

A MS SARITA SINGH

v.

M/S SHREE INFOSOFT PRIVATE LIMITED

(Civil Appeal No 346 of 2022)

B JANUARY 12, 2022

**[DR. DHANANJAYA Y CHANDRACHUD AND
A. S. BOPANNA, JJ.]**

- Service Law – Deputation – Appellant, a software developer, was employee of the company based in Gurgaon – Terms of employment included that in case of any aberration appellant was liable to repay the amount spent by company on her deputation – Appellant was sent to U.S. for a meeting – Upon her return, appellant faced several issues with management and she resigned – Legal notice was issued to appellant to repay amount spent by the respondent on her overseas deputation and salary for the notice period – Respondent instituted suit for recovery – Trial Court decreed the suit partially – First appellate Court affirmed the judgment and second appeal dismissed by High Court – On appeal, held: Central question was of the interpretation of the word ‘deputation’ – No material evidence on record to indicate that appellant was sent on deputation – Deputation involves a tripartite consensual agreement between the lending employer, borrowing employer and the employee – Specific rights and obligations would bind the parties and govern their conduct – A transient business visit without any written agreement detailing terms of deputation will not qualify as a deputation, this aspect has completely been ignored by all the three courts below – Impugned judgment of High Court set aside – As a consequence, the suit for recovery instituted by the respondent shall stand dismissed – Appellant was subjected to needless harassment and drawn into a vortex of litigation – She had concerns about conditions at the workplace – When she complained and resigned, she met with a reprisal of being embroiled in a suit for recovery – Courts must send a strong message that such things shall not come to pass and will not be tolerated by the legal system – Hence, appellant entitled to costs of the litigation quantified in the amount of Rs 1 lakh.*

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 346 of A
2022.

From the Judgment and Order dated 01.08.2018 of the High Court of Punjab and Haryana at Chandigarh in RSA No. 3369 of 2018.

Sunil K Mukhi, T.S. Narwal, Dushyant Tiwari, Anish R. Shah, B
Advs. for the Appellant.

Vineet Bhagat, K.G. Bhagat, Ms. Manju Bhagat, Ms. Archna Midha, Mohit Gulati, Advs. for the Respondent.

The following Order of the Court was passed:

ORDER

1. Leave granted.
2. This appeal arises from a judgment and order dated 1 August 2018 of a Single Judge of the High Court of Punjab & Haryana in RSA No 3369 of 2018 (O&M). D

3. The appellant is a software developer who joined the services of the respondent on 15 November 2012. The respondent is a company based in Gurgaon and engages in the business of software development. As a software developer, the appellant was employed on an annual package of Rs 13,50,400. The terms of employment were contained in a letter of offer dated 15 November 2012. The conditions of employment included the following stipulation: E

“II (5) You are liable to be posted at any of the various divisions of SHREE INFOSOFT PRIVATE LIMITED (the Company)/ branches/ subsidiaries/affiliates/associates/sister-concerns either domestic or overseas, wherever it may be situated. You will abide by the company’s rule and regulations as may be in effect from time to time with respect to your function, grade or location where you work in. Please note that, in lieu of clause 3 & 4 of Section II of the ‘Other Terms and Conditions’ of Annexure B, you are required to abide by the following in case of overseas deputation: F G

While on and or return to India from overseas deputation, it is essential that you serve SHREE INFOSOFT PRIVATE LIMITED for a period as stated under, as applicable:

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A	Deputation Period	Required months of service on and or return from overseas deputation as applicable
	0 days to 30 days	3 months from the date of deputation/return
	31 days to 90 days	6 months from the date of deputation/return
B	More than 90 days	12 months from the date of deputation/return

In the event of any aberration in serving Company as mentioned above, you are liable to repay the amount spent by Company on your deputation covering the cost of travel, insurance premium, per diem,

C visa fee and other associated expenses.”

4. The appellant was initially sent for a meeting to the US on 22 August 2013 for a period of one week. The appellant was provided with a ticket to facilitate her travel. Other expenses incidental to the visit were borne by the employer. The duration of the visit was subsequently

D extended till 20 September 2013. The appellant returned to India and reported for work on 21 September 2013. On her return, the appellant was appointed as a Senior Project Manager on 27 September 2013 with a revised compensation package of Rs 16 lakhs per annum.

5. Upon her return from the US, the appellant worked with the E respondent from 21 September 2013 until 12 December 2013, for a period of eighty-two days. Following a change in management, the appellant faced several issues in regard to the treatment which was being meted out to her. By a letter dated 12 December 2013, the appellant resigned from service. On 14 December 2013, the appellant was informed that her resignation was accepted and that the Human Resources department

F would facilitate the exit process. On 18 December 2013, the appellant addressed an email putting up her grievances and to inquire whether further formalities would have to be completed. The appellant was informed on 18 December 2013 by an email that her request for being immediately relieved had been accepted by the Management.

G 6. On 22 May 2014, an advocate’s notice was issued to the appellant calling upon the appellant to pay an amount of Rs 5,70,753 together with interest at the rate of 24% per annum from 12 December 2013, which included the amount which was spent by the respondent on her “overseas deputation and salary for the notice period”. The appellant responded by an advocate’s reply on 3 June 2014.

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7. The respondent instituted a suit in the court of the Civil Judge (Senior Division), Gurgaon for the recovery of a sum of Rs 5,70,753 together with interest at the rate of 24% per annum. The appellant contested the suit by filing a written statement denying liability. On 9 August 2016, the Civil Judge (Junior Division), Gurgaon decreed the suit partially in the amount of Rs 3,14,59 lakhs together with interest at the rate of 9% per annum from the date the amount became due. This amount represented the expenses undertaken by the respondent towards the travel and stay of the appellant to the US. The judgment of the trial Judge was affirmed in appeal on 29 November 2017 by the Additional District Judge, Gurugram. The second appeal before the High Court has been dismissed by the impugned judgment and order.

