

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH.

O.A. No. 294 OF 1986.

DATE OF DECISION 06 - 04 - 1989.

R. Ramabadran.

Petitioner

Mr. S. Tripathy,

Advocate for the Petitioner(s)

Versus

The State of Gujarat.

Respondent

Mr. Anil Dave,

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. TRIVEDI : VICE CHAIRMAN.

The Hon'ble Mr. P. M. JOSHI : JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

(11)

R. Ramabadran, IAS
Managing Director,
Gujarat State Civil Supplies
Corporation Ltd.,
Gandhinagar.

... Petitioner.

(Advo. Mr. S.Tripathy.)

Versus.

State of Gujarat
(Notice to be served through
The Chief Secretary to Government,
General Administration Department,
Sachivalaya, Gandhinagar).

... Respondent.

(Advo. Mr. Anil Dave.)

J U D G E M E N T

O.A./ 294/86.

Date : 06-04-1989.

Per : Hon'ble Mr. P.H.Trivedi. : Vice Chairman.

The Petitioner a member of I.A.S. has asked for the direction to the Respondent - State of Gujarat to allow the payment of Deputation Pay and Allowances to the Applicant on the line of other Officers in Corporation/Board during his period of deputation, to The Gujarat State Civil Supplies Corporation on the ground that such deputation allowance were being paid to the extent of 20% of the basic salary subject to maximum of Rs. 300/- to the Officers deputed to such Boards or Corporation. Earlier the Gujarat State Civil Supplies Corporation did not pay this deputation allowance to I.A.S. Officers but in some Special Civil Applications filed before the Gujarat High Court, it was held that such deputation allowances cannot be withheld from I.A.S. Officer, if they were paid to other Officers of the Gujarat State Civil Supplies

Corporation and the Letters Patent Appeals were also dismissed and then the State of Gujarat had paid such deputation allowance to I.A.S.Officers. However, by letter dated 5th September, 1985, they intimated the Petitioner that no Officer while on deputation to the Gujarat State Civil Supplies Corporation is entitled to the payment of deputation pay and thereafter that Corporation by its letter dated 10th Sept. 1985, represented that the Managing Director is not an Officer under administrative control of State of Gujarat prior to creation of the Corporation and the said Officer, therefore, was not transferred to the Corporation as per Resolution of the Govt. of Gujarat dated 15th October, 1980 and accordingly, that Circular did not apply to the Petitioner. Thereupon the Government of Gujarat took the stand that by the Govt. Resolution in the Finance Department dated 19-12-1980 and 5-8-1988 that when the activities of the Govt. Department are transferred to Board/ Corporation, the Government employees deputed to such Boards/Corporations shall not be entitled to deputation pay/allowance. The Govt. intimated that the Gujarat State Civil Supplies Corporation is a Corporation which is set up by transferring the activities of the Food and Civil Supplies Department and therefore the Staff and Officers of the Gujarat State Civil Supplies Corporation are not entitled to get deputation allowance. The Applicant, ~~therefore~~, thereafter represented to the Chief Secretary to the Govt. of Gujarat by his representation dated 12th March, 1986 giving details as to what activities transferred to the Corporation from the Government and what activities are taken up by the Corporation on

its own, and also stated that in the Special Civil Application, before the Gujarat High Court, the respondents had not advanced any argument in regard to justification of denying deputation allowance to the staff transferred to the Corporation which was stated to act over the activities to the Government. The petitioner also argued that he is discriminated against and the action of the respondents is violative of article 14 and the post held by the petitioner is not one of those posts which were transferred to the Corporation. The pay and allowance of the applicant were not debited to the consolidated fund of the State nor the State grants any portion of the salary and allowance payable to the applicant and the entire expenditure in that respect is debited to the Corporation. The petitioner also stated that in the case of Municipal Commissioners and the Industrial Estate although functions were earlier within the scope of activities of the Govt. and the expenditure is paid to the Municipal Corporation or state Corporation of a similar nature the Officer deputed to them are paid deputation allowance. Similarly, the G.I.D.C., G.I.I.C. and Gujarat Land Development Corporation where such allowance have been paid although the activities of the Body/Corporation were clearly being performed by the State Govt.

2. The contentions of the petitioner have been resisted by the respondents on the ground that the applicant has no legal right of deputation allowance and that by policy decision, the Gujrat Government decided to transfer the functions performed by the Food & Civil Supplies Department to the Gujrat State Civil Supplies Corporation and transferred

the staff and the applicant was deputed to the Corporation and accordingly the applicant is not entitled to any deputation allowance. The Government decided as a matter of policy to perform some activities through a Corporation instead of the Govt. Department and transferred the Staff to such Corporation. There is no justification for adding to the emoluments of the staff transferred by giving them any deputation allowance. Regarding the decision of High Court of Gujarat it was submitted that it is not true that deputation allowance is to be given to each and every All India Service Officers. It was submitted that the deputation allowance should be paid in accordance with Government Resolution and as per Govt. Resolution, the applicant is not entitled to deputation allowance. The grounds of denying the deputation allowance is not unreasonable according to the respondents. If therefore, the petitioner is held not to be entitled to the deputation allowance and if such allowance is drawn by him it must be refunded there is no illegality committed. The fact that the Government does not bear the liability of pay and allowances of the Managing Director of the Corporation does not affect the powers of the State of Gujarat to prescribe who should be allowed deputation allowance and there is no difference of work for which Corporation will be entitled to the deputation allowance. During the hearing, we asked the respondent to give relevant documents to show how the corporation in the instant case is distinguished from other bodies or corporations and which other corporation ~~happened to~~ or bodies happen to be the cases in which deputation allowance is not given. We were informed

that besides this Corporation only in case of Gujrat Land Development Corporation, deputation allowance is not allowed and all other bodies or corporations are allowed deputation allowance. We were also informed that the case of the petitioner is under consideration but by his further reply dt. 27.3.1989 the respondent stated that after such reconsideration, the State Government did not consider it necessary to revise his earlier decision and confirmed non-payment of deputation allowance to the applicant.

