

2026:PHHC:035052



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

202

CWP-7783-2023

Date of decision: March 07, 2026

OM PRAKASH

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Ravinder Malik (Ravi), Senior Advocate with
Mr. Ritender Rathee, Advocate and
Mr. Rishab Arora, Advocate
for the petitioner.

Ms. Rajni Gupta, Additional Advocate General, Haryana.

TRIBHUVAN DAHIYA, J. (ORAL)

The petition has been filed *inter alia* seeking a writ of *certiorari* quashing the order dated 02.02.2023, Annexure P-17, whereby the petitioner has been refused permission to join duties as Clerk. Further, a writ of *mandamus* has been sought directing the respondents to allow the petitioner to join the post on which he has a lien in terms of provisions of the Haryana Civil Services (General) Rules, 2016 (for short, 'the 2016 Rules').

2. Learned senior counsel argued that the petitioner was initially appointed as Peon in the Education Department on 11.06.1991, and confirmed as such on 19.02.1994. Later, he was promoted as Clerk on 04.06.2009. However, before confirmation he got selected as Art and Crafts Teacher and was relieved from service to join the post on 06.05.2010. The entire selection of Art and Crafts Teachers pursuant to advertisement 06/2006 was set aside by this Court vide judgment passed in

CWP-18482-2010 titled *Suman Kumari v. State of Haryana and others*, and was upheld by the Supreme Court vide order dated 14.12.2020. He was, therefore, relieved by the Department on 11.02.2021, vide letter, dated 11.02.2021, Annexure P-11, pursuant to an order, dated 09.02.2021, Annexure P-10, passed by Director General Elementary Education, Panchkula, to that effect. Since the petitioner had a lien on the post of Peon, and could not be confirmed either on the promotional post of Clerk or as Art and Crafts Teacher, his right to join back on the substantive post cannot be taken away in terms of Rules 28, 29 and 30 of the Haryana Civil Services (General) Rules, 2016. In support of the contentions, he has relied upon the Supreme Court judgment dated 04.09.2023, rendered in *L.R. Patil v. Gulbarga University, Gulbarga*, (2024) 17 SCC 436.

3. *Per contra*, learned State counsel contended that the petitioner cannot be allowed to join as Peon in the Department in terms of Rule 30 of the 2016 Rules, which prescribes that a permanent Government employee shall retain lien on a regular post either while performing duties of that post or during the probation period after appointment to another post. Since the petitioner got appointed as Art and Crafts Teacher vide order dated 05.05.2010 and his services were terminated on 11.02.2021, i.e., long after completing two years' period of probation, he cannot be taken back in service.

4. Arguments advanced by learned counsel for the parties have been considered.

5. As apparent on record, the petitioner was initially appointed as Peon in the Education Department on 11.06.1991 and was confirmed on the

post on 19.02.1994. He could not be confirmed on the post of Clerk he had been promoted to, since prior thereto he was selected as Art and Crafts Teacher in the Department on 05.05.2010. However, entire selection against the advertisement pursuant whereto he had been appointed, was set aside leading to his being relieved from service without confirmation on 11.02.2021. Rule 30 of the 2016 Rules allows a permanent Government employee to retain his lien on a regular post; it reads as under:

30. Retention of lien.—

A permanent Government employee shall retain a lien on a regular post while—

- (a) performing duties of that post;
- (b) during the probation period on appointment to another post;
- (c) to (d) xxx xxx xxx

It is apparent that a permanent Government employee retains a lien on the post he has been working against as a confirmed employee, on appointment to another post during the probation period. Meaning thereby, till the employee is confirmed on other post he has been appointed to, he retains the lien on his previous post. And as per the settled proposition of law, unless a specific order of confirmation is passed by the employer, an employee cannot be said to have been confirmed; conversely, in the absence of an order of confirmation it cannot be taken that probation period has come to an end except when there is a stipulation to the contrary in the Rules or the circumstances so established. The submission by learned State counsel is that the petitioner cannot be permitted to join back as the prescribed period of probation was two years and he worked as Art and Crafts Teacher for over

ten years. But she could not show that on completion of the said period he automatically stood confirmed. More importantly, it stands admitted by the respondents themselves in affidavit dated 26.02.2026, that the petitioner's services as Art and Crafts Teacher were not confirmed by the Department. Accordingly, he cannot be precluded from the benefit of Rule 30 of the 2016 Rules, and it is held that he retains a lien on the regular substantive post of Peon held by him prior to joining service as Art and Crafts Teacher in the Department.