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8. We have heard Mr Sunil K Mukhi, counsel appearing on behalf of the appellant and Mr Vineet Bhagat, counsel for the respondent.

9. The controversy in the present case turns upon the construction of clause II(5) in the offer of appointment which formed the basis of the contract of employment. The conditions of employment stipulate that:

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- (i) The appellant was liable to be posted at “any of the various divisions” of the respondent, namely, the company, its branches, subsidiaries, affiliates, associates, sister concerns;
- (ii) The posting may be either at a domestic location or overseas;
- (iii) The appellant would have to abide by the rules and regulations of the respondent with respect to her function, grade or location where she works;
- (iv) In the event of an “overseas deputation”, the appellant would upon return to India have to serve for a period of three months where the deputation was up to thirty days (with graded increases in the service required on return corresponding to the period of deputation); and
- (v) In the event of a shortfall, the appellant would have to pay for the amounts spent by the company on the deputation, covering the cost of travel, insurance premium, per diem, visa fees and other associated expenses.

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- A 10. Clause II(5) indicates that the appellant was liable to be posted at any of the branches, subsidiaries, affiliates, associates or sister concerns of the respondent either in India or abroad. Sub-cluse 5 indicates that in the event of an overseas deputation, she would have to serve for a minimum period. For a deputation up to 30 days, the minimum service was three months; for 31 days to 90 days, six months; and for a period of more than 90 days, 12 months from the date of deputation/return. In the present case there was no letter under which the appellant was posted overseas or indicating that she was sent on deputation.
- C 11. The respondent as a claimant and plaintiff had to discharge the initial burden of establishing that the appellant was sent on deputation overseas. Significantly, while the terms and conditions of employment have been reduced to writing, there is no valid evidence on the basis of which it can be deduced that the appellant was sent on deputation overseas. On the contrary, it is the contention of the appellant that she was sent overseas for a business meeting. It is true that the appellant was represented in the proceedings in the suit by her spouse as the holder of a power of attorney. That however did not obviate the legal requirement that the burden must be discharged by the plaintiff of establishing its own case. There is no material evidence on the record to indicate that the appellant was sent on deputation. Deputation has a definite connotation in law. A two-judge Bench of this Court in **State of Punjab v. Inder Singh**¹ has clarified the concept of deputation and stressed on the particular rights and liabilities that are associated with a deputation, which occurs only with the consent of the employee. Justice D P Wadhwa, speaking for the Court, held:
- F “18. The concept of “deputation” is well understood in service law and has a recognised meaning. “Deputation” has a different connotation in service law and the dictionary meaning of the word “deputation” is of no help. In simple words “deputation” means service outside the cadre or outside the parent department. **Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department**

H ¹(1997) 8 SCC 372

to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. **There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post.** The law on deputation and repatriation is quite settled as we have also seen in various judgments which we have referred to above...”

(emphasis supplied) C

A deputation would also involve a third party - the borrowing employer who discharges specific rights and obligations towards the employee and the lending employer. A three-judge Bench of this Court in **Umapati Choudhary v. State of Bihar**² clarified the tripartite nature of a deputation in the following terms:

“8. Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not. In the case at hand all the three conditions were fulfilled...”

Further, a two-judge Bench of this Court in **Union of India v. S N Maity**³ interpreted the terms of deputation strictly and disavowed acts of caprice on part of the employer. Justice Dipak Misra (as the learned Chief Justice then was) noted:

²(1999) 4 SCC 659

³(2015) 4 SCC 164

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- A 15. The controversy that has emerged in the instant case is to be decided on the touchstone of the aforesaid principles of law. We have already opined that it is not a case of simple transfer. It is not a situation where one can say that it is a transfer on deputation as against an equivalent post from one cadre to another or one department to another. It is not a deputation from a government department to a government corporation or one Government to the other. There is no cavil over the fact that the post falls in a different category and the first respondent had gone through the whole gamut of selection. **On a studied scrutiny, the notification of appointment makes it absolutely clear that it is a tenure posting and the fixed tenure is five years unless it is curtailed. But... this curtailment cannot be done in an arbitrary or capricious manner. There has to have some rationale. Merely because the words "until further orders" are used, it would not confer allowance on the employer to act with caprice."**

(emphasis supplied)

- Thus, a deputation involves a tripartite consensual agreement between the lending employer, borrowing employer and the employee. Specific rights and obligations would bind the parties and govern their conduct. A transient business visit without any written agreement detailing terms of deputation will not qualify as a deputation unless the respondent were to lead cogent evidence to indicate that the appellant was seconded to work overseas on deputation. This aspect of the case has completely been ignored by all the three courts below. The claim was not substantiated having regard to the plain terms of the contract.

- E 12. For the above reasons, we allow the appeal and set aside the impugned judgment of the High Court dated 1 August 2018 in RSA No 3369 of 2018 (O&M). As a consequence, the suit for recovery which has been instituted by the respondent shall stand dismissed.

- G 13. The appellant has been subjected to needless harassment and drawn into a vortex of litigation. She had concerns about the conditions at the workplace. When she complained and resigned, she has been met with a reprisal of being embroiled in a suit for recovery. Courts must send a strong message that such things shall not come to pass and will

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not be tolerated by the legal system. Hence, the appellant shall be entitled to the costs of the litigation quantified in the amount of Rs 1 lakh which shall be deposited in the Registry of this court within a period of one month from the date of this order. The Registry shall disburse the amount to the appellant. A

14. Pending applications, if any, stand disposed of. B

Bibhuti Bhushan Bose
(Assisted by : Shubhanshu Das, LCRA)

Appeal allowed.