SUPREME COURT OF INDIA

Union of India

Vs.

Shardindu

C.A.No.2676 of 2007

(A.K.Mathur and Tarun Chatterjee JJ.)

16.05.2007

JUDGMENT:

A.K. MATHUR, J.

1. Leave granted.

2. This appeal is directed against the order passed by the Division Bench of the High Court of Delhi whereby the Division Bench of the High Court has confirmed the order passed by learned Single Judge whereby learned Single Judge has set aside the order passed by the Union of India dated 18.11.2005 purporting to terminate the deputation of the respondent as Chairperson, National Council for Teacher Education (for short, NCTE).

3. Brief facts which are necessary for disposal of this appeal are that the respondent herein was informed on 31.12.2003 that he has been selected as Chairperson of the NCTE for a period of four years or till he attains the age of 60 years, whichever is earlier. After this appointment the respondent herein was relieved by the Government of Uttar Pradesh on 21.1.2004 and he assumed the charge of Chairperson, NCET on 22.1.2004. It was alleged that the respondent while working as Director, State Council for Educational Research and Training in the State of Uttar Pradesh, Lucknow an inquiry was conducted by the State Vigilance Commission at the behest of Government of Uttar Pradesh in respect of examination of 2001, in 2004. The State Vigilance Commission submitted the report on 27.3.2005 and on the basis of that report, a First Information Report was registered on 19.9.2005 implicating seven persons including the respondent herein and a separate order was passed by the State Government placing the respondent under suspension pending commencement of disciplinary proceeding. When this fact came to the notice of the Union of India, it passed an order on 18.11.2005 terminating the deputation of the respondent as Chairperson, NCTE. This order was subject matter of challenge in the writ petitioner filed by the respondent before the Delhi High Court. In order to appreciate the controversy involved in the matter the impugned order dated 18.11.2005 is reproduced below:

" F.No.26-39/2005-EE-10

Government of India

Ministry of Human Resource Development

Deparptment of Elementary Education & Literacy

November 18, 2005.

O R D E R

The Central Government hereby terminates

the deputations of Dr.Shardindu as Chairperson, NCTE, appointed on 22.1.2004 vide order No.61-4/ 2003- D(TE) EE-10 dated 15.12.2003 and prematurely repatriates him to his parent cadre, with immediate effect.

Sd/- (PRERNA GULATI)

Director (EE)."

4. The respondent filed a writ petition challenging this order before learned Single Judge that he was not on deputation, therefore, his tenure could not be terminated and he could not be repatriated back to the State of Uttar Pradesh. The principal submission of the respondent before the learned Single Judge was that the respondent was appointed under sub-section (3) of Section 4 of the National Council for Teacher Education Act, 1993 (hereinafter to be referred to as 'the Act') and the services of the respondent could only be terminated in terms of Sections 5 & 6 of the Act. It was submitted that the respondent has not become disqualified under Section 5 of the Act, therefore, the Central Government could not remove a person under Section 6 of the Act. The plea of the appellants before learned Single Judge was that the respondent was on deputation, therefore, deputation period has been terminated and he has been repatriated back to his parent Department as Education Officer of the State Government. It was also submitted that the appointment of the respondent was a pleasure appointment of the President of India under Article 310 of the Constitution of India. The appointing authority being the Central Government, therefore, as per General Clauses Act, the appointing authority could terminate the services of an incumbent.

5. Learned Single Judge after considering the matter took the view that there was no question of invoking the pleasure doctrine in the present case under Article 310 of the Constitution of India and the respondent was not on deputation, therefore, his services could not be terminated and he could not be repatriated back to the State of Uttar Pradesh. It was also held that since the incumbent was appointed under the Act of 1993 and he had not incurred any of the disqualifications mentioned in the Act, therefore, his services could not be terminated. It was also held that as per the method of termination of an incumbent as provided under the Act, his services could only be terminated in the manner as provided under the Act and none else. Learned Single Judge allowed the writ petition and set aside the order passed by the Union of India. Against the order passed by learned Single Judge of the High Court, a writ appeal was filed by the appellants before the Division Bench of the High Court which confirmed the order passed by the learned Single Judge, by order dated 27.7.2006. Hence aggrieved against the impugned order dated 27.7.2006 passed by the Division Bench of the High Court of Delhi, the present Special Leave Petition was filed by the appellants.