6. In *L.R. Patil* case *ibid.* the Supreme Court dealt with somewhat similar factual situation. The appellant therein was working as Office Superintendent in the University, having been confirmed as such with effect from 07.08.1987. Subsequently, he was appointed as Assistant Registrar in the same University by direct recruitment, and was relieved to join the post vide office order dated 08.04.1993. The appointment was quashed by the High Court vide order dated 24.06.1998, and appeal against the same was dismissed by the Division Bench on 29.09.2000; during its pendency the petitioner continued working as Assistant Registrar. After dismissal of the appeal, his appointment was withdrawn by the University vide office order dated 23.12.2000, and he was placed back on his previous post of Office Superintendent with immediate effect. A dispute arose with regard to his promotion and other service benefits based thereupon at par with his juniors. The University refused to give the benefit. He again filed a petition before the High Court challenging the rejection. It was allowed holding him entitled to the claimed benefits on the ground that he had a lien on the substantive post of Office Superintendent, which continued since he was not

permanently absorbed or confirmed on the post he was subsequently appointed, i.e., Assistant Registrar. It is relevant to refer to the following observations of the Court on the issue:

18. Coming to the facts in the present case, the appellant vide order dated 8-4-1993 was appointed by the respondent-University as Assistant Registrar and the said fact was duly noted in his service book. His appointment was successfully challenged and resultantly it was quashed by the High Court. Appeals against the said order were dismissed. In view of dismissal of appeals, the respondent-University vide Resolution dated 23-12-2000 resolved to retain the appellant back on his previous post i.e., 'Office Superintendent'.

19. In this context, the "Preamble" of the Resolution reveals that the appellant was relieved to take up the new appointment on permanent post with "formal permission" from the competent authority to avail the benefit of past service for the purpose of pension and leave as contemplated under Rule 252(b) of the KCS Rules. It is also subsequently noted in the Resolution that during the pendency of appeal against the order quashing the appellant's appointment, the Division Bench of the High Court passed an interim order and stayed the operation of the order of learned Single Judge quashing the appointment pending admission of appeal. In the said perspective, it is apparent that, subject to pending litigation assailing the appellant's appointment as Assistant Registrar, he throughout continued to be on the post of Assistant Registrar as probationer and was never confirmed or was permanently absorbed on the said post. Be that as it may, if the appellant was never permanently absorbed or confirmed on the post of "Assistant Registrar", then as per mandate of Rule 20 Note 4 of the KCS Rules, his lien shall continue on the original post of the Office Superintendent.

20. xxx xxx xxx

21. In a three-Judge Bench judgment in *State of Rajasthan v. S.N. Tiwaris*, while interpreting the word “lien” against the post appointed substantively with respect to another post, this Court held as thus: (SCC p. 704, para 17)

“17. It is very well settled that when a person with a lien against the post is appointed substantively to another post, only then he acquires a lien against the latter post. Then and then alone the lien against the previous post disappears. Lien connotes the right of a civil servant to hold the post substantively to which he is appointed. The lien of a government employee over the previous post ends if he is appointed to another permanent post on permanent basis. In such a case the lien of the employee shifts to the new permanent post. It may not require a formal termination of lien over the previous permanent post.”

7. In view of the discussion, the petition is allowed. The impugned order, dated 02.02.2023, is set aside directing the respondents to take the petitioner back in service on the post of Peon. He shall be entitled to continuity in service and all notional service benefits from 06.05.2010; however, salary shall be paid to him from the date he was relieved from service as Art and Crafts Teacher, i.e., 11.02.2021. The arrears of salary will carry interest at the rate of seven per cent per annum from that date till the date of actual payment. These directions shall be carried out by the respondents within four weeks of receiving a certified copy of the judgment.

March 07, 2026

Jaspreet Kaur

(TRIBHUVAN DAHIYA)
JUDGE

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No