

Triveni Shankar Saxena

Vs

State of U.P. and others

Civil Appel No. 3460 of 1982

(S. R. Pandian, K. Jayachanra Reddy JJ)

20.12.1991

JUDGEMENT

S. RATNAVEL PANDIAN, J.:-

1. This appeal is filed by the appellant Triveni Shankar Saxena questioning the correctness of the judgment dated 23-8-1982 rendered by the High Court of Allahabad, Lucknow Bench in Writ Petn. No. 226 of 1980 allowing the said Writ Petition and quashing the order of the Uttar Pradesh Services Tribunal dated 6-10-1979. A few facts of the case as set out in Suit No. 367/ 74 filed before the Court of the Civil Judge, Moradabad may be stated:

The appellant was appointed as a Lekhpal by the Sub Divisional Magistrate, Moradabad on 6-4-1953 at the circle of Village Tilokpur, Pargana in Moradabad District, which post he held from 6-4-53 to 12-3-54 at Tilokpur and thereafter from 13-3-54 to 15-11-54 in Village Thonda in Tehsil Moradabad.

2. In the wake of consolidation proceedings in the State of U.P., the appellant Was selected as a Consolidator on 5-11-1954, and was sent for training as a Consolidator at Rampur Training College, which he joined on 16-11-1954 and after completing the training he again joined his original posting on 12-2-55.

3. On 24-3-55 the appellant was appointed as a Consolidator in Sah;iranpur by the Commission of Consolidation, U. Pt Government, Lucknow through the S.D.M. "doradabad and was relieved and sent on deputation. As a Consolidator the appellant was transferred from place to place in the normal course. He was transferred from Pilibhit on promotion as an Assistant Consolidation Officer (for short A.C.O.) at Azamgarh on 7-6-1967 and thereafter to Agra and to Lakhimpur. He was once again posted in Azamgarh as A.C.O. While it was so, the appellant received the order of termination of his services on 16-10-1971 from the Conlidation Commissioner, which order did not assign any reason. His case is that he was on deputation. According to the appellant, the only course left open to the Consolidation Commissioner was to revert him back to his substantive post, namely, Lekhpal, to which he was having a lien in the District of Moradabad and that he was not given any opportunity of representing his case and was not served with any memo of charge for terminating him though he had put in 19 years of service without a break and that the order of termination is bad in law as being violative of Rules 14-A and 14-B of the Uttar Pradesh Fundamental Rules contained in Part II of the Financial Handbook Volume II.

4. Being aggrieved by the order of termination (simpliciter), the appellant served a notice under Section 80, C.P.C. upon the Government and thereafter filed a Civil Suit No. 367 of 1974 in the

court of Civil Judge, Moradabad to declare that the order of termination dated 16-10-71 passed by the Commissioner of Consolidation was illegal, void and ineffective and the appellant, having been on deputation, was entitled to his original substantive post with full emoluments.

5. The claim of the appellant, was denied by the first respondent (State of U.P.) inter alia submitting that the appointment of the appellant as Consolidator and thereafter as A.C.O. was quite temporary, that the services of the appellant were terminated only under the rules after paying one month's salary, that the claim of the appellant is not justifiable. Further, the case of the respondents is that the appellant held the post of Lekhpal in an officiating capacity and not in substantive capacity, that thereafter he applied for the post of Consolidator for which he was selected and posted on temporary basis and that he had no lien on the post of Lekhpal at the time of his appointment as Consolidator in the Department of Consolidation.

6. While the suit was pending before the Civil Court, the U. P. Public Services (Tribunals) Ordinance came into force and hence it was transferred to the U. P. Public Services Tribunal No.1, Lucknow (hereinafter referred to as the 'Tribunal'). Before the Tribunal an affidavit, counter and rejoinder affidavits were filed by the parties in support of their respective cases. The Tribunal for the reasons assigned in the judgment held that the order of termination of the appellant's services had been passed arbitrarily and whimsically by the authorities concerned without any rhyme or reason and concluded its final order which reads thus:

"We accordingly allow this claim petition and declare that the order dated 16-10-71 terminating the services of the petitioner passed by the Commissioner Consolidation, Lucknow is illegal and void and set aside the same. The petitioner shall be entitled to get all the benefits arising out of it according to rules. In the circumstances of the case we make no order as to costs."

