

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CWP-16950-2015**Judgment reserved on:22.03.2023****Decided on:11.04.2023**

Raj Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Amit Khatkar, Advocate
for the petitioner.

Mr. Pankaj Middha, Addl. A.G., Haryana,
for the respondents.

SUVIR SEHGAL, J.

Petitioner has approached this Court for issuance of a writ in the nature of certiorari for setting aside impugned order dated 27.06.2014, Annexure P-9, passed by respondent No.1 and for issuance of a writ in the nature of mandamus directing the respondents to grant seniority to the petitioner to the post of Superintendent as per the gradation list as his juniors have been promoted to the said post.

Facts, leading to the filing of the petition, are that the petitioner was appointed as a Clerk through the Haryana Subordinate Service Selection Board and joined in the Haryana Civil Secretariat on 15.02.1982. In the year 1987, Social Welfare Department, Haryana, invited applications for the post of Assistant on transfer basis from Clerks of various Departments, who had

completed 05 years' service. Alongwith 18 other Clerks, petitioner applied for the post through proper channel and was selected alongwith one Ranbir Singh. He was relieved from the Haryana Civil Secretariat vide order dated 29.09.1987, Annexure P-2. Thereafter in the year 1997, posts of Stamp Auditor in the pay scale of Assistant were circulated by the Revenue Department. Petitioner applied for the post. He was duly selected and joined the Revenue Department on 30.05.1997 and retired on attaining the age of superannuation on 31.01.2014.

Counsel for the petitioner has contended that Ranbir Singh, counter part of the petitioner, who has also appointed in the Social Welfare Department alongwith him, has been promoted alongwith 06 other persons as Officiating Assistant vide order dated 23.01.1989, Annexure P-3, whereas the petitioner has been ignored. Reference has also been made on the office notings, Annexure P-1, regarding retention of lien. By placing reliance on the gradation list, Annexure P-6, counsel for the petitioner has argued that despite petitioner being senior, he has been deliberately superseded and representation, Annexure P-7, submitted by him has been wrongly rejected vide order impugned herein.

Countering his arguments, State counsel has urged that when the Gradation List, Annexure P-6, was prepared on 01.01.1987, petitioner was working with the Haryana Civil Secretariat, however, subsequently, after he was relieved in September, 1987, his name was removed from the Gradation List and he was not considered for promotion. He has argued that being a temporary employee, petitioner did not have any lien in the parent department. State counsel has submitted that the case of the petitioner is on different footing from that of Ranbir Singh and Ramesh Chand.

I have heard counsel for the parties and considered their respective submissions.

The concept of 'lien' has been elucidated by the Supreme Court in **State of Madhya Pradesh Versus K.U. Sandhya Tomar and another (2013) 11 SCC 356** and it has been held as under:-

“10. “Lien” connotes the civil right of a Government servant to hold the post “to which he is appointed substantively.” The necessary corollary to the aforesaid right, is that such appointment must be in accordance with law. A person can be said to have acquired lien as regards a particular post only when his appointment has been confirmed, and when he has been made permanent to the said post. The word ‘lien’ is a generic term and, standing alone, it includes lien acquired by way of a contract, or by operation of law. Whether a person has lien, depends upon whether he has been appointed in accordance with law, in substantive capacity and whether he has been made permanent or has been confirmed to the said post. (Vide: [Parshotam Lal Dhingra v. Union of India](#), AIR 1958 SC 36; [S. Pratap Singh v. State of Punjab](#), AIR 1964 SC 72; [T.R. Sharma v. Prithvi Singh & Ors.](#), AIR 1976 SC 367; [Ramlal Khurana v. State of Punjab & Ors.](#), AIR 1989 SC 1985; [Triveni Shankar Saxena v. State of U.P. & Ors.](#), AIR 1992 SC 496; [Dr. S.K. Kacker v. All India Institute of Medical Sciences & Ors.](#), (1996) 10 SCC 734; [S. Narayana Vs. Md. Ahmedulla Khan & Ors.](#), AIR 2006 SC 2224; and [State of Rajasthan & Anr. v. S.N. Tiwari & Ors.](#), AIR 2009 SC 2104).”

In [Triveni Shankar Saxena v. State of U.P. & Ors.](#), AIR 1992 SC 496, approving the judgment of a learned Single Judge of the Allahabad High Court, Apex Court held that a person can be said to be acquired a lien on a post only when he is confirmed and made permanent on that post and not earlier.

Adverting to the facts of the instant case, it is amply clear that the petitioner was appointed as a Clerk in the Haryana Civil Secretariat in February, 1982 and when he was appointed by transfer in the Social Welfare

Department, he was working on a temporary post. He was never confirmed on the post of Clerk in the Haryana Civil Secretariat and, therefore, cannot claim to have a lien on the post in his parent department. Therefore, the claim of the petitioner for promotion to the post of Superintendent, in his parent department is unfounded.

Reliance placed by the petitioner on the office notings will also not come to his aid. The settled legal position is that the noting in departmental files do not create any right in favour of an employee and it is only the orders issued by the Competent Authority which can create a right. Reference in this connection may be made to the judgments of the Hon'ble Supreme Court in Puranjit Singh Versus Union Territory of Chandigarh and others 1994 Suppl. (3) SCC 471 and M.D., U.P. Land Development Corporation and another Versus Amar Singh and others (2003) 5 SCC 388.

Furthermore, it is the specific stand of the respondents that the office notings were never approved by the Competent Authority. Still further, insofar as the claim of the petitioner qua Ranbir Singh is considered, it is come on the record that both the petitioner and Ranbir Singh were appointed as Assistant in the Social Welfare Department by separate orders and were relieved on different dates i.e. on 29.09.1987 and 14.08.1987, respectively, by virtue of separate orders. Ranbir Singh, was senior to the petitioner in the Haryana Civil Secretariat and was confirmed on 29.12.1986 against a permanent post of Clerk, which had fallen vacant prior to his being relieved. Keeping in view his confirmation, he was promoted as an Officiating Assistant on his turn alongwith other Clerks vide order dated 23.01.1989, Annexure P-3. Thus, the factual position qua Ranbir Singh is entirely different and the petitioner cannot claim any parity with him.

When examined from all possible angles, the arguments raised by the petitioner do not have any legs to stand on.

In view of the above, there is no merit in the writ petition, which is hereby dismissed.

11.04.2023
sheetal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No