

CWP-16840-2016 (O&M)
Date of Decision: 11.02.2026

**CORAM: HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA
HON'BLE MR. JUSTICE ROHIT KAPOOR**

Ms. Samdisha Kaur, AAG, Punjab.

ASHWANI KUMAR MISHRA, J. (ORAL)

This writ petition has been filed with a prayer to set aside the order dated 25.05.2016 contained in Annexure P-9 of the writ petition, whereby the appointment of the petitioner as Child Development Project Officer has been treated as a fresh appointment w.e.f. 02.03.2009. The petitioner has also prayed for quashing the order dated 01.04.2010, vide which the period of service of the petitioner from 09.01.2009 to 01.03.2009 has been declared as period *dies-non*. The petitioner has further prayed for appropriate directions to the respondent to consider the question of pay protection, keeping in view the departmental circular dated 15.11.2000.

Above prayers are made in the context of undisputed facts which are as under:-

The petitioner was selected by the Punjab Public Service Commission and was issued an appointment letter to the post of Child Development Project Officer on 02.07.1992. The petitioner was placed on probation. Vide order dated 07.10.1995, the petitioner successfully

completed the period of probation and was confirmed on the said post. The petitioner continued to work as such from 1992 onwards till he applied for appointment to the post of Civil Judge (Junior Division), for which an advertisement was issued by the Punjab Civil Services (Judicial Branch). The petitioner submitted an application through the proper channel for selection to the advertised post. Permission at the competent level was granted to the petitioner for the said purpose. The petitioner was ultimately appointed as Civil Judge (Junior Division) on 03.11.2005. The appointment letter of the petitioner is on record as Annexure P-2. Pursuant to such appointment, the petitioner assumed charge w.e.f. 26.11.2005.

It is at this stage that the petitioner was relieved from his previous department of Social Security, Women and Child Development vide order dated 01.12.2005. This order has significance for the controversy arising in the present matter and is consequently reproduced hereinbelow:-

“Consequent upon his appointment to the Punjab Civil Service (Judicial Branch), Shri Amrish Jain, CDPO, Dera Bassi, is, hereby, relieved from this Department with effect from 25-11-2005(Afternoon) as per his request dated 25-11-2005, read with Order dated the 25th November, 2005 of the Hon'ble Punjab and Haryana High Court conveyed vide their Endst.No. 807 Gaz I/VI M.46 dated 25-11-2005, subject to the condition that his lien will be kept in this Department for a period of two years or till his confirmation in the Punjab Civil Services (Judicial Branch), whichever is earlier, in view of the instructions of Government of Punjab issued from time to time.”

It transpires that the petitioner could not complete his probation satisfactorily on the post of Civil Judge (Junior Division), and his services

came to be dispensed with by the State vide order dated 31.12.2008. The

order came to be communicated to the petitioner on 08.01.2009. The petitioner, on the very next day i.e., 09.01.2009, offered his joining in the Department of Social Security, Women & Child Development. However, the respondent-State, did not allow the petitioner to join until an order was passed in this regard on 02.03.2009. This order also has implications for the controversy raised and is reproduced hereinafter:-

“As Shri Amrish Kumar Jain former Child Development Project Officer was relieved from this Department in consequence of his appointment to Punjab Civil Services (Judicial Branch) vide letter of the government Memo No.2/251/05-5 SS/5255-58 Dated 01-12-2005.

2. As the Department of Home Affairs and Justice dispensed with the services of this officer as this officer could not clear his probation period successfully vide their letter No.1/128/2008-3JUD (1)/4519-21 Dated 31-12-2008. Shri Amrish Kumar Jain vide his representation Dated 09-01-2009 has requested this department to accept his joining report to the post of Child Development Project Officer.

3. After considering the entire facts of this case, it has been decided to allow the joining of Shri Amrish Kumar Jain as Child Development Project Officer with effect from 02-03-2009 under Rule 3.12, Punjab Civil Services Rules Volume-1 Part-1. The orders of the posting will be issued separately.”

