

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.46867 of 2018

ORDER :

This writ petition is filed seeking Writ of Mandamus declaring the impugned proceedings No.UH/P.1/B4/ID No.818/2018/1421, dated 09.08.2018 issued by the respondents – University, as arbitrary, illegal, unreasonable, without application of mind and in violation of the petitioner's Fundamental Rights guaranteed under Articles 14, 16 and 21 of the Constitution of India, and consequently, set aside the same and declare that the petitioner is entitled to continue in the post of Assistant Engineer (Civil) with continued service with all consequential benefits till the date of his retirement.

Heard Sri Gandra Mohan Rao, learned counsel for the petitioner and Sri Vardhineni Krishna Mohan, learned Standing Counsel for the respondents – University.

It has been contended by the learned counsel for the petitioner that the petitioner was initially selected and appointed as Junior Engineer in the respondents – University on 04.02.1987 and thereafter he was selected for the post of Assistant Engineer (Civil) and joined the said post in the respondent University on 05.08.1992. Learned counsel for the petitioner further submits that the services of the petitioner were also confirmed in the said post of Assistant Engineer (Civil)

on completion of probation of two years vide proceedings dated 21.09.1994. It is contended that while the petitioner was working as Assistant Engineer (Civil), the respondents – University has issued a Notification dated 07.01.2009 for the post of Executive Engineer and as the petitioner was fully eligible and qualified for the said post, he has responded to the said Notification and after undergoing regular selection process, the petitioner was selected and appointed as Executive Engineer vide proceedings dated 29.06.2009, subject to the outcome of the writ petition filed challenging the appointment of the petitioner as Executive Engineer. Learned counsel for the petitioner further contends that W.P.No.2694 of 2010 was filed before this Court challenging the appointment of the petitioner to the post of Executive Engineer and after contest, the said writ petition was allowed vide order dated 02.09.2015, setting aside the selection and appointment of the petitioner as Executive Engineer. Challenging the said order dated 02.09.2015 in W.P.No.2694 of 2010, the petitioner has preferred W.A.No.949 of 2015 and a Division Bench of this Hon'ble Court initially, vide interim order dated 04.11.2015, was pleased to grant interim suspension of the learned single Judge's order and finally the said writ appeal was dismissed vide judgment dated 08.06.2018, confirming the order of the learned single Judge setting aside the appointment of the petitioner as Executive Engineer. In pursuance of the said orders, the petitioner was relieved from the post of Executive Engineer vide proceedings

dated 15.06.2018. Thereafter, the petitioner has submitted his joining report dated 15.06.2018 requesting the respondents to permit him to join the post of Assistant Engineer (Civil), but the respondents, instead of entertaining the petitioner into duty, have prevented him from discharging the duties of Assistant Engineer (Civil). Learned counsel for the petitioner further contends that in pursuance of the Notification issued by the respondents, when the petitioner was appointed as Executive Engineer vide proceedings dated 29.06.2009, the lien of the petitioner shall have to be maintained in the substantive vacancy of Assistant Engineer (Civil). Learned counsel for the petitioner further contends that the respondents – University has not confirmed the services of the petitioner in the newly appointed post of Executive Engineer because of the pendency of the writ petition before this Hon'ble Court and finally the appointment of the petitioner was set aside by this Court vide order 02.09.2015 in W.P.No.2694 of 2010, which was confirmed by a Division Bench of this Court vide judgment dated 08.06.2018 in W.A.No.949 of 2015. Therefore, learned counsel for the petitioner contends that the lien of the petitioner has to be maintained in the substantive vacancy of Assistant Engineer (Civil) and till the lien of the petitioner is terminated in the cadre of Assistant Engineer (Civil), he is entitled to be continued in the substantive vacancy of Assistant Engineer (Civil). Learned counsel for the petitioner further contends that the respondents have rejected the joining report submitted by the petitioner vide

proceedings dated 09.08.2018 on the ground that the lien of the petitioner in the cadre of Assistant Engineer (Civil) in the respondent University no longer subsists and hence, the case of the petitioner could not be considered for entertaining the duty in the cadre of Assistant Engineer (Civil). Learned counsel for the petitioner contends that in pursuance of the Notification issued by the respondents – University, the petitioner has responded to the said Notification and after obtaining prior permission from the competent authority and in pursuance of the regular selection process, he was selected and appointed to the post of Executive Engineer, which was finally set aside by this Court vide order 02.09.2015 in W.P.No.2694 of 2010 and the same has been confirmed by a Division Bench of this Court vide judgment dated 08.06.2018 in W.A.No.949 of 2015, and it is only at the intervention of this Court, the appointment of the petitioner as Executive Engineer was set aside and the substantive post of the petitioner is that of Assistant Engineer (Civil) and the lien of the petitioner over the said vacancy was not terminated by the respondents – University and in the absence of any orders terminating the lien of the petitioner on the substantive vacancy of Assistant Engineer (Civil), the respondents cannot contend that the lien of the petitioner no longer subsists in the cadre of Assistant Engineer (Civil). Learned counsel for the petitioner, therefore, contends that appropriate orders be passed in the writ petition by setting aside the impugned order dated 09.08.2018 and direct the

respondents to permit the petitioner to discharge his duties as Assistant Engineer (Civil) in the respondents University.

On the other hand, the learned Standing Counsel for the respondents – University contended that the case of the petitioner was considered in accordance with law, as the lien will be maintained only for a period of 2 years and since 2 years period had already expired long time back from 2009 onwards, the question of maintaining lien even after expiry of 7 years would not arise. It is further contended that since the appointment of the petitioner as Executive Engineer was set aside and the petitioner was relieved from the said post vide order dated 15.06.2018, the question of the petitioner continuing in the cadre of Assistant Engineer (Civil) in pursuance of the so called lien, at this point of time, would not arise. Therefore, there are no merits in the writ petition and the writ petition is liable to be dismissed.

This Court, having considered the rival submissions of the learned counsel for the respective parties, is of the considered view that the lien has to be maintained whenever an employee tenders technical resignation in the substantive vacancy in order to take up the new task and until and unless the lien is terminated by way of a speaking order, the employer cannot contend that the lien of the employee would not subsist. Admittedly, in the instant case, the services of the petitioner in the cadre of Executive Engineer was not regularised because of

the pendency of the writ petition and finally the writ petition was allowed by setting aside the appointment of the petitioner as Executive Engineer and the same has been confirmed by the Division Bench of this Court, which would mean that the petitioner was continued in the substantive vacancy of Assistant Engineer (Civil) only, though he was discharging the duties as Executive Engineer, as there were no confirmation orders in the cadre of Executive Engineer. This Court is of the considered view that since the lien of the petitioner was not terminated, at any point of time, until issuance of the impugned proceedings dated 09.08.2018, wherein there is no whisper that the lien of the petitioner was already terminated. The impugned order only states that the lien of the petitioner in the substantive vacancy of Assistant Engineer (Civil) no longer subsists. This is nothing but an arbitrary action of the respondents – University. Without there being any termination of lien, the respondents – University cannot contend that the lien of the petitioner does not subsist in the cadre of Assistant Engineer (Civil). Therefore, the impugned proceedings dated 09.08.2018 is liable to be set aside and it is accordingly set aside. The respondents – University is directed to take back the petitioner into service as Assistant Engineer (Civil) with all other consequential benefits and permit the petitioner to discharge his duties as Assistant Engineer (Civil).

With the above observations, the writ petition is allowed.

No order as to costs.

As a sequel, miscellaneous petitions pending, if any, in this writ petition shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

29.01.2019.
Msr

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