7. The State of U. P., respondent herein on being dissatisfied with the order of the Tribunal filed Writ Petition No. 226/80 before the High Court at Allahabad, Lucknow Bench. The High Court by its judgment allowed the Writ Petition and quashed the order of the Tribunal observing thus:

"It is, therefore, not correct to say that there was no material for terminating employment of the petitioner nor it can be accepted that the impugned order against the petitioner was passed to impose any penalty on him. The order also cannot be said to be arbitrary or whimsical."

Hence the present appeal by the appellant.

8. The pivotal questions on which the claim of the appellant revolves are (1) whether the appellant was having lien on the post of Lekhpal; and (2) whether he entered into the service in the Consolidation Department on deputation and as such was entitled to be sent back only to his substantive post, namely, the post of Lekhpal, but not to be terminated.

9. The case of the appellant is that while he was holding the substantive post of Lekhpal, he entered into service in the Consolidation Department only on deputation, that the communication dated 10-6-63 sent from the office of Collector of Moradabad and signed by the Land Records Officer would clearly show that his lien had been fixed. in Amroha Tehsil in the vacancy of Shri Harish Chandra. The counter case of the respondent is that the appellant was never holding the post of Lekhpal in a substantive capacity and that his appointment in the Consolidation Department as Consolidator was

never on deputation, but on the other, it was on a selection by the Selection Board, that he was holding that post of Consolidator on temporary basis and that he was holding no lien on the post of Lekhpal.

10. At the outset it may be mentioned that the appellant has not satisfactorily substantiated his claim that he was holding the post of Lekhpal in a substantive capacity except placing reliance on a letter dated 10-6-63 which letter is purported to have been sent to him after nearly 9 years of his selection as Consolidator. The relevant portion of the order of appointment as Lekhpal which is annexed to the appeal records as Annexure P-12 reads :

"Order

Shri Tribani Shankar is appointed Lekhpal on temporary basis.

Sd/- M. A.Zaidi

S.D.O. Moradabad

6-4-1953"

11. There after the appellant was selected as Consolidator on 5-11-1954.

12. The relevant portion of the letter dated 10-6-63 purported to have been sent to the appellant after 9 years of his selection as Consolidator is as follows:

"Moradabad Collectorate

Dated : 10-6-63

Shri Tribeni Shankar Saxena, Consolidation Baraut c/o Settlement Officer, Begum Bagh, Meerut.

Please refer to your application dated 4-3-63 your lien has been fixed in Amroha Tehsil in the vacancy of Sri Harish Chandra who has been absorbed in Collection (sic).

Sd/- H. D. Pande

Land Records Officer"

13. A copy of the application dated 4-3-63 referred to in the letter emanated from the office of the Moradabad Collectorate is not placed before this Court nor is it available on the file produced by the respondents. In the absence of the original or copy of the appellant's application we are at a loss to know as to what was the nature of the claim he made since he continued his temporary service in the Consolidation department till 1971 for about 17 years from the date of joining service as Consolidator and for 8 years even after receipt of the communication from the Collectorate. Further, though the letter of the Collectorate shows that his lien has been fixed in the vacancy of Shri Harish Chandra, who is said to have been absorbed in collection (sic) we are not in a position to find out as, to whether Shri Harish Chandra was on deputation or transferred to other service or whether he had been permanently appointed to some other post or whether the post of Lekhpal, Shri Harish Chandra

held, fell as a permanent vacancy or a temporary one. Moreover, when the appellant is not shown to have been appointed to the post of Lekhpal on a permanent basis and to have held substantively that post, this letter dated 10-6-63 does not assume much significance and relevance. But on the other hand, when the appellant was appointed only on temporary basis as it is evident from his order of appointment dated 6-4-53 and thereafter newly appointed in some other post, the question of lien does not arise, even on the basis of the letter dated 10-6-63.

