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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM-11396-CWP-2017 in/and
CWP-14571-2016
Date of decision 17.11.2022

SEEMA KOHAR

...Petitioner

V/S

STATE OF HARYANA AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. S.K. Redhu, Advocate
for the petitioner.

Mr. Rajesh Gaur, Addl. A.G., Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-11396-CWP-2017

The instant application under Section 151 C.P.C. is for placing on record the replication. The same is allowed and taken on record.

Main case.

The present petition has been filed by the petitioner challenging the order dated 12.11.2012 , Annexure P-7 by which the petitioner was relieved from the service by the Department of Food and Drug Administration where she was working on the post of Chemist giving permission to the petitioner to join as a Lecturer in the department of education in pursuance to her selection and appointment dated 07.11.2012 but by imposing the condition that since the petitioner is not a regular/permanent employee of the department, her lien will not be maintained

within the department. The prayer of the petitioner is that the petitioner, who

was the permanent and regular employee of Food and Drug Administration, be allowed to retain her lien on the post of Chemist and be allowed to rejoin on the said post of Chemist, which request was made by the petitioner before she was to be confirmed against the post of Lecturer.

The facts leading to the filing of the present writ petition are that the respondent-Department of Food and Drug Administration issued an advertisement, advertising the post of Chemist. The petitioner who was fully eligible, appeared before the Subordinate Service Selection Board and competed for the post of Chemist and was declared successful in selection and keeping in view the said fact since the petitioner was meritorious keeping in view the post advertised, she was offered an appointment as a Chemist on 18.08.2004. Copy of the appointment order is Annexure P-1. As per the said appointment, the petitioner was to remain on probation for a period of two years, which could have been extended for a further period of one year. Petitioner continued working and there was nothing against the petitioner upon completion of two years of service in the year 2006 and no order was passed by the respondent-Department of Food and Drug Administration extending the probation of the petitioner.

The Haryana Public Service Commission, vide advertisement No.3 of 2009 and corrigendum dated 30.04.2010, advertised the post of Lecturer in Chemistry (School Cadre) HES-II Group B. As the petitioner was fully eligible for appointment as a Lecturer in Chemistry (School Cadre), the petitioner sought permission from the competent authority in the Department of Food and Drug Administration to compete for the said post. After getting due approval from the authorities concerned, the petitioner submitted an application for consideration of her case for appointment as a

Lecturer in Chemistry. Petitioner competed and was ultimately selected as a Lecturer in Chemistry (School Cadre) vide order dated 07.11.2012, Annexure P-5.

On the date of the selection as a Lecturer in Chemistry (School Cadre), the petitioner already had approximately 8 years of service as Chemist and had crossed the maximum period of probation prescribed for the said post not just under the rules governing the services but as also depicted in the appointment order dated 18.08.2004, appointing the petitioner as Chemist.

While giving permission to join the selected post of Lecturer in Chemistry (School Cadre), the department of Food and Drug Administration imposed a condition that though the petitioner is relieved so as to join the post of Lecturer in Chemistry in education department but as she was not working on permanent/substantive capacity in the said department, her lien for the post Chemist will not be retained in the department. Though the petitioner joined in pursuance to the said relieving but the petitioner is aggrieved against the imposition of condition of not maintaining her lien in the department of health against the post of Chemist as, after joining the post of Lecturer in Chemistry (School Cadre), the petitioner intended to come back as a Chemist for which, she had made a request to the department concerned on 02.11.2014, copy of which has been appended as Annexure P-10. The department of Food and Drug Administration, Haryana, refused to take back the petitioner against the post of Chemist on the ground that the petitioner was not working on permanent/substantive capacity as a Chemist, hence her lien was not maintained after her relieving in the year 2013. The said action of the respondent is under challenge in the present petition.

After notice of motion, the respondents have filed the reply wherein, the respondents have conceded to the facts which have been narrated hereinbefore. As per the respondents, the petitioner was yet to be confirmed before she was relieved from her service so as to join the post of Lecturer in Chemistry (School Cadre) in the department of Education and therefore, as no confirmation order was passed, confirming the petitioner against the post of Chemist, the condition imposed in the order of relieving that no lien will be maintained is perfectly valid and legal and is in consonance with the rules governing the service.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The only question which arise in the present case is whether the petitioner is to be treated as working on permanent/substantive capacity as Chemist on the date when the petitioner was relieved in the year 2013 so as to join the post of Lecturer in Chemistry (School Cadre) so as to maintain the lien of the petitioner against the post of Chemist in the Department of Food and Drug Administration.

