

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.1000 of 2018

Manoj Kumar Singh, S/o Shri Mahendra Kumar Singh, aged about 39 years, R/o Village Mithwar, Post & Police Station Phephna, District Ballia (U.P.)

---- Petitioner

Versus

1. State of Chhattisgarh, through Principal Secretary, Home Department, Mahanadi Bhawan, Mantralaya, Naya Raipur (C.G.)
2. Director Prosecution, Govt. of Chhattisgarh, Naya Raipur (C.G.)
3. General Manager, East Central Railway, Hazipur (Bihar)

---- Respondents

For Petitioner:	Mr. T.K. Jha, Advocate.
For Respondents No.1 and 2 / State: -	Mr. Shashank Thakur, Govt. Advocate, on advance copy.
For Respondent No.3:	Miss S. Harshita, Advocate, on instructions from Mr. Abhishek Sinha, Advocate, on advance copy.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

01/02/2018

1. The petitioner was appointed as Assistant District Prosecution Officer (ADPO) on 17-3-2011 for which he submitted his resignation on 23-6-2014 which was accepted on 27-8-2014 and ultimately, he was relieved on 30-8-2014 and on next day 1-9-2014, he joined as Chief Law Assistant at Patna under East Central Railway. Thereafter, he filed an application on 14-12-2015 to the Government of Chhattisgarh that on the basis of his lien, he may be allowed to rejoin on the post of ADPO. The competent authority by its order impugned Annexure P-1 dated 28-4-2016, rejected the application on the basis of fundamental rule 14(c) that his lien has already come to an end. Questioning

legality and validity of the order passed by the State Government, this writ petition has been preferred.

2. Mr. T.K. Jha, learned counsel for the petitioner, would submit that since the petitioner was confirmed on the post of ADPO by order dated 28-5-2016 with effect from 24-3-2013, therefore, he has a lien on the post of ADPO and he is entitled to rejoin on the said post by virtue of the provisions contained in Rule 14(d) of the Fundamental Rules.
3. Mr. Shashank Thakur, learned State counsel appearing for respondents No.1 and 2, on advance copy, would submit that the petitioner's resignation was accepted on 27-8-2014 and on 30-8-2014, he was relieved and he was not confirmed on the date of acceptance of his resignation, subsequent confirmation on 28-5-2016 is nothing but an inadvertent one and that order has no consequence at all, as the relationship of employer and employee has already come to an end on 30-8-2014, as such, the petitioner having resigned before his confirmation, has no lien at all and therefore his application has rightly been rejected.
4. I have heard learned counsel for the parties on the question of admission and considered their rival submissions and also gone through the record with utmost circumspection.
5. It would be expedient to notice Rule 14 (a), (c) and (d) of the fundamental rules which state as under: -

“F.R. 14 Suspension of lien- (a) A local Government shall suspend the lien of a Government servant on a permanent post which he holds substantively, if he is appointed in a substantive capacity,—

(1) to a tenure post, or

(2) omitted vide F.D. No. 1083-CR-1018-IV-R-I, dated 24-9-71.

(3) provisionally, to a post on which another Government servant would hold a lien had his lien not been suspended under the rule.

(b) xxx xxx xxx

(c) Notwithstanding anything contained in clause (a) or (b) of this rule, a Government servant's lien on the tenure post may in no circumstances be suspended. If he is appointed substantively to another permanent post, his lien on the tenure post must be terminated.

(d) If a Government servant's lien on a post is suspended under clause (a) or (b) of this rule, the post may be filled substantively, and the Government servant appointed to hold it substantively shall acquire a lien on it, provided that the arrangements shall be reversed as soon as the suspended lien revives.

Notes- (1) This clause shall also apply to a post in selection grade of a cadre.

(2) When a post is filled substantively under this clause, the appointment will be termed a provisional appointment; the Government servant appointed will hold a provisional lien on the post; and that lien will be liable to suspension under clause (a) but not under clause (b) of this rule.”

