

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.235

CWP No.20772 of 2021

Pronounced on: 12.12.2023

Management Development Institute

.... Petitioner

Versus

The District Judge-cum-Educational Tribunal,
Gurugram and another

... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Siddharth Batra, Advocate and
Mr. Abhinav Sood, Advocate for the petitioner.

Mr. Vivek Kohli, Senior Advocate with
Ms. Neetika Bajaj, Advocate and
Mr. Jasmeet Bhatia, Advocate for respondent no.2.

TRIBHUVAN DAHIYA, J.

This petition has been filed seeking a writ of *certiorari* setting aside the findings on points/issues (c)/(iii) and (d)/(iv) of the impugned judgment, dated 10.08.2021, Annexure P-1, passed by the District Judge-cum-Educational Tribunal, Gurugram, whereby respondent no.2 has been reinstated as Professor in the petitioner-Institute with full back wages.

Facts in brief

2. Facts of the case in brief are as under:

2.1. The petitioner/Management Development Institute (hereinafter referred to as 'the Institute') is a registered Society under the Societies Registration Act, 1860. The second respondent was offered appointment as Professor of Marketing in the Institute vide letter dated 01.03.2000, Annexure P-4, and joined as such. As per the terms, he was appointed on whole time basis subject to probation period of two years. On confirmation,

his tenure was to continue until attaining the age of superannuation, which

was initially sixty years and later raised to sixty five years. The appointment was in the pay scale of ₹18400-500-22400. The appointment letter clearly stipulates that in all matters, his service will be governed by the MDI Staff Regulations, 1986 (hereinafter referred to as 'the Regulations') and other rules in force from time to time. He claims to have successfully discharged duties as Professor; his performance was appreciated by the Board of Governors of the Institute also.

2.2. The Institute implemented its HR Policy and Service Rules, 2009 (hereinafter referred to as 'the 2009 Rules'), Annexure P-6, with effect from 01.01.2010.

2.3 Later, the Institute advertised post of its Director on 07.06.2011, inviting applications from the eligible candidates. The second respondent applied for the same. Based on the recommendations of a Search Committee, the Board of Governors of the Institute offered the post of Director to him, vide letter dated 17.01.2012, Annexure P-7. The offer of appointment as Director was for five years, effective from the date of taking over the charge and was terminable on three months' notice from either side.

2.4. The second respondent accepted the offer and joined as Director of the Institute on 17.01.2012. It is claimed by him that apart from performing the duties as Director, he continued teaching as a Professor of Marketing also. That is the reason, in the Information Brochure released by the Institute in 2013, 2014 and 2015, the second respondent was shown as Professor of Marketing, in addition to holding the position of Director. Besides, in communications to the All India Council for Technical Education (AICTE), which is the regulatory body for the Institute, the petitioner was shown to be Professor.

2.5 All of a sudden, on 28.10.2014, it was conveyed to the second respondent, vide Annexure P-9, that the Board of Governors has decided to terminate his service/cease his appointment as Director with effect from the said date.

2.6. When the second respondent claimed to be still working as Professor in the Institute despite termination as Director, a communication dated 15.12.2014, Annexure P-11, was sent to him by the Institute informing that he ceased to be Director with effect from 28.10.2014, and as per records, was not holding any *lien* on the post of Professor. An amount of ₹1,00,50,040 was remitted to his Bank account towards terminal benefits and other dues on 16.12.2014.

2.7. In these circumstances, the second respondent challenged his termination order dated 28.10.2014 by filing a writ petition bearing W.P.(C) No.7944 of 2014 before the Delhi High Court, which was dismissed vide order dated 27.01.2015. He challenged the said order by filing a Letters Patent Appeal bearing LPA No.59 of 2015 before a Division Bench, and vide order dated 20.02.2015, the Court directed listing of the said writ petition before a learned Single Judge on 23.02.2015. However, the second respondent withdrew his petition from the Delhi High Court on 23.02.2015, and was granted liberty to approach the competent Court at Gurugram or the High Court of Punjab and Haryana for appropriate reliefs.