The learned counsel for the respondent has conceded that as per the rules governing the service, on appointment by way of direct recruitment an employee is on probation for a period of two years. The said probation can be extended further for a period of one year, in case the department feels that the same needs to be extended. The learned counsel for the respondent has not been able to place on record any document to show that after the appointment of the petitioner in the year 2004, the probation period of the petitioner was ever extended on completion of two years. That being so, the

petitioner becomes a regular employee immediately upon completion of the two years.

Further, even if it is assumed for the sake of arguments that the maximum period of probation provided even after extension is three years, then also, as the petitioner was appointed on regular basis in the year 2004, the maximum period of probation came to an end in August, 2007. Nothing has come on record nor it is the case of the respondents that the said period of probation was ever extended.

As per the rules governing the service, in case of direct recruitment, an employee on completion of the maximum period on probation, is either to be confirmed or in case he/she is not fit to be retained in service, the service of the said employee needs to be terminated. In the present case, even after completion of the maximum period of probation, the petitioner was allowed to continue in service, the said fact clearly shows that there was nothing adverse against the petitioner so that it could be even imagined that the respondents were of the opinion that the services of the petitioner needed to be terminated on completion of the maximum period of probation. Hence, the claim of the petitioner is that she is deemed to be a regular and substantive employee upon completion of the maximum period of probation, needs to be accepted.

Learned counsel for the respondent has raised the argument that even if the petitioner had completed the maximum period of probation but till an order is passed confirming the petitioner, there is no deeming fiction that the petitioner is to be treated as permanent or a confirmed employee hence, since upto the date the petitioner was relieved from services in order to join

the post of Lecturer in Chemistry (School Cadre) in the year 2013, no order

of confirmation was passed confirming the petitioner as a Chemist, the prayer of the petitioner that she should be treated as confirmed and a substantive employee of the respondent-department may kindly be declined.

This argument of the petitioner needs to be tested on the basis of the settled principle of law. A Division Bench of this Court in ***LPA-354-1963, decided on 26.11.1964 titled "Dharam Singh Vs. State of Punjab"*** held that even if no formal order of confirmation is passed, when a probationer completes maximum period of probation but the said employee is not reverted to the substantive rank in case of promotion or his/her services are not terminated in case of direct recruitment, there is automatic confirmation of the said probationer. The relevant paragraph of the judgment is as under:-

“The next step in the argument is that, having been a probationer for more than three years, the appellant became either entitled to be confirmed or liable to be reverted or his services dispensed with if his work or conduct was unsatisfactory, but that, in any case, the probation as such could not in view of sub-rule (3) continue beyond the period of three years. This argument is unanswerable and Mr. Pannu has not suggested that the rules contemplated the extension of the period of probation beyond three year. The sub-rule in question forbids such extension. The controversy is about the effect of what actually happened in the present case, namely, that no formal order confirming the appellant was made nor any order dispensing with his services at the completion of the three years' probation and the appellant was allowed to continue. It seems to me that if the appellant could not continue as a probationer, and he was neither reverted nor were his services dispensed with on account of unsatisfactory work or conduct, then he must be taken to have been confirmed. There appears to me in view of the express rules no other conclusion possible. Mr. Pannu's submission is that the confirmation

of a probationer is a formal act of judgment and unless that act is performed, no probationer can be said to have been confirmed. The argument is perfectly sound so far as it goes. It does not go however, far enough, for it does not deny that there can exist a rule providing that in certain contingencies a probationer may be taken to have been confirmed, although no formal order of confirmation may have been made. That is precisely the submission made on behalf of the appellant and what is urged is that rule 6 is so framed that if at the end of the period of three years probation which is incapable of being further extended, the probationer is neither reverted nor his services dispensed with, but he is allowed to continue in the same post, then he must be taken to have been confirmed. Mr. Pannu, referred in the course of arguments to the observation of the Supreme Court in some cases that even if the period of probation is not formally extended, but the probationer continues without having been formally confirm, he is not to be taken as having been actually confirmed it must be deemed to be still on probation. Those cases, however, concerned service rules which permitted the extension of a period of probation for an indefinite time and not where a limit had been placed on the total period of probation. Those decisions are, therefore, of no assistance. In particular. Mr. Pannu, sought to rely on the decision in Narain Singh Ahluwalia v. The State of Punjab and another (Civil Appeal 492 of 1963), decided by the Supreme Court on the 29th January, 1964 as, according to Mr. Pannu, the service rule, considered in that case did actually provide for a maximum period of probation beyond which the period could not extend. Actually, however, the report shows that part of the rule was never considered by the Supreme Court not in fact any question like the present arose in that case. The point for consideration was different. The appellant before the Supreme Court, Narain Singh Ahluwalia, had been appointed to officiate as a Superintendent in an office for some time, but was subsequently reverted and his claim was that his reversion amounted to reduction in rank, which could not be done without an enquiry. The argument in support of that claim was that

