

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

Date of Decision: January 11, 2018

+ **W.P.(C) 4963/2017**

SAVINDER KAUR Petitioner
Through: Mr. Raj Singh Phogat, Advocate

versus

INDRAPRASTHA POWER GENERATION CO. LTD.
.....Respondent
Through: Mr. A. S. Dater, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned order of 9th January, 2017 (*Annexure P-1*) declines petitioner's request for retention of lien on the post of Deputy Manager (HR) in *Indraprastha Power Generation Company Limited (hereinafter referred to as IPGCL)*. Upon submission of technical resignation from the post of Deputy Manager (HR), petitioner was relieved by respondent-*IPGCL* on 30th November, 2016 to enable her to join *Pawan Hans Limited* on probation for a period of one year. It is so evident from Offer of Appointment of 3rd October, 2016 (*Annexure P-4*) made by *Pawan Hans Limited*. It is for this reason that petitioner while resigning had sought retention of lien in respondent-*IPGCL* for a period of one year. It is so reflected in technical resignation (*Annexure P-5*). Respondent-*IPGCL* vide its Office Order of 30th November, 2016 (*Annexure P-6*) had

simply accepted the resignation of petitioner and had relieved her to enable her to join *M/s. Pawan Hans Limited*. Since the relieving letter (*Annexure P-6*) was silent about retention of lien, therefore, petitioner vide letter of 5th December, 2016 (*Annexure P-7*) had written to respondent-*IPGCL* to intimate the status of retention of lien to her. Respondent-*IPGCL* vide its letter of 15th December, 2016 (*Annexure P-8*) had informed petitioner that the competent authority has not accepted her request for retention of her lien. Thereafter, petitioner vide letter of 16th December, 2016 (*Annexure P-9*) had again requested respondent-*IPGCL* for grant of lien as she wanted to continue to work with respondent-*IPGCL*. Reminder of 9th January, 2017 was sent by petitioner to respondent-*IPGCL*, but to no avail. Petitioner vide letter of 13th January, 2017 (*Annexure P-10*) had sought withdrawal of resignation from respondent-*IPGCL* with immediate effect.

2. According to petitioner's counsel, aforesaid letter of 13th January, 2017 (*Annexure P-10*) seeking withdrawal of the technical resignation was not responded to by respondent-*IPGCL*. Learned counsel for petitioner submits that despite repeated reminders on 27th January, 14th March and 25th April, 2017 (*Annexure P-11 colly.*), there was no response to petitioner's aforesaid letter (*Annexure P-10*) seeking withdrawal of her technical resignation. Learned counsel for petitioner submits that instructions on Technical Resignation and Lien have been issued by the Government vide Office Memorandum (*henceforth referred to as 'O.M.'*) of 26th December, 2013 (*Annexure P-12*), which mandate that if the Government servant has proceeded on '*immediate absorption basis to*

service outside his cadre/post in the government' then only, there will be no lien.

3. It is submitted by petitioner's counsel that petitioner had not gone to *Pawan Hans Limited* on '*immediate absorption basis*' and so, petitioner had inherent right to retain her lien and she had exercised her lien vide letter of 13th January, 2017 (*Annexure P-10*). Reliance is placed by petitioner's counsel upon O.M. of 17th August, 2016 on the subject of Technical Resignation and Lien. Reliance is also placed by petitioner's counsel upon Division Bench decision of this Court in *Department of Telecommunications v. Satya Prakash & Ors.* 2016 SCC OnLine Del 3496 to submit that lien in the parent department is retained where an employee goes on probation outside the service.

4. On the contrary, learned counsel for respondent supports impugned order and draws attention of this Court to O.M. of 23rd December, 2013 containing instructions on forwarding applications of Government servants for outside employment and submits that as per aforesaid O.M., no lien is to be retained where an employee joins the public sector undertaking/ autonomous bodies. So, it is submitted that the O.Ms. relied upon by petitioner's counsel do not apply to the instant case. Thus, dismissal of this petition is sought.

5. Upon hearing and on perusal of impugned order, relevant O.Ms, material on record and the decision cited, I find that as per O.M. of 23rd December, 2013 containing instructions on '*forwarding applications of Government servants for outside employment*', whenever such applications are received, they are forwarded with a clear understanding

to the employees that in the event of their selection on the post applied for, they will sever their connection with the Government. Thus, it becomes clear that the relieving order should indicate that there would be no lien in case an employee seeks employment outside. A perusal of relieving letter (*Annexure P-6*) makes it abundantly clear that it is conspicuous on lien aspect. Since relieving order (*Annexure P-6*) is not in consonance with O.M. of 23rd December, 2013 relied upon by respondent, therefore, the bar of 'no lien' would not apply to the case of petitioner. Such a view is taken in view of dictum of Division Bench decision in *Satya Prakash (supra)*. Consequentially, impugned order (*Annexure P-1*) is hereby quashed while holding that petitioner had exercised lien within one year of her technical resignation i.e. on 13th January, 2017 vide letter (*Annexure P-10*). Learned counsel for petitioner on instructions submits that the post of Deputy Manager (HR) in respondent-*IPGCL* is still vacant. If it is so, then petitioner be permitted to join back on the same post within a period of four weeks from today.

6. With aforesaid directions, this petition is disposed of.

Dasti to learned counsel for petitioner.

(SUNIL GAUR)
JUDGE

JANUARY 11, 2018

S