

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved On : 19th August, 2010
Judgment Delivered On: 30th September, 2010

+ **W.P.(C) NO.7845/2004**

MR.K.K.SHARMA Petitioner
Through: Mr.G.D.Gupta, Sr.Advocate with
Mr.Vivya Nagpal, Advocate

versus

GOVT. OF NCT OF DELHI AND ORS. Respondents
Through: Ms.Sujata Kashyap, Advocate with
Mr.S.K.Gupta, DEO

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. The petitioner was appointed as a Trained Graduate Teacher (Science-Biology) by the Directorate of Education, Government of NCT of Delhi. In response to an advertisement dated 15.1.1987, petitioner applied to U.P.Secondary Education Service Commission, Allahabad for being selected to the post of Principal in Inter-Colleges in U.P. He forwarded his application to U.P.Secondary Education Service Commission, Allahabad, through the Deputy Director of Education, Government of N.C.T. Delhi. Vide letter dated 18.4.1991, the petitioner was informed of his being selected to the post of Principal for D.A.V. Inter College, Budhana, Muzaffar Nagar, U.P.

2. It was indicated to the petitioner that he would be on probation for a period of one year.

3. Since petitioner would have been on probation for a period of one year as the Principal of DAV Inter College, he requested the Director of Education to retain his lien on the post of Trained Graduate Teacher (Science-Biology) while relieving him. His request was acceded to and while relieving the petitioner with effect from 31.7.1991, as per letter dated 24.7.1991 it was indicated to him as under:-

“Period: The period of lien will be two years subject to the condition that either he would report back after the completion of two years or get himself absorbed in the D.A.V. Inter College, Budhana, Muzaffar Nagar (U.P.) during the period of two years, failing which he would submit his resignation from the post of TGT (Sc.B) in the Delhi Administration, Delhi.”

4. Relevant would it be to note that while relieving the petitioner it was clearly indicated to him that his lien was being retained for a period of two years on completion of which he should either get himself absorbed at DAV Inter College or he would have to report back.

5. The petitioner was not confirmed after one year as the Principal of DAV Inter College, Budhana and a recommendation was made to the District Inspector of Schools for probation to be extended by another one year which recommendation was rejected and this compelled the Management of DAV Inter College to challenge the order rejecting the recommendation by filing a writ petition before the Allahabad High Court being CW No.5769/1993.

6. It is apparent that the issue of petitioner's confirmation as Principal of DAV Inter College became subjudice before the Allahabad High Court.

7. The petitioner gave afore-said information to the Directorate of Education informing that his status was in a state of flux and he requested that his lien be retained as TGT (Science-Biology) and he be permitted to continue to work as the Principal of DAV Inter College Budhana. The request was accepted and the lien which was expiring on 31.7.1993 was extended by a year i.e. 31.7.1994, upon expiry of which period the Directorate of Education informed the petitioner that his lien could not be extended indefinitely and that if he could not get absorbed as the Principal of DAV Inter College he should report back for duty.

8. The petitioner did not report back for duty and requested that his lien be extended. The request was declined. The petitioner still did not report back. He was treated as being unauthorizedly absent. Charge memo was issued to him alleging his having remained unauthorizedly absent. Inquiry officer was appointed. Petitioner did not participate in the inquiry. He was held guilty and ultimately on 26.2.1998 an order dismissing him from service was passed.

9. Petitioner appealed to the Director of Education Delhi against the said order of dismissal on two grounds. First, petitioner stated that the order was passed in violation of natural justice inasmuch as no communications regarding the enquiry were made to him. Second, Petitioner relied upon Fundamental Rule 14-A(a) of Service Rules which states *that "a Government servant's lien on a post may in no circumstances be terminated, even with his consent, if the result will be to leave him without a lien or suspended lien upon a permanent post"*.

10. Deciding the appeal vide order dated 11.3.1999, the Director of Education held that the record evidenced that the petitioner was communicated about the enquiry, but he

failed to respond to the same and that in said circumstances the ex-parte enquiry was valid. Regarding the application of Rule 14-A(a), it was held that Rule 14-A(a) applies to Government Servants, only as long as they remain in Government Service. It was held that D.A.V. Inter College was a grant-in-aid institution and was not a Government Department. This being so, when petitioner joined D.A.V. Inter College, he ceased to be a government servant and hence Rule 14-A (a) was inapplicable to his case.

11. The petitioner appealed against the aforesaid order to the Chief Secretary, Government of N.C.T. Delhi. He reiterated the grounds of violation of natural justice and application of Rule 14-A(a) of the Service Rules to his case. He stated that D.A.V. institutions could not be treated as private institutions, as they were fully funded by the Government. Vide order dated 6.3.2003, the Chief Secretary rejected the said plea of the petitioner and held that the Government had no control over the management of D.A.V. institutions, and hence D.A.V. institutions were private institutions. As a result, Rule 14-A(a) could not apply in the case of the petitioner. Pertaining to the plea of violation of natural justice, the Chief Secretary held that the evidence showed that the petitioner had received the correspondence and none were returned undelivered to the Department. It was further held that the dismissal of petitioner on his failing to either report back to the Directorate of Education, Delhi or to resign from the employment of the respondent, after the expiry of the period of lien was in conformity with the terms and conditions for retention of lien of petitioner. Holding so, the Chief Secretary, Government of NCT Delhi upheld the penalty imposed by the disciplinary authority and dismissed the appeal filed by the petitioner.

12. Petitioner challenged the aforesaid decision of the Chief Secretary, Government of NCT Delhi by filing O.A.No.590/2004 before the Central Administrative Tribunal on the same grounds which he had been urging i.e. that his lien should have been retained and that the disciplinary proceedings were conducted in violation of his right of representation against such proceedings.