6. We have heard learned counsel for the parties and perused the records. Mr. Vikas Singh, learned Additional Solicitor General of India submitted that the appointing authority in the present case is the Union of India and it is a pleasure appointment. Therefore, under Article 310 of the Constitution of India, the President can terminate the services of an incumbent. Therefore, they need not to follow the procedure laid down under Sections 5 & 6 of the Act. On the question of pleasure doctrine, learned ASG invited our attention to the following decisions of this Court. i) (1985) 3 SCC 398 Union of India & Anr. v. Tulsiram Patel etc. ii) (1985) 4 SCC 252 Satyavir Singh & Ors. v. Union of India & Ors. etc. iii) (1980) 2 SCC 593 Gujarat Steel Tubes Ltd. & Ors. v. Gujarat Steel Tubes Mazdoor Sabha & Ors.

7. It was next submitted that when the Act is silent, then the vacuum can be filled up by the Court. It was submitted that the present contingency was never visualized by draftsmen that if the incumbent is charge-sheeted for his past conduct then what is the remedy in that contingency. Therefore, learned counsel submitted that the lacunae be filled up by the Court and in that connection learned counsel for the appellants invited our attention to a decision in Seaford Court Estates, Ltd. v. Asher [(1949) 2 All ER 155].

8. However, our attention was also invited to a decision of this Court in Standard Chartered Bank & Ors. v. Directorate of Enforcement & Ors. [(2005) 4 SCC 530] wherein this ratio of English Court has not been followed by the Constitution Bench of this Court.

9. Learned counsel submitted that the respondent was in the service of State of Uttar Pradesh and he was selected under the Act of 1993, he was an appointee of the State of Uttar Pradesh and he has a lien in the State of Uttar Pradesh, therefore, even if he has not been sent on deputation by the State of Uttar Pradesh, still he would be deemed to be on deputation and in that connection, learned counsel invited our attention to the following decisions of this Court. i) JT 2007 (3) SC 89 Prasar Bharti & Ors. v. Amarjeet Singh & Ors. ii) (2004) 5 SCC 714 Secretary, Ministry of Information & Broadcasting v. Gemini TV (P) Ltd. & Ors. iii) (1977) 1 SCC 130 Union of India v. Agya Ram iv) 1995 Supp. (2) SCC 13 Election Commission of India v. State Bank of India Staff Association, Local Head Office, Unit Patna & Ors. etc. v) (1996) 4 SCC 727 Jai Jai Ram & Ors. v. U.P.State Road Transport Corporation, Lucknow & Anr. vi) (2005) 8 SCC 394 Union of India through Government of Pondicherry & Anr. v. V.Ramakrishnan & Ors.

10. In the alternative, Mr. Singh submitted that this Court should invoke Article 142 of the Constitution as the contingency which has happened in the present case was never contemplated in the Act. Therefore, it will not be proper to keep the incumbent like the present one who is facing disciplinary proceeding in the State of Uttar Pradesh. Therefore, this Court should invoke its inherent jurisdiction under Article 142 to do complete justice to the parties in the present case and in support of his submission has invited our attention to the following decisions of this Court. i) (1998) 4 SCC 409 Supreme Court Bar Association v. Union of India & Ors. ii) (2004) 9 SCC 741 Textile Labour Association & Anr. v. Official Liquidator & Anr. iii) (2000) 6 SCC 213. M.C.Mehta v. Kamal Nath & Ors.

11. As against this, learned senior counsel for the respondent, Mr. Sunil Gupta submitted that since the appointment of the respondent was a statutory appointment, the termination of the appointment of the respondent could only be done in the manner provided under the Act and in support of this contention, invited our attention to the following decisions of this Court. i) (1975) 1 SCC 421 Sukhdev Singh & Ors. v. Bhagat Ram Sardar Singh Raghuvanshi & Anr. etc. ii) (1986) 4 SCC 746

12. Learned senior counsel for the respondent submitted that there is no question of filling up the lacunae in the present case as the Act is very clear and therefore, the termination could only be done in the manner as provided under the Act i.e. Section 6 of the Act. Lacunae could only be filled in where it is found that the Act does not provide any method or the Act is silent but in the present case, the Act is very clear and there is no lacunae to be filled up and in support of his contention learned counsel invited our attention to the following decisions of this Act.

i) (1986) 4 SCC 746 State of Kerala v. Mathai Verghese & Ors. ii) 1992 Supp.(1) SCC 323 Union of India & Anr. v. Deoki Nandan Aggarwal iii) (2002) 3 SCC 533. Padma Sundara Rao (Dead) & Ors. v. State of Tamil Nadu & Ors. 13. Learned senior counsel also filed an article written by him in Journal Section of (1988) 2 SCC.