under the rules nobody could be appointed in a substantive capacity unless he had first served as a probationer for a minimum period of two years in the case of certain probationers and one year in the case of others and because the appellant had actually served that minimum period of probation he was entitled to be confirmed and must be deemed to have been confirmed. The Supreme Court negatived that claim on the ground that mere service as a probationer for a certain period of time did not entitle any one to claim that he was confirmed. There was no claim in that case that the maximum period of probation had been served and had long expired and the claimant had continued in that post in spite of such expiry. That case, therefore, does not help the respondent's contention. As observed by the Supreme Court in that very decision a rule of service can certainly provide for automatic confirmation in certain contingencies, and, as I view the service rules governing the appellant, they do provide by making it impossible for the period of probation to be extended beyond three years that if the person concerned does continue to hold the same post and his services are not dispensed with at the end of three years and he is not reverted, then he must be taken to have been confirmed. It is clear that the appellant in fact continued to hold the post for more than two years after the maximum period of probation had expired and he must, therefore, be taken to have so continued in a substantive capacity. Mr. Pannu agrees that on that conclusion, that the appellant was in February, 1963, holding his post substantively, the termination of his services necessarily amounted to a punishment and must be deemed to be 'removal' from service, which of course, was not permissible without a proper enquiry. The conclusion must, therefore, be that the termination of the appellant's services was illegal. I would in the circumstances, allow this appeal and set aside the order terminating the appellant's services, dated the 11th February, 1963, leaving the parties, however, to their own costs. ”

Keeping in view the law cited hereinbefore, the argument of the learned counsel for the respondent cannot be accepted that in the absence of any order confirming the petitioner in the cadre of Chemist, petitioner cannot be treated as confirmed Chemist being contrary to the settled principle of law. Keeping in view the settled principle of law in Dharam Singh (supra), the petitioner is to be treated as permanent and confirmed employee on completing three years of service as Chemist and in the year 2013 when she was relieved by the Department of Food and Drug Administration, so as to join the department of education, petitioner was a regular and confirmed employee, hence, imposing the condition that the lien of the petitioner upon the post of Chemist will not be maintained by treating her as a probationer, is contrary to the settled principle of law.

The question now which arises is that whether, the petitioner is entitled to come back on the post of Chemist or not keeping in view her request dated 02.11.2014. The rule governing the service in respect of lien, which is also being relied by the respondent in their reply is Rule 3.14 of the Punjab Civil Services Rules as is applicable upon Haryana. The said Rule 3.14 is as under:-

“3.14(a) A competent authority shall suspend the lien of a Government employee on a permanent post which he holds substantively, if he is appointed in a substantive capacity-

(1) to-----

(2) to a permanent post outside the cadre on which he is borne, or

It is pertinent to mention here that petitioner did not make any request to retain her lien in the office of answering respondent, therefore, she cannot claim to join this office again.”

A bare perusal of the order would show that the lien of the petitioner was required to be suspended once she was appointed outside the cadre till the petitioner was made substantive and permanent in the cadre of Lecturer in Chemistry (School Cadre). Suspension of the lien means that the lien of the post of in question remains with the employee so as to substantively work against the said post even while working on a post outside his/her cadre. Hence, once the petitioner made an application intending to come back to the post of Chemist before confirmation on the post of lecturer, it was incumbent upon the respondent to allow her to rejoin as chemist having substantive right to occupy the said post as under the rule governing the service, petitioner has a right of lien on the post of Chemist. That being so, the respondents were under obligation to allow the petitioner to join as Chemist upon her request dated 02.11.2014, Annexure P-10 as the same is in consonance with the rules governing the service and settled principle of law.

Said proposition of law came up for consideration of the Hon'ble Supreme Court in Civil Appeals Nos.354 and 355 of 1971 decided on 17.11.1975 wherein, same rule has been interpreted to mean that employee retains lien on the previous post even after appointment on a post outside cadre till confirmation on the said post. Relevant para of the said judgment is as under:-

“5. We may at the outset reproduce the relevant rules of the Punjab Civil Services Rules, Volume 1, Part I as applicable to the State of Haryana:

“3.12. Unless the any case it be otherwise provided in these Rules, a Government servant on substantive

appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post.

3.14 (a) A competent authority shall suspend the lien of a Government servant on a permanent post which he holds substantively, if he is appointed in a substantive capacity.

(1)

(2) to a permanent post outside the cadre on which he is borne, or

(3)

3.15 (a) Except as provided in Clause (c) of this rule and in note under Rule 3.13, 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 or a suspended lien upon a permanent post.

(b) In a case covered by sub-clause (2) of Clause (a) of Rule 3.14 the suspended lien may not, except on the written request of the Government servant concerned, be terminated while the Government servant remains in Government service.