13. Vide impugned judgment and order dated 10.3.2004, the Tribunal dismissed the O.A. holding that no person has a right to insist that lien must be permanently retained and once the period for which lien was retained came to an end, the petitioner should have reported back to duty or communicated his resignation there from. He having not done so could not claim a right of retention of his lien. On the issue of violation of natural justice, the Tribunal held that the record clearly showed that applicant received the notices, but voluntarily did not take part in the proceedings.

14. The present writ petition was filed to challenge the aforesaid decision of the Tribunal. The petitioner primarily relied upon Rule 14-A(a) of the Service Rules. He pleads that DAV Inter College was fully under control of U.P. Government as he was selected for the post of Principal of DAV Inter College by U.P. Secondary Education Service Commission, which is a statutory body of U.P. Government; that the termination, suspension or dismissal from service, superannuation, etc. is only possible with the prior approval of U.P. Secondary Education Service Commission; that D.A.V. Inter College is a 100% grant-in-aid institution; the salary, etc. of the employees of D.A.V. is paid by U.P. State Government; the provisions regarding G.P.F. scheme, pension scheme, Group Insurance Scheme, Gratuity payment scheme, family pension, pension commutation benefits and appointment of dependent

member in case of death of an employee, as were applicable to Government Servants were also applicable to the employees of DAV Inter Colleges. For said reasons, petitioner urged that even after joining DAV Inter College as a principal he continued to remain in Government service. He urged that this being so, Rule 14-A(a) clearly applied to his case and the Directorate of Education could not terminate his lien if the result of such termination would be to leave him without a lien or suspended lien upon any permanent post. That inasmuch as by dismissing the petitioner in the year 1998, when he was yet not confirmed as the Principal of D.A.V. Inter College, U.P., the respondent left him without any lien or suspended lien on any permanent post, respondent had violated Rule 14-A(a). Petitioner urged that on said grounds the order dated 26.2.1998 dismissing petitioner's services under Directorate of Education, Delhi was illegal and liable to be set aside. Additionally, the petitioner urged that the penalty of disqualifying him from any future employment in the government was too excessive and liable to be set aside.

15. In reply, the respondent urged that the order dated 24.7.1991 relieving the petitioner to enable him to join D.A.V. Inter college as a Principal, clearly stipulated that petitioner's lien was retained only for a period of two years. That on expiry of the said period of two years, the petitioner was liable to either report back to duty under Directorate of Education, Delhi or resign. It was urged that DAV Inter College was a privately managed institute receiving some funds from the State of Uttar Pradesh and this did not make the college a government college.

16. Clearly, the issue arising in the present writ petition is whether in the facts and circumstances of the present case, the petitioner had an indefinite right to retain lien under the

first respondent to the post of TGT (Science-Biology) and thus order terminating his service is contrary to law?

17. It is not in dispute that when the petitioner was relieved from services under Directorate of Education, Delhi, he was allowed retention of lien for a period of two years only. The terms and conditions for retention of lien unambiguously stipulated that the petitioner would either report back after the completion of two years or get himself absorbed in the D.A.V. Inter College, Budhana, Muzaffar Nagar (U.P.) during the period of two years, failing which he would submit his resignation. That though the period of lien was to expire on 31.7.1993, but on the request of the petitioner it was extended by another year. Beyond that, no further extension of lien was granted to the petitioner.

18. That the status of the petitioner under DAV Inter College came under a state of flux is not the creation of the Directorate of Education who was not expected to indefinitely retain petitioner's lien on the post which he held, for that would have meant the Director not being in a position to fill up the said post on permanent basis. Besides, the petitioner had clearly accepted the term as noted herein above in para 3 under which he was relieved. In the decision reported as (2002) 2 SCC 240 Anil Bajaj v. Post Graduate Institute of Medical Education & Research it was held that if an employee has agreed to a condition (e.g. sanction to go abroad on service on condition that he returns to original service within a certain period) on the happening of which his lien would stand automatically terminated, the principle of estoppel would apply and he cannot challenge termination of his services for the breach of such a condition.

19. As regards applicability of FR 14-A(a), no doubt it provides that the lien of a government servant shall not be

terminated, but the same is expressly subject to FR 13. It may be noted that as per Proviso ii to FR 13 a lien is liable to be terminated if the government servant on foreign service/deputation stays out beyond the maximum period granted to him of proceeding out. As per OM No.63/37/63-Est issued by the Government of India on 14.7.1967, vide Clause 2 thereof it has been provided:-

“2. In the case of permanent Government servants, their lien may be retained in the parent Department/Office for a period of two years. They should either revert to the parent Department/Office within that period or resign from the parent Department/Office at the end of that period. An undertaking to abide by these conditions may be taken from them at the time of forwarding the applications to other Departments/Offices.”

20. It may be noted that as per Clause 5 of the said office memorandum the lien can be extended by further one year and no more. Clause 5 reads as under:-

“5. In exceptional cases where it would take some time for the other Department/Office to confirm such Government servants due to some other administrative reasons, the permanent Government servants may be permitted to retain their lien in the parent Department/Office for one more year. While granting such permission, a fresh undertaking similar to the one indicated in sub-para. (2) above may be taken from the permanent Government servants by the parent Department/Office. A similar treatment may be accorded to the quasi-permanent employees on their giving an undertaking similar to the one indicated in sub-para. (3) above.”

21. Thus, the claim of the petitioner which is predicated under FR 14-A(a) is clearly misconceived as it ignores the Proviso ii to FR 13 and the office memorandum dated 14.7.1967.

22. Thus, we find no infirmity with the view taken by the Central Administrative Tribunal and hence we dismiss the writ petition but refrain from directing costs to be paid.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

September 30, 2010