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W.P. (MD) .No. 6523 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.11.2019

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD) .No.6523 of 2015

M.P. (MD) Nos.2,3 and 4 of 2015

and WMP (MD) No.13564 of 2019

Dr.T.Jai Sankar

.. Petitioner

Vs.

1.The Tamil Nadu Veterinary and  
Animal Sciences University,  
Rep. by its Registrar,  
Madhavaram Milk Colony,  
Chennai - 600 051.

2.The Bharathidasan University,  
Rep. by its Registrar,  
Palkalaiperur, Tiruchirappalli,  
Tiruchirappalli District - 620 024.

3.The Madras Veterinary College,  
Rep. by its Dean,  
Chennai - 600 051.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the first respondent TANUVAS University in F.No.211/A1/2011, dated 24.02.2015 and the consequential proceedings issued by the second respondent Bharathidasan University in Ref.No.02209/H1/2014, dated 17.04.2015 (received on 20.04.2015), quash the same and further direct the respondents to permit the petitioner to continue as Assistant Professor cum Head (in charge) in the Department of Statistics in the second respondent Bharathidasan University.

For Petitioners : Mr.M.Ajmal Khan  
Senior Counsel for  
M/s.Ajmal Associates

For Respondents : Mr.S.Vijaya Kumar  
1 & 3

For Respondent 2 : Mr.V.R.Shanmuganathan



**ORDER**

This Writ Petition is filed for issuance of Writ of Certiorarified Mandamus to quash the impugned proceedings of the first respondent TANUVAS University in F.No.211/A1/2011, dated 24.02.2015 and the consequential proceedings issued by the second respondent Bharathidasan University in Ref.No.02209/H1/2014, dated 17.04.2015 (received on 20.04.2015) and further to direct the respondents to permit the petitioner to continue as Assistant Professor cum Head (in charge) in the Department of Statistics in the second respondent Bharathidasan University.

2.The petitioner was originally appointed as a System Programmer in the office of Dean, Madras Veterinary College, third respondent herein. After serving for a period of more than fifteen years, the petitioner joined service in the second respondent Bharathidasan University as Assistant Professor in Statistics in the Department of Maths on 22.02.2011. It is stated that the petitioner's appointment in the second respondent university was made through a regular recruitment process after following all the usual formalities. As per the order of appointment, the petitioner would be placed under probation for a continuous period of two years from the date of joining the post. It is also stated that at the end of the period of probation or extended period of probation, if the petitioner is considered fit and suitable for the post, he will be confirmed in the second respondent university. Clause 4 in the order of appointment reads as follows:

**"4.Terms of lien.**

4.31.If you wish to hold a lien on your present post, the Barathidasan University shall not have any financial commitment for contribution towards your leave salary and pension to your parent department/institutions.

4.32.You shall make your own arrangement to obtain necessary orders from the parent organisation/respective Government and also take necessary steps for the renewal of the lien well in advance before the expiry of the lien granted to you and if the extension of lien is not granted by the Government/parent organisation, you will be reverted to your parent department immediately on completion of the lien period."

It is not known under what background the clause relating to lien was incorporated in the order of appointment. Except stating that the petitioner was appointed on lien basis, the counter affidavit of second respondent does not disclose on what basis this clause was incorporated when the appointment was by following a recruitment process against permanent vacancy.



3.It appears that the petitioner based on specific clause mislead himself to seek permission from the first respondent to join in the Bharathidasan University namely the second respondent with a lien for a period of one year from the date of relieving the petitioner. Such permission was granted subject to the following conditions:

I. that there should not be any financial commitment to Tamil Nadu Veterinary and Animal Sciences Universities.

II. that he should get proper relief before taking up the new post on lien basis.

III. that he should not resign the present post while on lien basis.

IV. that he should abide by the Rules and Regulations of TANUVAS issued from time to time.

V. that the period of his absence on lien basis would be counted as service for the purpose of pension, if necessary, pension contribution are paid by the individual based on the representation made by him.