14. Before we proceed to examine the rival contention of the parties, it will be proper to refer to necessary provisions bearing on the subject i.e. the National Council for Teacher Education Act, 1993 and the Rules framed there under, known as the National Council for Teacher Education Rules, 1997. This Act of 1993 was promulgated by the Parliament to provide for establishment of National Council for Teacher Education with a view to achieving planned and co-ordinated development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith. Section 2 (b) defines "Chairperson which reads as under :

" 2. (b) "Chairperson" means the Chairperson of the Council appointed under clause (a) of sub-section (4) of section 3."

15. Section 4 lays down the terms of office and conditions of service of Members. Section 4 reads as under :

" 4. (1) The Chairperson, Vice- Chairperson and the Member- Secretary shall hold office on a full-time basis.

(2) The term of office of the Chairperson, the Vice-Chairperson and the Member- Secretary shall be four years, or till they complete the age of sixty years, whichever is earlier.

(3) The conditions of service of the Chairperson, the Vice-Chairperson and the Member- Secretary shall be such as may be prescribed.

(4) The term of office of Members [other than the Members specified in clauses (a) to (l) and clauses (n) and (o) of sub-section (4) of section 3] shall be two years or till fresh appointments are made, whichever is later, and other conditions of service of such Members shall be such as may be prescribed.

(5) If a casual vacancy occurs in the office of Chairperson, whether by reason of death, resignation or inability to discharge the functions of a Chairperson owing to illness or other incapacity, the Vice-Chairperson holding office as such for the time being, shall act as the Chairperson and shall, unless any other person is appointed earlier as Chairperson, hold office of the Chairperson for the remainder of the term of office of the person in whose place the said person is to so act.

(6) If a casual vacancy occurs in the office of the Vice-Chairperson or any other Member, whether by reason of death, resignation or inability to discharge his functions owing to illness or other incapacity, such vacancy shall be filled up by making fresh appointment and the person so appointed shall hold office for the remainder of the term of the office of the person in whose place such person is so appointed.

(7) The Chairperson shall, in addition to presiding over the meetings of the Council, exercise and discharge such powers and duties of the Council as may be delegated to him by the Council and such other powers and duties as may be prescribed.

(8) The Vice-Chairperson shall perform such functions as may be assigned to him by the Chairperson from time to time."

16. Section 5 deals with disqualification for office of Members. Section 6 lays down the vacation of office of Member. We are not concerned with rest of the provisions of the Act as it deals with various functions and other connected matters of education. In purported exercise of the powers under Section 31 of the Act the Central Government framed the Rules known as National Council for Teacher Education Rules, 1997 (hereinafter to be referred to as ' the Rules'). Rule 5 of the Rules lays down the conditions of service of the Chairperson, the Vice-Chairperson and the Member-Secretary, like their pay, dearness allowance, house rent allowance and city compensatory allowance and other terminal benefits. Rule 6 deals with traveling and daily allowances to Members. Rule 7 deals with the powers and duties of the Chairperson. Therefore, from the scheme of the Act and the Rules it is apparent that the appointment of the Chairperson of the NCTE is a tenure post for a period of four years or any person attaining the age of sixty years whichever is earlier. Section 5 deals with disqualification and none of the disqualifications mentioned in that section has been incurred by the respondent. Neither he has been convicted nor sentenced to imprisonment for an office which in the opinion of the Central Government, involves moral turpitude, nor has he been un- discharged insolvent, nor was of unsound mind and has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government, and has in the opinion of the Central Government such financial or other interest in the Council as is likely to affect prejudicially the discharge by him of his functions as a Member nor has committed any financial irregularity while working as Chairperson. Therefore, the respondent has not incurred any of the disqualifications as mentioned above. Section 6 deals with vacation of office of Member. Section 6 lays down that the Central Government can remove if any person has incurred any of the disqualifications as mentioned in Section 5. Proviso to Section 6 (a) further clarifies that the incumbent shall be removed on the ground that he has become subject to the disqualification mentioned in clause (e) of that section, unless he has been given a reasonable opportunity of being heard in the matter or refuses to act or becomes incapable of acting or without obtaining leave of absence from the Council, absent from three consecutive meetings of the Council or in the opinion of the Central Government has abused his position as to render his continuance in office detrimental to the public interest. Therefore, under these contingencies if a member is to be removed, then notice is required to be given to the incumbent. On the basis of the analysis of Sections 5 & 6 it is more than clear that the respondent has not incurred any of these disqualifications.

