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SITIKANATHA MISHRA

v.

UNION OF INDIA & ORS.

(Civil Appeal Nos. 234-235 of 2015)

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JANUARY 9, 2015

[ANIL R. DAVE, ADARSH KUMAR GOEL AND
R. BANUMATHI, JJ.]

C *Service Law: Regularization and lien – Claim for – Initial*
appointment of appellant as Professor, on contract – Later
regularized w.e.f. the date of joining the post – Prior to
issuance of formal order indicating regularization of the
appellant with retrospective effect, appellant joined higher post
(post of Director) on contract basis – After completing his
D *tenure as Director, appellant applied for rejoining the post of*
Professor – Denied by the Department on the ground that he
was not having substantive appointment as Professor – Writ
petition challenging the denial, dismissed – On appeal, held:
E *Order of regularization was applicable to the appellant and he*
would be deemed to have been regularized on the post of
Professor from the date he joined the said post – Thus, having
been regularized, the appellant was holding the substantive
post as Professor, and therefore, his claim for lien over that
post, is required to be considered by the Competent Authority.

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Allowing the appeals, the Court

HELD: 1.The appellant having been appointed in the
year 1997 after due selection and covered by the
recommendation of the Staff Inspection Unit in the year
G 2002 which recommendation was accepted by the
Government of India, a decision to regularize incumbents
of 68 posts clearly applied to the appellant. No doubt, the
appellant had taken over as Director in the Institute but
on that ground, it will be unjust to deny him the benefit

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of the said regularization. The appellant had to be taken as having been regularized on the post of Professor with effect from 27th January, 1997. [para 12-13] [23-B-D]

State of M.P. vs. Sandhya Tomar 2012 (11) SCR 839 = 2013 (11) SCC 357, *State of Rajasthan vs. S.N. Tiwari* 2009 (4) SCR 448 = 2009 (4) SCC 700, *Arun Kumar Agrawal vs. Union of India and others* 2014 (3) SCR 861 = 2014 (2) SCC 609 – relied on.

S. Narayana vs. Mohd. Ahmedulla Khan 2006 (2) Suppl. SCR 69 = 2006 (10) SCC 84 – distinguished.

2. The competent authority has rejected the claim of the appellant to join as Professor after completing his tenure as Director, only on the ground that he was not having substantive appointment as Professor which is not correct. However, the question whether having regard to the nature of the work to which the appellant was appointed on contract basis, i.e., Director and the period for which he was appointed, his claim for lien could be accepted, survives. The appellant is deemed to have been regularized in service as Professor with effect from 27th January, 1997 and the decision of the Central Government dated 31st October, 2006 as ratified by the Board of Governors was applicable to him. This issue should, in the first instance, be decided by the department in the light of observations made above. [para 19-20] [27-E-F, G-H]

Case Law Reference :

2006 (2) Suppl. SCR 69	distinguished	Para 15
2012 (11) SCR 839	relied on	para 17
2009 (4) SCR 448	relied on	para 17
2014 (3) SCR 861	relied on	para 18

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 234-235 of 2015

From the Judgment and Order dated 27.03.2012 and 10.10.2012 of the High Court of Orissa at Cuttack in W.P. (C) B No. 2331 of 2010 and RVWPET No. 212 of 2012 respectively.

Kirti Renu Mishra, Apurva Upmanyu for the Appellant.

Kamini Jaiswal, Shilpi Dey, for the Respondents.

C The Judgment of the Court was delivered by

ADARSH KUMAR GOEL, J. 1. Leave granted.

2. These appeals have been preferred against the final judgment and order dated 27th March, 2012 in Writ Petition D No.2331 of 2010 and order dated 10th October, 2012 in Review Petition No.212 of 2012 of the High Court of Orissa at Cuttack.

3. The question raised for our consideration is whether the E appointment of the appellant to the post of Professor in the Indian Institute of Tourism and Travel Management ("IITTM"), an autonomous body under the Ministry of Tourism, Government of India from 27th January, 1997 could be treated to be on regular basis and whether his appointment to the post of F Director in the same Institute with effect from 8th June, 2006, on contractual basis, had the effect of relinquishing his lien to the post of Professor, in absence of his resignation and in absence of filling up of the said post of Professor.

G 4. We have heard learned counsel for the parties.

5. The IITTM issued an advertisement dated 25th October, 1996 inviting applications for various posts, including the post of Professor in Business Studies. The appellant applied and was duly selected for the post on the basis of interview and H appointment letter dated 4th January, 1997 was issued to him.

