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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgement pronounced on: 4th September, 2018

+ **LPA 51/2018 & C.M. No. 4833/2018**

INDRAPRASTHA POWER GENERATION COMPANY LTD.Appellant

Through Mr. Vinay Sabharwal, Advocate

versus

SAVINDER KAUR

...Respondent

Through Mr. Raj Singh Phogat, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J (Oral)

1. Challenge in this appeal filed under Clause X of the Letters Patent Act is to the order dated 11.01.2018 passed by the learned Single Judge whereby the writ petition filed by the respondent seeking retention of lien to the post of Deputy Manager(HR) in Indraprastha Power Generation Company Limited(hereinafter referred as 'IPGCL')/ parent company was allowed.
2. The brief facts which led to the filing of the present appeal are that the respondent/Savinder Kaur was appointed as Executive trainee (HR) on 30.06.2008. After completion of her training, she was appointed as an Assistant Manager(HR), and she stood was confirmed on 30.06.2009. On 30.06.2013, she was promoted as

Deputy Manager(HR) in the appellant company. The respondent applied for the post of Assistant General Manager/AGM(HR) in M/S Pawan Hans Ltd., a Central Public Enterprises, in response to an advertisement through proper channel and in respect to which No Objection Certificate(NOC) was granted by the appellant company. After receiving an offer of appointment to the post of AGM(HR) from M/s Pawan Hans Ltd on 03.10.2016, the respondent submitted her technical resignation with effect from 01.11.2016 in IPGCL. In view of the request made in the resignation letter dated 01.11.2016, she was relieved from her services in IPGCL vide Office order dated 30.11.2016. The respondent joined the services with M/S Pawan Hans Ltd. Vide letter dated 05.12.2016 she inquired about her status of retention of lien in the IPGCL. The respondent was informed that her request was rejected by the IPGCL vide its order dated 15.12.2016. On 16.12.2016, the respondent sent another letter requesting IPGCL regarding the status of lien as the same has not been informed to her after being relieved on technical resignation. The appellant vide order dated 09.01.2017 informed the respondent that the request for retention of lien had been denied as the same is not tenable as per rules. Several reminders were sent to IPGCL for the retention of lien and on 13.01.2017, the respondent sought withdrawal of technical resignation from IPGCL with immediate effect. Despite several reminders and requests, the same was not responded by the appellant company. Aggrieved, the respondent filed a writ petition before this court seeking retention of lien to the post of Deputy

manager(HR) in IPGCL, and the same was allowed by the learned Single Judge. Hence, the present appeal was preferred by the appellant company.

3. Mr. Vinay Sabharwal, the learned counsel for the appellant strenuously contended that the Single Judge committed an error in allowing the writ petition filed by the respondent vide its order dated 11.01.2018 and that such findings were based more on hypothetical assumption of facts, based on mere conjecture and surmises; that after receiving offer of appointment from M/S Pawan Hans Ltd., an unconditional resignation was rendered by the respondent and the respondent joined the said company without ensuring whether the retention of lien was granted to her by IPGCL; that the appointment of the respondent in M/S Pawan Hans Ltd. was on immediate absorption basis hence no lien was to be retained by the appellant company; that the appellant company and the M/S Pawan Hans Ltd. are two distinct entities and M/s Pawan Hans Ltd. is not a Department of the Government, therefore, no inference of automatic retention of lien can be drawn with the previous employer; that the respondent's request for retention of lien was specifically dealt with by the appellant company at the time of acceptance of resignation; that unless the retention of lien is communicated to the employee by the employer, it cannot be granted by implication. In order to substantiate his case, the learned counsel for the appellant has placed reliance on the cases of ***Union of India v. Lt. Col Komal Charan & Ors.*** reported in 3 S.C.R. 259, ***Jai Prakash Wadhwa & Ors. v. Lt. Governor, Delhi Admn & Anr***

reported in (1997) 11 SCC 174, *Department of Telecommunications v. Satya Prakash & ors.* reported in 2016 *Law Suit (Del)* 3539.

4. Per contra, Mr. Raj Singh Phogat, learned counsel for the respondent contended that the respondent in her letter of resignation dated 01.11.2016 had requested for the retention of lien for the period of one year and the respondent was relieved from her services by the appellant without clarifying or rejecting the position on the said request; that the respondent issued various applications to the appellant to intimate her about the Status of Lien but the same was rejected by the appellant vide letter dated 15.12.2016 and by order dated 09.01.2017; that the respondent's joining in M/S Pawan Hans Ltd. was not for immediate absorption basis as she was on probation for a period of one year, hence, the appellant company was bound to retain lien in the parent company; that as the appellant company is a government owned company thus they are bound to follow FR/SR rules as well as DOPT OM's; that the respondent is entitled to all the consequential benefits of the lien. Hence, the learned Single Judge was right in allowing the writ petition filed by the respondent; that there is no infirmity in the impugned order and same does not call for any interference by this court.
5. We have heard the learned counsels for the parties and considered their rival submissions and perused the relevant material on record.

