

STATE OF MADHYA PRADESH & ORS.

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v.

KU. SANDHYA TOMAR & ANR.
(Civil Appeal No. 9028 of 2012)

DECEMBER 13, 2012

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**[DR. B.S. CHAUHAN AND FAKKIR MOHAMED
IBRAHIM KALIFULLA, JJ.]**

Service Law – Appointment – Temporary appointment – In a project – Through Employment Exchange – The appointee joining another department – Later repatriated to parent department – Not permitted to join parent department – Subsequent advertisement for appointment to the post – Challenged by the appointee – Advertisement quashed by Single Judge as well as Division Bench of High Court – On appeal, held: The initial appointment was in violation of Articles 14 and 16 of the Constitution – As the appointment was temporary, the appointee cannot claim any lien in respect of the said post – The appointee has no right to challenge the advertisement – Constitution of India, 1950 – Articles 14 and 16.

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Words and Phrases – ‘Lien’ – Meaning of, in the context of service law.

Respondent No. 1 was appointed to the post of Project Director in the Child Labour Elimination and Rehabilitation Society, through the Employment Exchange on a temporary basis. Thereafter, she joined a post in the Department of the State Government. After eight months, she was repatriated to her parent Department. But, she was not permitted to join the duty in her parent Department. The post of Project Director was thereafter advertised.

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A Respondent No. 1 filed Writ Petition challenging the advertisement. Single Judge of High Court quashed the advertisement. The Division Bench of High Court, in writ appeal affirmed the judgment of Single Judge. Hence the present appeal.

B Allowing the appeal, the Court

HELD: 1. Initial appointment of respondent No.1 was not made on the basis of any advertisement in any newspaper whatsoever. Hence, applications for the post were not invited. It is a settled legal proposition that considering the candidature of persons by mere calling of names from the Employment Exchange does not meet the requirement of Articles 14 and 16 of the Constitution of India. Thus, respondent No.1 was not appointed following the procedure mandatorily required by law, and that such appointment was admittedly in violation of Articles 14 and 16 of the Constitution of India, as several other eligible candidates have been deprived of their right to be considered for the post. [Para 7] [845-C-D-E-F]

E *Excise Superintendent Malkapatnam, Krishna District, A.P. (1996) 6SCC 216; 1996 (5) Suppl. SCR 73 ; Veer Kunwar Singh University Ad Hoc Teachers Association and Ors. v. Bihar State University (C.C.) Service Commission and Ors., (2009) 17 SCC 184; 2007 (7) SCR 396; Union of India and Ors. v. Miss. Pritilata Nanda AIR 2010 SC 2821; 2010 (8) SCR 733; State of Orissa and Anr. v. Mamata Mohanty (2011) 3 SCC 436; 2011 (2) SCR 704 – relied on.*

G 2. It is a settled legal proposition that in the event that a person is not appointed on a regular basis, and if his service is not governed by any Statutory Rules, he shall be bound by the terms and conditions that have been incorporated in his appointment letter. In such an eventuality, there can be no reason with respect to why

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the terms and conditions incorporated in the appointment letter should not be enforced against such an employee. In the instant case, respondent No.1 was temporarily appointed in a project, and, thus she had at no point of time been appointed on a regular basis, owing to which she cannot claim any lien with respect to the said post. [Para 8] [845-G-H; 846-A-B]

State of Punjab and Ors. v. Surinder Kumar and Ors., AIR 1992 SC 1593: 1991 (3) Suppl. SCR 553 – relied on.

3. "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 a substantive capacity, and whether he has been made permanent or has been confirmed to the said post. [Para 9] [846-B-E]

Parshotam Lal Dhingra v. Union of India AIR 1958 SC 36: 1958 SCR 828; *S. Pratap Singh v. State of Punjab* AIR 1964 SC 72: 1964 SCR 733; *T.R. Sharma v. Prithvi Singh and Ors.* AIR 1976 SC 367: 1976 (2) SCR 716 ; *Ramlal Khurana v. State of Punjab and Ors.* AIR 1989 SC 1985: 1989 (3) SCR 680; *Triveni Shankar Saxena v. State of U.P. and Ors.* AIR 1992 SC 496: 1991 (3) Suppl. SCR 534 ; *Dr. S.K. Kacker v. All India Institute of Medical Sciences and Ors.*(1996) 10 SCC 734: 1996 (5) Suppl. SCR 540; *S. Narayana vs. Md. Ahmedulla Khan and Ors.* AIR 2006 SC 2224: 2006 (2) Suppl. SCR 69; *State of Rajasthan and Anr.*

A *v. S.N. Tiwari and Ors.* AIR 2009 SC 2104 – relied on.