2.8 Accordingly, the second respondent filed a writ petition, CWP No.4177 of 2015, before this Court, challenging his termination and seeking reinstatement as Director and Professor in the Institute. A co-ordinate Bench, vide judgment dated 29.05.2015, directed him to approach the Educational Tribunal concerned for redressal of grievances. Instead of approaching the

Tribunal, he preferred an appeal against the order, dated 29.05.2015, by

filing LPA No.892 of 2015 before a Division Bench. Vide judgment dated 16.09.2020, the Division Bench refused to entertain the appeal by holding that the second respondent has an efficacious alternate remedy before the Educational Tribunal; it was also observed that it will be open to the Institute to initiate appropriate proceedings against the second respondent with regard to his derogatory posts against it on social media and other platforms, as the former was deliberately making false and malicious remarks against the Institute and its functionaries to tarnish its reputation.

2.9. Aggrieved by the order of Division Bench, dated 16.09.2020, the second respondent filed Special Leave Petition (Civil) No.11918 of 2020 before the Supreme Court, which was not entertained on the ground that the second respondent already stood relegated to alternate remedy available in law.

2.10. After exhausting all the available remedies, the second respondent approached the Educational Tribunal, Gurugram, by filing Civil Appeal No.176 of 2020, challenging the order dated 28.10.2014, whereby his service as Director was terminated, and the letter dated 15.12.2014, whereby it was informed by the Institute that he had no *lien* against the post of Professor. He also sought reinstatement as Director and Professor in the Institute along with back wages.

2.11. The Tribunal adjudicated the controversy between the parties by framing the following points/issues for determination:

- i) Whether with regard to removal of appellant as Director of Management Development Institute Gurugram the Management Development Institute HR Policy and Service Rules 2009, were applicable?

- ii) Whether termination of the service of the appellant (the second respondent herein) as Director of Management Development Institute Gurugram, while treating him as a contractual employee, was illegal?
- iii) Whether the appellant was having a lien on the post of Professor of Marketing in Management Development Institute Gurugram, during his tenure as Director of the same institute? If yes, whether his dismissal by the respondent, by virtue of second impugned order is illegal.
- iv) Whether the appellant is entitled for back wages?

2.12. On points/issues no.(i) and (ii), which were decided together, the Tribunal arrived at the conclusion that the removal of second respondent from the post of Director of the Institute was in consonance with the contract of service as well as the 2009 Rules, and was not stigmatic. However, on point/issue no.(iii), the Tribunal held that even after joining as Director, the second respondent was having a *lien* on the post of Professor of Marketing, and his removal as such was in violation of the 2009 Rules. On point/issue no.(iv), it was held that there was no delay on the part of second respondent in filing the appeal as he was pursuing the lawful remedies available, and no fault can be attributed to him on that account. Accordingly, he was entitled to full back wages.

2.13. Based on these findings, the appeal was partly accepted by the Tribunal declaring the second respondent's dismissal from the post of Professor of Marketing as illegal, null and void, and setting aside the order dated 15.12.2014. He was held entitled to reinstatement as Professor in the Institute forthwith with full back wages, from the date of removal as Director till the date of reinstatement. And for the remaining prayers, the

appeal was dismissed vide the impugned judgment, against which the instant petition has been filed.

2.14. The second respondent has not challenged findings of the Tribunal on issues no.(i) and (ii), wherein it was held that his removal from the post of Director of the Institute was in consonance with the contract of service as well as the 2009 Rules. Only the petitioner has filed this petition impugning findings of the Tribunal on the remaining two issues, no.(iii) and (iv), which are being adjudicated herein.