17. Now, the position that emerges is that the respondent was appointed for a fixed tenure of four years or till he attains the age of sixty years whichever is earlier under Section 4 of the Act and while discharging his duties he did not incur any of the disqualifications as mentioned in Sections 5

& 6. Therefore, so far as this statutory appointment is concerned, it cannot be terminated because he had not incurred any of the disqualifications. But while he was working in the State of Uttar Pradesh an inquiry was conducted in 2004 for an incident said to have happened in 2001 and in that a vigilance report was submitted before the State of Uttar Pradesh and on that basis the respondent was placed under suspension and a disciplinary proceeding was also initiated against the respondent and others by the State of U.P. None of these acts comes within the purview of Sections 4,5 & 6. If there was any provision that for his previous misconduct his tenure could be cut short, then it is understandable that the Central Government could have exercised their powers. But in absence of such provision can a statutory appointment be cut short, specially when the incumbent has not incurred any disqualifications under the Act. It may appear to be embarrassing but nonetheless we can not ignore the statutory provisions. If the provisions of disqualification and removal were not there perhaps something could be done but in face of clear provisions bearing on the subject it will be travesty of justice to cut short the statutory appointment of an incumbent.

18. Learned Additional Solicitor General tried to support his submission on pleasure doctrine under Article 310 of the Constitution and submitted that the respondent has been appointed by the Central Government and therefore, it is the pleasure of the President to cut short his appointment. In this connection, learned ASG invited our attention to a decision of this Court in Union of India & Anr. v. Tulsiram Patel etc. [(1985) 3 SCC 398] especially to paragraphs 34 and 44. The distinction between statutory appointment and pleasure appointment has to be kept in mind. The pleasure appointments are such where the incumbents are appointed at the pleasure of the President, like Governors etc. As against this, statutory appointments are made under the statute and the service conditions of the incumbents are governed by the statute. They are not pleasure appointments. Governor appointed under the Constitution is purely pleasure appointment or appointment of such nature which the incumbent holds at the pleasure of the President or the Governors as the case may be. Such appointments may be cut short. Their Lordships in the aforesaid case have dealt with the distinction between the pleasure appointment and appointment under the civil services. Their Lordships held that in India the doctrine of pleasure appointment received Constitutional sanction under Article 310 but unlike in United Kingdom in India it is not subject to any law made by the Parliament but is subject to only whatever expressly provided by the Constitution. Therefore, the distinction has to be borne in mind, the doctrine of pleasure appointment as it existed in feudal set up and in the democratic set up. Their Lordships discussed the doctrine of pleasure appointment in U.K. where the incumbent was appointed at the pleasure of the King but in India this concept has been adopted under Article 310 of the Constitution and how it is to be exercised has also been laid down in the Constitution. Therefore, the concept of pleasure doctrine cannot be invoked in the present case. Every appointment made by the Central Government is in the name of the President but by that it does not mean that all the appointments are pleasure appointments de hors the Constitution or statutory rules bearing on the subject. In the present case, the appointment made was of statutory appointment and the service conditions of the Chairperson and Members have been laid down, likewise their removal has also been laid down on incurring certain disqualifications. Therefore, the submissions of learned Addl. Solicitor General has no legs to stand.

19. In this connection, learned Addl. Solicitor General also invited our attention to a decision of this Court in Satyavir Singh & Ors. v. Union of India & Ors. etc. [(1985) 4 SCC 252]. The same view has been reiterated by their Lordships in this case also where a distinction made in Tulsiram Patel's case (supra) has been summarized that the doctrine of pleasure appointment made in United Kingdom is subject to what may be expressly provided otherwise by legislation. Their Lordships have also reiterated the pleasure appointment made in India has been incorporated under Article 310

of the Constitution.