B 4. Respondent No.1 voluntarily abandoned her job in the Society and joined another post in another department. Therefore, her temporary employment in the Society came to an end automatically. The Society was not bound to permit respondent No.1 to join the post of Project Director. As a consequence thereof, she has no right to challenge the advertisement dated 16.5.2005. At the most, if respondent No.1 was eligible for appointment as per the said advertisement, she could apply for fresh appointment. [Para 10] [846-H; 847-A-B-C]

Case Law Reference:

	1996 (5) Suppl. SCR 73	Relied on	Para 7
D	2007 (7) SCR 396	Relied on	Para 7
	2010 (8) SCR 733	Relied on	Para 7
	2011 (2) SCR 704	Relied on	Para 7
E	1991 (3) Suppl. SCR 553	Relied on	Para 7
	1958 SCR 828	Relied on	Para 9
	1964 SCR 733	Relied on	Para 9
F	1976 (2) SCR 716	Relied on	Para 9
	1989 (3) SCR 680	Relied on	Para 9
	1991 (3) Suppl. SCR 534	Relied on	Para 9
	1996 (5) Suppl. SCR 540	Relied on	Para 9
G	2006 (2) Suppl. SCR 69	Relied on	Para 9
	AIR 2009 SC 2104	Relied on	Para 9

H CIVIL APPELLATE JURISDICTION : Special Leave Petition (Civil) No. 18983 of 2009.

From the Judgment & Order dated 05.11.2008 of the High Court of M.P. at Indore in W.A. No. 86 of 2007. A

B.S. Banthia for the petitioners.

Niraj Sharma and Sumit Kumar Sharma for the Respondents. B

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. Leave granted.

2. This appeal has been preferred against the judgment and order dated 5.11.2008, passed by the High Court of Madhya Pradesh (Indore Bench) in Writ Appeal No.86 of 2007, by which it has affirmed the judgment and order of the learned Single Judge dated 17.7.2006, passed in Writ Petition No.1007 of 2006, by which the learned Single Judge quashed the advertisement dated 16.5.2005, inviting the applications for appointment on the post of Project Director. C
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3. Facts and circumstances giving rise to this appeal are:-

A. That the Central Government introduced a scheme for elimination of child labour with respect to which, the Director General of Employment and Training wrote a letter dated 15.7.1995, to the Collector, Khargone (West Nimar) to implement the aforesaid Scheme. In order to give effect, i.e., to implement the said Scheme, a society, namely, the Child Labour Elimination & Rehabilitation Society (hereinafter referred to as the, "Society"), was formed on 12.4.1996 and the Collector became the ex-officio Chairman of the said Society. It appears that in order to appoint the Project Director, certain names requisitioned from the Employment Exchange, were considered and respondent no.1 was selected and appointed temporarily, vide letter dated 8.11.1996 on a fixed salary of Rs.4,000/- per month. Salary of respondent no.1 was increased from Rs.4,000/- to Rs.8,000/- per month vide Order dated 16.7.1999. E
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A B. Respondent no.1 joined a post in the Panchayat & Rural
 Development Department in Zila Panchayat, Indore in
 pursuance of the order dated 29.7.2003, passed by the
 Government of Madhya Pradesh. Her services in the Panchayat
 & Rural Development Department were not required, and she
 B was repatriated vide order dated 29.3.2004 to her parent
 department. However, respondent no.1 was not permitted to
 join the Society. The post of Project Director was advertised
 on 16.5.2005. Thus, respondent no.1 filed a writ petition on
 26.5.2005, challenging the advertisement dated 16.5.2005,
 C claiming her right to join the said post.

C. The appellants contested the writ petition on various
 grounds, however, the writ petition was allowed by the learned
 Single Judge vide order dated 17.7.2006. Aggrieved, the
 appellants filed a writ appeal, which stood dismissed vide
 D impugned judgment and order dated 5.11.2005. Hence, this
 appeal.

4. Shri B.S. Banthia, learned counsel for the appellants
 has submitted that the High Court committed an error in allowing
 E the said writ petition as respondent no.1 was merely a
 temporary employee, and had joined another post under the
 alleged order of deputation, and had worked there for a period
 of 9-10 months. She could not join as a Project Director in the
 Society as she had no lien therein. She had also left the Society
 F without obtaining any previous sanction from the appointing
 Authority, i.e., the District Collector. She had further, voluntarily
 abandoned the services of the Society on 29.7.2003 and
 thereafter, she filed the said writ petition on 26.5.2005, only
 challenging advertisement dated 16.5.2005. Hence, even
 G though her services in the Panchayat & Rural Development
 Department were terminated on 29.3.2004, she approached
 the High Court only after lapse of a period of one year and two
 months. Thus, the High Court ought not to have entertained the
 writ petition at all. The appeal deserves to be allowed.