VI. that he should remit all the University dues before relief."

4.It is admitted that the petitioner completed probation satisfactorily in the post of Assistant Professor in the Department of Statistics, Bharathidasan University, on the afternoon on 21.02.2012 as seen from the communication dated 14.05.2012 issued by the Registrar of the second respondent university. Very strangely as it is found in the order of appointment, the petitioner requested, the first respondent university to extend the lien period for a period of one year and such extension was also given upto four years. As seen from the order of appointment, the petitioner was forced to get such extension of lien only on the basis of Clause 4.32 of the Order of appointment dated 17.02.2011. The petitioner though wanted to continue in the second respondent university (Bharathidasan University), so as to continue in the second respondent university the petitioner was seeking extension of lien from the first respondent. After four extensions, the first respondent university refused to give extension as extension of lien beyond a period of four years is not permissible as per the rules. By the impugned order dated 24.02.2015 the first respondent turned down the request of the petitioner to extend the lien and instructed the petitioner to rejoin duty at the office of the Dean, Madras Veterinary College, Chennai, with immediate effect. The second respondent also passed an order which reads as follows:

"Dr.T.Jai Sankar had requested his parent employer for further extension of lien from 22.02.2015 to 21.02.2016 but it was denied and he was instructed to rejoin duty immediately. From 22.02.2015 onwards, he is working in this University without permission for lien from his parent employer.

Hence, it is hereby ordered that Dr.T.Jai Sankar is

reinstated to the post of Assistant Professor, Department



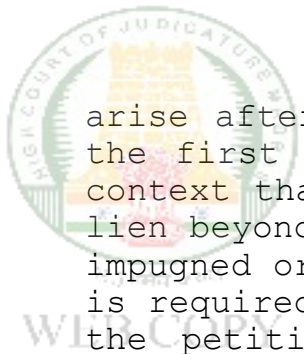
of Statistics, Bharathidasan University, Tiruchirappalli, with immediate effect so as to enable him to join in his parent department."

5.Thus, the second respondent by the impugned order made it clear that the petitioner's employment in the second respondent cannot be allowed without permission for lien from his parent employer. The petitioner was also relieved from the post of Assistant Professor by the second respondent with immediate effect. Challenging the order passed by the first respondent, dated 24.02.2015 and the consequential order passed by the second respondent dated 17.04.2015, the above Writ Petition is filed.

6.From the reading of the affidavit and the counter affidavit filed by the respondents, this Court is of the view that the petitioner wanted always to continue only in the service of the second respondent and this was made clear to respondents 2 and 3 in unequivocal terms. The petitioner was appointed in the second respondent university pursuant to a regular process of recruitment following all the rules and regulations. The qualifications and appointment of petitioner on merit is not in dispute. On a wrong understanding of appointment order particularly Clause 4.31 and 4.32 of appointment order, the petitioner appears to have sought permission from the first respondent for extension of lien. It is admitted that the petitioner was not sent to the second respondent university on deputation and that his appointment was permanent, without holding any lien. The second respondent in his proceedings dated 17.02.2011 appears to have incorporated a clause under terms of lien as it was extracted earlier vide clause 4.32. In this factual background, the first respondent has filed a counter as if the lien was granted to the petitioner on the basis of regulations contained in Chapter VII of the TANUAS' statutes. Clause 46 of the Statutes provide guideline for service on deputation. As per Clause 46(2) of the statutes reads as follows:

"University employees may be permitted to take up temporary appointment in the State or Central Government or under any authorised agencies and such employees shall be considered as on deputation. The leave salary and pension contribution shall be paid in accordance with the terms of the deputation. The period of such deputation shall not ordinarily exceed three years and in any case four years."