2.15. It is apposite to mention that during the course of arguments before this Court on 14.09.2023, learned counsel for the second respondent made a statement that *'he has no objection to the petitioner-Institute not being considered as an instrumentality of the State under Article 12 of the Constitution, so far as the instant case is concerned.'*

Submissions by learned counsel for the parties

3. Mr. Siddharth Batra, learned counsel for the petitioner-Institute has argued that in view of the conceded position on record, as per statement of learned counsel for the second respondent, the Institute does not fall within the definition of State under Article 12 of the Constitution of India. Even otherwise, no issue has been formulated by the Tribunal as to whether the Institute falls within the ambit of Article 12. Therefore, the petitioner remains a private unaided educational Institute, and its contract of employment with the second respondent is a private contract of service. He cannot have any *lien* on the post. The Tribunal is patently wrong in holding otherwise by relying upon a notification issued by the Ministry of Personnel, Government of India, which refers to government employees only. The same has no application to a private contract of service, as is there in the instant

case.

3.1. Besides, as per settled law, an employee cannot hold two substantive posts simultaneously. The second respondent never took any extraordinary leave from the post of Professor to join as Director of the Institute, nor was any such leave granted to him. The post of Director was a new contractual appointment, which was accepted by him without seeking any permission to continue his previous appointment as Professor. Therefore, from the date second respondent joined as Director in the Institute, his appointment as Professor of Marketing came to an end. The petitioner conveyed the fact to the second respondent, vide letter dated 15.12.2014, and credited the terminal benefits and dues to his Bank account. Therefore, there is no merit in the claim that he has a *lien* over the latter post.

3.2. Still further, it has been contended that as the relationship between the petitioner and the second respondent is based on a private contract of service entered into between the two, the latter has no right to reinstatement in service; he can at the most claim damages in case the termination of contract is found to be illegal. Besides, the Tribunal has gone patently wrong in holding him entitled to back wages. There is no such concept in private employment, nor has the second respondent asserted that he was not gainfully employed.

3.3. Lastly, the contention is, the second respondent has demonstrated grave misconduct, and has tried to harm the Institute's image in public eye by highly objectionable social media posts which are vulgar and abusive. On that account, the Institute has filed a civil suit against him, bearing CS No.2051 of 2021, for defamation and breach of service conditions, and illegal, *mala fide*, malicious, vindictive acts, seeking compensatory damages to the tune of ₹2 crore for loss of its reputation and

goodwill in the eyes of general public, apart from financial loss. It is, therefore, apparent that relations between the Institute and the second respondent have been damaged beyond repair, and the former has completely lost confidence in him. On this score also, there is no justification for his reinstatement in service. Therefore, findings of the Tribunal are untenable in the eyes of law, and deserve to be set aside.

4. *Per contra* Mr. Vivek Kohli, learned senior counsel representing the second respondent contends that before joining as Director of the Institute, he was working as Professor of Marketing since 01.03.2000. Being a confirmed employee, he was entitled to serve till the age of superannuation, i.e., sixty-five years. As per terms of appointment, his service was governed by the Institute Regulations and other rules in force from time to time, i.e., the 2009 Rules, which stipulate that '*the Institute will follow the Rules of Government of India as applicable to IIMs wherever rules are not given in the MDI HR Policy and Service Rules, 2009.*' Relying upon that, learned senior counsel contends that as the 2009 Rules are silent on the right of employees to hold a *lien*, it will be available to them as per Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) office memorandum, dated 26.12.2013, issued on the subject of 'Consolidated Instructions on Technical Resignation and Lien' (hereinafter referred to as 'the office memorandum'). It stipulates, under clause 3, 9 and 10, that *lien* is a right of a government employee to hold a regular post, whether permanent or temporary, either immediately or on the termination of period of absence. The benefit of *lien* in a post/service/cadre is enjoyed by all officers who are confirmed in service, and is retained by a government servant while on foreign service, or holding a temporary post or officiating in another post. It further stipulates

that government servant's *lien* on a post cannot be terminated even with his consent if the result will be to leave him without a *lien* upon a permanent post. Unless *lien* of a government servant is transferred, he retains the same on the permanent post he has been substantively holding. It gets terminated only on his acquiring a *lien* on a permanent post outside the cadre he is borne.