14. Mr. Gopal Subramaniam appearing for the appellant took much pain in construing the expression 'lien' with reference to the definition of that word as found in the "U.P. Fundamental Rules" and contended that the appellant should have been reverted back only to his original post and not terminated. In the counter affidavit (Annexure P.IV) filed on behalf of the second respondent, namely, S.D. M., Moradabad before the Tribunal, it is stated thus:

"The petitioner did work as Lekhpal in an officiating capacity from 6-4-1953 to 15-11-1954 in Tilokpur Ghond District Moradabad the petitioner was selected for the post of Consolidator in the Consolidation Department and he took training in Training Centre Rampur since 16-11-1954 to 11-2-1955. But it is absolutely wrong to say that he held a lien on the post of Lekhpal at the time of his appointment as Consolidator in the Department of Consolidation. As a matter of fact, he held regular post of a Lekhpal in a very short period in an officiating capacity and thereafter it so transpired that he had applied for the post of Consolidator for which he was selected and joined the post directly. No deputation was granted to him simply because of the fact he was not holding the post of Lekhpal in a substantive capacity.

In 1966, vide Letters Nos. 959/7SK-65 dated 25-3-1966 and 2061/7 SL-65, dated 23-6-66 the petitioner was asked by the department to submit any proof if he had by which it could be proved that he was holding the post of regular Lekhpal prior to his appointment as Consolidator and that he held any lien to the post of regular Lekhpal. Neither any proof was available in the office of the deponent nor could be supplied by the claimant himself. Therefore, the matter was finally decided that he had no lien on the post of Lekhpal whatsoever."

15. Rules 14-A and 14-B of the U.P. Fundamental Rules read as follows:

"14-A. (a) A Government servant's lien on a post may in no circumstances be terminated, even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post.

(b) In a case covered by sub-clause (2) of clause (a) of Rule 14, the suspended lien may not, except on the written request of the Government servant concerned, be terminated while the Government remains in Government service.

14-B. Subject to the Provisions of Rule 15, the Government may transfer to another permanent post in the same cadre the lien of a Government servant who is not performing the duties of the post to which the lien relates, even if that lien has been suspended."

16. There cannot be any controversy that unless the appellant shows to the satisfaction of the Court that he was having a lien on the post of Lekhpal, he cannot make a grievance of any violation

having been perpetrated under the above said rules. The word "lien" is defined in Rule 9(13) of the above said rules as follows:

"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."

17. We shall now examine what the word 'lien' means. The word 'lien' originally means "binding" from the Latin ligamen. Its lexical meaning is "right to retain". The word "lien" is now variously described and used under different context such as 'contractual lien', 'equitable lien', 'specific lien', 'general lien', 'partners lien', etc. etc. In Halsbury's Laws of England, Fourth Edition, Volume 28 at page 221, para 502 it is stated:

"In its primary or legal sense "lien" means a right at common law in one man to retain that which is rightfully and continuously in his possession belonging to another until the present and accrued claims are satisfied."

18. In Stroud's Judicial Dictionary, 5th Edition, Volume 3 at page 1465 the following passage is found:

"Lien. (1) A lien - (without effecting a transference of the property in a thing) - is the right to retain possession of a thing until a claim be satisfied; and it is either particular or general. So, as regards Scotland, "lien" is defined as including "the right of retention" (Sale of Goods Act 1893 (c.71), S. 62), or it shall mean and include right of retention" (Factors (Scotland) Act, 1890 (c. 40), S. 1); See hereon Great Eastern Railway v. Lords Trustees (1909) AC 109."

In Words and Phrases, Permanent Edition Vol. 25 the definition of word 'lien' when used to explain the equitable lien is given thus:

"A lien from a legal standpoint, embodies the idea of a deed or bond, and necessarily implies that there is something in existence to which it attaches."

