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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No.3821/2016

7th March, 2017

DR. SUMIT MEHTA

..... Petitioner

Through: Mr. Vivek B. Saharya, Advocate.

versus

GOVERNING BODY KALINDI COLLEGE AND ANR.

..... Respondents

Through: Mr. R.P.Sharma and Mr. Vaibhav
Mehra, Advocates for R-1.

Ms. Disha Malhotra, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner seeks the relief of quashing of the letter dated 18.1.2016 whereby the respondent no.1/erstwhile employer/Kalindi College informed the petitioner that since petitioner has been absorbed on permanent basis by the present employer being the University of Rajasthan (really it should be Commissioner Office, Higher Education, Jaipur, Rajasthan), hence lien of petitioner on his post as Lecturer with the respondent no.1 has ceased to exist w.e.f. 25.11.2015 being the date of the permanent absorption of the petitioner with the present employer. Petitioner has been since 25.11.2015

working as Lecturer, Department of History in Government College in Jaipur, Rajasthan.

2. There is no dispute, and it is admitted before this Court by the counsels for the parties, that the employment of the petitioner with the respondent no.1/Kalindi College/erstwhile employer was governed by the CCS Rules and Fundamental Rules and Supplementary Rules. Respondent no.1 in its counter-affidavit has placed reliance upon Clause (2) of Rule 14.9 of the Leave Rules 2002 to contend that extraordinary leaves ordinarily will not be granted for more than one year, but in no case beyond the period of two years. Respondent no.1 in its counter-affidavit in para 13 has also stated that petitioner has been relieved from services with the respondent no.1 due to his absorption on permanent basis with the present employer and hence petitioner cannot claim extension of period of lien for the third year.

3. (i) On behalf of the petitioner, reliance is placed upon certain paras pertaining to lien in Nabhi Publication, a private publication, with respect to Central Government employees and which paras talk of extension of a lien period for more than two years and up to a maximum period of three years.

(ii) Surely, courts cannot take some private commentary being the Nabhi Publication being authoritative with respect to a particular subject, and

therefore, this Court has examined the FRSR in order to know whether lien can be extended beyond a period of two years i.e for a period of three years inasmuch as petitioner is claiming extension after a period of two years which expired on 6.10.2015 and for one more year thereafter till 6.10.2016 i.e for three years.

4. The relevant FRSR is FR-13 and which reads as under:-

“F.R.13. A Government servant who has acquired lien on a post retains the lien on that post;

- (a) while performing the duties of that post;
- (b) while on foreign service, or holding a temporary post, or officiating in another post;
- (c) during joining time on transfer to another post, unless he is transferred along with his title to a post on lower pay, in which case his lien is transferred to the new post from the date on which he is relieved of his duties in the earlier post;
- (d) while on leave; and
- (e) while under suspension.

Provided that no lien of a Government servant shall be retained:

- (i) Where a Government servant has proceeded on immediate absorption basis to a post or service outside his service/cadre/post in the Government from the date of absorption; and
- (ii) On foreign service/deputation beyond the maximum limit admissible under the orders of the Government issued from time to time.”

5. Though respondent is not justified in arguing that petitioner proceeded on immediate absorption on a permanent basis to the present employer and which is a ground under the Proviso to FR-13 not to retain lien, and taking note of FR-13 although FR-13 is not relied upon in the counter-affidavit, however, I find that the issue in question will have to be

decided with reference to FR-12-A, and which is not brought to the notice of the Court by either of the parties. F.R-12-A reads as under:-

“F.R.12-A Unless in any case it is otherwise provided in these rules, Government servant on acquiring a lien on a post will cease to hold the lien previously acquired on any other post”

6. As per FR-12-A, lien of a person on a post lapses on a person acquiring lien on another post. Lien is acquired once appointment is on permanent basis and admittedly petitioner stands appointed on permanent basis with the present employer in terms of the office order dated 26.11.2015 of the present employer and which reads as under:-

“Rajasthan Government
Education Department
Office of Principal, Sri Kalyan State Govt. College, Sikar
No.F.-1()/Faculty/SriK/2015/338, Dated 26.11.15.

OFFICE ORDER

Consequent to Dr. Sumit Mehta, Lecturer of History having been appointed in the post of Lecturer, History, on a probation of two years on fixed monthly salary of Rs.18,200/- on the recommendation of Rajasthan Public Service Commission, Ajmer, vide Order No.F.1 (46) Estt./Aakash/2009/2587 dated 28.02.2012 of the Director, College Education, Rajasthan, Jaipur, and having been joined the duty by him on 08.10.2013, has successfully completed his two years probation period satisfactorily on 07.10.2015 and thereupon in compliance of Rule 17 of Schedule IV to the State Government Order No.F.14/1/FD/Rules 2009 dated 12.10.2009, approval is hereby granted to make payment to him from 08.10.2015 total basic salary of Rs.21600/- in the pay scale of Lecturer post as per 6th Pay Commission i.e Rs.15600-39100 Grade Pay (AGP) Rs.6000/- and allowances admissible under the rules.

Sd/-
(Dr. G.S.Kalvania)
Principal
Sri Kalyan College, Sikar

Copy to:

1. Commissioner, College Education, Rajasthan, Jaipur.
2. Accounts Branch-with extra copy.

3. Dr. Sumit Mehta, Lecturer, History.
4. Personal File.

Sd/-
Principal
Sri Kalyan College, Sikar”

7. In view of the fact that the petitioner has been permanently employed and absorbed with the present employer in the post of Lecturer, History pursuant to the order dated 26.11.2015 of the present employer, FR-12-A will straight way come into play whereby petitioner no longer can continue his lien with the respondent no.1. Putting it in other words, in view of FR-12-A once the petitioner has got permanent absorption and appointment with the Rajasthan Government for teaching in the State Government College at Sikar, Rajasthan pursuant to the order dated 26.11.2015 of the Rajasthan Government reproduced above, petitioner acquired lien on the post of Lecturer with the Rajasthan Government and consequently, because of FR-12-A lien of the petitioner on his post of Lecturer, History with the respondent no.1 will stand terminated.

8. Learned counsel for the petitioner vehemently argues that it is the respondent no.1 who failed to reply to the repeated letters of the petitioner, and it is because of this silence of the respondent no.1 that petitioner was not able to exercise his option for continuation of lien by not taking permanent post with the present employer, however, this argument is

misconceived inasmuch FR-12-A is very clear that once there is a permanent absorption in another post of a particular government department, the employee's lien on the earlier post will stand extinguished. Therefore even if there is inaction on behalf of the respondent no.1, this Court cannot violate the law being FR-12-A and which specifically provides termination of a lien of an employee on his acquiring lien on another post and which lien is acquired by the petitioner in the present case on account of his permanent absorption as a lecturer with the Government of Rajasthan.

9. Dismissed.

MARCH 07, 2017
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VALMIKI J. MEHTA, J