3. At the outset, we must observe that the legal right of the applicant extends only to the extent of establishing that he has been unfairly discriminated against. The State Government's right to determine in the case of which category of the employees who are deputed and the corporation in which they are deputed the deputation allowance cannot be challenged. The petitioner has not disputed that he is liable as a matter of duty to be deputed by State Government to a Corporation, and that it is the State Government's right and his duty to perform his functions as Managing Director of the Corporation and such a liability or duty are not subject to any condition of his consent or voluntary acceptance thereof but are in the terms and condition of his service as I.A.S. Officer. Whether the pay and allowance are borne as liability of the State Government and are met for the consolidated fund of Gujarat or whether they are paid by the Corporation which is financed by the State Government do not in any way affect the right of State Government to decide whether any Officer will be allowed the deputation allowance or no

The only question which arises is whether the State Government has followed the principle of reasonable differentiation in the case of this Corporation in taking its decision of not allowing deputation allowance to the Staff of the State Government deputed to this Corporation and similarly whether the State Government has followed any reasonable criterion to distinguish the case of the petitioner from those of other I.A.S.Officers or other Officers in denying him the deputation allowance. Now the policy that when a corporation is set up to perform functions of the State Govt. either wholly or mainly and that when these staff of the State Govt. is transferred to such corporation, it would not be in public interest to add to the financial emoluments of the staff of the State Govt. when so transferred, to such corporation cannot be regarded as unreasonable or lying in any way unreasonable differentiation. After by transfer on deputation, the service conditions of the staff are not adversely affected in any manner nor does the character of the work in any way gets altered. It is therefore, not reasonable to accept that the State Govt. will allow additional emoluments to its staff for doing so. Whether the relevant resolution of the Govt. which is applicable to its staff on transfer to the corporations on their being formed should be held to apply to the applicant as he was appointed as Managing Director also does not affect the question of the right of the State Govt. to determine whether to grant of deputation allowance or its right to discontinue it from any date. There is nothing shown by the petitioner to establish any legal right of such

deputation allowance either for all staff transferred on deputation to the corporation. The Gujrat High Court in its order has also not ruled out in terms that the State Govt. has no right to determine whether deputation allowance should be paid to any of its staff or for the corporation under its control. We, therefore, do not uphold the contention of the petitioner that because the post of Managing Director was not in existance before setting up of the Corporation and therefore was not transferred to the Corporation, he cannot be denied deputation allowance by the State of Gujrat. We also do not uphold the contention of the petitioner that its policy of denying deputation allowance cannot be applied to this Corporation because it lacks any rational of differntiation. Similarly, the fact that some of the functions of the State Govt. have been retained by the State Govt. and that the Corporation performs function other than those transferred by the State Govt. does not affect the right of the State Govt. to decide whether deputation allowance should not be paid to its employees who are transferred on deputation.

4. While, therefore, upholding the petitioner's right to allow deputation allowance or not to its staff transferred under Corporations of any category, we cannot accept the position that such decisions are free from judicial review. Such judicial review by the nature of such cases is bound to be limited in its range and scope. It can only be to the extent of ascertaining whether the principles of differentiation are uniform and are free from the taint of arbitrariness.

or want of any reasonableness. The learned advocate for the respondent stated on instruction only one instance besides the Civil Supplies Corporation in which deputation allowance was not permitted, named Gujarat Land Development Corporation and that such allowance was given to all other Corporations including Municipal Corporations. From these facts before us, we are unable to see how other Corporation -s have distinguished the basis of their having undertaken activities which State Govt. did not perform or now activities other than those transferred by the State Govt. the Corporation have not been undertaken as has been done in case Gujarat State Civil Supplies Corporation. In fact we found no meaningful circumstance or facts or criteria to distinguish the case of this Corporation from those of other Corporations/Bodies. We also do not find any reasonable explanation how the case of Managing Director of this Corporation was distinguishable from that of Managing Director of other Corporation. We would not consider it within our scope to decide whether denying deputation allowance in the case of Gujarat Land Development Corporation was validly done or not because the facts and circumstances of that Corporation or the Govt. decision regarding that corporation are not before us. The case of the Gujarat State Civil Supplies Corporation however, does not warrant any inference that it is distinguishable from that of other Bodies or Corporation.

5. We were informed during the hearing that a fresh decision has been taken following the Govt. decision on the Pay Commission Report of not

allowing deputation allowance to any staff on deputation them. The question of validity of such decision is not before us. Until such a fresh decision is made effective, however, the petitioner should be held to be entitled to the deputation allowance.

6. Accordingly, we allow the petition to have merit to the extent stated. We direct that the respondents allow the petitioner the deputation allowance subject to any fresh orders which are passed by the respondents following any uniform policies consequent on Pay Commission Report. Rule made absolute. We, however, do not find any justification to award cost. Parties will bear their own costs.


(P.H. TRIVEDI.)
VICE CHAIRMAN.


(P.M. JOSHI)
JUDICIAL MEMBER.