20. In this connection, our attention was also invited to a decision of this Court in Gujarat Steel Tubes Ltd. & Ors. v. Gujarat Steel Tubes Mazdoor Sabha & Ors. [(1980) 2 SCC 593]. This was a case where the termination of the workmen was involved and in that context, their Lordships observed that in case the termination is found to be bad in law then on reinstatement the incumbent is entitled to full back wages. This case does not provide any assistance.

21. As against this, learned senior counsel for the respondent, Mr.Gupta has strenuously urged before us that in case of statutory appointment there is no scope to cut short except to terminate the services of the incumbent in the manner provided under the Act. In this connection, our attention was invited to a decision of this Court in Sukhdev Singh & Ors. v. Bhagatram Sardar Singh Raghuvanshi & Anr. etc. [(1975) 1 SCC 421] wherein the Constitution Bench held that the termination of service of an incumbent by the Corporation created by statute without complying with the regulations framed by the Corporation cannot be made. The reason was that the termination contravened the provisions contained in the Regulations. In short, when the appointment is made, the service conditions are laid down. The termination of such appointment could only be made in the manner provided in the statute and by no other way. Once the regulations have been framed and detailed procedure laid down therein, then in that case if the services of an incumbent are required to be terminated then that can only be done in the manner provided and none else. Similar view has been taken in the case of State of Kerala v. Mathai Verghese & Ors. [(1986) 4 SCC 746]. Therefore, in this background, we are of opinion that the submission of learned Additional Solicitor General cannot be sustained.

22. Learned Addl. Solicitor General; next submitted that whenever the Act is silent in that contingency, this Court can fill the vacuum by interpreting the provision in such a manner that that vacuum can be filled up by order of the Court. In that connection, learned Addl. Solicitor General heavily relied on a decision in Seaford Court Estates, Ltd. v. Asher [(1949) 2 All ER 155]. In that context their Lordships observed as follows :

" Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the legislature."

23. This is an objective statement of law that in changing world. it is difficult to foresee future contingencies but if such contingency has not been anticipated then can a Court sit in to make it good. In the present case it is true that the contingency which has arisen i.e. the incumbent who has

been appointed being a statutory appointment or saddled with investigation for his past conduct. Can this be made a good ground for cutting short his tenure?

24. Our attention was also invited to a decision of this Court in Standard Chartered Bank & Ors. v. Directorate of Enforcement & Ors. [(2005) 4 SCC 530]. In this case the question was whether any company or corporation being a juristic entity be prosecuted for offence for which mandatory imprisonment and fine is provided. The majority took the view overruling the earlier judgment in Velliappa Textiles [(2003) 11 SCC 405] that the company can be prosecuted and sentence of fine imposed and may not be sent for imprisonment. The question was whether this should be left for the Legislature to correct it or Court should step in and their Lordships steered of clear the controversy by overruling the earlier judgment in Vellappa Textiles that the company can be prosecuted and sentence of fine can be imposed. In that case, their Lordships observed as follows :

" Hence it is not open to the court remedy an irretrievable legislative error by resort to the theory of presumed intention of the legislature. We do not subscribe to the view of Denning, L.J., that "judicial heroics" were warranted to cope with the difficulties arising in statutory interpretation. If by upholding Vellappa it would be impossible to prosecute a number of offenders in several statutes where strict liability has been imposed by the statute, then so be it. Judicial function is limited to finding solutions within specified parameters. Anything more than that would be "judicial heroics" and "naked usurpation of legislative function". "

25. Therefore, the Constitution Bench of this Court has not followed the judicial dictum laid down by Lord Denning, J. in Seaford Court Estates, Ltd. (supra). Mr.Gupta, learned Senior Counsel for the respondent submitted that the mandate of legislature is very clear as contained in Section 6. Therefore, there is no lacunae left in the statute. In support of his submission, Mr.Gupta invited our attention to a decision of this Court in Mathai Verghese & Ors. (supra). Their Lordships held that the Court can merely interpret a provision so as to make explicit the intention of the legislature. It cannot rewrite, recast or redesign the provisions since the power to legislate has not been conferred on the court. Their Lordships further observed that the Court should make a purposeful interpretation so as to 'effectuate' the intention of the legislature and not a purposeless one in order to 'defeat' the intention of the legislators wholly or in part. Our attention was also invited to a decision of this Court in Union of India & Anr. v. Deoki Nandan Aggarwal [1992 Supp. (1) SCC 323]. In this case, their Lordships have observed that there is a limited scope of judicial activism and in exercise of judicial activism the Court cannot adopt or resort to legislative function and the Court cannot supply the omission of the statute.

