

# SUPREME COURT OF INDIA

State of Rajasthan

Vs.

S.N.Tiwari

C.A.No.1609 of 2009

(S.B. Sinha, B. Sudershan Reddy and Mukundakam Sharma JJ.)

16.03.2009

## JUDGMENT

### **B.Sudershan Reddy,J.**

1. Leave granted.
2. These appeals are directed against the common judgment and order of the High Court of Rajasthan, Jaipur Bench dated 29.11.2006 in DBC Special Appeal No.606/01 and DBC Special Appeal No. 863/01 affirming the judgment and order of the learned Single Judge.
3. The facts leading to filing of these appeals by the State of Rajasthan required to be noticed are as under:
4. The sole respondent herein was initially appointed as Investigator Grade-II in the Department of Economic and Industrial Surveys of Government of Rajasthan. He joined his duty on 27.4.1959. The respondent along with other similarly situated employees were declared surplus by the Department but all of them were sent to work in the Directorate of Medical and Health Services, Jaipur. On 3.12.1980 while the respondent was working as a Statistical Inspector under Medical and Health Department, he was appointed on purely urgent temporary basis as a Homeopathic Doctor under ESI Scheme for a period of 6 months or till the selection of a candidate by the Rajasthan Public Service Commission whichever was earlier. He was accordingly relieved to join his duty as a Homeopathic Doctor w.e.f 6.12.1980. The respondent continued in that capacity till his retirement on 31.8.1994 on attaining the age of superannuation since no alternative arrangement was made by the State of Rajasthan.
5. The Directorate of Economic and Statistics Department vide its letter dated 5.4.1991 addressed to the Director of ESI Corporation, Jaipur requiring it to obtain the respondent's option as to whether he wanted to return back to the services of the said department or to be made permanent in the ESI Corporation. The respondent vide letter dated 8.4.1991 addressed to the Director of Economics and Statistics exercised his option to have lien

continued in the Subordinate Statistical Services for the purposes of protection of financial interests/promotions to higher post in statistical services. The respondent also referred to and relied upon the Judgment of the Rajasthan High Court dated 2.9.1988 where under the Court at the instance of the respondent directed the parent department to determine the year-wise vacancies and to make promotions from the post of Statistical Inspector to Statistical Assistant in accordance with Rajasthan Service Rules.

6. The respondent filed the writ petition No. 4832 of 1991 with a prayer seeking directions as against the Health Department not to send him back to the parent department and allow him to continue to work on the same post as Homeopathic Doctor and fix his salary/pay in the regular pay-scale attached to that post. The respondent also filed writ petition No. 1663 of 1997 after 6 years of the aforesaid writ petition in the year 1997 seeking directions as against the Director of the Directorate of Economic and Statistics Department to consider his case and recomputed the vacancies from 1964 and onwards and to give him all promotions, seniority, financial benefits, pay fixation etc. from the date, his immediate juniors have been promoted from the post of Statistical Inspector to Deputy Director. The respondent also claimed the pensionary benefits by duly fixing his seniority and promotion etc.

7. Both the writ petitions were taken up for hearing during which the respondent requested the High Court to dismiss the writ petition No. 4832 of 1991 filed by him as not pressed. The High Court after an elaborate consideration of the matter came to the right conclusion that the respondent herein was temporarily appointed to work as Homeopathic Doctor in Medical and Health Services Department and always retained his lien in the Economic and Statistics Department and therefore entitled to reliefs as claimed by him in writ petition No. 1663 of 1997. No relief was granted in writ petition No. 4832 of 1991 since the respondent/writ petitioner did not press for the same. Hence these appeals by the State of Rajasthan.

8. Smt. Madhurima Tatia, learned counsel appearing for the State of Rajasthan inter alia submitted that the respondent having joined the Medical and Health Services Department as Homeopathic Doctor continued on the same post till the date of his retirement on attaining the age of superannuation and that post of Homeopathic Doctor is not encadared in the *Rajasthan Subordinate Service Rules, 1971* and, therefore, he is not entitled to claim promotion and other benefits in the Economics & Statistics Department after 1980.

9. The learned counsel for the respondent supported the impugned judgment and contended that the lien of the respondent continued to be with parent department as he was never made permanent as Homeopathic Doctor in ESI Corporation where he was deputed to work.

10. We have carefully considered the submissions made by the counsel appearing for the respective parties.

11. There is no controversy whatsoever that respondent employee was appointed on permanent basis in the Directorate of Economic and Statistics Department initially and thereafter sent to work in Medical & Health Department from there he was sent on

deputation on urgent temporary basis as a Homeopathic Doctor under a Scheme for a period of 6 months or till the selection of the candidate by the Rajasthan Public Service Commission whichever was earlier. Since no selection as such had taken place the respondent continued in the said post until his attaining the age of superannuation i.e. 31.8.1994. It is not the case of the State that any Competent Authority terminated the lien of the respondent in the parent department. There is no material made available by the State to show that the respondent had been confirmed in any permanent post and that he was holding that appointment in a substantive capacity on permanent basis. On the other hand, even while working as Homeopathic Doctor in ESI Corporation, the respondent employee obtained directions as against the State and Directorate of Economics & Statistics Department to determine the year-wise vacancies and to make promotions from the post of Statistical Inspector to Statistical Assistant in accordance with the Rules. That order attained its finality. The same would demonstrate that the respondent employee always had a lien in the Department of Economics and Statistics. It may be necessary to notice Rule 18 of Rajasthan Service Rules which is re-produced in its entirety hereunder:

“ 18. Termination of lien (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) A Government servant's lien on a post stands terminated on his acquiring a lien on a permanent post (whether under the Government or Central/other State Governments) outside the cadre on which he is borne. ”

12. A bare reading of the Rule makes it clear that a government servant's lien on a post cannot be terminated in any circumstances even with his consent if it results in leaving the government servant without a lien or a suspended lien upon a permanent post. A government servant's lien on a post stands terminated only on his acquiring a lien on a permanent post outside the cadre on which he is borne. It is not the case of the State that the respondent employee was made permanent as a Homeopathic Doctor in ESI Corporation. The respondent employee did not acquire any lien in the ESI Corporation. The question of termination of lien does not arise since the respondent employee did not acquire a lien on a permanent post outside the cadre on which he is borne.

13. 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. This Court in *Ram Lal Khurana Vs. State of Punjab*<sup>1</sup> observed that 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.

14. 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. [See *Triveni Shankar Saxena Vs. State of U.P.*<sup>2</sup> ].

15. The High Court upon appreciation of the material available on record found that lien of the respondent employee always continued in the department of Economics & Statistics. His urgent temporary appointment as Homeopathic Doctor vide order dated 3.12.1980 was not a substantive appointment for any definite period. The mere fact that the respondent employee continued to work for a long period itself would not result in loss of lien in the parent department of Economics & Statistics. That even after the respondent employee joined as Homeopathic Doctor in ESI Corporation in 1980 the parent department treated the respondent employee as belonging to its own cadre. We find no infirmity in the order passed by the High Court.

16. Be it noted that no objections were raised when the respondent employee gave his option on 8.4.1991 duly informing all the concerned that his lien in the Subordinate Statistical Service, had to be maintained for the purposes of promotions to higher posts/protection of financial interests etc. In such view of the matter the respondent employee always had his lien in his parent department. The State at this stage cannot be allowed to turn round and say that the respondent employee did not retain lien against his post in the parent department.

17. The appeals, therefore, fail and are dismissed. In the facts and circumstances of the case, we make no order as to costs.

<sup>1</sup>(1989) 4 SCC 99

<sup>2</sup>(1992 Supp (1) SCC 524)