

WPA 21815 of 2018

**Gour Chandra Jana
Vs.
State of West Bengal & Ors.**

Mr. Dipayan Kundu.

... for the Petitioner.

Mr. Mrinal Kanti Ghosh.

... for the State.

1. In this case the petitioner has challenged rejection of grant of notional incremental benefit to him by the respondent District Inspector of Schools, Secondary Education, South 24 Parganas/respondent No. 3, vide its order dated June 5, 2018.
2. The factual background of the case is required to be narrated in brief. The petitioner is an Organizer Teacher in the Organizing Committee of the respondent No. 4/Bali Purbapara High School, which was established in the year 1987. The school was approved with effect from May 1, 1998, without any financial assistance.
3. With regard to the same the school was aggrieved and knocked the doors of the Court. The writ petition filed by the teaching and non-teaching staff of the said school travelled through the Hon'ble Single Bench, the Hon'ble Division Bench (FMA No. 400 of 2002) and the Hon'ble Supreme Court. A contempt application before the Hon'ble Division Bench in connection with the said FMA No. 400 of 2002, was also filed.
4. During pendency of the said contempt application the petitioner was appointed as a Primary Teacher under the South 24 Parganas District Primary School

Council. Therefore, the petitioner applied for a 'lien' from the respondent school where he has been an organizing teacher and working till that date.

5. Vide the resolution dated November 29, 2005, the Managing Committee of the respondent school allowed 'lien' in favour of the petitioner, which was further extended from time to time on various subsequent occasions. Such 'lien' of the petitioner was valid till November 30, 2007.
6. Be that as it may, after approval of the School Managing Committee for 'lien' of the post, the petitioner joined as a primary teacher in his new assignment on and from December 1, 2005.
7. The respondent school was finally recognized as a Grant-in-aid School by the respondent Board, vide order dated January 30, 2006. Therefore, after the 'lien' period being over on November 30, 2007, the petitioner sought to return to his original post as an Assistant Teacher in the respondent school. However, he was not allowed to join as prayed for.
8. Being aggrieved, the petitioner moved before this Court in a writ petition. The order of the Court dated December 7, 2009 in WP No. 22891 (w) of 2007 and WP No. 22894 (w) of 2007 are worth mentioning in this regard. The Court by dint of the said order dated December 7, 2009, directed the respondent/Director of School Education, to enquire whether the petitioner intended to resume his duty during the period of 'lien' on the concerned post or not. The Director was to pass an order thereafter.
9. The resultant order is that the grant of 'lien' in favour of the petitioner was illegal and invalid. That same was challenged in a Writ Petition being WP No. 39 (w) of 2011, which was disposed of vide an order of the

Court, dated August 4, 2011. The Court directed the Principal Secretary of School Education Department to consider as to whether the 'lien' granted by the school authority in favour of the petitioner was legal and valid. The Principal Secretary was directed to act in accordance with law, in case upon consideration, the 'lien' granted, was found to be valid.

10. In an appeal by the petitioner challenging the said order dated August 4, 2011 the Hon'ble Appeal Court allowed the petitioner to resume duty in the original post held by him in the respondent Bali Purbapara Junior High School. According to the Court's directions, the petitioner was allowed to join and was provided with the admissible salary and allowances, since after resuming his duty in the respondent school. The petitioner joined there on July 2, 2013. With effect from the date of his joining that is, July 2, 2013 in the said school, the respondent District Inspector of Schools, Secondary Education, South 24 Parganas has approved his service as an Assistant Teacher of the said school.
11. According to the writ petitioner, he being an Organizing Teacher of the school and on 'lien' to the post therein, on the date of recognition of the school by the Government and that he being allowed to join in the said school after expiry of the 'lien' period and having been approved as an Assistant Teacher therein, is entitled for approval with effect from May 1, 1998 itself, that is, the date of recognition of the school. That he should not have been approved only with effect from July 2, 2013. The writ petitioner ventilated his grievances before the competent authority in writing.
12. While rejecting the petitioner's prayer for grant of notional incremental benefit with effect from the date of recognition of the school, that is, May 1, 1998, the

District Inspector of Schools, Secondary Education, South 24 Parganas has strongly relied on Para (b) of G.O No. 1018-SE (SEC) dated 8.12.1997, which speaks that regularization of the 'lien', can be made after returning to the original post, without any break at either end, for grant of notional increment, only when the 'lien' is for two years time period. Since the petitioner's 'lien' period extended from December 1, 2007 to July 1, 2013, that is, for over a period of five years, the said respondent has indicated that the period of 'lien' not being regularized by the appropriate authority, his claim for notional incremental benefit as per G.O No. 1018-SE (SEC) dated 8.12.1997, for the non-regularized operation of the 'lien' period, cannot be granted in accordance with law.

