



**Counsel for the Petitioner:**

Pawan Kumar Pandey, Ajay Kumar

(Delivered by Hon'ble Rajesh Singh Chauhan, J.)

**Counsel for the Respondent:**

C.S.C., Ran Vijay Singh, Sarvesh Kumar Dubey

**Service Law – Deputation – Repatriation –**

District Coordinators under Samagra Shiksha Abhiyan – Deputation from Basic Education Department – Nature of appointment explained – Government Order dated 26.05.2003 providing maximum deputation period of three years, extendable to five years – After expiry, repatriation mandatory – Deputationists have no indefeasible right to continue in borrowing department – Appointment not cancelled, only repatriation to parent cadre – No violation of natural justice – Fundamental duty under Article 21-A (Right to Education) requires teachers to return to teaching duties – Repatriation order upheld.

Held: Deputation is temporary by nature; no vested right accrues to continue in the borrowing department. Petitioners, Assistant Teachers appointed as District Coordinators on deputation, had completed more than 4–5 years. In view of G.O. dated 26.05.2003, their repatriation to parent department is valid, justified, and not violative of natural justice. Distinction between “appointment on deputation” and “transfer on deputation” discussed. Petitioners cannot claim continuance as of right. Writ Petitions dismissed; interim orders vacated.

**List of Cases cited:**

1. Ashok Kumar Ratilal Patel Vs U.O.I.(2012) 7 SCC 757
2. Kunal Nanda Vs U.O.I.(2000) 5 SCC 362
3. Mahesh Chandra Gautam Vs St. of U.P. 2005 SCC OnLine All 563
4. Dinesh Kumar Singh Vs St. of U.P. 2024 SCC OnLine All 2326
5. D.K. Yadav Vs J.M.A. Industries Ltd. (1993) 3 SCC 259

1. These are the bunch of writ petitions, wherein Sri Sharad Pathak and Sri Pawan Kumar Pandey have argued on behalf of the petitioners, Sri Pradeep Kumar Singh, learned Additional Chief Standing Counsel has appeared on behalf of the State-opposite parties and Sri Sanjay Basin, learned Senior Advocate assisted by Sri Sarvesh Dubey and Shobhit Mohan Shukla for opposite party No.2.

2. In the aforesaid bunch of writ petitions the grievance of all the petitioners is one and the same, therefore, with the consent of learned counsel for the parties all the writ petitions have been connected and are being decided by a common judgment. However, the leading writ petition would be Writ-A No.6157 of 2024 (Shashank Sachan vs. State of U.P. and others), so the facts of the case have been taken from the aforesaid leading writ petition.

3. The petitioners of the aforesaid writ petitions have challenged the impugned repatriation order whereby they have been repatriated to their parent department and they have also challenged the consequential relieving orders. Notably, on the first date of admission, the interim order has been granted by this Court.

4. The question involved in this bunch of writ petitions is that as to whether the deputationists have got any indefeasible right to be retained in their borrowing department when they are fully aware that their appointment to the borrowing department has been done on deputation basis; they are being paid their salary etc. from their parent department and they are

maintaining their lien in their parent department. Another question in the bunch of writ petitions is that as to whether the deputationists can be retained in their parent department permanently.

5. The brief facts and circumstances of the present case is that the petitioners have been appointed on the post of Assistant Teachers in the Basic Education Department since 2007 onwards, as the case may be. After their appointment, the petitioners have started discharging their respective duties on the post of Assistant Teacher at various schools governed and controlled by the Basic Education Department. On 21.12.2019, an advertisement was published on official website for making selection and appointment of District Coordinators. Thereafter, a letter was issued by the State Project Director, Lucknow, U.P. on 30.12.2019 to all the District Basic Education Officers with respect to appointment of District Coordinators by way of selection amongst the Assistant Teachers working in the school run by U.P. Basic Shiksha Parishad.

6. On 23.01.2020, the State Project Director wrote a letter to all the District Basic Education Officers of the State of U.P. prescribing the eligibility criteria for Online examination for the post of District Coordinator fixing the date of examination for 27.01.2020 granting duty leave for 27.01.2020 to the Assistant Teachers who would be participating in such examination. In the aforesaid letter, it has been categorically indicated that these appointments would be made on deputation basis. Therefore, it is clear that before the date of examination all the participants have been made aware that if they are selected and appointed as District

Coordinators their appointment would be on deputation basis.