26. Our attention was also invited to a decision of this Court in Padma Sundara Rao (Dead) & Ors. v. State of T.N. & Ors. [(2002) 3 SCC 533]. Their Lordships held that casus omissus cannot be supplied by the Court. The provisions of the statute have to be read as a whole and in its context. When language of the provision is plain and unambiguous the question of supplying casus omissus does not arise. The Court can interpret a law but cannot legislate. Therefore, the submission of learned Addl.Solicitor General that since the contingency which has arisen in the present case was not foreseen by the draftsmen or by the Parliament, therefore, the casus omissus may be supplied by this Court i.e. since the incumbent has been facing the charge, his tenure should be cut short. We regret we cannot cure the lacunae by exercising the power under Article 142 of the Constitution and uphold the order of termination especially when such contingency has not been made a ground for disqualification for holding the post. Therefore, the submission of learned Addl. Solicitor General cannot be accepted.

27. Learned Addl. Solicitor General next submitted that the appointment of the respondent was purely on deputation basis and since the deputation period has been terminated and the appointing authority has full right to terminate his deputation. Therefore, the respondent can be sent back to his parent department i.e. the State of Uttar Pradesh. We regret to say that this appointment of the respondent cannot be said to be purely an appointment on deputation basis. Strictly speaking, it is not a deputation post because the incumbent has been selected under the Act and he has not come on deputation as such though loosely it can be said to be on deputation in the sense that since the incumbent holds his lien in the State of Uttar Pradesh and the State of Uttar Pradesh has permitted him to join the post for a fixed period of four years or till he attains the age of superannuation i.e. sixty years. Since the respondent holds a lien in the State of U.P. therefore, to some extent he can be said to be on deputation but it is not in the sense of deputation as in the case of an all India Service person who is sent on deputation to the Central Government or to other organization. It is an independent selection under the statute and the State of U.P. has permitted the respondent to join his assignment as he holds a lien and after completion of the period of four years he will come back to the State till he attains the age of superannuation. If the incumbent was to retire within the period of four years perhaps it would not have been necessary to have moved the State of U.P. for its permission to join this assignment. Even after expiry of four years the respondent is left with some period of service. Therefore, formal permission was sought from the State of U.P. to permit the incumbent to join the post for a fixed term. Therefore, it is the permission by the State of U.P. to join the post and in case the incumbent comes back he can join the service under the State of U.P.. Therefore, it is almost like a permission and not in strict terms of deputation but loosely it can be termed as deputation. This is not the situation when the period of deputation can be cut short and the incumbent can be sent back to his parent department i.e. the State of U.P. unlike the officers of an all India service. This appointment is for a fixed tenure after due selection under the Act. Therefore, this kind of deputation stands on an entirely different category. However, learned Addl. Solicitor General tried to justify that a person who is sent on deputation has no right to continue in the post and his period of deputation can be cut short and he may be repatriated back to his parent department.

28. In this connection, our attention was invited to a decision of this Court in Prasar Bharti & Ors. v. Amarjeet Singh & Ors. [JT 2007 (3) SC 89]. This is entirely a different case. In this case when the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 was incorporated, certain employees who were working in the All India Radio their services were taken in the Corporation . In that context, their Lordships made a distinction on deputation and transfer. Deputation only connotes service outside the cadre or outside the parent department in which an employee is serving. Therefore, so far as this case is concerned, those persons who were put on deputation with the Prasar Bharati, in that context their Lordships held that those persons will be treated on deputation and their service conditions will be governed by the principle of deputation. Their Lordships observed as follows :

" We do not find that the action taken by the appellants herein in transferring the respondents is in any way arbitrary or irrational."

Therefore, this case does not provide any useful assistance to us.

29. Our attention was invited to a decision of this Court in the case of Umapati Choudhary v. State of Bihar & Anr. [(1999) 4 SCC 659]. In this case, this Court held that an incumbent who is on

deputation, can be repatriated back to his parent department and such order cannot be said to be bad.