- 13.** Mr. Kundu appearing for the petitioner has termed such decision of the respondent DI as an arbitrary one, not lawful and liable to be set aside. According to him the entire period of 'lien' of the writ petitioner was duly approved by the school authority and duly extended from time to time till July 1, 2013. After the 'lien' period was over, by virtue of the Court's order the petitioner was allowed to join in his original post in the respondent school and drew appropriate salary and allowances. For this reason, he says that there would not be any cogent reason for the respondent authority to deprive the petitioner from the notional benefit of continuous service and increment, with effect from the date of his initial appointment. He has sought for an appropriate order in this case.
- 14.** An affidavit-in-opposition has been filed by the respondent No.3/District Inspector of Schools. Here, the grounds of rejection of petitioner's prayer as in the order dated June 5, 2018, have been reiterated. The petitioner's prayer for grant of notional benefit was

objected to and the respondents have also prayed for dismissal of the writ petition.

15. The sole question is with respect to whether the writ petitioner has sought for returning to his original substantive post, within the period of valid 'lien' or not. According to the G.O No. 1018-SE (SEC) dated 8.12.1997, the approved employee after having served the period of 'lien' when returns to the original post without any break at either end, would be entitled to notional increments as well as for consideration of the 'lien' period as extraordinary leave without pay.
16. "Lien" connotes the civil right of a government servant to hold the post to which he is appointed substantively. The settled legal position is that a government servant only ceases to exist in a post, when he is appointed on another post substantively/confirmed or absorbed permanently. Otherwise, his "lien" would continue on the previous post. The legal proposition as above has been spelt out in the judgments of the Supreme Court reported in **(2015) 3 SCC 670 [Sitikantha Mishra vs Union of India & Ors]** and **2023 SCC OnLine SC 1110 [L. R. Patil vs Gulbarga University, Gulbarga]**.
17. In view of the law settled in the manner as mentioned above, it would not be improper to find that the petitioner, unless subsequently is engaged by appointment or otherwise, in another post substantively, he would not be precluded from claiming the benefits of his initial substantive post to which he has "lien".
18. Respondent's objection to the petitioner's prayer is on the ground that the conditions as prescribed in G.O No. 1018-SE (SEC) dated 8.12.1997 have not been fulfilled in case of the petitioner, in so far as there has been a break period, as the petitioner has undergone

a 'lien' period beyond the prescribed two years time. In this regard the respondents have relied on the notification No. G.O. 79-EDN (S) dated 28.1.1994 which speaks that a teacher of an institution on confirmation in a permanent post can acquire a 'lien' for a period not exceeding two years.

- 19.** The documents relied on by the petitioner in its affidavit-in-reply is worth noting in this regard. By dint of the same the petitioner has put forth part of his service book, duly endorsed by the head of the Institution, that the 'lien' granted to the petitioner with effect from December 1, 2005 was extended till November 30, 2007. The petitioner has also stated on affidavit that, since thereafter, due to the non-cooperation by the school authority to allow him to join, he had to remain outside of the school activities and moves the Court of law seeking redressal of his grievances. Finally, by dint of the Court's order he was allowed to join on July 2, 2013 in the school and was approved with effect from the said date.
- 20.** These facts are undisputed in this case. After November 30, 2007, the parties have been litigating amongst themselves for prolonged period of time.
- 21.** The Court finds that the reason for which the petitioner had to come before the Court and fight for his rights since 2007 to 2013 has been beyond his control. Admittedly, the petitioner was granted 'lien' with effect from December 1, 2005, for the period of six months, extended thereafter till November 30, 2007 (as per document annexed with the affidavit-in-reply). In the meantime vide order dated January 30, 2006, the respondent school was recognized as a Grant-in-aid School under the Government of West Bengal. However, since immediately after expiry of two years period of 'lien', the petitioner had to remain out of the respondent school, due to the reason

beyond his control, till the time the Court granted him liberty to join in the said school again, with effect from July 1, 2013. This Court finds that the said period should be regularized, for a beneficial and practicable execution of Court's order as above. The petitioner's 'lien' period beyond two years time cannot be considered as the break period in terms of G.O No. 1018-SE (SEC) dated 8.12.1997, to consider him ineligible under the same, for grant of notional incremental benefit.

- 22.** As discussed above, the law is now well settled that unless the person joins/is absorbed in a subsequent substantive post, he continues to have 'lien' as regards the earlier substantive post, the writ petitioner is found entitled to have the benefits of having 'lien' to the post in the respondent school, during the period till he joins therein, pursuant to the Court's directions, that is on July 1, 2013.
- 23.** Upon such finding the Court is further to hold that on the basis of the undisputed fact of the petitioner being Organizing Teacher on the respondent school, which was recognized with effect from May 1, 1998 is entitled to the notional incremental benefit in terms of G.O No. 1018-SE (SEC) dated 8.12.1997, with effect from said date of recognition of the said school (as an unaided institution).
- 24.** Hence, this writ petition being WPA 21815 is 2018 is allowed with the following directions:-
 - (i) Order of the District Inspector of Schools, Secondary Education, South 24 Parganas/ respondent No. 3 order dated June 5, 2018 is set aside;
 - (ii) The respondent No. 3 is directed to grant notional increment in favour of the petitioner with effect from May 1, 1998, and issue order in that regard;

(iii) The exercise as above shall be immediately done positively within the period of 15 days time from the date service of copy of this order.

- 25.** Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)