

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT APPEAL No.1180 of 2013

Between:

S.D. Padmanabhan

APPELLANT

And

1. Union of India, rep. by its Secretary, Ministry of Commerce,
Department of Commerce, Udyog Bhavan, New Delhi, and others.

RESPONSENTS



THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT APPEAL No.1180 of 2013

JUDGMENT: (Per Hon'ble Sri Justice V. Ramasubramanian)

The writ appeal arises out of an order passed by the learned Single Judge dismissing the writ petition filed by the appellant.

2. Heard Mr. A. Satya Prasad, learned Senior Counsel appearing for the appellant and Mr. B. Narayana Reddy, learned Assistant Solicitor General appearing for the respondents.

3. The appellant joined the Marine Products Export Development Authority in February 1983, which was part of the Ministry of Commerce of the Government of India. In the year 1994, the appellant applied for appointment to a Senior Executive position in an independent corporation, viz., Shipping Credit Investment Corporation of India Limited and was selected for appointment. In normal circumstances, the appellant should have resigned his post in the Marine Products Development Authority and taken up the new employment in a Corporation. But the appellant made a request to the Government of India to permit him to retain his lien in the civil post that he was holding.

4. For some reason, the appellant was permitted to retain the lien for a limited period. Therefore, the appellant went and joined the Shipping Credit Investment Corporation of India. Within the period prescribed for him to come back, the appellant did not come back. Therefore, the respondents treated the appellant as having lost his lien in the post.

5. After writing repeated letters for reinstatement, the appellant came up with a writ petition in the year 2010. The learned

Single Judge dismissed the writ petition on two grounds, viz., (a) that there was delay and laches; and (b) that the appellant has lost his lien. As against the said order the appellant is before us.

6. The case on hand is not one of deputation covered by Fundamental Rules 110 to 114. It is a case where the appellant got selected to a Senior Executive position in an independent Corporation. As we have pointed earlier, he must have resigned his job to take up the new employment. Out of sympathy, the respondents agreed to permit him to retain the lien for a limited period. Since the appellant did not come back after the expiry period of lien, he lost his lien over the post. Therefore, it is not a case of termination but a case of resignation pursuant to appointment outside the cadre.

7. As rightly pointed out by the learned Single Judge, Fundamental Rule 13 indicates the conditions upon which a Government servant can retain the lien on a post. The proviso to Fundamental Rule 13 makes it very clear that the appellant was not entitled to come back. A person, who is not entitled to come back, cannot seek posting orders.

8. Moreover, the appellant came to the Court after a long delay of about 16 years. Therefore, the appellant was also guilty of delay and laches. Hence we find no reason to interfere with the order of the learned Single Judge. Therefore, the Writ Appeal is dismissed.

9. As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

JUSTICE V. RAMASUBRAMANIAN

JUSTICE G. SHYAM PRASAD

21st December, 2016
Js.

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
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Date: 21-12-2016

Js.