30. Our attention was invited to a decision of this Court in Union of India v. Agya Ram [(1977) 1 SCC 130]. In this case an employee under the State of Government was sent on deputation to the Office of Regional Settlement Officer and he was repatriated back to his parent substantive post without any notice. Their Lordships held that it did not amount to termination. This case is distinguishing on its facts i.e. a person sent on deputation to another department therefore, the deputationist has no right and he can always be repatriated to his parent department.

31. Learned Addl. Solicitor General next invited our attention to a decision of this Court in Jai Jai Ram & Ors. v. U.P. State Road Transport Corporation, Lucknow & Ors. [(1996) 4 SCC 727]. In that case their Lordships observed that the incumbents were on deputation to foreign service and during the period of deputation to the U.P. State Road Transport Corporation their services were terminated. In that context, their Lordships held that since they were Government servants and were on deputation with the Corporation, the U.P. Fundamental Rules 9 (7-B) would be applicable. Therefore, they will be deemed to be the Government servants irrespective of the fact that they were on deputation with the Corporation. This case has no relevance so far as the present controversy is concerned.

32. Our attention was invited to a decision of this Court in Election Commission of India v. State Bank of India Staff Association Local Head Office Unit, Patna & Ors. [1995 Supp. (2) SCC 13]. This was a case where the District Election Officer had requisitioned the services of the employees of the State Bank of India for conducting election. Their Lordships after interpreting clause (6) of Article 324 of the Constitution held that the order of the District Election Officer requisitioning the services of the employees of the State Bank of India for election duty is not sustainable and accordingly quashed the same. This case is of no relevance so far as the present controversy is concerned.

33. Our attention was also invited to a decision of this Court in Union of India through Govt. of Pondicherry & Anr. v. V. Ramakrishnan & Ors. [(2005) 8 SCC 394]. In this case an incumbent was on deputation and he was repatriated back from his deputation to his parent department. Their Lordships observed that if the incumbent is on deputation he can always be sent back to his parent department and there is no malice. Therefore, this case is of no assistance so far as the present controversy is concerned.

34. Lastly, learned Additional Solicitor General submitted that Article 142 of the Constitution should be exercised in the present case as there is no such provision for the contingency which has arisen in the matter and the termination of the respondent should be upheld. In this connection, our attention was invited to a decision of this Court in Supreme Court Bar Association v. Union of India & Anr. [(1998) 4 SCC 409]. This was a case where their Lordships exercised the inherent power under Article 142 of the Constitution. The Constitution Bench held that this Court in exercise of power under Article 142 of the Constitution cannot ignore any substantive statutory provision dealing with the subject. It is a residuary power, supplementary and complementary to the powers specifically conferred on the Supreme Court by statutes in order to do complete justice between the parties wherever it is just and equitable to do so. It is only intended to prevent any obstruction to the stream of justice. None of such contingencies exists in the present case so as to invoke the power under Article 142 of the Constitution. This case stands reaffirmed in Textile Labour Association & Anr. v. Official Liquidator & Anr. [(2004) 9 SCC 741].

35. Our attention was invited to a decision of this Court in M.C.Mehta v. Kamal Nath & Ors. [(2000) 6 SCC 213]. In this case, their Lordships held that power under Article 142 of the Constitution cannot be exercised by the Supreme Court where issue can be settled only through substantive provisions of the statute. Therefore, there is no occasion for us to exercise power under Article 142 of the Constitution.

36. Learned Addl. Solicitor General invited our attention to a decision of this Court in Secretary, Ministry of Information and Broadcasting v. Gemini TV (P) Ltd & Ors. [(2004) 5 SCC 714]. This was a case in which Election Commission of India was directed to suggest the modalities as regards the advertisements to be telecast on electronic media by cable operators and television channels. This was after reviewing the provisions of the Representation of People Act, 1951; Cable Television Networks (Regulation) Act, 1995 and Cable Television Networks Rules, 1994; this Court issued certain directions under Article 142 of the Constitution. This case has hardly any relevance so far as the present case is concerned.

37. As a result of our above discussion, we are of opinion that the view taken by the High Court of Delhi is correct and there is no ground to interfere with the same. Consequently, the appeal is dismissed. The respondent be restored back in his post and he shall be paid all his dues which are payable to him in accordance with law. There would be no order as to costs.