

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 102 of 2018**

1. Manoj Kumar Singh S/o Shri Mahendra Kumar Singh, Aged About 39 Years R/o Village Mithwar, Post & Police Station Phephna, District Ballia, Uttar Pradesh.

---- Appellant**Versus**

1. State Of Chhattisgarh Through Principal Secretary, Home Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh.
2. Director Prosecution, Govt. Of Chhattisgarh, Naya Raipur, Chhattisgarh.
3. General Manager, East Central Railway, Hazipur, Bihar.

---- Respondent

For Appellant	Shri T.K. Jha, Advocate
For Respondent/State	Shri Prafull Bharat, Addl. Adv. General
For Respondent No.3	Shri Abhishek Sinha, Advocate

Hon'ble Shri Justice Ajay Kumar Tripathi, CJ
Hon'ble Shri Justice Prashant Kumar Mishra

Judgment**Per Ajay Kumar Tripathi, CJ.****31/07/2018**

1. Writ appeal has been preferred against the order dated 1-2-2018 passed by a learned Single Judge who has dismissed the writ petition by refusing to interfere with the decision of the State Government dated 28-4-2016 (Annexure – P/1 to the writ petition) wherein his prayer for continuing with the lien on the post of Assistant District Prosecution Officer (henceforth 'ADPO') was negated.

2. The facts behind the present litigation is that the appellant/petitioner was appointed as ADPO on 17-3-2011. While he was still on probation he tendered his resignation on 23-6-2014 which was accepted by the respondent State authorities on 27-8-2014.
3. The reason behind the resignation of the appellant from the post of ADPO is that he was selected by the East Central Railway (henceforth 'the ECR') for the post of Chief Law Assistant, which was a substantive post and position for which the appellant had applied against an advertisement and came to be selected also.
4. After having worked for a couple of years and because the appellant had not been confirmed on the post of Chief Law Assistant under the ECR he had a change of mind and decided to come back to the post of ADPO. He set the process in motion by approaching the respondent State authorities by claiming that he had a lien over the post of ADPO keeping in mind that the State of Chhattisgarh confirmed him in service on the post of ADPO vide an order/notification dated 28-5-2016 from the initial date of his appointment.
5. Argument of learned counsel appearing for the appellant is that the resignation of the appellant from the post of ADPO was a technical resignation and the fact that the State of Chhattisgarh had confirmed his services from the initial date of appointment by virtue of the notification dated 28-5-2016 he had a right to hold the post of ADPO in a substantive capacity coupled with the fact that the appellant had sought permission of the State authorities

before participating and accepting employment under the ECR.

6. The learned Single Judge took note of the Fundamental Rule 14 (FR) on which some kind of argument hinged and has given the reasons as well for rejecting such claim vide order dated 28-4-2016 (Annexure – P/1 to the writ petition). The State Government has relied on FR 14 (c) which has been extracted in paragraph 5 of the impugned order of the learned Single Judge.
7. The FR envisages the circumstances where an employee can have a lien or claim lien, but FR 14 (c) categorically states that if the State Government employee is appointed substantively to another permanent post his lien on the tenure post will be terminated.
8. The arguments made on behalf of the appellant has to be tested on the touchstone of the factual position and whether those arguments can be sustained and become the ground for interfering with the order of the learned Single Judge dated 1-2-2018.
9. The learned Single Judge after dealing with the various propositions of law including the right of an employee to claim lien concluded in the following words in paragraphs 9 & 10 :

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.

10. We are also in agreement with the finding given by the learned Single Judge that the appellant sought permission to participate in the examination which was allowed. The participation was for appointment on a substantive basis on the post advertised by the ECR and on his selection to the post he tendered his resignation in unconditional terms, a copy of which is annexed as Annexure – P/4 to the writ petition. The request for resignation was also acted upon and accepted by the respondent State authorities vide their decision dated 27-8-2014, copy of which is annexed as Annexure – P/5 to the writ petition.

11. In none of these documents there is any whisper that the appellant was claiming any kind of lien on the earlier post or that he had any intent or object in his mind to continue any relationship with the State Government after his substantive appointment on the post of Chief Law Assistant in the ECR, Hazipur (Bihar).
12. In our opinion the resignation was unconditional and after the resignation was accepted the master-servant relationship came to an end and merely because by bureaucratic oversight while confirming the services of ADPO the name of the present appellant also figured in the list in a mechanical fashion, which will not create any right in favour of the appellant because such order for confirmation would be a *non est* order, since the appellant was not in service and the resignation had already been accepted and acted upon as far back as on 27-8-2014.
13. Learned counsel for the State as well as the Railway submit that the appellant has nowhere challenged the acceptance of resignation letter. If the resignation letter stands there would be no occasion to get into the argument whether the appellant had any kind of lien with the State Government or not. Such a prayer obviously is mischievous prayer which has been made by the appellant trying to build up a case on the basis of notification which came to be issued by the State authorities in relation to his confirmation which was a redundant order, not required to be passed and even if it was passed it will be treated as not having

any substantive effect on the status of the appellant since the master-servant relationship was ended way back on 27-8-2014, when the unequivocal resignation was accepted and acted upon .

14. In this background, the dismissal of the writ petition by the learned Single Judge cannot be said to be erroneous.

15. As an upshot, the writ appeal, *sans* merit, is liable to be and is hereby dismissed.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice

Sd/-

(Prashant Kumar Mishra)
Judge

Gowri