

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

132

CWP-26467-2023

Date of Decision : 28.11.2023

Sushant Vatsa

..... Petitioner

Versus

Union of India and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. D.R. Sharma, Advocate and
Mr. Pankaj Khurana, Advocate
for the petitioner.

Mr. Sudhir Nar, Sr. Panel Counsel
respondent No.1-UOI.

Mr. Arun Gosain, Advocate
for respondent No.2.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of advertisement No. NABI/ADMIN/1(001)/2022-23-01/Rectt (Annexure P-13) whereby respondent No.2 (for short 'respondent') has advertised post of Assistant Engineer on which the petitioner was earlier posted.

2. The respondent is a society registered under Society Registration Act, 1860. It is controlled by Government of India and all the rules and regulations made by Ministry of Personnel Public Grievances and Pensions, DoPT, are applicable to respondent. The petitioner came to be appointed as Assistant Engineer(Electrical) in the pay scale Rs.9300-34800/- with grade pay of Rs.4600/-. There was probation period of one

year and the petitioner was further supposed to complete 04 years contract period. The petitioner successfully completed one year probation period as well as 04 years contract period. On completion of the aforesaid period, the petitioner was appointed on permanent post vide memo dated 03.04.2017. The service of the petitioner was governed by Central Civil Services (Classification Control and Appeal) Rules, 1965 and Central Civil Services (Conduct) Rules, 1964.

3. The petitioner pursuant to advertisement issued by respondent No.3-IIT, Hyderabad applied for the post of Executive Engineer (Electrical) through proper channel. The petitioner came to be selected by IIT. The petitioner submitted technical resignation with respondent which came to be accepted vide letter dated 30.05.2022. It is apt to mention here that respondent vide mail dated 26.05.2022 informed the petitioner that Institute will not be able to provide lien to him considering the limited number of staff.

4. The respondent has advertised different posts including post of Assistant Engineer on which the petitioner was working prior to his technical resignation. The petitioner wants to rejoin his parent department i.e. respondent, however, respondent has denied his request on the ground that there was no lien on the aforesaid post, thus, he cannot be permitted to rejoin.

5. Learned counsel for the petitioner *inter alia* contends that petitioner was working with respondent against a regular post. The petitioner submitted technical resignation to get posting with respondent No.3. The petitioner had submitted technical resignation and respondent had accepted technical resignation means there was mutual understanding

that petitioner is not resigning on permanent basis and it is a temporary resignation. The petitioner was under bonafide belief that he retains lien for 2 years, however, respondent has advertised the post whereas he wants to rejoin his earlier place of posting.

6. Learned counsel for the respondent submits that vide e-mail dated 26.05.2022, the petitioner was informed that there is no lien in his favour, thus, technical resignation was accepted without lien in his favour. The petitioner is undisputedly governed by instructions issued by DoPT and as per instructions dated 23.12.2013 issued by DoPT, if a government servant submits his resignation to join public sector undertaking or autonomous body, he does not retain lien. This fact has been further clarified vide instructions dated 24.11.2022 issued by DoPT.

7. I have heard the arguments of learned counsel for the parties and perused the record.

8. The conceded position emerging from record is that the petitioner in 2012 joined respondent-NABI. The initial appointment was for 05 years which included one year probation period and 04 years contract period. The petitioner on completion of said period was made permanent. The petitioner was governed by CCS Rules, 1965 as well as CCS Rules, 1964. The petitioner got an opportunity to join autonomous body i.e. respondent No.3. The petitioner submitted technical resignation which came to be accepted. The petitioner wants to rejoin his parent department i.e. NABI. The respondent is not ready to permit the petitioner to rejoin rather respondent has advertised post held by petitioner. The petitioner is also subject to instructions issued by DoPT which vide instructions dated 23.12.2013 has clarified that if a government servant

joins a public sector undertaking or an autonomous body, he will not retain lien. The relevant extracts of the instructions dated 23.12.2013 reads as :

4. PROCEDURE TO BE FOLLOWED IN THE CASE OF THOSE WHO APPLY FOR POSTS IN THE SAME/ OTHER CENTRAL GOVERNMENT DEPARTMENTS/ STATE GOVERNMENT/ AUTONOMOUS BODY/ CENTRAL PUBLIC SECTOR ENTERPRISES ETC

- (a) to (d) x x x x
- e) Permanent Government servants on their being selected for appointment in an autonomous Body/ CPSE will have to resign before they are permitted to join the new organization. In their case no lien shall be retained and they will be governed by the orders issued by Department of Pensions & Pensioners' Welfare regulating mobility of personnel between Central Govt and Autonomous Bodies/ CPSEs etc.

x x x x

7. FORWARDING OF APPLICATIONS FOR POSTS ADVERTISED BY CENTRAL/ PUBLIC SECTOR UNDERTAKINGS/ CENTRAL AUTONOMOUS BODIES

Applications of Central Government Servants in response to press advertisement for posts in Central Public Enterprises/Autonomous Bodies may be forwarded with a clear understanding with the employee that in the event of their selection for the post applied for they will sever their connections with the Government before joining the Public Sector Undertakings/ Autonomous Bodies. No lien shall be retained in such cases. The relieving order should indicate the period within which the official should join the Public Sector Undertaking/ Autonomous Body.

Normally this period should not be more than 15 days. This period may be extended by the competent authority for reasons beyond the control of the official. Necessary notification/ orders accepting the resignation of the Govt. servant from Govt. service should be issued from the actual date of his/her joining the Public Sector Undertaking/Autonomous Body. The period between the date of relieving and the date of joining Public Sector Undertaking/ Autonomous Body can be regulated as leave of the kind due and admissible and if no leave is due, by grant of extra ordinary leave. In case he/she is not able to join the Public Sector Undertaking/Autonomous Body within the period allowed by the competent authority, he/she should report back to the parent office forthwith.

9. The respondent accepted resignation of the petitioner and it was accepted as technical resignation. The respondent in its e-mail dated 26.05.2022 communicated to the petitioner that Institute will not be able to retain lien considering the limited number of staff. The respondent-NABI did not inform the petitioner that he is not entitled to lien in terms of instructions issued by DoPT, nevertheless, neither the petitioner nor respondent can act contrary to the instructions which are binding on both. The petitioner in terms of instructions in vogue at the time of resignation as well as instructions dated 24.11.2022 which were issued post resignation of the petitioner, was not entitled to lien. This Court cannot ask the respondent to act contrary to instructions issued by DoPT.

10. In view of instructions dated 23.12.2013 and 24.11.2022 which are not under challenge, the petitioner did not retain lien on the post in question, thus, the petitioner has no claim on the said post.

11. In the wake of above discussion and findings, the petition deserves to be dismissed and accordingly dismissed.
12. The dismissal of this petition would not inhibit the respondent to appoint petitioner, in view of the fact that post in question is still lying vacant.

28.11.2023
anju

(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>