6. The word “lien” has been considered by the Supreme Court in the matter of **State of Madhya Pradesh and others v. Sandhya Tomar and another**¹ and it has been observed as under: -

“10. “Lien” connotes the civil right of a government servant to hold the post “to which he is appointed substantively”. The necessary corollary to the aforesaid

¹ (2013) 11 SCC 357

right is that such appointment must be in accordance with law. A person can be said to have acquired lien as regards a particular post only when his appointment has been confirmed, and when he has been made permanent to the said post. “The word ‘lien’ is a generic term and, standing alone, it includes lien acquired by way of contract, or by operation of law.” Whether a person has lien, depends upon whether he has been appointed in accordance with law, in substantive capacity and whether he has been made permanent or has been confirmed to the said post. (*Vide Parshotam Lal Dhingra v. Union of India*², *Pratap Singh v. State of Punjab*³, *T.R. Sharma v. Prithvi Singh*⁴, *Ramlal Khurana v. State of Punjab*⁵, *Triveni Shankar Saxena v. State of U.P.*⁶, *S.K. Kacker v. All India Institute of Medical Sciences*⁷, *S. Narayana v. Mohd. Ahmedulla Khan*⁸ and *State of Rajasthan v. S.N. Tiwari*⁹.)”

7. In **S.N. Tiwari's case** (supra), the Supreme Court has observed as under: -

“17. It is very well settled that when a person with a lien against the post is appointed substantively to another post, only then he acquires a lien against the latter post. Then and then alone the lien against the previous post disappears. Lien connotes the right of a civil servant to hold the post substantively to which he is appointed. The lien of a government employee over the previous post ends if he is appointed to another permanent post on permanent basis. In such a case the lien of the employee shifts to the new permanent post. It may not require a formal termination of lien over the previous

2 AIR 1958 SC 36

3 AIR 1964 SC 72

4 (1976) 1 SCC 226

5 (1989) 4 SCC 99

6 1992 Supp (1) SCC 524

7 (1996) 10 SCC 734

8 (2006) 10 SCC 84

9 (2009) 4 SCC 700

permanent post.

18. This Court in *Ramlal Khurana v. State of Punjab*¹⁰ observed that: (SCC p. 102, para 8)

“8. ... Lien is not a word of art. It just connotes the right of a civil servant to hold the post substantively to which he is appointed.”

8. Similarly, in the matter of *Arun Kumar Agrawal v. Union of India*¹¹

Their Lordships of the Supreme Court observed as under: -

“58. It is a settled proposition of law that a deputationist would hold the lien in the parent department till he is absorbed in any post. The position of law is quite clearly stated by this Court in *State of Rajasthan v. S.N. Tiwari* (supra)

'18. This Court in *Ramlal Khurana v. State of Punjab* (supra) observed that: (SCC p. 102, para 8)

“8. ... Lien is not a word of art. It just connotes the right of a civil servant to hold the post substantively to which he is appointed.”

19. The term 'lien' comes from the Latin term "ligament" meaning "binding". The meaning of lien in service law is different from other meanings in the context of contract, common law, equity, etc. The lien of a government employee in service law is the right of the government employee to hold a permanent post substantively to which he has been permanently appointed.'

59. Similarly, in *Triveni Shankar Saxena v. State of U.P.*¹² (supra) it has been held as under: (SCC p. 531, para 24)

'24. A learned Single Judge of the Allahabad High Court in *M.P. Tewari v. Union of India*¹³

10 (1989) 4 SCC 99

11 (2014) 2 SCC 609

12 1992

13 1974 All LJ 427

following the dictum laid down in the above *Paresh Chandra case*¹⁴ and distinguishing the decision of this Court in *Parshotam Lal Dhingra* (supra) has observed that: (All LJ p. 429)

“a person can be said to acquire a lien on a post only when he has been confirmed and made permanent on that post and not earlier”

with which view we are in agreement.' ”

9. A conspectus of the aforesaid judgments and the principles flowing from the aforesaid judgments would clearly show that in order to claim lien on a particular post, the requirement is that the Government servant must have been confirmed on the said post and on appointment to a permanent post be under the State Government or the Central Government, a Government servant's lien on the post stands terminated only on his acquiring a lien on a permanent post.
10. Reverting to the case in hand, the petitioner submitted his resignation on 23-6-2014 which was accepted on 27-8-2014, undisputedly, on that day, he was not confirmed on the post of ADPO, though later-on, he was said to have been confirmed on 28-5-2016, but that has no consequence because his services have come to an end on 30-8-2014, when he was relieved from the post of ADPO and therefore the order dated 28-5-2016 is inconsequential and is of no help to the petitioner. Since the petitioner has not been confirmed on the post of ADPO on the date of his resignation, he did not have lien on the post of ADPO, as before his confirmation, he resigned which was accepted. Therefore, the State Government is justified in holding that the petitioner is not entitled to join on the post of ADPO, as he did not have lien on the said post.

14 *Paresh Chandra Nandi v. North-East Frontier Railway*, (1970) 3 SCC 870

11. In the result, I do not find any merit in the writ petition and it is accordingly dismissed, at the admission stage without notice to the other side. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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