7.The first respondent admitted the position that the post of Assistant Professor in the second respondent university is a permanent post and that it is unnecessary to seek any lien from the first respondent herein unless the petitioner wants to come back to the first respondent university. It is further clarified that upon completion of probation in second respondent university, the petitioner and the university have admitted that the petitioner became a permanent Assistant Professor in the second respondent university and that therefore, no question of extending the lien



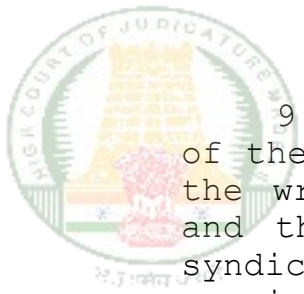
arise after completion of probation. The impugned order passed by the first respondent was explained by the first respondent in the context that there was no provision under the statute to extend the lien beyond a period of four years. The first respondent passed the impugned order not on the ground that the services of the petitioner is required in the first respondent university or on the ground that the petitioner was sent on deputation but because there was no provision to extend the lien period beyond a period of four years. The first respondent appears to have extended lien only because of Clause No.4.32 of appointment order and by accepting the request of the petitioner to extend the lien.

8.Paragraphs 7, 8, 9, 10, 16 and 23 of the counter affidavit of first respondent is relevant and hence, extracted below:

"7.When facts stood so, the petitioner responded to the advertisement issued by the Bharathidasan University for the post of Assistant Professor in Statistics Department vide Advertisement Nos.5013/H2/2010, dated 24.11.2010. The Dean, Madras Veterinary College, third respondent herein, under whom the petitioner has served as System Programmer, forwarded the application to the second respondent university on 3.1.11. While forwarding the application of the petitioner for the post of Assistant Professor (Statistics) in Bharathidasan University, the following conditions were stipulated.

- i.that there should not be any financial commitment to Tamil Nadu Veterinary and Animal Sciences University.
- ii.That he should resign the present post held by him in the event of his selection.
- iii.That he should obtain proper relief from the university.
- iv.That he should remit all the dues to the university, including bond amount if any at the time of resignation.

8.I submit that the second respondent in its proceedings No.5013/H2/2010, dated 17.02.2011 appointed the petitioner as Assistant Professor in the Statistics Department, Bharathidasan University as per the Rules/statutory provisions of the university. It is not out of place to mention at this stage that the post of Assistant Professor in Statistics Department, Bharathidasan University is a permanent post and that the petitioner was placed under probation for a period of two years from the date of appointing the post. It is also seen that at the end of probation or extended period of probation, the university would confirm the appointment if he is fit and suitable for the post. I crave leave of this Hon'ble Court to refer to the terms and conditions of the second respondent university in this regard.



9.I submit that on a mere perusal of the proceedings of the Registrar of the second respondent, it is seen that the writ petitioner was appointed for the permanent post and that the selection was made on merits and that the syndicate of the respondent university approved his appointment in his Resolution No.2011.063, dated 17.02.2011 and was also confirmed by the orders of the Vice Chancellor on 17.02.2011.

10.I submit that the petitioner herein, on receipt of the appointment order, approached the first respondent seeking an order to join in Bharathidasan University on lien basis for a period of one year from the date of relieving. The first respondent herein in its proceedings No.U.S.O.No.20840/A1/2011, dated 21.02.2011 issued an order relieving the petitioner to the post of System Programmer to join Bharathidasan University on lien basis for a period of one year. For the sake of brevity, I shall extract below the terms and conditions stipulated in the appointment order issued by the 2<sup>nd</sup> respondent University:-

**"4.Terms of lien.**

4.31.If you wish to hold a lien on your present post, the Barathidasan University shall not have any financial commitment for contribution towards your leave salary and pension to your parent department/institutions.

4.32.You shall make your own arrangement to obtain necessary orders from the parent organisation/respective Government and also take necessary steps for the renewal of the lien well in advance before the expiry of the lien granted to you and if the extension of lien is not granted by the Government/parent organisation, you will be reverted to your parent department immediately on completion of the lien period.

4.33.During the period of lien and in the event of any report of misconduct, moral turpitude or criminal activities, you will be reverted to your parent department immediately along with the report of the disciplinary proceedings."