(c) Notwithstanding the provisions of Rule 3.14 (a), the lien of a Government servant holding substantively a permanent post shall be terminated while on refused leave granted after the date of compulsory retirement under Rule 8.21, or on his appointment substantively to the post of Chief Engineer of the Public Works Department.

Note, - In a case covered by Rule 3.14 (a) (2), where a Government servant is appointed in a substantive capacity to a permanent post outside the cadre on which he is borne, Rule 3.15 (b) precludes permanently the termination of his suspended lien unless and until a written request to this effect is received from him. The result is that it is possible for such a Government servant to stop his suspended lien being removed from the parent cadre indefinitely and, thus cause inconvenience to the parent office. Such a situation may be met by appropriate executive action being taken by the controlling officer who may refuse his consent to such a Government servant being confirmed or retained in a permanent post outside his cadre unless he agrees to his lien on a permanent post in his rent office being terminated."

6. The learned Judges constituting the majority of the Full Bench in holding that the appellant's lien on the post of Agricultural Inspector had stood terminated relied upon Rule 3.12. Perusal of the above rule shows that normally a Government servant on substantive appointment to any permanent post acquires a lien on the post and ceases to hold any lien previously acquired on any other post. The opening words of the above rule, however, show that it would apply unless it be otherwise provided in the rules. Rule 3.14 (a) (2) carves but an exception to the general rule contained in Rule 3.12. According to Rule 3.14 (a) (2), a competent authority shall suspend the lien of a Government servant on a permanent post which he holds substantively if he is appointed in a substantive capacity to a permanent post outside the cadre on which he is borne. When the appellant was appointed as Block Development and Panchayat Officer in a substantive permanent capacity, his case squarely fell within the ambit of Rule 3.14 (a) (2) as the post of Block Development and

Panchayat Officer was outside the cadre of Agricultural Inspectors to which the appellant belonged. In the circumstances, it was imperative for the competent authority to suspend the lien of the appellant on the permanent post of Agricultural Inspector which he had held substantively.

The competent authority, however, failed to suspend the lien of the appellant on the post of Agricultural Inspector. The appellant plainly cannot suffer because of such inaction or omission on the part of the competent authority. A reading of the rule leaves no doubt that a duty is cast upon the competent authority to suspend the lien of a Government servant on a permanent post which he holds substantively if he is appointed in a substantive capacity to a permanent post outside the cadre on which he is borne. The imperative nature of the rule is also clear from the use of the word "shall" in clause (a) as against the use of the word "may" in clause (b) of that rule. The appellant, in our opinion, cannot be penalised because of the omission of the competent authority to act in accordance with the mandatory provisions of rule 3.14 (a) (2). Clause (b) of rule 3.15 also makes it clear that in a case covered by sub-clause (2) of clause (a) of rule 3.14, the suspended lien of the Government servant concerned may not, except on the written request of that Government servant, be terminated while he remains in Government service. The note to rule 3.15 shows a way out in case any difficulty is experienced on account of the operation of rule 3.14 (a) (2). It is nobody's case that any written request was made by the appellant for terminating his suspended lien on the post of Agricultural Inspector. As such we find it difficult to uphold the finding of the majority of the learned Judges that the lien of the appellant on the post of Agricultural

Inspector had stood terminated. In our opinion, the third Judge who was in the majority took a correct view of the matter when he observed that the Government servant is not to be penalised and cannot be deprived of the safeguards provided by Rule 3.14 because of the fact that the competent authority had not taken the necessary steps.”

Keeping in view the above, the condition imposed in the relieving order dated 12.11.2012, Annexure P-7, that the lien of the petitioner will not be maintained is set aside being contrary to the settled principle of law keeping in view the facts and circumstances of the present case and the respondents are directed that as the petitioner intended to join back on the post of Chemist keeping in view the request dated 02.11.2014, as the petitioner will have the lien on the said post of Chemist on the said date, the respondents are under obligation to allow the petitioner to join back as a Chemist. Hence, the respondents are directed to allow the petitioner to join back as Chemist in the Department of Food and Drug Administration on the post of Chemist on which the petitioner holds the lien and is still vacant as of now, which fact has already come on record keeping in view the affidavit of the respondent dated 18.02.2020.

After the petitioner is allowed to join as a Chemist the claim of the petitioner for further promotion or benefit, as extended to the immediate junior in the said cadre will be considered in accordance with law and appropriate order will be passed whether the petitioner is entitled for the grant of the said benefits or not. If not, the detailed reasons be given for denying the said benefit.

Let the present order be complied with within a period of two months from the receipt of the copy of this order.

Allowed.

(HARSIMRAN SINGH SETHI)
JUDGE

17.11.2022

sangeeta

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No