7. It has been informed by learned counsel for the parties that pursuant to the aforesaid selection process more than 5000 candidates participated in Online examination and the petitioners of the present bunch of writ petitions have been declared successful. The State Project Director issued a letter dated 19.03.2020 to the selected candidates for joining on the post of District Coordinator at their respective districts. In the aforesaid letter dated 19.03.2020, it has been categorically indicated that the aforesaid appointment would be purely on deputation basis; the appointees would be getting their salary etc. from their parent department and their lien shall be maintained with their parent department. Therefore, it is clear that before submitting their joining on the post of District Coordinator the selectees/appointees were made aware about the nature of appointment and after knowing the aforesaid information the petitioners submitted their joining on the post of District Coordinator at various districts.

8. Learned counsel for the petitioners has submitted that in the letter of appointment the period of deputation has not been indicated. Further, till date no fresh recruitment has been made on the post of District Coordinator though the decision has now been taken to fill-up the post of District Coordinators in various districts through outsourcing. The impugned order dated 01.07.2024 has been issued by the State Project Director repatriating the petitioners to their parent department in the light of the Government Order bearing No.1/1/95[1]-Ka-4-2003 dated 26.05.2003 indicating therein that since the period of deputation of the

petitioners have been completed for more than 04 years, therefore, they are repatriated to their parent department. In compliance of the impugned order dated 01.07.2024, the relieving order dated 02.07.2024 has been issued by the District Basic Education Officer. Notably, both the aforesaid impugned orders have been stayed by this Court vide order dated 08.08.2024 and the interim order is still existing.

9. Learned counsel for the petitioners has submitted that the Government Order dated 26.05.2003 is related to the State government employees whereas the present petitioners are discharging their duties under one project in the name of Samagra Shiksha Abhiyan. Therefore, the aforesaid Government Order would not be applicable on the petitioners.

10. Learned counsel for the petitioners has further submitted that all the District Coordinators have not been repatriated to their parent department but by adopting the pick and choose policy without having any cogent reason to that effect only the petitioners have been repatriated to their parent department.

11. Learned counsel for the petitioners has placed reliance upon the dictum of Apex Court rendered in the case of *Ashok Kumar Ratilal Patel vs. Union of India and another reported in (2012) 7 SCC 757* to submit that the petitioners have been appointed on deputation by way of selection, so their appointment can be interfered with only on the ground of unsuitability or unsatisfactory work. However, in the impugned order nothing has been indicated regarding unsuitability or unsatisfactory work of the petitioners but they have been repatriated pursuant to the Government Order dated 26.05.2003.

12. Learned counsel for the petitioners has stated that the Apex Court in the case of *Ashok Kumar Ratilal Patel* (supra) has held vide para-14 that there is difference between 'Appointment on Deputation' and 'Transfer on Deputation' and who have been transferred on deputation have got no right to be retained in the borrowing department but who have been appointed on deputation, their appointment may not be cancelled except on the ground of non-suitability or unsatisfactory work.

13. On being put a pin point query as to whether the appointment of the petitioners has been cancelled or they have been repatriated to their parent department, learned counsel for the petitioners has stated that the petitioners have been repatriated to their parent department. So learned counsel for the petitioners have again been confronted as to how the direction of Apex Court issued in the case of *Ashok Kumar Ratilal Patel* (supra) would be applicable in the present case inasmuch as the appointment of selectees on deputation was cancelled in the case of *Ashok Kumar Ratilal Patel* (supra), whereas the appointment of the petitioners has not been cancelled, rather they have been repatriated to their parent department, learned counsel for the petitioners could not explain the aforesaid query properly. On being further confronted on the point as to whether repatriating the petitioners to their parent department would be treated as cancellation of their appointment when they were made aware about the fact that their appointment as District Coordinator would be on deputation basis; they would be getting their salary etc. from their parent department and their lien would be maintained their parent department, learned counsel for the petitioners could not explain the aforesaid query properly.

14. Per contra, Sri Sanjay Bhasin, learned Senior Advocate assisted by Sri Sarvesh Dubey and Sri Shobhit Mohan Shukla as well as learned counsels for the respective District Basic Education Officers have submitted that the petitioners being deputationists have got no indefeasible right to be retained at their borrowing department permanently when they are getting their salary etc. from their parent department and their lien is maintained at their permanent department. They have further submitted that there must be an end of deputation appointment and even if no specific period is prescribed in their appointment letter even then they can be repatriated to their parent department by the Competent Authority of the borrowing department or the parent department. The Government Order dated 26.05.2003 would be applicable on the present petitioners as it is related to all the government employees including the petitioners, who are Assistant Teachers in the Basic Education Department. As per the Government Order dated 26.05.2003, the deputationists can be retained at the borrowing department to the maximum period of three years and after completion of three years period, he may be repatriated to their parent department. This Government Order further provides that in any circumstances after completing the period of five years the deputationists shall be repatriated to their parent department and the direction of this Government Order would be abided by strictly. Most of the petitioners have submitted their joining on deputation post i.e. the District Coordinator in the month of March, 2020, therefore, as on today, they have completed more than five years of service as District Coordinator. Some of the petitioners may be completing the five years period, but undisputedly all the petitioners have completed more than three years of service on deputation post.