The petitioner joined and was working in the concerned Department of Social Security, Women & Child Development when a subsequent order was passed by the Principal Secretary of the concerned department on 25.05.2016. This order took note of the previous appointment of the petitioner as Child Development Project Officer on 02.07.1992, and

the fact that, with due permission of the competent authority, he had applied for appointment to the post of Civil Judge (Junior Division), and that such permission was granted. Thereafter, he was appointed to the post of Civil Judge (Junior Division).

The respondent, in the order dated 25.05.2016, took note of the previous order dated 01.12.2005, as per which the lien of the petitioner was restricted to a period of 02 years or till his confirmation in the Punjab Civil Services (Judicial Branch), whichever was earlier. The respondent, therefore, was of the opinion that the lien available to the petitioner in the Department of Social Security, Women & Child Development ceased to exist after the expiry of two years and, therefore, on the date when he was allowed to join i.e., on 02.03.2009, he had no lien on his previous post. Accordingly, the impugned order provided that the petitioner's service from 02.07.1992 to 01.03.2009 could not be treated as continuous service for any purpose, and his joining in the department on 02.03.2009 would have to be treated as a fresh appointment. This order is the first order which is assailed in the writ petition.

On the petitioner's representation, the State of Punjab also passed an order on 01.04.2010 holding that the period between 09.01.2009 to 02.03.2009 would be treated as a period *dies-non* and that he would not be eligible for any financial or administrative benefits for the said period.

The petitioner has appeared in person. He submits that after his confirmation in service in the Department of Social Security, Women & Child Development, he was holding a lien in the concerned department on the post of Child Development Project Officer. It is contended that this lien has to continue under the statutory scheme until he is substantively

appointed elsewhere. For this purpose, the petitioner places reliance upon Rule 3.15 of the Punjab Civil Services Rules which is as under:-

“A Government employee's lien on a post shall, in no circumstances, be terminated, even with his consent, if the result will be to leave him without a lien on any post”

The petitioner also submits that once he had submitted his joining in the concerned department on 09.01.2009, any delay occasioned in allowing him to join would have to be treated as a period of compulsory waiting and could not have been treated as a period *dies-non*.

The aforesaid contention is opposed by learned State counsel, who points out that the specific stipulation in the order of 01.12.2005 restricting the lien to a period of two years was never assailed and, therefore, the impugned order, holding the petitioner's joining on 02.03.2009 to be a fresh appointment, is a natural consequence of the previous order and requires no interference. It is urged that since the order dated 01.12.2005 has not been challenged in the writ petition, the consequences flowing from such order cannot now be objected to.

In reply, the petitioner submits that the order dated 01.12.2005 was contrary to Rule 3.15 and that is why the State rightly allowed his joining, by treating his lien in the Department of Social Security, Women & Child Development to have continued. It is, therefore, urged that any subsequent decision of the State holding that the lien was not available to the petitioner at the parent post in the year 2009 is contrary to the conduct of the State itself.

From the material placed on record, it is apparent that the petitioner's services in the Department of Social Security, Women & Child

Development had been confirmed on 07.10.1995. He, therefore, became a substantive member of the cadre, and his lien on the post came into existence. It is thereafter that the petitioner applied for appointment to the post of Civil Judge (Junior Division). The application for such purpose was moved through the proper channel, and with the requisite permission of the competent authority. Though the petitioner successfully competed and secured appointment to the post of Civil Judge (Junior Division) and joined, his services were never confirmed. In such circumstances, the employment of the petitioner in the Judicial Wing of the State came to an end.

The moot question that arises for consideration in this matter is as to whether the lien of the petitioner in the Social Security Department would continue, or whether it would stand restricted to a period of two years by virtue of order dated 01.12.2005?

The question posed above has to be examined in the context of the statutory rules which regulate the service conditions of the petitioner. Rule 3.15 has been relied upon and is extracted above. This provision makes it clear that a Government employee's lien on a post shall, in no circumstances, be terminated, even with his consent, if the result would be to leave him without a lien on any post. This provision is emphatic and clearly applies to the facts of this case. The intention of the Rule is to protect the lien of an employee in circumstances such as those of the present matter. The stipulation that even with the consent of the employee the lien cannot be terminated severely curtails the liberty of the employer to terminate the lien. It is only when an employee acquires a lien on another post that termination of the lien from the previous post would be permissible.