At page 393 of the same volume it is stated:

"The word 'lien' has a well known signification. In law it signifies an obligation, tie, or claim annexed to or attaching upon any property, without satisfying which such property cannot be demanded by its owner, vide Storm v. Waddell, N. Y., 2 Sandf. Ch 494, 507, 508."

Again at page 399 of the same Volume it is stated :

"Lien" is a term of very large and comprehensive signification, but which never imports more than security, vide Mobile Building and Loan Ass'n v. Robertson, 65 Ala 382, 383."

19. In Black's Law Dictionary, 6th Edition, at page 922 the following passage is found:

"The word 'lien' is a generic term and, standing alone, includes liens acquired by contract or by operation of law."

20. Shelat, J. in Paresh Chandra v. Controller of Stores, AIR 1971 SC 359 while interpreting clause 14 of Rule 2003 of the Railway Fundamental Rules which defines lien has observed (at p. 360 of AIR):

"Rule 2003 of the Railway Fundamental Rules defines in Cls. 3 and 14 the terms 'cadre, 4pd 'lien'. 'Lien', as defined in Cl. 14 means the title of a railway employee to hold substantively a permanent post to which he has been permanently appointed. According to this definition, therefore, the appellant and respondents 4 to 8 were entitled to, with effect from August 15, 1947 (when all of them were made permanent), a lien on the respective posts to which, as from that day, they were confirmed and made permanent."

21. 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's case in distinguishing the decision of this Court in P. L. Dhingra v. Union of India, AIR 1958 SC 36 has observed that "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.

22. Even on the appellant's own showing he was appointed as a Lekhpal on 6-4-53 and held the same till 15-11-1954, that is for a period of nearly one year and seven months. His appointment order unambiguously shows that it was only on a temporary basis. The appellant has not shown that he had been confirmed in a permanent post and that he was holding that appointment substantively either immediately or on the termination of a period so as to make a claim of lien to the post of Lekhpal by availing the benefit of Rr. 14-A and 14-B of the U.P. Fundamental Rules. Therefore, as rightly pointed out by Mr. Yogeshwar Prasad, it cannot be said that the appellant held the post in a substantive capacity on permanent basis on the date when he was appointed as a Consolidator. In the absence of any such proof on the side of the appellant. We are constrained to hold that he worked as Lekhpal on a temporary basis and thereafter appeared before the Selection Board and was selected de novo as a Consolidator in the Consolidation Department.

23. Now we shall pass on the next question as to whether the appellant was holding the post of Consolidator only on deputation.

24. The case of the appellant that he has been deputed to the Consolidation Department has not been established by any documentary evidence. There is nothing on record show that he was on deputation except his unsubstantiated statement. The case of deputation is totally denied by the respondents all through which denial is not refuted by any acceptable proof. Therefore, under the above circumstances, the claim of the appellant that he was deputed is liable to be rejected.

25. Mr. Gopal Subramaniam during the course of his argument contended that the service of the appellant should not have been terminated merely on the ground of adverse entries in his personal file without complying with the provisions of Art. 311 of the Constitution and that the present termination order is a punitive action casting stigma on him. This argument, in our view, is not available to the appellant because the appellant nowhere in his pleadings has raised such a plea and that the order of termination does not spell out that it is a punitive action. In order to appreciate the nature of the termination order, we shall hereunder reproduce the same, which is annexed as 'Annexure P- 14':

dated 16th October, 1971

OFFICE MEMO

The undersigned issued notice under the General Rules advertised along with the Notification No. 230 (two/ kha/ 1953 dt. 30th January, 1953 of the appointing Department (Kha) to Shri Trivedi Shankar Saxena temporary Assistant Consolidation Officer,, Sagri District, Azamgarh that his services are no more required and his service shall be deemed to be terminated after the receipt of this notice and it is further directed that he' will be paid one month's salary in lieu of notice.