4.1. Therefore, the second respondent, who was holding the permanent post of Professor, retained a *lien* on the same despite joining as Director in the Institute. There is no condition in the letter of appointment as Professor, dated 01.03.2000, that his *lien* will be lost on his joining any other post; nor does the letter of appointment as Director, dated 17.01.2012, bar him from holding the post of Professor in any manner. Besides, there was no communication from the Institute at any point of time that after joining the contractual post of Director, he would cease to be a Professor, which was a permanent position. In this situation, it cannot be said that the second respondent's *lien* was ever terminated explicitly or impliedly. Even the impugned order, dated 15.12.2014, only stated that as per records he was not holding any *lien* on the post of Professor, without referring to any document vide which the *lien* was ever terminated, and/or he was ever removed from the post of Professor. Resultantly, he continues to be in service as Professor. It is settled proposition of law that a right cannot be lost in a vacuum, on its own, without the same being terminated or given up. In case there is any ambiguity in the terms of appointment or the rules of the Institute, that cannot act to the disadvantage of employee/second respondent. In fact, he has been performing duties as Professor and regularly taking classes in the Institute also while working as Director; this is an undisputed fact between the parties, as recorded by the Tribunal in the impugned judgment.

4.2. Further, it has been contended by the learned senior counsel that since the second respondent has a *lien* on the post of Professor, he has a right to reinstatement too. It is the Institute which has not allowed him to work, forcing him to approach the Courts seeking vindication of the right to serve till superannuation. Therefore, the Institute cannot be allowed to take benefit of its own wrong and deny the due benefits on account of delay. As a natural corollary to reinstatement, he becomes entitled to full salary/back wages also. Lastly, it has been contended that the second respondent had a right to pursue legal remedies against the illegal termination, and there was no *mala fide* about it, as held by the Tribunal. It has also been held that he could not get any employment after termination due to the stigma attached to it. On this account also, he is entitled to payment of full salary on reinstatement.

5. Heard learned counsel for the parties, and with their assistance gone through the documents on record.

Analysis of the Tribunal's findings on points/issues (iii) and (iv)

6. Both the issues are inter-connected and, therefore, being decided together. Regarding the issue, whether the second respondent was holding a *lien* on the post of Professor of Marketing during his tenure as Director of the Institute, the Tribunal has observed, "*that the Ministry of Personnel, Government of India, has been issuing memorandum from time to time and such memorandum also contains the pre-conditions for termination of lien. According to such memorandum 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 upon a permanent post. Unless his lien is transferred, a government servant holding substantively a permanent post retains lien on that post. It will not be correct to deny a Government servant lien on a post he was holding substantively on the plea that he had*

not requested for retention of lien while submitting his Technical Resignation, or to relieve such a Government servant with a condition that no lien will be retained. A Government employee's lien on a post shall stand terminated on his acquiring a lien on a permanent post (whether under the Central Government or a State Government) outside the cadre on which he is borne." Further, the Tribunal opined that with regard to *lien* the principles of law laid down in *State of Rajasthan and another v. S.N.Tiwari and others*, (2009) 4 SCC 700, were applicable and squarely covered the case of second respondent. Accordingly, it was held as under:

- i) As the second respondent did not shift to any other department and continued to serve the Institute as Director on contract, the post on which he was not entitled to have any kind of *lien*, he retained *lien* on the post of Professor being a regular employee. Accordingly, it cannot be said that he ceased to have a *lien* on the post of Professor after joining as Director.
- ii) Since during the period second respondent was working as Director, the post of Professor of Marketing was not filled-up by appointing another person, it would disentitle the Institute to contend that there was no continuity of his service or that he had no *lien* on the post of Professor. This is in line with law laid down by the Supreme Court in *Sitikanatha Mishra v. Union of India and others*, (2015) 3 SCC 670.
- iii) It cannot be accepted that the second respondent continued working as Professor of Marketing in the Institute during his tenure as Director.

