

P. C. Wadhwa vs State Of Haryana & Ors on 5 March, 1981

Equivalent citations: 1981 AIR 1540, 1981 SCR (3) 84, AIR 1981 SUPREME COURT 1540, 1981 LAB. I. C. 815, 1981 UJ (SC) 246, 1981 SCC (L&S) 433, (1981) 2 LAB LJ 42, 1981 (2) SCC 642, (1981) 2 LAB LN 37, (1981) 2 SERV LR 212, (1981) 43 FACLR 71, (1981) 2 SCWR 153

Author: Syed Murtaza Fazalali

Bench: Syed Murtaza Fazalali, A. Varadarajan, Amarendra Nath Sen

PETITIONER:

P. C. WADHWA

Vs.

RESPONDENT:

STATE OF HARYANA & ORS

DATE OF JUDGMENT 05/03/1981

BENCH:

FAZALALI, SYED MURTAZA

BENCH:

FAZALALI, SYED MURTAZA

VARADARAJAN, A. (J)

SEN, AMARENDRA NATH (J)

CITATION:

1981 AIR 1540

1981 SCR (3) 84

1981 SCC (2) 642

1981 SCALE (1) 585

ACT:

All India Services (Conditions of Service-Residuary Matters) Rules, 1960-Rule 2(b)-Scope of-I.P.S. Officers on deputation, if entitled to get deputation allowance-Absence of provision for payment of deputation allowance in Pay and Cadre Rules, whether amounts to a bar to the receipt of deputation allowance.

HEADNOTE:

Rule 2 of the All India Services (Conditions of Service-Residuary Matters) Rules, 1960 empowers the Central Government to make regulations to regulate any matters relating to conditions of service of persons appointed in an All India Service for which no provision is made in the

rules under the All India Services Act, 1951; and until such regulations are made, such matters shall be regulated, in the case of persons serving in connection with the affairs of a State, by the rules applicable to officers of the State Civil Service, Class I. By an order issued in 1963 the then Punjab Government ordered that officers of the State holding Class I posts would be entitled to deputation allowance at the rates mentioned in para (i) (c) (ii) of the Order. By the application of the Punjab Reorganisation Act this order became applicable to officers serving in the State of Haryana.

The appellant was an officer belonging to the Indian Police Service. His services were placed at the disposal of the State Electricity Board to work as a Vigilance Officer, a post which was declared equivalent in status and responsibilities to the post of Deputy Inspector General of Police, held by him under the State Government. The order of deputation passed by the Governor, while protecting the pay and other allowances received by him in the cadre post, did not however mention anything about the payment of deputation allowance to him.

The appellant claimed deputation allowance under Rule 2(b) of the Residuary Rules. But his representation had been rejected by the State Government. He then moved the High Court for the issue of a writ; but that petition was dismissed in limine.

Before this Court the appellant contended that he had a statutory right to get deputation allowance as provided in Rule 2(b) of the Residuary Rules.

Allowing the appeal

^

HELD: Rule 2(b) of the Residuary Rules expressly applies to officers of All India Services on deputation. [87 G]

85

1. The substratum of Rule 2(b) is that an officer of the All India Services on deputation would be entitled to deputation allowance equivalent to that given to Officers of the State Civil Service Class I. This Rule, read in conjunction with para (i) (c) (ii) of the Order issued by the erstwhile Punjab Government, manifestly entitles the appellant to draw deputation allowance at the rates mentioned in the Order. [87 H]

2. There is nothing in either Rule 6 of the IPS (Cadre) Rules, 1954 or in Rule 9 of the IPS (Pay) Rules, 1954 which debars an I.P.S. Officer from getting any deputation allowance when he was on deputation to any of the authorities mentioned in Rule 2(i) of the Cadre Rules. The mere absence of a provision for payment of deputation allowance in the Cadre Rules or Pay Rules cannot be interpreted to mean an absolute bar to the receipt of such deputation allowance if other rules permit such a course of action. Rule 9 of the Pay Rules only protects the salary

admissible to I.P.S. Officers on deputation. Sub-rules 1 to 6 of Rule 9 of the Pay Rules do not prohibit payment of deputation allowance to officers. What the proviso to sub-rule 6 does is that it protects the pay and allowances of an officer on deputation so that he is not adversely affected in his emoluments while on deputation. In the absence of any express rules made by the Central Government on the subject the Residuary Rules would apply. [89D-G]

3. There is no substance in the argument of the Board that since the terms of deputation sanctioned by the Governor did not speak of payment of deputation allowance to the appellant, the order of deputation should be read as a modification made by the Central Government to Rule 2(b) of the Residuary Rules. Rule 2(b) makes an exception only if the Central Government makes an order in consultation with the State Government modifying the rules. There is no evidence to show that the Central Government consulted the State Government to take away the effect of Rule 2(b) of the Residuary Rules. Moreover the order of the Governor cannot be construed as an order passed by the Central Government. [90E-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1475/1972.