He joined service on 27th January, 1997. According to the appointment letter his appointment was to be on contract initially for three years. The documents on record show that the IITTM is a society and as per rules and regulations, the Board of Governors ("BOG"), inter alia, comprises of Minister of Tourism, Minister of State for Tourism, Secretary, Ministry of Tourism, Director General (Tourism) and various other functionaries who are mostly nominees of the Central Government. Appointments in the IITTM were initially made on contractual basis for the technical reason in absence of formal sanction of posts which issue was pending with the Ministry. Pending such sanction, the incumbents who were duly selected, after advertisement, selection process continued on contractual basis at times even without formal extension letters. In pursuance of directions of the Ministry of Tourism, Staff Inspection Unit ("SIU") of the Department of Expenditure, Ministry of Finance, conducted assessment of manpower requirement of the IITTM in the year 2001 and submitted its report in the year 2002 recommending regularization of 68 posts which included the post of Professor held by the appellant. Finally, it was on 31st October, 2006 that the Central Government took a decision to regularize the services of the said 68 incumbents. The decision of the Central Government was ratified by the BOG in its 31st Meeting held on 4th December, 2006. As already mentioned, the recommendations of SIU were made earlier and were duly approved by the BOG in its meeting held on 18th September, 2002. Accordingly, a formal letter dated 15th January, 2007 was issued to the effect that services of the appellant were regularized in the post of Professor in IITTM with effect from the date of initial joining that is 27th January, 1997. In the meanwhile, advertisement dated 25th March, 2006 was issued by the IITTM for recruitment to the post of Director on contract basis for three years with possibility of extension by two years. Persons holding posts on regular basis in prescribed pay scale having three years of service were also eligible. The candidates in service were to submit their applications through their employers. Minimum 18 years of experience in a recognized

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A educational institution with at least three years of administrative experience was also required. The appellant applied to the said post and was selected and appointed vide letter dated 8th June, 2006. On expiry of period of three years, his appointment was further extended till he handed over the charge on 31st
 B December, 2009. Thereafter he claimed to continue as Professor. However, as per decision of Ministry of Tourism conveyed by the letter dated 28th January, 2010, the appellant was informed that he could not continue in any official capacity. It was this decision which the appellant called in question by
 C filing the writ petition before the High Court.

6. Contention raised on behalf of the appellant is that though formal order of regularization was conveyed by the Ministry on 31st October, 2006 and the same was ratified by
 D the BOG on 4th December, 2006, the same was in respect of persons already appointed after due selection and who had already been assessed and recommended for regularization by the SIU in the year 2002. The order of regularization dated
 E 31st October, 2006 was in respect of 68 posts "strictly as per assessment and recommendation of SIU". The said assessment and recommendation covered the appellant who was holding the post of professor in the scale of Rs.16400-
 F Rs.22400. The appellant had joined the post of Director in the Institute on 8th June, 2006 after serving the Institute as Professor from 27th January, 1997 and he had already been assessed and recommended for regularization. Since the order
 G of regularization was retrospective and was in respect of 68 posts, including the post held by the appellant, he was entitled to be treated at par with other incumbents to the said 68 posts in respect of his past service of nine and a half year as
 H Professor for all purposes. His joining another higher post in the same Institute could not be read as excluding him from the benefit of regular appointment merely because few months before issuance of formal order, he had joined higher post. Once it is assumed that the appellant stood regularized as Professor, as indeed is the effect of documents referred to

above w.e.f. 27th January, 1997, on the date of his appointment on 8th June, 2006 to the post of Director, he continued to have lien to the post of Professor to which he was regularly appointed which did not end on his appointment to the post of Director on contractual basis for a limited period.

7. The stand of the appellant was contested by the IITTM by filing a counter affidavit before the High Court. According to IITTM, on his joining the post of Director, his appointment as Professor came to an end as the said appointment was on contract basis. The said appointment de-barred the appellant from engaging in any other trade or business or employment without permission of the competent authority. The regularization order did not apply to the appellant who was not an existing incumbent on 4th December, 2006 as required in terms of letter dated 31st October, 2006 of the Government. Letter dated 15th January, 2007 issued on that basis was by the appellant himself as a Director which had to be ignored.

