

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.12466 of 2012

and

M.P.No.1 of 2012

Dr.V.Kavida

... Petitioner

vs.

1.Union of India,
rep.by its Secretary to Government
Education-cum-Chairperson,
Ponshe, Government of Puducherry,
Puducherry.

2.The Member Secretary,
Pondicherry Secretary for
Higher Education(Ponshe)
Pipmate Complex,
Lawspet, Puducherry.

3.The Principal,
Indira Gandhi College of Arts
and Science,
Kadirkamam,
Puducherry.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a writ of mandamus, to direct 1st Respondent to permit the petitioner to retain the petitioner lien in the parent department(3rd Respondent's institution) for one more year, by way of extension of lien.

For Petitioner :No Appearance

For Respondents :Mr.A.C.Manoj Kumar for R1
Mr.K.P.Jotheeswaran for R2
Mr.B.Nambiselvan for R3

ORDER

The writ petition has been filed by the petitioner seeking for issuance of a Writ of Mandamus to direct 1st Respondent to permit the petitioner to retain her lien in the parent department (3rd Respondent's institution) for one more year by

way of extension of lien.

2. The learned counsel for the respondents filed a counter affidavit in which it is stated in paragraph No.6, which reads as under:

"6. I respectfully state that

(A) as per the condition imposed on the Petitioner for granting permission to her to retain lien in the post of Lecturer in Commerce, at the expiry of 2 years lien period, she has neither reported for duty before the Respondents nor resigned the post of Lecturer in Commerce in the 3rd Respondent College. But, she has submitted a Letter dt.03.06.2011 to the 3rd Respondent College, vaguely stating that in view of her children's education, she proposes to revert to the post of Lecturer in Commerce in the 3rd Respondent College and request to consider for extension of lien for further permissible period. Along with his letter dt.06.06.2011, the 3rd Respondent has forwarded the said letter to the 2nd Respondent-PONSHE.

(B) In view of F.R.13(2) (5) of the Fundamental Rules, only in exceptional cases where it would take sometime for the Pondicherry University to confirm the Petitioner in the post of Reader in Commerce in its Karaikal Centre due to some other administrative reasons, the Respondents may permit to retain her lien in the post of Lecturer in commerce in the 3rd Respondent College for one more year. While so, in its Letter dt.15.06.2011, the Pondicherry University has informed the Petitioner that her service in the said University will be confirmed only on termination of her lien in her previous employment i.e. in the post of Lecturer in commerce in the 3rd Respondent College and the date of her confirmation in the Pondicherry University will be the date next to the date of termination of her lien in the post of Lecturer in Commerce. Therefore, it is obvious that non-confirmation of the Petitioner in the post of Reader in the Pondicherry University was not due to any administrative reasons, but only due to her retention of lien in the post of Lecturer in Commerce in the 3rd Respondent College.

(C) In the above circumstances, the Respondents have no power to extend the lien period beyond 2 years and hence, they were not able to pass any order, extending the lien period of the Petitioner as per her request.

(D) Even otherwise, the powers conferred under F.R.13(2) (2) & (5) of the Fundamental Rules on the Respondents to permit an employee, who got employment in

another department, to retain his/her lien in his/her previous employment in the Respondent College for a period of 2 years and also for extending the said lien period for one more year in exceptional cases i.e., for a total period of 3 years. The petitioner was relieved by the Respondents from her previous employment from 01.07.2009 and she was availing the lien period permitted to her from 02.07.2009. Hence, even the total 3 years lien period permitted under the Fundamental Rules would expire in case of the Petitioner on 01.07.2012. Thereafter, the Respondents have no power, authority or jurisdiction to extend the lien period any further i.e. beyond the total period of 3 years. Therefore, on the face of it, the relief prayed by the petitioner in the above W.P. i.e. to direct the 1st Respondent to permit her to retain her lien in her previous employment as Lecturer in Commerce in the 3rd Respondent College for one more year by extending the same i.e. beyond the above said permissible total lien period of 3 years under the Fundamental Rules, is vexatious, illegal and unmaintainable.

(E) Therefore, the interim and main prayers made by the Petitioner in the M.P. and W.P. are violative of the Fundamental Rules, beyond the scope of the powers, authority and jurisdiction of the Respondents, illegal, misconceived, unmaintainable and liable to be dismissed. Otherwise, the Respondents will be put to inconvenience, prejudice and hardship."

3. In the counter affidavit, it is stated that since earlier two occasions, the petitioner's lien was extended, the 3rd respondent/Principal, Indira Gandhi College of Arts and Science, Kadirkamam, Puducherry, has no power to further extend the lien, as prayed in this writ petition.

4. In view of the counter affidavit filed by the respondent in paragraph - 6(D), this writ petition is not maintainable and hence, the Writ Petition is liable to be dismissed.

5. Accordingly, the writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Deputy Registrar(J)

//True Copy//

Sub Assistant Registrar

ub/kak

To

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+1cc to Mr.K.P.Jotheeswaran, Advocate SR.No.48146

W.P.No.12466 of 2012

LRS (CO)
GN(10/08/2017)



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