Consequently, the Tribunal concluded, once the second respondent was having a *lien* on the post of Professor of Marketing as a regular confirmed

employee, the Institute was bound to follow the process and procedure prescribed in the 2009 Rules for his removal from service, which admittedly had not been done. Besides, the Principles of Natural Justice were also not followed before removing him. Therefore, the order of removal, dated 15.12.2014, was declared null and void, and set aside by the Tribunal. And as the second respondent was continuously pursuing his remedy before different forums and there were no traces of *mala fide* in such moves, he was held entitled to full back wages also.

6.1. The Tribunal's findings despite relying upon an office memorandum issued by the Government of India, do not refer to particulars of the memorandum, viz., its number, date, etc., nor give any reasoning as to how such a memorandum giving right of *lien* to government servants will have applicability to the case of second respondent, who admittedly was in employment of the private unaided Institute and his service conditions were not governed by statutory rules. It is not the case of second respondent either that *lien* has been acquired under the contract of service entered into with the Institute. However, learned senior counsel has tried to justify the findings by relying upon the Institute Regulations, i.e., the 2009 Rules, which stipulate that '*the Institute will follow the Rules of Government of India as applicable to IIMs wherever rules are not given in the MDI HR Policy and Service Rules, 2009*'. Based on this, it has been contended that the office memorandum, dated 26.12.2013, issued by the Government of India giving right of *lien* to government servants, becomes application to the Institute's employees, including the second respondent.

6.2. The argument raised by the learned senior counsel invoking the concept of *lien* meant for government servants into the 2009 Rules is too far-

etched to be accepted; *firstly*, because concededly the Institute is not a

statutory body/authority under Article 12 of the Constitution. It is only by relying upon observations of learned Single Judge of the Delhi High Court in *Bernard D'mello v. Industrial Finance Corpn. Ltd.*, 2006 (92) DRJ 739 (DB), the Tribunal has held that the Institute is amenable to writ jurisdiction and is discharging a public function. The finding is not sustainable since the judgment of learned Single Judge in the case was set aside by the Division Bench in LPA No.723 of 2004 titled *Bernard D'mello v. Industrial Finance Corpn. Ltd.*, holding that the Delhi High Court did not have territorial jurisdiction to entertain the petition, and that any reasoning or findings given by the learned Single Judge on merits were without jurisdiction. The relevant paragraph of the judgment reads as under:

Since we have held that the High Court of Delhi has no territorial jurisdiction to entertain the petition, any reasoning or findings given on merits is without jurisdiction and without going into merits of the reasoning and the findings given by the learned Single Judge, it is clarified that any observations made, reasoning or findings given in the impugned judgment regarding the compulsory retirement of the petitioner being without jurisdiction stands set aside and will not come in the way of the petitioner Bernard D'Mello, if he opts to file writ petition in the High Court of Punjab and Haryana.

6.2.1 Further, it is well settled that even if an institution is discharging a public function of imparting education, which is subject to judicial review, its relations with the employees governed by ordinary contract of service do not become amenable to writ jurisdiction. In this regard, it is apt to refer to law laid down by the Supreme Court in *St. Mary's Education Society and*

another v. Rajendra Prasad Bhargava and others, 2023 (4) SCC 498, wherein it was held as under:

75. We may sum up our final conclusions as under:

75.1 and 75.2 xxx xxx

75.3. It must be consequently held that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a constitutional court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions. An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a "public function" or "public duty" be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service.

6.2.2 The Constitution Bench in *TMA Pai Foundation and others v. State of Karnataka and others*, 2002(8) SCC 481, has also held that in a private educational institution relationship between an employee and the management is contractual in nature. The relevant paragraph of the judgment

reads as hereunder:

64. An educational institution is established only for the purpose of imparting education to the students. In such an institution, it is necessary for all to maintain discipline and abide by the rules and regulations that have been lawfully framed. The teachers are like foster parents who are required to look after, cultivate and guide the students in their pursuit of education. The teachers and the institution exist for the students and not *vice versa*. Once this principle is kept in mind, it must follow that it becomes imperative for the teaching and other staff of an educational institution to perform their duties properly, and for the benefit of the students. Where allegations of misconduct are made, it is imperative that a disciplinary enquiry is conducted, and that a decision is taken. *In the case of a private institution, the relationship between the management and the employees is contractual in nature.* ... (italics by this Court)