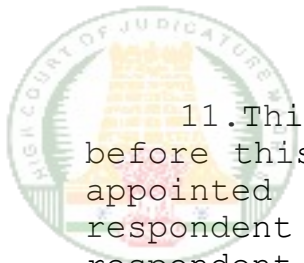
16.I submit that the petitioner herein has suppressed the vital fact that the post of Assistant Professor in the second respondent university is a permanent post and that it is not necessary to seek any lien from the first respondent herein. More over the petitioner herein has admittedly completed his probation of two years service and the second respondent wanted to confirm his service permanently as Assistant Professor in the university. If that is so, question of extending lien does not arise.



23.I submit that the petitioner is not eligible to invoke the aforesaid fundamental rules for the simple reason that he is not deputed out of India or transfer to a foreign service. Assuming without accepting that the petitioner is eligible for deputation, the maximum period deputation can not exceed more than three years in terms of the aforesaid rule. The first respondent has therefore rightly rejected the request of the petitioner and instructed him to join duty at the office of the Dean, Madras Veterinary College, Chennai, immediately without fail, in the order dated 24.02.2015. Consequent upon the same the petitioner was relieved by the second respondent university on 17.04.2015 with immediate effect and thereafter the petitioner joined the duty in the first respondent university on the forenoon of 24.04.2015."

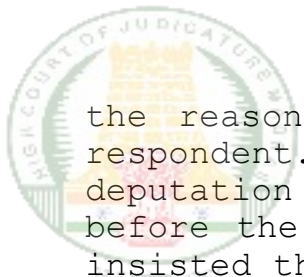
9.Clause 4.31 if read along with Clause 4.32 of the appointment order would reveal that Clause 4.32 will be applied only if the petitioner wants to hold a lien in the first respondent. However, the petitioner without an intention or option to have lien in first respondent appears to have applied for lien as per Clause 4.32 of appointment order. It is not the case of any of the respondent that the petitioner was sent on deputation to the second respondent or that the petitioner has applied for any lien. Though the petitioner is also responsible for the whole confusion, this Court is not inclined to dismiss the Writ Petition as the mistake was mutual and no prejudice is caused to any one finally.

10.The second respondent university has filed a counter as if the Writ Petitioner was appointed to the post of Assistant Professor on lien basis though it is admitted that he was appointed against a permanent vacancy. Referring to the order of appointment dated 17.02.2011, it is stated that the petitioner's appointment was on lien basis. Clause 4.32 of the appointment order was relied upon by the second respondent to reiterate that the petitioner was appointed subject to the lien and that the petitioner, only on the basis of getting the lien extended on different spells continued in the second respondent university. Very strangely the second respondent then took a stand that the petitioner could not get extension from his parent employer for the fifth time and that therefore, the petitioner could not continue in the second respondent university in view of the rejection of petitioner's request by the first respondent to extend the lien beyond four years. It was only by relying upon Clause 4.32 of appointment order, the second respondent university pleaded that once the lien is not extended by the parent employer of the petitioner, he must be immediately relieved from the service so as to rejoin in the parent university. As pointed out earlier Clause 4.32 should be read along with Clause 4.31. The appointment order by Clause 4.31 gives only an option to the petitioner to hold lien in first respondent. Only if he wishes to hold a lien in first respondent, Clause 4.32 will come into play.



11.This Court considered the entire facts and materials placed before this Court. As it is pointed out earlier the petitioner was appointed as against regular permanent vacancy in the second respondent university. Since he was then employed under the first respondent university, he sought permission to take appointment in other department. In this case, there was no document or material produced to show that the petitioner wanted employment on temporary basis. The appointment of petitioner was not subject to any lien or on deputation basis. The petitioner has mislead himself to seek lien or extension of lien without any intention to hold lien in first respondent. In this case, the order of appointment was on permanent basis and was not subject to any lien that can be exercised by the first respondent or petitioner. Once the petitioner is appointed and the appointment order reads that the appointment will be confirmed after completion of period of probation and does not subject to any lien or other conditions, this Court is of the view that the appointment is absolute. Clause 4.32 of the appointment order has no application as the petitioner never opted to hold lien in first respondent. The learned Counsel appearing for the second respondent himself during the course of argument submitted that the petitioner has not resigned from the first respondent and that therefore, the second respondent could not permit the petitioner to continue in the post. The whole thing therefore appears to be on the basis of some confusion or misconceived notions about the term lien found in the order of appointment. The facts now revealed from the conduct of the parties would only suggest that the petitioner was always intended to serve permanently in the second respondent university without any lien. In other words, his intention to serve the second respondent university was conveyed to the respondents 1 and 2 in unequivocal terms.