15. Therefore, learned counsels for the opposite parties have submitted with vehemence that the prayer in the writ petitions seeking direction to the effect that the petitioners be allowed to work on the post of District Coordinator and they be not relieved from that post pursuant to the impugned orders dated 01.07.2024 and 02.07.2024 (Annexure Nos.1 and 2) quashing the aforesaid orders, is misconceived. They have further submitted that the law on deputation is very clear to the effect that the deputationists have got no indefeasible right to be retained at borrowing department permanently and the judgment of the Apex Court rendered in re: *Ashok Kumar Ratilal Patel* (supra) would not be applicable in the present case. In support of the aforesaid submission, learned counsels for the opposite parties have placed reliance on the dictum of Apex Court rendered in re: *Kunal Nanda vs. Union of India and another reported in (2000) 5 SCC 362*, the dictum of this Court rendered in re: *Mahesh Chandra Gautam vs. State of U.P. & others reported in 2005 SCC OnLine All 563* and the dictum of Apex Court rendered in re: *Dinesh Kumar Singh vs. State of U.P. & others reported in 2024 SCC OnLine All 2326*.

16. Disputing the aforesaid contentions of learned counsel for the opposite parties, learned counsels for the opposite parties have also cited the judgment of Apex Court rendered in re: *D.K. Yadav vs. J.M.A. Industries Ltd.* reported in *(1993) 3 SCC 259* referring para-9 wherein the Apex Court has held that no decision must be taken which will affect the right of any person without first being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice.

17. Learned counsels for the opposite parties have stated that the aforesaid judgment of Apex Court in re: **D.K. Yadav** (supra) would not be applicable in the present case inasmuch as the petitioners were fully aware about their nature of appointment as submitted above. Therefore, the plea of natural justice may not be taken in the present case. They have also stated that even the judgment in re: **Ashok Kumar Ratilal Patel** (supra) is not supporting the facts of the present case, rather this case too is supporting the contentions of the opposite parties. Therefore, learned counsels for the opposite parties have submitted that the present writ petition and its bunch of writ petitions may be dismissed with cost.

18. Having heard learned counsel for the parties and having perused the material available on record, I am also of the considered opinion that the deputationists have got no indefeasible right to be retained at the borrowing department as their lien is maintained in their parent department. In the present case, what is to say about maintaining the lien at the parent department, the petitioners are paid salary from their parent department and their lien has been maintained in their parent department.

19. Since the Government Order dated 26.05.2003 has been issued by the Chief Secretary, Government of U.P. addressing to all the Principal Secretaries/ Secretaries of all concerns of the State of U.P. indicating therein that the deputationists may be permitted to be continued at the borrowing department upto three years, thereafter, they may be repatriated and after completion of a period of five years as deputationists, they shall be repatriated in all the circumstances. So the

impugned order is purely justifiable in view of the settled proportion of law as well as the same is in-conformity with the Government Order dated 26.05.2003, which is very much applicable in the present case as the petitioners are originally the Assistant Teachers serving in the Basic Education Department.

20. It would not be out of place to mention here that pursuant to the Constitution (Eighty-sixth Amendment) Act, 2002 dated 01.04.2010 Right to Education (Article 21-A) has been inserted under Chapter-III of the Constitution of India which defines Fundamental Rights. Article 21-A of the Constitution of India reads as under:-

**“Article 21-A. Right to Education.** *The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”*

21. So the free and compulsory education under Article 21-A would be provided by the Basic Education Department to the children, under the aforesaid Article having age from 6 years to 14 years. The petitioners have initially been appointed as Assistant Teachers in the Basic Education Department so their primary duty is to impart education to the children having age between 6 to 14 years. The repatriation of the petitioners to their parent department appears to be purposeful inasmuch as if the petitioners are repatriated to their parent department i.e. the Basic Education Department, they would impart teaching to the students having age of 6 to 14 years. The petitioners may not claim that instead of imparting teaching to those children, they would discharge the duty of Coordinator which

has nothing to do with imparting education to the children within the age of 6 to 14 years. No employee can deny their basic duty and responsibility, for that, he/ she has been initially appointed. More so, when the children studying in Primary Schools are having their fundamental right i.e. Right to Education so the demand of the petitioners to be retained at the borrowing department and not be repatriated to their parent department i.e the Basic Education Department, is violative of Article 21-A of the Constitution of India.