M. JHIR

Mohamad Jhir

Director-cum-Commissioner of

Consolidation, Uttar Pradesh"

26. The above order as rightly pointed out by Mr. Yogeshwar Prasad clearly spells out that it is an order of termination (simpliciter) passed against a temporary employee not casting any stigma on him or disclosing penal consequences. The High Court in its penultimate paragraph of its judgment has observed:

"Record placed before the Court in the instant case shows that the petitioner had several adverse entries from the year 1956-57 to the year 1969-70. It is, therefore, not correct to say that there was no material for terminating the employment of the petitioner nor it can be accepted that the impugned order against the petitioner was passed to impose any penalty on him. The order also cannot be said to be arbitrary or whimsical."

We also sent for the original Character Roll of the appellant and waded through it carefully and found several adverse entries about the unsatisfactory performance of his work throughout. The order of termination dated 16-10-1971 shows that the appellant at the relevant time was holding the post of temporary Assistant Consolidation Officer and that his services were no more required and that he was paid one month's salary in lieu of notice. As it is not the case of the appellant that his services alone were terminated whilst some of his juniors have been retained in service, the dictum laid down in *Om Prakash Goel v. Himachal Pradesh Tourism Development Corporation, Ltd.*, AIR 1991 S C 1490 to which we were parties and on which reliance was placed by the appellant has no application to the facts of this case.

Mr. Yogeshwar Prasad drew our attention to a recent decision of this Court in *State of Uttar Pradesh v. Kaushal Kishore Shukla* (1991) 1 SCC 691 wherein the proposition of law regarding the termination of service of ad hoc or temporary Government servants on assessment of suitability on consideration of adverse entries has been laid down. In that case, this Court after observing that the decision in *Nepal Singh v. State of U. P.* (1985) 1 SCC 56 : (AIR 1985 SC 84) is per incuriam and distinguishing the decision in *Ishwar Chand Jain v. High Court of Punjab and Haryana* (1988) 3 SCC 370: (AIR 1988 SC 1395) and following *R. K. Misra v. U. P. State Handloom Corporation*, 1987 (SUPPI) SCC 739 : (AIR 1987 SC 2408) has ruled thus:

"Under the service jurisprudence a temporary employee has no right to hold the post and his services are liable to be terminated in accordance with the relevant service rules and the terms of contract of service. If on the perusal of the character roll entries or on the basis of preliminary inquiry on the allegations made against an employee, the competent authority is satisfied that the employee is not suitable for the service whereupon the services of the temporary employee are terminated, no exception can be taken to such an order of termination.

A temporary Government servant has no right to hold the post, his services are liable to be terminated by giving him one month's notice without assigning any reason either under the terms of the contract providing for such termination or under the relevant statutory rules regulating the terms and conditions of temporary Government servants."

27. However, this Court has made it clear that if the competent authority decides to take punitive action, it may do so by holding a formal inquiry by framing charges and giving an opportunity to the Government servant in accordance with the provisions of Art. 311 of the Constitution. In the instant case, as we have already noticed supra, the termination is not a punitive action. According to the State of U.P. the services of the appellant were terminated as per the rules on account of his unsuitability by giving him one month's salary, which statement is not challenged before us. Therefore, we hold that the dictum laid down in the above Kaushal Kishorei Shukla's case (1991 (1) SCC 691) will squarely apply to the facts of the present case and that the order of termination (simpliciter) cannot be challenged.

28. Notwithstanding of the above conclusion, we cannot lose sight of the patent fact that the appellant was" allowed to continue in service for more than 18 years in different capacity and the competent authority did not think of terminating his service in spite of a number of adverse entries in his Character Roll and allowed him to continue to work. Had the termination been effected at the earlier point of time, the appellant could have possibly secured some other employment. Having regard to the special facts and circumstances of the case and considering the equities arising in this matter, we feel that an amount of Rs. 50,000/- should be paid as an ex gratia payment. We, therefore, direct the Government of Uttar Pradesh to make payment of the said sum of Rs. 50,000/- to the appellant within 4 months from today.

29. Subject to the above directions the appeal is dismissed. No order as to costs.

Appeal dismissed.

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