H 5. Per contra, Shri Niraj Sharma, learned counsel

appearing for respondent no.1 has strived to defend the impugned order passed by the High Court, contending that she had been sent on deputation by the Government, and over this, she had no control. Therefore, she had a right to join the said Society. Thus, the appeal is liable to be dismissed. A

6. We have considered the rival submissions made by learned counsel for the parties and perused the record. B

7. Initial appointment of respondent no.1 was not made on the basis of any advertisement in any newspaper whatsoever. Hence, applications for the post were not invited. It is a settled legal proposition that considering the candidature of persons by mere calling of names from the Employment Exchange does not meet the requirement of Articles 14 and 16 of the Constitution of India. (Vide: *Excise Superintendent Malkapatnam, Krishna District, A.P.*, (1996) 6 SCC 216; *Veer Kunwar Singh University Ad Hoc Teachers Association & Ors. v. Bihar State University (C.C.) Service Commission & Ors.*, (2009) 17 SCC 184; *Union of India & Ors. v. Miss. Pritilata Nanda*, AIR 2010 SC 2821; and *State of Orissa & Anr. v. Mamata Mohanty*, (2011) 3 SCC 436). C
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Thus, in view of the above, we are of the considered opinion that respondent no.1 was not appointed following the procedure mandatorily required by law, and that such appointment was admittedly in violation of Articles 14 and 16 of the Constitution of India, as several other eligible candidates have been deprived of their right to be considered for the post. F

8. There can be no dispute with respect to the settled legal proposition that in the event that a person is not appointed on a regular basis, and if his service is not governed by any Statutory Rules, he shall be bound by the terms and conditions that have been incorporated in his appointment letter. (Vide: *State of Punjab & Ors. v. Surinder Kumar & Ors.*, AIR 1992 SC 1593). In such an eventuality, there can be no reason with respect to why the terms and conditions incorporated in the H

A appointment letter should not be enforced against such an employee. In the instant case, respondent no.1 was **temporarily appointed in a project** and thus, she had at no point of time, been appointed on a regular basis, owing to which, she cannot claim any lien with respect to the said post.

B 9. "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
 C when his appointment has been confirmed, and when he has been made permanent to the said post.

D "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. (Vide: *Parshotam Lal Dhingra v. Union of India*, AIR 1958 SC 36; *S. Pratap Singh v. State of Punjab*, AIR 1964 SC 72; *T.R. Sharma v. Prithvi Singh & Ors.*, AIR 1976 SC 367; *Ramlal Khurana v. State of Punjab & Ors.*, AIR 1989 SC 1985; *Triveni Shankar Saxena v. State of U.P. & Ors.*, AIR 1992 SC 496; *Dr. S.K. Kacker v. All India Institute of Medical Sciences & Ors.*, (1996) 10 SCC 734; *S. Narayana Vs. Md. Ahmedulla Khan & Ors.*, AIR 2006 SC 2224; and *State of Rajasthan & Anr. v. S.N. Tiwari & Ors.*, AIR 2009 SC 2104).

G 10. It is not the case of the learned counsel for respondent no.1 that she had any lien with respect to the post.

H Respondent no.1 voluntarily abandoned her job in the Society and joined another post, in another department on 29.7.2003. Therefore, her temporary employment in the Society

came to an end automatically. She had chosen better employment under the Government of Madhya Pradesh, as opposed to continuing her employment in the Society on a project. Her employment in the Government of Madhya Pradesh was terminated after serving therein for a period of eight months, vide order dated 29.3.2004. In such a fact-situation, the Society was not bound to permit respondent no.1 to join the post of Project Director. As a consequence thereof, she has no right to challenge the advertisement dated 16.5.2005. At the most, if respondent no.1 was eligible for appointment as per the said advertisement, she can apply for fresh appointment. In case respondent no.1 felt that she had a right to join the services of the Government of Madhya Pradesh and that her service from there was wrongly terminated, she could have challenged the said order dated 29.3.2004, which has in fact, never been challenged by her, for reasons best known to her.

11. In view of the above, the learned Single Judge, as well as the Division Bench have misdirected themselves with respect to the actual issues involved in the case, and have decided the case upon totally irrelevant issues. The appeal therefore, succeeds, and is allowed. The judgment and order of the learned Single Judge, as well as that of the Division Bench, are hereby set aside. No costs.

K.K.T.

Appeal allowed.