6. In the facts and circumstances of the present case, it is seen that in response to an advertisement for the post of AGM (HR) in M/S Pawan Hans Ltd.(Public Sector Undertaking/Central Public Enterprise), the respondent, who was then working as Deputy Manager(HR) in the appellant company, had applied for the said post through proper channel in another government undertaking, obtained NOC from the appellant company and thereafter, submitted her 'Technical Resignation' vide letter dated 01.11.2016. The word 'Technical Resignation' has been defined in Office Memorandum(OM) No. 28020/1/2010-Estt.(C) issued by Department of Personnel & Training(DOPT) dated 26.12.2013 which is produced hereinbelow:-

“In case where a Government servant applied for post in the same or the other departments through proper channel and on selection, is required to resign the previous posts for administrative reasons, the benefit of past service, if otherwise admissible under rules, is given treating the resignation as a “Technical Formality.” Resignation submitted for other reasons or if competent authority has not allowed him to forward his application through proper channel is a resignation and benefit of past service will not be admissible.”

Perusal of the said definition makes it clear that the resignation was rendered by the respondent herein to the appellant company through proper channel and was a technical formality. Perusal of the resignation letter dated 01.11.2013 further clarifies that the Respondent has sought retention of lien in IPGCL/PPCL for a

period of one year. The resignation letter dated 01.11.2013, is produced below:

*“Director(HR),
IPGCL/PPCL, Himadri,
Rajghat, New Delhi-110002.*

*Sub: Resignation **Through Proper Channel***

Sir,

*It is to bring to your kind knowledge that I had applied for the post of AGM(HR), E-4 level in M/S Pawan Hans Limited in the IDA pay scale of Rs.29100-54500 against its recruitment advertisement in leading newspaper, with intimation to this office. **NOC was also provided to me for attending interview for the said post.***

*I am pleased to inform that I have selected for the post and received offer of appointment. In offer letter, Pawan Hans Ltd. has asked me to join latest by 31st Oct 2016. I have given my acceptance for the post and requested them to extend joining time by one month i.e. will join Pawan Hans Ltd. by 1st Dec 2016. Therefore, **I am tendering my technical resignation from the services of IPGCL/PPCL w.e.f. 01.11.2016(F/N) with a request to relieve me on 30.11.2016 (serving one month notice period) so that i may join Pawan Hans Ltd. on 01.12.2016.***

Further, it is requested to kindly consider the following:

- 1) **Retention of Lien in IPGCL/PPCL for the period of one year.***
- 2) Earned leaves and Half Pay Leaves due in my account may kindly be transferred to M/S Pawan Hans Ltd.*
- 3) The amount of Gratuity may also be transferred to M/S Pawan Hans Ltd.*

4) *To refund the amount of contribution made towards IPGCL/PPCL's post retirement medical scheme(PRMS), as applicable along with interest thereon.*

5) *LPC and Experience certificate may be issued at the time of relieving.*

It is once again requested to kindly accept my resignation and relieve me on 30.11.2016.

Thanking you.

(Savinder Kaur)

Deputy Manager(HR)

E.No.50295 ”

7. As far as argument with regard to appointment of respondent on immediate absorption basis is concerned, it is necessary to peruse the offer of appointment letter dated 03.10.2016 which reads a under:-

“...B) PROBATION/CONFIRMATION

You will be on probation for a period of one year from the date of joining. During the probation period, your services are liable to be terminated without any notice. On satisfactory completion of the probation period, which shall not be deemed to have been completed unless you are informed of it in writing, the Company can terminate your services at any time by giving three month's notice or salary in lieu thereof. In case of resignation, you will be required to give six month's notice.”

In the offer of appointment letter dated 03.10.2016 to the post of Assistant General Manager(HR) issued by M/S Pawan Hans Ltd., it is stated that the respondent will be on probation for a period of one year from the date of joining and during the said period her services in the said company can be terminated without any notice.