6.2.3 The Institute herein is a registered unaided private society under the Societies Registration Act, 1860. It is not a statutory body, and cannot be termed a local or public authority. As per the settled law, even if it is discharging the public function of imparting education, its relationship with the employees is not in the realm of public law. It has entered into an ordinary contract of service with the employees, including the second respondent. Undisputedly, there was no statutory protection to the terms of contract entered into by the second respondent with the Institute. Therefore, he cannot be termed government employee or akin thereto, nor entitled to maintaining *lien* on the post of Professor on that basis.

6.3. *Secondly*, the stipulation in the Rules of 2009 that the Institute will follow the Rules of Government of India applicable to IIMs (Indian Institutes of Management) cannot be read to mean that every rule governing conditions of service of the central Government employees and the instructions issued thereunder, including the office memorandum, dated 26.12.2013, regarding their right to maintain *lien*, will *ipso facto* apply to employees of petitioner Institute as well. It will be against the inherent character of the Institute which is a private unaided educational Society, and also the fundamentals governing its relationship with the employees which is contractual as per the *TMA Pai Foundation* case (*supra*). It is trite law that a contract of service cannot be specifically enforced. Whereas, reading an employee's right to maintain a *lien* into an ordinary contract of service will entitle him/her to hold the post permanently till transfer of *lien*, and enforce the right as well by joining the post/seek appointment against it which is impermissible. The right to *lien* is provided to the employees of government/statutory bodies as per the applicable rules of service only. It is not a fundamental/basic right which is to be read in every employment. And in the instant case, concededly, service conditions of the second respondent are not governed or regulated by any statutory rules, nor does the terms of his appointment provide for any *lien* on the post of Professor of Marketing. It is well settled that a right cannot be assumed, it has to flow from a statute, rule, regulation or a contract; none exists in the instant case. Therefore, there is no basis to claim such a right.

6.4. *Thirdly*, the letter of appointment issued to the second respondent as Professor of Marketing does not mention about his maintaining a *lien* on the post, nor does his appointment as Director of the Institute indicate that he would have a *lien* on the post of Professor. After

joining as Director, the second respondent himself never asked for maintaining *lien* on the post of Professor, nor sought extraordinary leave or leave of the kind due from the post of Professor to join as Director of the Institute; no such leave was either to him.

6.5. *Fourthly*, the Tribunal has itself held that while working as Director of the Institute, the second respondent cannot be said to have been working as Professor of Marketing only on the basis of projections in the brochures or the documents submitted to the AICTE. Once it has been held that he was not holding the post of Professor while working as Director, and it is not on record that he ever asked for or was granted any kind of leave as Professor to join as Director in the Institute, it cannot be said he was maintaining a *lien* on the post of Professor. There cannot be any presumption that the *lien* was being maintained by the second respondent. Further, the Tribunal was wrong in holding that as the post of Professor was vacant when the second respondent was working as Director, it would provide continuity of service and/or entitle him to *lien* on the post. There is no causal connection between the two, i.e., vacancy of post and maintaining a *lien*, as even the post against which *lien* is held can be filled-up temporarily. Besides, right of an employee to hold *lien* flows from the principle of public employment and the rules framed to govern the same. Therefore, there is no basis for the findings recorded by the Tribunal.

6.6. *Fifthly*, it was only after the termination of second respondent's appointment as Director, vide letter dated 28.10.2014, he thought of claiming *lien* on the post and asserting that he continued to be Professor, the post he stopped working on with effect from 07.01.2012, by joining as Director. It was in these circumstances that the Institute communicated to him, vide letter dated 15.12.2014, that as per records, he was not holding any

lien on the post of Professor. It has not been pointed out that the said communication was not as per the Institute records.

