

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. 368-369 OF 2009
[Arising out of SLP(C) Nos. 20212-20213/2005]

UNION OF INDIA AND ORS. ... APPELLANT(S)

:VERSUS:

S.A. KHAILIQ PASHA AND ANR. ... RESPONDENT(S)

ORDER

Nobody appears for Respondent No. 1.

Leave granted.

Respondent No.1, who was a Head Constable in the State of Andhra Pradesh, was sent on deputation to the Subsidiary Intelligence Bureau (“SIB”), Ministry of Home Affairs, Hyderabad, on or about 9.3.1992 for a period of 5 years. While working with the transferee organization, he was promoted to the post of Assistant Central Intelligence Officer-II, with effect from 10.8.1994.

He filed a representation in the year 2001 praying for his absorption. His representation for permanent absorption was rejected. Aggrieved by and dissatisfied therewith, he filed original application before the Central Administrative Tribunal. By a judgment and order dated 31.8.2004, the said application was allowed.

Appellant herein was directed to give effect to the order of absorption, aggrieved whereby it filed a writ petition which by reason of the impugned judgment has been dismissed by the High Court.

Before the High Court, reliance was placed on a purported Memo dated 17.4.2003 issued by the SIB, in terms whereof those who had only one year's service left for retirement, were not to be considered for absorption, inter alia on the premise that the said Memo will have prospective effect. The contention of the appellant was rejected by the High Court, stating:

“But this communication, as already observed by us, is not based on legal position as available in the Rules. The very contention of the Department is that the personnel shown in the letter dated 19.7.2001 are entitled for absorption in the Central Services and consequent on their absorption, their lien in the parent department will be terminated. It is also on record that number of police personnel were absorbed in the IB and also continuing in the IB Service. In view of this, it is not understood as to how the Government could refuse the same benefit in respect of the 1st respondent.”

Mr. Radhakrishnan, learned senior counsel appearing on behalf of the appellant would submit that the first respondent having no right to be absorbed in the appellant services, the impugned judgment is wholly unsustainable.

Mr. Chowdhary, learned senior counsel appearing on behalf of the State of Andhra Pradesh, supported the contention of the appellants.

Nothing has been shown either before the Tribunal or before the High Court by or on behalf of the first respondent herein that he had a statutory right to be absorbed in the appellants' services.

In this case, the State of Andhra Pradesh, which was the lending authority, did not accede to the prayer of the first respondent for permanent absorption in the services of the SIB. The first respondent while on deputation, was holding lien in the State of Andhra Pradesh. The employer, therefore, had a right to give or withhold its consent for permanent absorption of its employee.

Furthermore, in absence of any statutory rules, an employee does not have any legal right to be absorbed in the services. It is so held in *Kunal Nanda vs. Union of India* and Anr. [2000 (5) SCC 362], in the following terms:

“On the legal submissions also made there are no merits whatsoever. It is well settled that unless the claim of the deputationist for a 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 v. M.D., U.P. Rajkiya Nirman Nigam Ltd* is

inappropriate since the consideration therein was in the light of the 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 needs 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 be 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.”

See also Mahesh Kumar K. Parmar and Ors. Vs. SI.G. of Police and Ors., [2002 (9) SCC 485].

In that view of the matter, the High Court must be held to have proceeded on a wrong legal premise.

It is, however, accepted at the Bar that the 1st respondent has since retired from service.

We, therefore, keeping in view the peculiar facts and circumstances of this case, particularly in view of the fact that, rightly or wrongly, he has been allowed to continue in the services of the SIB till he attained the age of superannuation, i.e. 60 years, it is not a fit case where any order should be passed against him at this stage

in exercise of our jurisdiction under Article 136 of the Constitution of India.

We make it clear that we have refused to exercise our discretionary jurisdiction in the matter only having regard to the facts and circumstances of this case.

Subject to the declaration of law as mentioned hereinabove, the appeals are dismissed with the aforementioned observation.

**.....J
(S.B. SINHA)**

**.....J
(Dr. MUKUNDAKAM SHARMA)**

**.....J
(ASOK KUMAR GANGULY)**

**NEW DELHI,
JANUARY 13, 2009.**