12.The learned Senior Counsel appearing for the petitioner submitted that the word deputation was not employed anywhere by the first respondent before taking appointment. Clause 4.31 explains Clause 4.32 of the appointment order. This Court is of the view that the contention of the second respondent in the counter affidavit referring to clause 4.32 cannot be accepted. Clause 4.32 if stand alone does not give meaning to the appointment order especially when there was no request by the petitioner to consider him on lien basis. There was no communication either from the first respondent or from the petitioner to indicate that the petitioner was seeking appointment either on lien or on deputation basis in the second respondent university. The appointment was purely based on merit following regular process. Unfortunately, the petitioner was made to believe that he could continue in the second respondent only with the lien period extended periodically by the first respondent which is not permissible. It is in the above circumstances, I am of the considered view that the first respondent passed the impugned order only because the petitioner wanted



the reason that the petitioner wanted to hold lien in the first respondent. It is admitted that the petitioner was not sent on deputation to the second respondent. The request of the petitioner before the first respondent was only because the second respondent insisted the petitioner to get extension of lien by virtue of Clause 4.32 in the appointment order. The second respondent thereafter took advantage of the order of the first respondent and passed the impugned order relieving the petitioner from the post of Assistant Professor in the second respondent university. Though the order of first respondent is unwarranted but it was based on the request of the petitioner who in turn was compelled to get such extension by referring to clause 4.32 of the appointment order, this Court is unable to sustain both orders. The second respondent is the cause for confusion. The stand taken by the second respondent placing reliance on Clause 4.32 of the appointment order is not sustainable as this Court has already concluded that Clause 4.32 will not be operative unless the petitioner opts to hold lien in first respondent. It was on a wrong understanding of Clause 4.32 the petitioner has mislead himself and sought for permission from first respondent to extend lien without any intention to hold lien in first respondent.

13.As a result, this Writ Petition is allowed and the impugned order passed by the first respondent dated 24.02.2015 and the consequential order passed by the second respondent dated 17.04.2015 are set aside. The second respondent is directed to reinstate the petitioner and permit him to continue in the second respondent university as Assistant Professor-cum-Head in the Department of Statistics and allow him to get all his service benefits ignoring the impugned order which are quashed by this Court. The first respondent is also directed to relieve the petitioner from the post so that the petitioner will be able to join in the second respondent university without any trouble or hardship. No costs. The petitioner shall resign from the post in first respondent upon reinstatement by second respondent. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CRL SIDE)

// True Copy //

Sub Assistant Registrar(CS)

SRM

To

1.The Registrar,  
The Tamil Nadu Veterinary and  
Animal Sciences University,  
Madhavaram Milk Colony, Chennai - 600 051.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Registrar,  
Bharathidasan University,  
Palkalaiperur, Tiruchirappalli,  
Tiruchirappalli District - 620 024.

3.The Dean.  
Madras Veterinary College,  
Chennai - 600 051.

+1CC TO MR.VR.SHANMUGANATHAN, Advocate Sr. No.97693  
+1CC TO MR.AJMAL ASSO., Advocate Sr. No.97422  
+1CC TO MR.P.VELMURUGAN, Advocate Sr. No. 97455

ORDER MADE IN  
W.P. (MD) No. 6523 of 2015  
11.11.2019

KMV(CO)  
TR(27.11.2019) 10P 7C