Appeal by special leave from the Judgment and Order dated 30.3.1972 of the Punjab & Haryana High Court in Civil Writ Petition No. 1034 of 1972.

P.C. Wadhwa in person (Appellant.) K.K, Jain, Bishamber Lal, S.K. Gupta and P. Dayal for Respondent No. 2.

K.S. Gurumoorthy for Union of India.

The Judgment of the Court was delivered by FAZAL ALI, J. This appeal by special leave is directed against an order dated March 30, 1972 of the Punjab and Haryana High Court dismissing the writ petition filed by the appellant in limine.

The facts of the case lie within a very narrow compass and may be stated thus:

The appellant was an IPS officer allotted to the Haryana State and before his services were placed at the disposal of the Haryana State Electricity Board (hereinafter referred to as the Board), he was holding a substantive rank of Deputy Inspector-General of Police and was Commandant General, Home Guards and Director, Civil Defence. On April 15, 1969 the appellant was sent on deputation and his services were placed at the disposal of the Board where he was to work as Deputy

Inspector General of Police for Vigilance Work. On July 10, 1970 the post of Deputy Inspector General of Police in the Board was declared equivalent in status and responsibility to the IPS Cadre post of Deputy Inspector General of Police in order to protect the pay and salary and other allowances of the appellant which he was getting in his post before his deputation to the Board. In the Board, the appellant was designated as Vigilance Officer. By an order dated August 14, 1970 the appellant's terms of deputation to the Board were finalized by the Haryana Government and the same were communicated to the appellant on August 26, 1970. The terms and conditions on which the appellant was sent on deputation to the Board are contained in the order passed by the Governor of Haryana (Annexure B to SLP It would be seen that the order of the Governor, while protecting the pay and emoluments that the appellant was getting, did not mention anything about any deputation allowance being given to him. The appellant made a representation to the Central Government for payment of deputation allowance in accordance with rule 2 (b) of the All India Services (Conditions of Service-Residuary Matters) Rules, 1960 (hereinafter referred to as the Residuary Rules) and submitted that he should be given the same deputation allowance as was admissible to the officers of the Haryana State Civil Service holding posts of Class I when they were sent on deputation to some other department or local body. The representation filed by the appellant to Central Government was rejected. The appellant then filed the writ petition before the High Court which was dismissed in limine, as indicated above. Hence this appeal.

After hearing the appellant in person and counsel for the parties, we are satisfied that this appeal must succeed on a short point, and we are really surprised why the High Court dismissed the writ petition in limine when the matter merited serious scrutiny and deep examination. The appellant, who has argued in person, submitted that being an officer of the Indian Police Service, he was governed under All India Services Act, 1951 and Rules made therein and in so far as deputation allowance was concerned, by the Residuary Rules. He had thus a statutory right to get deputation allowance, as provided for in Rule 2(b) of the Residuary Rules. Relevant portion of Rule 2 may be extracted thus:

"2. Power of the Central Government to provide for residuary matters.-The Central Government may, after consultation with the Governments of the States concerned, make regulations to regulate any matters relating to conditions of service of persons appointed to an All India Service, for which there is no provision in the rules made or deemed to have been made under the All India Services Act, 1951 (61 of 1951); and until such regulations are made, such matters shall be regulated:-

(a) in the case of persons serving in connection with the affairs of the Union, by the rules, regulations and orders applicable to officers of the Central Services, Class I;

(b) in the case persons serving in connection with the Affairs of a State by the rules, regulations and orders applicable to officers of the State Civil Services, Class I,

subject to such exceptions and modifications as the Central Government may, after consultation with the State Government concerned, by order in writing, make;" (Emphasis supplied) It would be seen that rule 2(b) expressly applies to the appellant or for that matter to the officers of the All India Services. The substatum of the rule is that whenever any officer is sent on deputation, he would be entitled to a deputation allowance equivalent to that which is given to officers of the State Civil Service, Class I. In the instant case, it appears that by virtue of the Order issued by the Punjab Government on January 28/31, 1963 which also applies to Haryana by the application of Punjab Reorganization Act, it is clear that officers of the State concerned holding Class I posts would be entitled to deputation allowance on certain rates mentioned in para (i) (c) (ii) of the order which runs thus:

"The deputation allowance shall be at a uniform rate of 20 per cent of the employee's basic pay and shall be subject to a maximum of Rs. 300- per mensem, provided that the basic pay plus the deputation allowance shall, at no time exceed Rs. 3,000- per mensem. This shall equally apply in cases of 'Foreign Service' where at present deputation allowance of 25 per cent of the basic pay is admissible under serial No. 40 of rule 15.1 of Punjab C.S.R. Vol. I Part I, 'Basic pay' for the above purpose shall mean the pay drawn in the scale of pay of the officiating appointment in an employee's parent cadre, provided that the officiating appointment so held was not in a tenure post and it is certified by the appointing authority that but for the deputation the employee would have continued to hold the officiating appointment indefinitely."