Thus, it is apparent that by monitoring the condition of probation for the period of one year in the appointment letter, it cannot be deemed that the appointment of the respondent in Pawan Hans Ltd. was on immediate absorption basis. The learned Single Judge has rightly relied on Office Memorandum dated 26.12.2013 and held that the bar of “no lien” would not apply to the case of the respondent. It is thus relevant to produce the relevant portion of DOPT OM dated 17.08.2016 issued by the Government of India:-

“3.4.3. No lien shall be retained:

- a. 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*
- b. On foreign/deputation beyond the maximum limit admissible under the orders of the Government issued from time to time.”*

It is observed that the abovementioned instruction No. 3.4.3 is attracted only when the Government servant has proceeded on immediate absorption basis and in the present case, the letter dated 03.10.2016 clearly mentions that the appointment of the respondent in M/S Pawan Hans Ltd. is on probationary basis for a period of one year.

8. The contention of the appellant company is that IPGCL and Pawan Hans Ltd. are two distinct legal entities and not a Department of the Government is not acceptable as Pawan Hans Ltd. being a Public Sector Undertaking having shareholding of the Central Government, forms part of the Central Government and cannot be

treated as one to be an Independent Company. The respondent shifted her job from one government department to another government department and hence, the rules and regulation applicable to the Central Government employees will be applicable in the present case.

9. After joining the post of AGM(HR) in M/S Pawan Hans Ltd., the respondent issued various letters to the appellant company to inquire regarding the status of Retention of Lien but the said plea was rejected by the appellant on the ground that the competent authority has not acceded to the said plea as the same is not tenable as per rules. As we have already discussed and held that M/S Pawan Hans Ltd. is a Government undertaking and the appointment of the respondent was on probation basis, it was mandatory on the appellant company to retain the lien of the respondent for a period of two to three years as provided in FR-13 as well as the in DOPT OM No. 26.12.2013. On this account, it is pertinent to throw some light on the rules mentioned in DOPT O.M. No. 28020/1/2010- Estt(C) dated 26.12.2013, which is produced hereinbelow:-

“Lien

Lien represents the right/title of a Government employee to hold a regular post, whether permanent or temporary either immediately or on the termination of the period of absence. The benefits of having a lien in a post/service/cadre is enjoyed by all officers who are confirmed in the post/service/cadre of entry or who have been promoted to a higher post declared as having completed the probation on regular basis to a

higher post where no probation is prescribed under the rules, as the case may be....

Retention of lien for Appointment in another Central Government Office/State Government

5. If a permanent employee is selected on the basis of his application for posts in another Central Government Department/Offices/State Government, his lien may be retained in the parent department for a period of 2 years. If the employee concerned is not permanently absorbed within a period of 2 years from the date of his appointment in the new post, he should immediately on expiry of the period of 2 years either resign from the service or revert to his parent cadre. An undertaking to abide by this condition may be taken from him at the time of forwarding of his application to other department/offices....

Termination of Lien

9. A Government servant's lien on a post may in no circumstances be terminated even with his consent if the result will be to leave him without a lien upon a permanent post. Unless his lien is transferred, a Government servant holding substantively a permanent post retains lien on that post.

10. a Government employee's lien on a post shall stand terminated on his acquiring a lien on a permanent post(whether under the Central Government or a State Government) outside the cadre on which he is borne."

10. In this background, it is pragmatic that the respondent had joined another unit of Central Public Undertaking by applying through proper channel and had served a Technical Resignation in the appellant company before joining outside the parent cadre. The appellant company was aware of the factual position and the

stipulation of probation in the letter of appointment given by M/S Pawan Hans Ltd as well as the clause of Retention of Lien as provided for in the letter of Resignation submitted by the respondent. The same stipulations was not rejected by the appellant company in its letter of acceptance vide office order dated 30.11.2016. As per the settled rules and regulations in this regard, the respondent cannot be left without a lien on a regular post. The word “immediate absorption basis” connotes that the absorption outside the parent cadre should be instantaneous and complete. Once the absorption is complete, the employee so absorbed cannot be reverted or claim lien on the post held earlier. In the instant case, the absorption of the respondent in the outside cadre was not immediate rather she was kept on probation for a period of one year was within the knowledge of the appellant company before rendering the office order dated 30.11.2016.

11. Another contention with regard to the fact that unless the Retention of Lien is specifically communicated to the employee by the employer, it cannot be granted by implication also does not convinces this court as it is in clear and unambiguous language stated in the rules that the Government Servant’s lien on the post may in no circumstances be terminated even with his consent if the result will be to leave him without a lien upon a permanent post. Unless her lien is transferred, the Government servant holding substantively a permanent post retains lien on that post.
12. In view of the above-mentioned observations, it is observed that the findings ascertained by the learned Single Judge suffers from

no infirmity. Keeping in mind the aforesaid facts, this court finds that there is no merit in the appeal. The appeal, therefore, stands dismissed alongwith pending application.

SANGITA DHINGRA SEHGAL, J.

G.S.SISTANI, J.

SEPTEMBER 4, 2018//gr

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