correspondence between the Government and the officers of the Project and today the situation is that even after five years Shri Vaish is being paid the same salary of Rs. 640 which he was getting before joining Ramganga Command Project and the increment in salary from 1.4.77 has not been approved. There can be some force in the above said opinion of the Government on purely technical basis. However, the reality is that from 1.3.77 Shri Vaish is continuously under great financial loss. Certainly, therefore, Shri Vaish has to face unexpected mental and economic harassment. B C D E

4. After considering this subject liberally, the Government has come to the conclusion that to give justice to Shri Vaish only one alternative is left that Shri Vaish shall be appointed in Ramganga Command Authority at the pay scale of Rs.550-1200 as Subject Matter Expert (Dairy and Animal Husbandry) or on any suitable equivalent post and from 1.3.1977 after also approving the five increments over basic salary of Rs. 640 being paid to him by Milk Board the salary of Shri Vaish be determined by Ramganga Command Authority. F G

5. The Kanpur Milk Board shall also be informed about the above said appointment of Shri Vaish in the Authority. Shri Vaish also holds lien over the basic post of Assistant Sales Officer at the pay scale of Rs.550-1200. H

A 6. In the opinion of the Government, this is the only correct and just alternative. Therefore, you please carry out the formalities as aforesaid.

By Order,  
Sd/-

B Illegible  
(Shamshad Ahmed)

Government Order No. 2944/4.1.82(1)/Regional  
Department-1 Dated:

C A carbon copy of the above said Government Order is being sent to the Secretary, Kanpur Cooperative Milk Board, Nirala Nagar (Juhi), Kanpur for his information with reference to his demi official letter dated 26.5.1982

By Order,  
(Shamshad Ahmed)  
Commissioner & Secretary”

D In compliance with the said order, employee was appointed on a temporary basis as Assistant General Manager with clear stipulation that his services are totally temporary and can be terminated at any time by the other side by giving notice for one month or payment of salary in lieu thereof. In terms of the Government order, the basic pay was also fixed. In the meantime the State Government took the decision in March 1982 for abolishing all posts of the Authority except that of Chief Engineer Irrigation. In the resolution it was stipulated that those employees who were directly appointed by the Authority should be absorbed in the vacant posts with the Project and till their absorption with the Project they were to be retained with the Authority.

E At this juncture came the letter of Milk Board requesting for relieving the employee immediately so that he could join the Milk Board by 1.3.1983. This letter dated 17/24.2.1983 is also of importance and reads as below:

“Kanpur Sakkari Milk Board Limited

G Ref. No. 238/Admn./17/03 Dated: 17/24.2.1983

The Chairman & Project Administrator, Ram Ganga Command & Development Authority, 3A/101, Azad Nagar, Kanpur 2.

Dear Sir,

H Sri S.K.Vaish, Asstt. Sales Officer, Kanpur Sahkari Milk Board

Ltd., Kanpur, who has been to the Ram Ganga Command Authority on deputation since 1977 is required to join this institution as Asstt. Sales Officer immediately. You are, therefore, requested to please relieve him immediately so that he may be able to join his duties as above by 1.3.1983. In case Sri Vaish is not interested to join back in this institution, his resignation may please be obtained and forwarded so that further action may be taken at this end.

Yours faithfully,  
Sd/-  
General Manager”

In line with the request, the Authority relieved the employee so that he can join the Milk Board. This order was the subject matter of challenge before the High Court in which the impugned judgment came to be passed.

To make the narration of facts complete, one more document needs to be referred i.e. the letter dated 20.5.1985 written by the Milk Board to the authority. The position regarding employee's employment was indicated as follows:

“So far as the termination of line of Mr. Vashya is concerned, from the post of the Assistant Sales Officer in the Kanpur Milk Board, in the above subject, copy of the letter No. ANW dated 25.3.1980 of Mr. Vashya is being enclosed. Vide above mentioned letter, Shri Vashya had admitted himself his services as terminated claiming it as false and improper and on the same ground, he obtained a Certificate from the general Manager Shri B. Dingar of this Institute on 31.3.82 that his lien was existing in the Kanpur Cooperative Milk Board in the month of March, 1982 and it had not been ended. On the basis of the abovementioned grounds and reasons, he was called back vide this Institute letter No. 238/Admin/PF/83 dated 17/21.2.83. But instead of this, Mr. Vashya, as far as it is in the knowledge, had filed a writ petition in the Hon'ble High Court against the order of the Ram Ganga command Authority, regarding submitting the joining report in this Institute and that his position of lien is being maintained as it is about which Shri Vashya is fully aware.”

Before approaching the High Court, questioning the legality of the relieving order, the employee had moved the U.P. Public Service Tribunal (in short 'the Tribunal') questioning refusal of the increments in 1980. It is

A relevant to note that before the Tribunal, the State Government and the authorities concerned as well as Milk Board took varying stands, which were highlighted by the employee before the High Court and in these appeals also.

B Mr. Gopal Subramanian, learned senior counsel for the appellant-Authority submitted that the High Court erred on the basic premises by attaching great importance to two aspects, which were really inconsequential. The employee all through took the stand that he was on deputation. Similar was the stand taken by the Milk Board. In fact, the action for sending the employee back was taken by the Authority on the basis of Milk Board's letter. It is not now open to it to take a different stand. Additionally, the High Court has failed to notice that the order dated 4.6.1982 passed by the State Government was essentially in the matter of fixation of pay and was not determining the question of deputation or otherwise of the employee. Even if it is accepted for the sake of argument that the employee was given employment by the Authority, same was on purely temporary basis as order of appointment clearly indicates. There being no substantive appointment, the question of employee being retained in the Authority after decision of the Government for abolition of posts cannot be countenanced. Similar stand was adopted by learned counsel for the State. Per contra, learned counsel for the Milk Board and the employee submitted that the Authority and the State Government are estopped from taking stand that the employee was on deputation, after having taken a positive stand before the Tribunal about the employee's status of employment. He supported the views expressed by the High Court.

F As noted above, in view of the conflicting stands of the parties, most of which were self-serving stands and in some cases without reference to the relevant documents, it would be appropriate to find out the essence of the dispute by taking note of various documents, more particularly the order of appointment, the order by which employee's services were placed at the disposal of the Authority and subsequently orders passed. One thing is clear that from the beginning the employee and the Milk Board as well as the Authority proceeded on the footing that employee was on deputation. This becomes clear from the stand taken by the employee asserting that he was on deputation. That was also his positive stand before the Tribunal. Interestingly, the Milk Board initiated the action for repatriation of the employee by writing to the Authority, clearly indicating that the employee was on deputation. In response to the said letter the Authority acted. Therefore, it is not open to the H Milk Board to take a contrary stand. The High Court seems to have lost way

amidst the maze of factual red herrings. Great stress was laid on the order dated 4.6.1982 of the Government. As rightly submitted by learned counsel for the Authority, the same was not directly on the question of deputation, but primarily related to fixation of pay. Therefore, that letter was not of any conclusive or determinative value so far as the controversy at hand is concerned. A

In view of materials available from the documents referred to above, the inevitable conclusion is that the employee was on deputation from the Milk Board and appointment on temporary basis with the Authority can, by no stretch of imagination, be considered to be substantive appointment. Abolition of posts is an aspect which cannot be lost sight of. Therefore, the order of repatriation which formed subject matter of challenge does not suffer from any infirmity. The High Court erred in interfering with the same. The appeals are allowed with costs fixed at Rs. 5,000. B C

S.K.S.

Appeals allowed.