6.7. On account of these reasons cumulatively, there was no basis for the Tribunal to hold that the second respondent had a *lien* on the post of Professor and, consequently, was entitled to full salary/back wages from the date of his removal as Director of the Institute till the date of his reinstatement.

Applicability of the judgments relied upon by the Tribunal

7. Reliance placed by the Tribunal on the judgment in *S.N.Tiwari* case (*supra*) is also misplaced, as the judgment holds a *lien* means right of a civil servant to hold a post substantively to which he was appointed, whereas the second respondent was not a civil servant. Besides, in the facts of that case, the employee therein, who was relieved from the Medical Health Department, had always retained his *lien* in the parent department. And vide letter dated 08.04.1991, he exercised the option to have his *lien* continued in the parent department/Directorate of Economics and Statistics. The Court has also held that no objections were raised when the respondent/employee gave his option for maintaining the *lien* for the purpose of promotion to higher post/protection of financial interests, etc. In these circumstances, it was held that the State cannot be allowed to turn around and say that the employee had no *lien* against his post in the parent department. These facts are totally alien to the instant case.

7.1. So far as reliance placed by the Tribunal on *Sitikanatha Mishra* case (*supra*) is concerned, the same also is on different facts, and law laid down therein would not apply to the instant case. The appellant therein was appointed to the post of Professor on contract basis on 27.01.1997 in the

autonomous body of Ministry of Tourism, Government of India. Later, he was appointed as Director in the same institute on 08.06.2006 on contract basis. Thereafter, his appointment as Professor was regularised by the Central Government on 31.10.2006, and the decision was ratified by the Board of Governors of the IITTM. On expiry of three years' period of contractual appointment as Director of the Institute, he claimed to continue as Professor. This was not accepted by the IITTM on the plea that on his joining the post as Director, his appointment as Professor came to an end as the said appointment was on contract basis and also debarred him in engaging in any other trade, business or employment without permission of the competent authority. Another plea was that the regularisation order did not apply to the appellant, who was not an existing incumbent on 04.12.2006 as required in terms of the letter of regularisation, dated 31.10.2006. And that the letter of regularisation cannot be relied upon as it was got issued by the appellant himself being the Director. In this factual background, the Supreme Court held that rejection of the appellant's claim to join on the post of Professor, where he claimed to have a *lien*, only on the ground that he was not having a substantive appointment as Professor, was not correct. He would be deemed to have been regularised in service as Professor with effect from the date of his initial appointment, i.e., 27.01.1997. Therefore, the issue whether he had a *lien* on the post of Professor was required to be decided afresh by the Institute, and it was so ordered.

22. ...The competent authority has rejected the claim of the appellant only on the ground that he was not having substantive appointment as Professor which, in our view, is not correct. However, the question is whether having regard to the nature of the work to which the appellant was appointed on contract basis

i.e. Director and the period for which he was appointed, his claim for lien could be accepted, will survive?

23. This question will now require fresh consideration in the light of finding recorded above that the appellant is deemed to have been regularised in service as Professor with effect from 27-1-1997 and the decision of the Central Government dated 31-10-2006 as ratified by BoG was applicable to him. We are of the view that this issue should, in the first instance, be decided by the Department in the light of the observations made above. ...

7.2. The instant case is on different footing. Firstly, because the Institute herein is not a State or its autonomous body; it is a private unaided educational institute. Secondly, regarding the post of Professor there is an ordinary contract of service between the Institute and the second respondent, which is in the realm of private law and, as discussed hereinabove, the principle of *lien* will have no application to it. Therefore, the second respondent is not entitled to any relief on the basis of law laid down in *Sitikanatha Mishra* case (*supra*) either.

8. In the light of discussion above, the petition is allowed, and findings of the Tribunal on issues/points (iii) and (iv) are hereby set aside, holding that the second respondent did not have *lien* on the post of Professor of Marketing in the Institute; consequently, he could not have been reinstated in service or given back wages/salary as ordered by the Tribunal.

(TRIBHUVAN DAHIYA)
JUDGE

12.12.2023

Maninder

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes