

(2012) 03 MAD CK 0076

In the Madras High Court

Case No : Writ Petition No. 4519 and M.P. No's. 1, 1, 1 and 2 of 2008

B. Ramasundar

APPELLANT

Vs

The Secretary to Government, Environment and Forest
Department, Fort St. George, Secretariat, Chennai-600009
and The Director, Department of Environment, Panagal
Buildings, Saidapet, Chennai-600015 [Alongwith W.P. No.
9080 and 13025 of 2008 and M.P. Nos. 1, 1, 1 and 2 of 2008]

RESPONDENT

Date of Decision : 29-03-2012

Acts Referred:

English Sale of Goods Act, 1979 — Section 62
Factors (Scotland) Act, 1890 — Section 1
Tamil Nadu Ministerial Service Rules — Rule 20
Tamil Nadu Public Service Commission Procedure Rules, 1955 — Rule 16, 3.12, 3.14,
3.14(2), 3.15

Citation : (2012) 03 MAD CK 0076

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Padma, for the Appellant; Abdul Saleem, AGP (F) for R1 and R2 in all writ petitions, Mr. P.S. Sivashanmugasundaram for R-3 in W.P. Nos. 4519 and 9080 of 2008, Mr. C. Prakasam for R-3 in W.P. No. 13025 of 2008, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. These three writ petitions came to be posted on being specially ordered by the Hon'ble Chief Justice vide order dated 3.1.2012. W.P. No.

4519 of 2008 was filed by one Ramasundar challenging an order dated 1.2.2008 passed by the Director of Environment, Chennai. By the

impugned order, the petitioner was informed that his services were no longer required and he was reverted back to the department of Motor

Vehicle Maintenance and was relieved from duty with effect from 1.2.2008. Further, he was directed to join duty before the Director, Motor

Vehicle Maintenance Department, Chennai. The writ petition was admitted on 27.2.2008. Pending the writ petition, in the application for interim

stay, this court had granted an interim stay. A reference was made to FR 14(b), by which it was stated that no reversion can take place beyond the period of three years after deputation.

2. During the pendency of the writ petition, the petitioner's wife Mrs. Lakshmi Ramsundar filed W.P. No. 9080 of 2008 challenging an order

passed by the Director of Environment, dated 28.03.2008 and seeks to set aside the same with consequential direction to allot work and permit

her to continue to work as a Superintendent in the office of the Director, Department of Environment. By the impugned order, the petitioner was

informed that her services were no longer required in the office and hence, she was reverted back to her parent department with effect from

28.3.2008. The petitioner's post being a Selection Grade Assistant, she was directed to report for duty before the Director of Motor Vehicle

Maintenance Department, Chennai. The writ petition was directed to be posted along with W.P. No. 4519 of 2008 and an interim stay was

granted till that date.

3. Thereafter, the petitioner in the first writ petition also filed a writ petition in W.P. No. 13025 of 2008 seeking to challenge an order dated

17.5.2008. That order came to be issued on a writ petition filed by one S. Pandian, an Assistant working in the Department of Environment, being

W.P. No. 18645 of 2007. It was informed that while preparing the seniority list of Assistants fit for promotion and to be included in the panel for

the post of Superintendent, the date of promotion as Assistant in the parent department of the respective individuals were taken into account, but

the seniority with reference to the date of permanent absorption in the department of Environment as per Rule 20 of the Tamil Nadu Ministerial

Service Rules was to taken into account. Hence the earlier proceedings dated 26.10.2007 was cancelled and a revised seniority list in the post of

Assistant in the department was prepared on 17.5.2008. In that writ petition, notice of motion was ordered on 27.5.2008. Pending notice of

motion, an interim stay was granted on condition that the stay will be in

operation if he is not already relieved.

4. One R.K. Nagaimugan filed M.P. Nos. 2 and 3 of 2008 seeking to implead him in W.P. No. 4519 of 2008 and that was ordered by this court

on 30.9.2008. Similarly, the petitioner in W.P. No. 13025 of 2008 filed an application in M.P. No. 4 of 2008 seeking to amend the prayer so as

to challenge the order dated 17.5.2008 passed by the second respondent and also the consequential order dated 17.5.2008. That was also

ordered on 30.09.2008.

5. On notice from this court, in the first writ petition a counter affidavit dated 18.4.2008 was filed by the second respondent Director of

Environment. In the third writ petition, a counter affidavit, dated 17.6.2008 was filed by the second respondent. The contesting third respondent S.

Pandian also filed a counter affidavit, dated 19.11.2008.

6. Since contentions raised in all the three writ petitions and the petitioners being the husband and wife and are similarly placed, all the three writ

petitions were grouped together and a common order is passed.

7. The two writ petitioners, i.e., Ramasundar and Lakshmi Ramsundar were originally employed in the Motor Vehicle Maintenance Department as

Assistants. The Department of Environment was newly created during the year 1996. For the purpose of making the department to work,

volunteers were called from the other department on 10.8.1998 to man the Environment department. The two petitioners were transferred from

the Motor Vehicle Maintenance Department to the Department of Environment. It was confirmed by the department of Environment by

proceedings, dated 27.8.1998. In that letter, the Director of Environment informed the Director of Motor Vehicle maintenance that the two

petitioners were appointed on foreign service basis. Therefore, he requested the Director of Motor Vehicle Maintenance Department to relieve

them so as to enable them to join duty on 1.9.1998 and also to send their service records. It was thereafter, Ramasundar joined as a selection

grade Assistant and Lakshmi Ramsundar joined as an Assistant after being relieved with effect from 2.9.1998. Similarly, S. Pandian, an Assistant,

was also relieved by the Director of Town and Country Planning and joined as Assistant by proceedings dated 17.2.2000.

8. The petitioners made a representation on 8.6.2000 asking to relieve them to

join their parent department, i.e., Motor Vehicle maintenance

Department. But, however, the Director of Environment by a communication dated 15.6.2000 had informed that since important assignments were

given to the department and that the department's work do not suffer, their services were essential. Hence he had expressed his inability to relieve

them from the post. Subsequently, on 13.2.2004, the two petitioners had expressed their willingness to continue to work in the department of

Environment. The Department of Environment by a letter dated 8.4.2004 informed the petitioners that consent given by the petitioners to serve in

the department of Environment as Selection Grade Assistant was enclosed and they had requested the Motor Vehicle Department to given their

consent for the same. Followed by this, the two petitioners gave a letter dated 22.4.2004 expressing their consent to work in the department by

cancelling their lien with the parent department and they submitted Forms containing particulars. It was also given to the department of

Environment. On 12.4.2007, the Government through the Secretary, Transport Department informed the Director of Motor Vehicle Maintenance

Department that the two petitioners have no right to revert to the parent department. Under the Tamil Nadu Ministerial Service Rules, a provision

has been made to get approval of the Public Service Commission for making permanent transfer from one department to another. The two

petitioners have no right to revert to the parent department. Hence the question of cancelling the lien will not arise. However, under the Special

Rules to the Tamil Nadu Ministerial Service, for inter department transfer, the consent of the TNPSC is required. In the case of the two petitioners,

such a consent was not obtained. Therefore, the Director of Motor Vehicle Department was directed to take steps to get the consent of the

TNPSC.

9. It is thereafter, the Director of Motor Vehicle Maintenance Department informed the Director of Environment pointing out whether any consent

was received from the Public Service Commission for their departmental transfer and if no consent has been obtained, they were asked to get the

ratification from the TNPSC. Since the petitioner Ramasundar became the selection grade assistant even as early as on 04.12.1996, he became

eligible to be appointed as a Superintendent after Nagaimugan, i.e., impleaded

respondent. Therefore, on 2.4.2007, he was temporarily promoted to the post of the Superintendent. This promotion was challenged by one Pandian in W.P. No. 18645 of 2007 and he had obtained an interim stay. The interim stay granted was vacated on 5.9.2007. This court also directed the department of Environment to prepare a seniority list of all persons. Accordingly, the Director of Environment by proceedings dated 5.7.2007 had instructed Ramasundar to hold full additional charge in the post of Superintendent and a direction was given to prepare the seniority list. The said Ramasundar was placed next to the impleaded respondent Nagaimugan in Serial No. 2, his wife Lakshmi as serial No. 3 and Pandian as serial No. 4. It was at that stage, the impugned orders came to be passed reverting both husband and wife back to the Motor Vehicle Maintenance Department. Challenging the same, the first two writ petitions came to be filed. As against the order reverting the petitioner as a Special Grade Assistant and the plea that his name cannot be included in the seniority list as he was not permanently absorbed in the present Department, W.P. No. 13025 of 2008 came to be filed.

10. The question arises in the first two writ petitions is whether the two petitioners can be reverted back to the department after they were transferred to the department of Environment and served in that department for more than nine years?

11. In the third writ petition, the question is whether Ramasundar can be reverted to the post of selection grade assistant and kept below Pandian in the line of seniority only on the ground that he was not permanently absorbed?

12. The contentions raised by the two petitioners were that in the present case, the transfer has been made to one department to another department. The fact that no consent was obtained from the TNPSC will not become void as already the department of Environment was directed to obtain ratification with the TNPSC. As already a direction was given to the Director of Environment to get a ratification with the TNPSC and since the petitioners do not have any lien with the parent department. If they were reverted, they will not be given any posting order.

13. In this context, the petitioners also referred to Rule 20(a)(iii) of the Tamil Nadu Ministerial Service Rules and it reads as follows:

Provided further the consent of the Commission may be deemed to have been

accorded in the case of transfer of probationers and approved

probationers from one unit to another unit necessitated consequent on the formation of new District.

14. If that was the case, in case of a newly formation of a Department also, the same logic should apply. The post of Assistants and

Superintendents are promotional post. Hence it was contended that since the TNPSC is not the appointing authority or the selecting authority, their consent is not necessary.

15. Per contra, on behalf of the department, it was contended that the petitioners have expressed their willingness to work in the new department

only on other duty basis. Since their performances were not found satisfactory, they were reverted back to the parent department. Their lien in the

parent department will continue. Their absorption in the department of Environment was based on their personal request. Since their lien with the

parent department still continues, their services cannot be counted for promotion. Reliance was placed upon a judgment of the Supreme court in

Surendra Singh Gaur Vs. State of M.P. and Others, . The lien is acquired by a person in his post only when he was confirmed and made

permanent in the post and not otherwise. Since the department never appointed them nor absorbed them, they did not come within the zone of

consideration for promotion. A reference was also made to a judgment of the Supreme Court in Ali M.K. and Others Vs. State of Kerala and

Others, and S.P. Indu Vs. The General Manager, Metro Railway and Another, .

16. Mr.C.Prakasam, learned counsel appearing for the third respondent Mr. S. Pandian, contended that without the concurrence of the TNPSC,

the petitioners cannot claim seniority over his client. On 25.08.2006, Pandian who was deputed from the Director of Town and Country Planning,

got his services transferred with the concurrence of the TNPSC.

17. The petitioner Lakshmi Ramasundar was also informed pursuant to an information sought under the RTI Act from the Personnel and

Administrative Reforms Department regarding the concurrence of the TNPSC being required in case of inter departmental transfer. In this context,

Rule 16(c) of the TNPSC Regulations, 1954 was referred to. The said rule reads as follows:

16 (c)in regard to the suitability of candidates for appointment by promotion

within the same service or recruitment from one subordinate service to another subordinate service or for transfer from one category to another category or from one class to another class within the same service carrying identical scale of pay and with similar or difference qualification, if any prescribed.

Provided that prior to 23rd April 1991 also, it shall not be necessary for the Commission to be consulted in regard to the suitability of candidates

for transfer from one category to another or from one class to another within the same service.

In the case of appointment subsequent to 9th February 1990, to the category of Assistants in the Departments of Secretariat other than Law

Department in the Tamil Nadu Secretariat Service by recruitment by transfer from among the holders of the post of Junior Assistants or Assistants

in the Tamil Nadu Ministerial Service, or Tamil Nadu Judicial Ministerial Service, the Commission shall be consulted.

(Emphasis added)

The answer to the first two writ petitions will decide the outcome of the third writ petition.

18. Before proceeding to deal with the actual questions involved, it is necessary to understand as to what constitute a Lien in the Government

employment. This question came to be considered by the Supreme Court in Triveni Shankar Saxena Vs. State of U.P. and others, and in

paragraphs 16 to 22 and 24 it was observed as follows:

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 contexts such as "contractual lien", "equitable lien", "specific lien", "general lien", "partners lien", etc. In Halsbury's Laws of England, (4th edn. 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 edn. 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 Co. v. Lord's Trustees¹"

19. 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.

20. 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

21. 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 Assn. v.

Robertson 3.

22. In Black's Law Dictionary, (6th edn., 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.

.....

24. A learned Single Judge of the Allahabad High Court in M.P. Tewari v. Union of

India⁵ following the dictum laid down in the above *Paresh*

Chandra case⁴ and distinguishing the decision of this Court in *P.L. Dhingra v. Union of India*⁶ 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.

19. The Supreme Court also held that the appointment of a Government servant to a permanent post may be substantive or on probation or on an

officiating basis. Only in a case where the Government servant was appointed on substantive right to hold the post, he becomes to hold a lien on

the said post as held by the Supreme Court in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, . In paragraph 11 it was held as follows:

11. The appointment of a government servant to a permanent post may be substantive or on probation or on an officiating basis. A substantive

appointment to a permanent post in public service confers normally on the servant so appointed a substantive right to the post and he becomes

entitled to hold a "lien" on the post. This "lien" is defined in Fundamental Rule Section 3, Chapter II Rule 9(13) as the title of a government servant

to hold substantively a permanent post, including a tenure post, to which he has been appointed substantively. The Government cannot terminate

his service unless it is entitled to do so (1) by virtue of a special term of the contract of employment, e.g., by giving the requisite notice provided by

the contract, or (2) by the rules governing the conditions of his service, e.g., on attainment of the age of superannuation prescribed by the rules, or

on the fulfilment of the conditions for compulsory retirement or, subject to certain safeguards, on the abolition of the post or on being found guilty,

after a proper enquiry on notice to him, of misconduct, negligence, inefficiency or any other disqualification. An appointment to a permanent post in

government service on probation means, as in the case of a person appointed by a private employer, that the servant so appointed is taken on trial.

The period of probation may in some cases be for a fixed period, e.g., for six months or for one year or it may be expressed simply as "on

probation" without any specification of any period. Such an employment on probation, under the ordinary law of master and servant, comes to an

end if during or at the end of the probation the servant so appointed on trial is found unsuitable and his service is terminated by a notice. An

appointment to officiate in a permanent post is usually made when the incumbent substantively holding that post is on leave or when the permanent post is vacant and no substantive appointment has yet been made to that post. Such an officiating appointment comes to an end on the return of the incumbent substantively holding the post from leave in the former case or on a substantive appointment being made to that permanent post in the latter case or on the service of a notice of termination as agreed upon or as may be reasonable under the ordinary law. It is, therefore, quite clear that appointment to a permanent post in a government service, either on probation or on an officiating basis, is, from the very nature of such employment, itself of a transitory character and, in the absence of any special contract or specific rule regulating the conditions of the service, the implied term of such appointment, under the ordinary law of master and servant, is that it is terminable at any time. In short, in the case of an appointment to a permanent post in a government service on probation or on an officiating basis, the servant so appointed does not acquire any substantive right to the post and consequently cannot complain, any more than a private servant employed on probation or on an officiating basis can do, if his service is terminated at any time. Likewise an appointment to a temporary post in a government service may be substantive or on probation or on an officiating basis. Here also, in the absence of any special stipulation or any specific service rule, the servant so appointed acquires no right to the post and his service can be terminated at any time except in one case, namely, when the appointment to a temporary post is for a definite period. In such a case the servant so appointed acquires a right to his tenure for that period which cannot be put an end to unless there is a special contract entitling the employer to do so on giving the requisite notice or the person so appointed is, on enquiry held on due notice to the servant and after giving him a reasonable opportunity to defend himself, found guilty of misconduct, negligence, inefficiency or any other disqualification and is by way of punishment dismissed or removed from service or reduced in rank. The substantive appointment to a temporary post, under the rules, used to give the servant so appointed certain benefits regarding pay and leave, but was otherwise on the same footing as appointment to a temporary post on probation or on an officiating basis, that is to say, terminable by notice except where under the rules

promulgated in 1949 to which reference will hereafter be made, his service had ripened into what is called a quasi-permanent service.

20. A person who was appointed on an adhoc basis to the post cannot have lien in that post as held by the Supreme Court in Haribans Misra and

Others Vs. Railway Board and Others, . In paragraph 15, it was observed as follows:

15.....A person may have lien on a post and not a lien on a place. And all that the said order means is that they have lien on the post of

Chargeman B, but in certain places under either the Production Engineer or the Works Manager. There can be no doubt that a person appointed

to a post on an ad hoc basis cannot have any lien on the post. It is only when a person is appointed on a permanent basis, he can claim lien on the

post to which he is so appointed. It is, therefore, not correct to say that the appellants were appointed or promoted to the post of Instructor C or

Chargeman C on an ad hoc basis or by way of an interim measure, as held by the High Court in the impugned judgment. If they were appointed on

ad hoc or purely temporary basis, they could not have been promoted to the post of Chargeman B and the said Order No. 25 dated 22-1-1966

would have been quite inconsistent with such ad hoc or temporary appointments.

21. It was also held that a person cannot hold two substantive posts and if a person's lien is kept in the parent department, he continues to hold the

substantive post unless it is duly terminated as held by the Supreme Court in Balkrishna Pandey Vs. State of Bihar and others, and in paragraph 5,

it was observed as follows:

5. It is settled law that an employee on temporary promotion would continue to hold the lien in his substantive post until it is duly terminated. He

cannot hold two substantive posts at the same time. Once it is concluded that the appellant is a deputationist working in the Directorate of SEP, his

name was rightly not shown in the seniority list of that Department. Therefore, he continued to hold his lien and seniority as Junior Statistical

Supervisor in the parent department. On reversion, he came back to his post as a Junior Statistical Supervisor and in his own right he was

promoted as SSA. Since the fifth respondent happened to be a permanent incumbent in the Directorate of SEP, he was promoted as SSA. When

further vacancy in the higher ladder, namely, SRA, had fallen vacant, he was

considered and promoted in that vacancy. Under those

circumstances, the High Court is well justified in refusing to interfere with the matter and we do not find any justification warranting interference.

22. Only when a competent authority terminates the lien in the parent department, the question of the person being absorbed in the deputed service

will arise and until that was done a Government servant get promotion in the parent department as held by the Supreme Court in *State of Rajasthan*

and *Another Vs. S.N. Tiwari and Others*, and in paragraphs 14 and 21, it was observed as follows:

14. 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 homoeopathic doctor in ESI Corporation, the respondent

employee obtained directions as against the State and the Directorate of Economics and Statistics Department to determine the yearwise 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.

21. 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.

23. Similarly, a competent authority had to suspend the lien of a government servant if he is appointed against the substantive post or a permanent

post outside the cadre in which he was borne. Such a rule is made to help for the cause of a government servant as held by the Supreme Court in

Ramlal Khurana (Dead) By Lrs. Vs. State of Punjab and Others, . In paragraphs 7 and 8, it was observed as follows:

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 case¹. 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.

