

Ramlal Khurana (Dead) by Lrs

Vs

State of Punjab and Others

Civil Appeal No. 2941 of 1982

(K. Jagannatha Shetty, A.M. Ahmadi JJ)

03.08.1989

ORDER

1. This appeal by special leave is directed against the decision of the High Court of Punjab and Haryana which dismissed the writ petition of the appellant and sustained the order of his compulsory retirement.
2. In March 1949, the appellant entered into service as a clerk in the Police Department. When he was working in the office of Inspector-General of Police, he appeared for selection to the post of Excise Sub-Inspector in the Excise Department of the State. He was selected and appointed as Excise Sub-Inspector. He continued in the post for a number of years. In October 1963, he was repatriated to his parent department. But it was not a simple repatriation. The post of Excise Sub-Inspector was in the higher scale than his original post in the Police Department. So he was reverted and sent back to his parent department.
3. The appellant challenged the reversion and repatriation in O.S. No. 126 of 1965 before the Court of Subordinate Judge I Class, Patiala. He sought for a declaration that the order of reversion was illegal and void. It was an infringement of his legal right to continue as Sub-Inspector in the Excise Department. The learned Subordinate Judge accepted his claim and decreed the suit. He made some pertinent observations :

"The plaintiff continued to hold the post beyond the prescribed period of probation and his services were not dispensed with at the end of two years and he was not reverted. The plaintiff, in fact, continued to hold the post for more than 6 years, after the maximum period of probation had expired. Consequently, the rule laid down (sic) in and on the basis thereof, it is held that the plaintiff must be taken to have so continued in a substantive capacity. On this conclusion, that the plaintiff was in October 1963, holding his post substantively, the termination of his service necessarily amounted to punishment, and must be deemed to be removal from service, which of course was not permissible without a proper enquiry. The conclusion must, therefore, be that the termination of the plaintiff's services was illegal."

4. It is thus clear from the above observation that the court expressed the view that the appellant was holding a substantive post in the Excise Department. After completing his probationary period, he was holding the post of Sub-Inspector in a substantive capacity. So his reversion and repatriation

amounted to penalty which was illegal since made without proper enquiry.

5. Since repatriation of the appellant was set aside by the civil court, the appellant was allowed to continue without interruption in the Excise Department itself. On October 1, 1975, the Excise Commissioner made an order compulsorily retiring him from service. The order was made under Rule 3(1)(a) and (b) of the Punjab Civil Services (Premature Retirement) Rules, 1975. The appellant challenged the validity of that order before the High Court mainly on the ground that the Excise Commissioner was not competent to make that order since he belonged to Police Department. He claimed that his lien in the Police Department was not removed and, therefore, the Inspector-General of Police was alone competent to deal with him. In support of the contention, he placed reliance on the decision of this Court in *T. R. Sharma v. Prithvi Singh* ((1976) 1 SCC 226 : 1976 SCC (L&S) 1 : (1976) 2 SCR 716). The High Court, however, distinguished that decision and dismissed the writ petition. It was held that the appellant had not gone to the Excise Department on deputation from the Police Department, but he held a fresh appointment as an Excise Sub-Inspector.

6. Counsel for the appellant placed strong reliance on Rule 3.14 of the Punjab Civil Services Rules (Vol. 1) Part I and also on the decision in *T. R. Sharma* case ((1976) 1 SCC 226 : 1976 SCC (L&S) 1 : (1976) 2 SCR 716). He urged that the appellant was no doubt holding a substantive post in the Excise Department, but he had not acquired a lien against that post, since he was not confirmed in that post. It was claimed that the lien in the parent department ought to have been suspended so that it could enure to his benefit as and when he wanted to return back to his parent department. The contention, in other words, proceeded on the premises that the lien against original post in the Police Department could not vanish even though the appellant was holding a substantive post in the Excise Department.

7. We do not think that the contention urged for the appellant as to Rule 3.14 could be accepted. Rule 3.14 provides that a competent authority shall suspend the lien of a government servant when he is appointed in a substantive capacity to a permanent post outside the cadre on which he is borne. It seems to us that this rule cannot be operated to the prejudice of a government servant who on his own has acquired legal right to an ex cadre post. Indeed, the rule is for the benefit of a government servant who intends to return back to his parent department. That was also the view expressed in *T. R. Sharma* case ((1976) 1 SCC 226 : 1976 SCC (L&S) 1 : (1976) 2 SCR 716). But then, the appellant never wanted to return back to his parent department. He was stoutly opposing repatriation and asserting his right to remain in the ex cadre post. He has thus denied himself of the benefit of that rule.

8. The other contention urged for the appellant that he was not confirmed in the Excise Department and unless confirmed, he acquired no lien cannot also be accepted. 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. Generally when a person with a lien against a post is appointed substantively to another post, he acquires a lien against the latter post. Then the lien against his previous post automatically disappears. The principle being that no government servant can have simultaneously two liens against two posts in two different cadres. It is a well accepted principle of service jurisprudence.

9. In that instant case, the civil court has already ruled that the appellant had a right to continue in his substantive appointment as Excise Sub-Inspector. He secured that declaration when the Excise Department repatriated him to his parent department. After obtaining that decree from a court of competent jurisdiction, he could not turn round and say that he still retained lien against his post in the parent department. The lien in his parent department must be held to have been cancelled

consequent on the decree of the civil court. Therefore, the Excise Commissioner seems to be the only competent authority to pass the order compulsorily retiring him from service.

10. The appeal, therefore, fails and is dismissed. In the circumstances of the case, we make no order as to costs.

11. Before parting with the case, we may however add a word more. It was stated that in view of pendency of the proceedings in this Court and in the High Court, the pension due to the appellant has not been finalised. We, therefore, direct the respondent to determine the pensionary benefits of the appellant and pay the same to his legal heirs within three months, if not already paid.

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