22. The law is trite on the point that if any act or inaction or omission to any person/ employee is violative of fundamental right, the same would be declared *void abnatio* and nullity in the eyes of law, so the grievance of the petitioners appears to be misconceived and violative of Article 21-A of the Constitution of India.

23. Now, I would like to deal with the case laws so cited by learned counsel for the parties. Paras-8, 12, 13, 14, 17 & 18 of the case in Re: **Ashok Kumar Ratilal Patel** (supra) read as under:-

“8.North Gujarat University in turn by letter dated 5th March, 2010 informed the 2nd respondent the approval of deputation given by the Executive Council of the North Gujarat University with further information that the appellant will be relieved on 17th March, 2010. The 2nd respondent was further informed that the present basic pay of the appellant is Rs.19,100 in the pay scale of Rs.16,400-450-20,900-500-22,400 and very shortly the same will be revised as per the 6th Pay Commission and will be fixed in Revised Pay Band+Academic Grade Pay of Rs.37,400 – 67,000+Rs.10,000. The 2nd respondent on receipt of the said letter

*issued the impugned letter dated 11th March, 2010 and withdrew the offer of appointment of the appellant on the ground that deputation from higher post to lower post is not admissible under rules.”*

12. On the other hand, according to the respondents, they having realised that the pay of the parent department of the appellant could not be paid as he was getting higher pay as Director in the North Gujarat University, the offer of deputation was withdrawn. It was further contended that a person getting higher scale of pay cannot be deputed against a lower scale of pay and the appellant has no right to claim his entitlement to the post of Director, AICTE.

13. Ordinarily transfers on deputations are made as against equivalent post from one cadre to another, one department to another, one organisation to another, or one Government to another; in such case a deputationist has no legal right in the post. Such deputationist has no right to be absorbed in the post to which he is deputed. In such case, deputation does not result into recruitment, as no recruitment in its true import and significance takes place as the person continues to be a member of the parent service.

14. However, the aforesaid principle cannot be made applicable in the matter of appointment(recruitment) on deputation. In such case, for appointment on deputation in the services of the State or organisation or State within the meaning of Article 12 of the Constitution of India, the provisions of Article 14 and Article 16 are to be followed. No person can be discriminated nor it is open to the appointing authority to act arbitrarily or to pass any order in violation of Article 14 of the Constitution of India. A person, who applies for appointment on deputation has indefeasible right to be treated fairly and

*equally and once such person is selected and offered with the letter of appointment on deputation, the same cannot be cancelled except on the ground of non-suitability or unsatisfactory work.*

17. Going by the principles as referred to above, we are constrained to state that the High Court failed to appreciate the difference between “transfer on deputation” and “appointment on deputation” and erred in holding that the appellant has no right to claim entitlement to the post of Director. As the appellant was selected after due selection and was offered appointment on deputation, and, in absence of any valid ground shown by the respondents, we hold that the appellant has a right to join the post and the respondents were bound to accept his joining.

18. For the reasons aforesaid, the impugned order of withdrawal of appointment dated 11th March, 2010 and the order of the Division Bench of Gujarat High Court cannot be sustained and they are accordingly set aside. As the post of Director is vacant, in view of the interim order of this Court dated 9th May, 2011, we direct the 2nd respondent to accept the joining of the appellant for a period of one year on deputation which is to be counted from the date of his joining and other terms and conditions of deputation will remain same. The North Gujarat University is directed to relieve the appellant with further direction to 2nd respondent to accept the joining of the appellant within one week from the date of reporting by the appellant.”

*(emphasis supplied)*

24. Para-6 of the case in re: **Kunal Nanda** (supra) reads as under:-

*“On the legal submissions also made there are no merits whatsoever. It is*

*well settled that unless the claim of the deputationist for 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 vs. M.D., U.P. Rajkiya Nirman Nigam Ltd. And others [1999 (8) SCC 381] is inappropriate since, the consideration therein was in the light of 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 need 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 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.”*

*(emphasis supplied)*

25. Paras-6 and 8 of the case in re: **Mahesh Chandra Gautam** (supra) read as under:-

“6. In my view, the contentions raised by the learned Counsels for the petitioners cannot be accepted. It is the prerogative of the employer to call back its employees sent on deputation. The employee, who has been sent on deputation and, in the present case, namely, petitioners have no right or lien on the deputation post. Even if period has been cut short, the petitioners have no right or claim on that post and they cannot stand before this Court and submit that they are entitled to continue on that post till the original period of deputation. In *Hari Om Tripathi vs. Nideshak, Rajya Nagar Vikas Adhikaran*, this Court held that the employee, who was sent on deputation could be reverted back to the parent department prior to the expiry of the stipulated period, since the employee cannot claim any right on the deputation post.