24. While considering the question of lien in the permanent post will stand terminated on account of his deputation to another post, the Supreme Court held that in the absence of an employee making a request to terminate or suspend the lien, it will not be automatically terminated, vide its judgment in T.R. Sharma Vs. Prithvi Singh and Others, and in paragraphs 6 and 7 it was observed as follows:

6. The learned Judges constituting the majority of the Full Bench in holding that the appellant's lien on the post of Agricultural Inspector had stood terminated relied upon Rule 3.12. Perusal of the above rule shows that normally a government servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post. The opening words of the above rule, however, show that it would apply unless it be otherwise provided in the rules. Rule 3.14(a)(2) carves out an exception to the general rule

contained in Rule 3.12. According to Rule 3.14(a)(2), a competent authority shall suspend the lien of a government servant on a permanent post

which he holds substantively if he is appointed in a substantive capacity to a permanent post outside the cadre on which he is borne. When the

appellant was appointed as Block Development and Panchayat Officer in a substantive permanent capacity, his case squarely fell within the ambit

of Rule 3.14(a)(2) as the post of Block Development and Panchayat Officer was outside the cadre of Agricultural Inspectors to which the

appellant belonged. In the circumstances, it was imperative for the competent authority to suspend the lien of the appellant on the permanent post

of Agricultural Inspector which he had held substantively. The competent authority, however, failed to suspend the lien of the appellant on the post

of Agricultural Inspector. The appellant plainly cannot suffer because of such inaction or omission on the part of the competent authority. A reading

of the rule leaves no doubt that a duty is cast upon the competent authority to suspend the lien of a government servant on a permanent post which

he holds substantively if he is appointed in a substantive capacity to a permanent post outside the cadre on which he is borne. The imperative

nature of the rule is also clear from the use of the word "shall" in clause (a) as against the use of the word "may" in clause (b) of that rule. The

appellant, in our opinion, cannot be penalised because of the omission of the competent authority to act in accordance with the mandatory

provisions of Rule 3.14(a)(2). Clause (b) of Rule 3.15 also makes it clear that in a case covered by sub-clause (2) of clause (a) of Rule 3.14, the

suspended lien of the government servant concerned may not, except on the written request of that government servant, be terminated while he

remains in government service. The note to Rule 3.15 shows a way out in case any difficulty is experienced on account of the operation of Rule

3.14(a)(2). It is nobody's case that any written request was made by the appellant for terminating his suspended lien on the post of Agricultural

Inspector. As such, we find it difficult to uphold the finding of the majority of the learned Judges that the lien of the appellant on the post of

Agricultural Inspector had stood terminated. In our opinion, the third Judge who was in the minority took a correct view of the matter when he

observed that the government servant is not to be penalised and cannot be deprived of the safeguards provided by Rule 3.14 because of the fact

that the competent authority had not taken the necessary steps.

7. As the Governor has deconfirmed the appellant from the post of Block Development and Panchayat Officer, the suspended lien of the appellant

on the post of Agricultural Inspector would stand revived with effect from February 26, 1969. The promotion of the appellant in the parent

Agricultural Department from the post of Agricultural Inspector to that of District Agricultural Officer by the impugned order cannot in the

circumstances be held to suffer from any legal infirmity.

25. In the light of the above legal precedents and the factual matrix involved, the following facts emerge :

(i) Though the petitioners were transferred at their own request, their lien with the post in the parent department has not been severed.

(ii) The consent or ratification of the Public Service Commission was not obtained for the transfer, though the State Government directed the

Director of Motor Vehicle Maintenance Department and the Director of Environment.

(iii) The petitioners themselves have written to the department that they wanted to serve the department only on other duty basis. In the absence of

legal formalities being followed, the question of implied consent will not arise.

26. Under these circumstances, this court do not find any case made out to find fault with the impugned orders dated 1.2.2008 in repatriating the

petitioners to the parent department and the order dated 28.3.2008 in cancelling the seniority list which included the name of petitioners who have

not been permanently absorbed in the new department. Hence all the three writ petitions will stand dismissed. However, there will be no order as

to costs. The apprehension that they will not get posting in their parent department, viz., Director, Motor Vehicle Maintenance Department is

without substance. However, a direction is issued to the first and third respondents to give appropriate posting orders to the petitioners on their

reversion to the Motor Vehicle Maintenance Department with due seniority and without fail. Consequently, all Miscellaneous petitions stand

closed.