In other words, the maximum amount of deputation allowance under the order would not exceed a sum of Rs. 300/- per mensem. Reading Rule 2(b) in conjunction with para (i) (c)

(ii) of the order of the Punjab Government, it is manifest that the appellant is doubtless entitled to deputation allowance at the rates mentioned in the order of the Punjab Government which fully applies to Haryana Government also. The argument advanced by the appellant therefore is unanswerable.

Mr. Bhagat, appearing for the State of Haryana, submitted that there is no provision either in Rule 6 of the IPS (Cadre) Rules, 1954 or in Rule 9 of the IPS (Pay) Rules 1954 regarding payment of deputation allowance and hence it should be held that any officer belonging to the IPS cadre was debarred from getting any deputation allowance unless there was an express provision in the said rules. Relevant part of rule 6 of the IPS (Cadre) Rules may be extracted thus:

"Deputation of Cadre Officers.-(1) A cadre officer may, with the concurrence of the State Government or the State Governments concerned and the Central Government be deputed for service under the Central Government or another State Government or under a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Central Government or by another State Government.

(2) A cadre officer may also be deputed for service under:-

(i) a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by a State Government, a Municipal Corporation or a Local Body, by the State Government on whose cadre he is borne, and

(ii)

Provided that

Provided further that no cadre officer shall be deputed under sub-rule (i) or sub rule (2) to a post carrying a prescribed pay which is less than or a pay scale, the maximum of which is less than, the basic pay he would have drawn in the cadre post but for his deputation."

We are unable to read in any of these rules any prohibition or bar to the payment of deputation allowance to an officer of the IPS Cadre on deputation to any of the authorities mentioned in rule 2(i) above. In the instant case the appellant was sent on deputation to the Board which is a body wholly or substantially owned by the State Government. The mere absence of the provision for payment of deputation allowance cannot be interpreted to mean an absolute bar to the receipt of such deputation allowance by an IPS Cadre officer, if other Rules permit such a course of action. Similarly, Rule 9 of the IPS (Pay) Rules, 1954 contains various clauses which merely protect the Pay and salaries admissible to an IPS officer when sent on deputation. There is no reference to any allowance or other emoluments in the Rule, excepting pay which is clearly set out in Schedule III to those Rules. We have gone through Sub-Rules (1) to (6) of Rule 9 and are unable to find any limitation contained in these rules which could prevent the appellant from getting deputation allowance. Reliance was, however, placed on the proviso to sub-rule (6) which may be extracted thus:

"Provided that the pay allowed to an officer under this sub-rule and sub-rule (5) shall not at any time be less than what he would have drawn had he not been appointed to a post referred to in sub-rule (4)."

The dominant object of the proviso is merely to protect the the pay and salary which an IPS officer was getting when he was sent on deputation, so that his being sent on deputation may not cause any prejudice to his career or emoluments. There being no Rules on the subject, it is manifest that in such cases the Residuary Rules would apply. We might mention that the Residuary Rules were made in 1960, about six years after the issuance of IPS (Cadre) Rules and IPS (Pay) Rules. It seems to us that the Central Government realised that, when other officers of the State Government on deputation were entitled to deputation allowance, there was no reason why this privilege should be denied to officers of the cadre of IPS. Perhaps it was with this essential object in view that Rule 2(b) of the Residuary Rules was enacted so as to enable IPS officers to get deputation allowance on the same terms as officers of State Civil Service Class I were getting. This provision would naturally hold the field in the absence of any express Rules made by the Central Government, which have so far not

been made.

Counsel appearing for the Board submitted before us that the letter of the Governor dated August 14, 1970 laying down the terms of deputation of the appellant does not contain any mention of deputation allowance to be given to the appellant and should therefore be read as a modification made by the Central Government, as contemplated by clause

(b) of rule 2 of the Residuary Rules. We are, however, unable to agree with this contention. In the first place, Rule 2 (b) of the Residuary Rules makes an exception only if the Central Government makes an order and that too after consultation with the State Government concerned modifying the Rule. There is no evidence in this case to show that any order was passed by the Central Government after consulting the State Government to modify or take away the effect of rule 2(b) of the Residuary Rules. The order of the Governor of Haryana cannot by any stretch of imagination be construed as an order passed by the Central Government. For these reasons the contentions raised by the respondents must be overruled. For the reasons given above we hold that the appellant is legally entitled under the Statutory Rules as indicated above to get deputation allowance. The Board was therefore in law bound to pay the said deputation allowance to the appellant. The result is that the appeal is allowed and order of the High Court dismissing the writ petition in limine is quashed. A Writ of mandamus is issued to the Board to pay the deputation allowance to the appellant, to be calculated in terms of para (i) (c) (ii) of the order of the Punjab Government referred to in this judgment. The payment would be made for the period the appellant was on depu-

tation to the Board. The entire amount shall be paid within three months.

The appellant would be entitled to his costs, quantified at Rs. 2,000/- which also should be paid to the appellant within three months.

P.B.R.

Appeal allowed.