8. In the *Kunal Nanda vs. Union of India*, the Supreme Court held that a deputationist can always and at any time be repatriated to his parent department either at the instance of the borrowing Department or on the instance of the lending department. The Supreme Court further held that incumbent who had which has ben posted had no vested right to continue on deputation or get absorbed in borrowing department. The Supreme Court held-

‘On the legal submissions made also there are no merits whatsoever. It is well settled that unless the claim of the deputationist for 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’.”

(emphasis supplied)

26. This Court in the case in re: **Dinesh Kumar Singh** (supra) has followed the aforesaid settled proposition of law.

27. Notably, para-9 in re: **D.K. Yadav** (supra), which has been discussed above, would not be applicable in the present case. So far as the fact and circumstances of the case in re: **Ashok Kumar Ratilal Patel** (supra) is concerned, notably the deputationist was selected on the post on deputation to the lower post from higher post, therefore such appointment was withdrawn/ cancelled by the Competent Authority but the Apex Court has held that a person who applies for appointment on deputation has an indefeasible right to be treated fairly and equally and once such person is selected and offered with the letter of appointment on deputation, the same cannot be cancelled except on the ground of non-suitability or unsatisfactory work. The facts and circumstances of the present case are altogether different inasmuch as the petitioners have not been selected on the post of District Coordinator on deputation having lower pay-scale and emoluments than they were having prior to their appointment, rather they all are getting some more incentive and their salary etc. is being paid by their parent department and their selection has not been cancelled, rather they have been repatriated to their parent department. Therefore, the direction

of Apex Court giving in para-13 of the aforesaid judgment would be applicable whereby the general principles in respect of law of deputation has been defined. Hence, the present petitioners cannot get any benefit from the judgment of *Ashok Kumar Ratilal Patel* (supra) in the present case.

28. Hence, to sum up, the deputationists have got no indefeasible right to be retained in their borrowing department and they should be repatriated to their parent department where they have been maintaining their lien. The deputation appointment may not be of permanent nature so the deputationists should either be repatriated to their parent department as per terms and conditions of such appointment or in terms of the guidelines so prescribed under the Government Order or any circular etc. dealing such issue or even prior to the period so prescribed in their appointment order if the Competent Authority of the parent department or borrowing department is willing to do so following the due procedure of law.

29. In the light of what have been considered here-in-above including the case laws, I do not find any illegality or infirmity in the impugned order of repatriation dated 01.07.2024 and the relieving order dated 02.07.2024 as well as other similar orders under challenged in the bunch of writ petitions, so this bunch of writ petitions are *dismissed* being misconceived. The interim orders granted in the bunch of writ petitions are hereby vacated. The petitioners of this bunch of writ petitions are directed to submit their joining at their parent department pursuant to their repatriation orders.

30. Consequently, all the writ petitions of this bunch are *dismissed*.

31. No order as to cost.

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**(2025) 5 ILRA 495**

**ORIGINAL JURISDICTION**

**CIVIL SIDE**

**DATED: ALLAHABAD 20.05.2025**

**BEFORE**

**THE HON'BLE AJIT KUMAR, J.**

Writ A No. 6705 of 2025

**Santosh Kumar Pal** ...Petitioner  
**Versus**  
**Union of India & Ors.** ...Respondents

**Counsel for the Petitioner:**

Malik Juned Ahmad

**Counsel for the Respondents:**

A.S.G.I., Saumitra Singh

**Transfer – Retention Policy – Seizure**

**Disorder – Non-speaking order – Legality.**

Petitioner, a CRPF Constable, challenged modified transfer order despite being under treatment for seizure disorder at Prayagraj. Retention Policy (DG CRPF Circular 27.09.2022, Clause 7) allows exceptions on genuine medical grounds. Authorities, while altering station from Manipur to Visakhapatnam, failed to consider medical documents or reasons, passing a non-speaking order. Court held that transfer being an incidence of service is ordinarily within employer's domain, yet once a retention policy exists, authorities are bound to apply their mind to medical claims under it. Diseases mentioned in the policy are illustrative, not exhaustive. "Seizure disorder" is at par or more severe than listed ailments. Non-application of mind vitiates transfer order. Matter remitted to authority to reconsider petitioner's medical case; meanwhile, impugned transfer order dated 07.05.2025 quashed.

**List of Cases cited:**

1. U.O.I. Vs S.L. Abbas, (1993) 4 SCC 357