8. We have duly considered the rival submissions.

9. As already mentioned, the question for consideration is whether the appellant is deemed to have been regularized from 27th January, 1997 or is deemed to be working on contractual basis on the date of his appointment as Director on 8th June, 2006. The stand of the IITTM is that since the appellant was not an existing incumbent on the date of issuance of letter dated 31st October, 2006, conveying the sanction of posts from the date of initial appointment, the decision of the Government to regularize the incumbents to 68 posts referred to in the recommendation of the SIU did not cover the appellant. This plea has been accepted by the High Court. We have considered the correctness of the said view.

10. The terms of letter dated 31st October, 2006 being crucial, it may be appropriate to reproduce the operative part of the same :

A *"Sub :- Implementation of the recommendation of the staff Inspection Unit, made in 2002.*

Sir,

B *I am directed to refer to the correspondence on the subject and to convey the Ministry's sanction to : regularization of 68 (sixty eight) posts strictly as per assessment and recommendation of Staff Inspection Unit, Department of Expenditure, Ministry of Finance. The IITTM will ensure that post regularized are the ones recommended by the SIU.*

C *2. The IITTM is also allowed to continue, on contractual basis, the existing incumbents against extra posts created by the Board of Governors. The number of such appointees will not exceed the number of posts created by the BOGs which was 35 (thirty five). Further, no new contract appointment will be made till further order.*

D *3. It has also been decided to request the Staff Inspection Unit to conduct another study of the IITTM. The study will also cover the proposed centre of the IITTM at Delhi/ Noida.*

E *4. The above is issued with the approval of Secretary (T), Ministry of Tourism."*

F *11. According to learned counsel for the appellant, the subject and para 1 of the letter clearly refer to the recommendation made in the year 2002 by the SIU after due assessment and the said recommendation was accepted. Second para of the letter which used the expression "existing incumbents", was applicable to those appointed against "extra posts" created by the BOG, i.e. 35 posts in addition to 68 posts which were directed to be regularized. Thus, there was no controversy regarding regularization of 68 posts as recommended in the year 2002 which recommendation was*

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approved by the Central Government and sanction was accorded.

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12. We find merit in this submission. The appellant having been appointed in the year 1997 after due selection and covered by the recommendation of the SIU which recommendation was accepted by the Government of India, a decision to regularize incumbents of 68 posts clearly applied to the appellant. No doubt, the appellant had taken over as Director in the Institute but on that ground it will be unjust to deny him the benefit of the said regularization. As already noted, the expression "existing incumbents" was not applicable to 68 posts.

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13. In this view of the matter, the view taken by the High Court cannot be sustained. The appellant had to be taken as having been regularized on the post of Professor with effect from 27th January, 1997.

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14. Next question is whether the appellant was entitled to lien and had a right to join the post of Professor after his tenure as Director came to an end.

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15. Learned counsel for the IITTM relied upon decision of this Court in *S. Narayana vs. Mohd. Ahmedulla Khan*¹ to the effect that question of lien arises only when a person is substantively appointed to a post and duly confirmed. Distinction was also drawn between expression "confirmed" and expression "regularized". It was submitted that even if the appellant was regularized but he was not confirmed and, therefore there could be no question of lien.

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16. In response, learned counsel for the appellant pointed out that not only the observation in the judgment relied upon are to be read in the context of the case decided and the facts in the said case, the matter was now governed by amended

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1. (2006) 10 SCC 84.

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A Fundamental Rules (“FRs”). Vide notification dated 9th February, 1998, Rule 9(13) of the FRs stood amended to substitute the expression “substantively” by “regular basis”. The Rule prior to and subsequent to the amendment is as follows :

B	PRIOR TO AMENDMENT	AFTER AMENDMENT
C	<p><i>“Lien means the title of a government servant to hold substantively, either immediately or on the termination of a period or periods of absence, a permanent post, including a tenure post, to which he has been appointed substantively”</i></p>	<p><i>“Lien means the title of a Government servant to hold on regular basis either immediately or on the termination of period or periods of absence, a post, including a tenure post, to which he has been appointed on regular basis and on which he is not on probation.”</i></p>
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17. We are of the view that the judgment relied upon on behalf of the IITTM is distinguishable. In the present case, the expression “regularization” does not refer to any irregular appointments which are sought to be regularized in violation of the Rules. It was the case of regularization on account of subsequent retrospective sanction, proposal for which was already pending. Initial appointment was not irregular or against Rules. The decision for sanctioning regular posts was taken later but with retrospective effect from date of joining and has been duly applied to the posts/incumbents in respect of whom proposal was pending. In *State of M.P. vs. Sandhya Tomar*², this Court observed :

G *“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*

H 2. (2013) 11 SCC 357.