It is undisputed that, in the present case, though the petitioner was appointed to the post of Civil Judge (Junior Division), but he never acquired a lien on such post, as he was not confirmed. Once that be the position, we have no hesitation in coming to the conclusion that the State could not have restricted or curtailed the lien of the petitioner on the previous post to a period of two years.

We also find substance in the petitioner's contention that, realizing the mandate of Rule 3.15, the competent authority of the State allowed the petitioner to join on 02.03.2009. If the lien had been treated as terminated on 02.03.2009, the joining of the petitioner to his earlier post would have been impermissible. It is not the case of the respondent that the petitioner had applied for any fresh appointment. His joining on 02.03.2009, therefore, was pursuant to the lien maintained and retained by him on his previous post. The conduct of the State, therefore, is clearly consistent with Rule 3.15.

What appears to us is that the terminology employed in the order dated 01.12.2005, whereby the lien was stated to be for a period of two years or till his confirmation in the subsequent employment, whichever was earlier, suffered from an inadvertent error. The terminology consistent with Rule 3.15 ought to have been 'whichever is later' instead of 'whichever is earlier'. In that view of the matter, the lien of the petitioner cannot be treated as having been terminated so as to treat his joining on 02.03.2009 as a fresh appointment. To such an extent, we find force in the petitioner's contention.

The view that we propose to take finds strength from a recent judgment of the Supreme Court in **L.R.Patil Vs. Gulbarga University,**

Gulbarga, 2023 INSC 796. After considering the applicable rules and referring to the previous judgments of the Court on the point, the concept of lien has been dealt with in the following terms by the Supreme Court in paragraph 17, which is reproduced hereinbelow:-

*“17. In a 3-Judge Bench judgment in the case of **“State of Rajasthan and Another Vs. S.N. Tiwari and Others, (2009) 4 SCC 700”**, while interpreting the word ‘lien’ against the post appointed substantively with respect to another post, this Court held as thus:*

“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.”

*Similarly in the case of **“State of Madhya Pradesh and Others Vs. Sandhya Tomar and Another, (2013) 11 SCC 357”**, this Court held that the lien is a civil right of a civil servant to hold the post to which he is appointed substantively. The relevant part of the order is reproduced below as thus –*

“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 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."

All the aforesaid judgments have been duly considered again by this Court in another 3-Judge Bench judgment in the case of Sitikanatha Mishra (supra). Thus, as per settled legal position, we observe that 'lien' of a government servant only ceases to exist when he/she is appointed on another post 'substantively'/confirmed or absorbed permanently. Otherwise, his/her lien would continue on the previous post."

Coming to the next part of the petitioner's grievance with regard to counting the period from 09.01.2009 to 02.03.2009 as being the period *dies-non*, we find substance in the petitioner's contention in this regard as well. Admittedly, the petitioner was relieved from the post of Civil Judge (Junior Division) on account of his not having secured his confirmation. On 09.01.2009, joining was given by the petitioner in his parent department, and for any delay occasioned in its acceptance, the petitioner cannot be punished. This period could not have been treated as a period *dies-non*, or else the petitioner would lose the benefit of his lien and previous service. In case we accept the respondent's contention of such period to be treated as *dies-non*, then it would amount to putting a premium on the default of the State itself in belatedly permitting the petitioner to join. This period, therefore, has to be treated as a period of compulsory waiting and shall be counted towards his service.

In view of the discussion and deliberations held above, this petition succeeds and is allowed. The impugned orders dated 25.05.2016 and 01.04.2010 are hereby quashed. We hold that the petitioner's lien on the post of Child Development Project Officer continued on the date the petitioner rejoined on 02.03.2009.

A consequential direction is issued to the respondent to recalculate the petitioner's salary by treating the aforesaid period as part of his lien and by ensuring that his appointment is not treated as a fresh appointment on 02.03.2009. Such consequential benefits shall be extended within a period of three months from the date of receipt of a certified copy of this order.

(ASHWANI KUMAR MISHRA)
JUDGE

(ROHIT KAPOOR)
JUDGE

11.02.2026
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No