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. (Vide Parshotam Lal Dhingra v. Union of India [AIR (1958) SC 36], Pratap Singh v. State of Punjab [AIR (1964) SC 72], T.R. Sharma v. Prithvi Singh [(1976) 1 SCC 226], Ramlal Khurana v. State of Punjab [(1989) 4 SCC 99], Triveni Shankar Saxena v. State of U.P. [(1992) Supp. (1) SCC 524], S.K. Kacker v. All India Institute of Medical Sciences [(1996) 10 SCC 734], S. Narayana v. Mohd. Ahmedulla Kha [(2006) 10 SCC 84] and State of Rajasthan v. S.N. Tiwari [(2009) 4 SCC 700]"

Similarly, in *State of Rajasthan vs. S.N. Tiwari*³, it was observed:

"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.

3. (2009) 4 SCC 700.

A **18.** *This Court in Ramlal Khurana v. State of Punjab [(1989) 4 SCC 99] observed that: (SCC p. 102, para 8)*

“8. ... Lien is not a word of art. It just connotes the right of a civil servant to hold the post substantively to which he is appointed.”

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18. In *Arun Kumar Agrawal vs. Union of India and others*⁴, it was observed :

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“58. It is a settled proposition of law that a deputationist would hold the lien in the parent department till he is absorbed in any post. The position of law is quite clearly stated by this Court in *State of Rajasthan v. S.N. Tiwari [(2009) 4 SCC 700 : (2009) 1 SCC (L&S) 934] (SCC p. 704, paras 18 & 19)*

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“18. This Court in *Ramlal Khurana v. State of Punjab [(1989) 4 SCC 99 : 1989 SCC (L&S) 644 : (1989) 11 ATC 841] observed that: (SCC p. 102, para 8)*

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‘8. ... Lien is not a word of art. It just connotes the right of a civil servant to hold the post substantively to which he is appointed.’

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19. The term ‘lien’ comes from the Latin term ‘ligament’ meaning ‘binding’. The meaning of lien in service law is different from other meanings in the context of contract, common law, equity, etc. The lien of a government employee in service law is the right of the government employee to hold a permanent post substantively to which he has been permanently appointed.”

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59. *Similarly, in Triveni Shankar Saxena v. State of U.P. [1992 Supp (1) SCC 524 : 1992 SCC (L&S) 440 : (1992) 19 ATC 931] it has been held as under: (SCC p. 531, para 24)*

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4. (2014) 2 SCC 609.

"24. A learned Single Judge of the Allahabad High Court in M.P. Tewari v. Union of India [1974 All LJ 427] following the dictum laid down in the above Paresh Chandra case [Paresh Chandra Nandi v. North-East Frontier Railway, (1970) 3 SCC 870] and distinguishing the decision of this Court in Parshotam Lal Dhingra v. Union of India [AIR 1958 SC 36] has observed that: (All LJ p. 429)

'a person can be said to acquire a lien on a post only when he has been confirmed and made permanent on that post and not earlier'

with which view we are in agreement."

19. Learned counsel for the appellant also highlighted the departmental notings suggesting that after the completion of his tenure as Director, the appellant's joining report as Professor may be accepted as he had neither resigned nor it was clearly mentioned that on joining as Director he will lose lien which is normally available. The competent authority has rejected the claim of the appellant only on the ground that he was not having substantive appointment as Professor which, in our view, is not correct. However, the question whether having regard to the nature of the work to which the appellant was appointed on contract basis, i.e., Director and the period for which he was appointed, his claim for lien could be accepted, will survive.

20. This question will now require fresh consideration in the light of finding recorded above that the appellant is deemed to have been regularized in service as Professor with effect from 27th January, 1997 and the decision of the Central Government dated 31st October, 2006 as ratified by the BOG was applicable to him. We are of the view that this issue should, in the first instance, be decided by the department in the light of observations made above. Learned counsel for the appellant has fairly stated that if decision is taken to accept his

- A lien to the post of Professor after his relinquishing the charge of the post of Director, he will not claim any monetary benefits for the period he did not serve, except that the said period be treated as leave of the kind due and his service be treated as continuous for purposes of terminal benefits. The appellant will be at liberty to place his view point before the competent authority forthwith.

21. Accordingly, we allow these appeals, set aside the impugned order of the High Court and direct the competent authority to take a fresh decision on the issue of lien within four weeks from the date of receipt of copy of this order, in the light of observations made in the above order.

Kalpana K. Tripathy

Appeals allowed