
(1992) 01 GAU CK 0004
In the Gauhati High Court
Case No : Civil Rule No. 2857 of 1991

Biresch Chandra Chakravarty

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 22-01-1992

Acts Referred:

Fundamental Rules — Rule 12A, 12A, 14A, 14A

Citation : (1992) 1 GLJ 147

Hon'ble Judges : K.Manisana, J and J.Sangma, J

Bench : Division Bench

Advocate : P.C.Kataki, M.Bhuyan, B.Rajkhowa , K.Barman, B.D.Goswami, A.K.Phukan, D.P.Chaliha, Advocates appearing for Parties

Judgement

R. K. Manisana, J.—In this application under Article 226 of the Constitution of India, the petitioner has challenged the order of the Assam Administrative Tribunal made on 13.2.91 in Case No. 81 (ATA) 90 refusing to grant pensionary benefit.

2. The facts giving rise to the present case, in brief, are as follows. The Government of Assam under its order dated 3.6.69 established an office of the SubRegistrar at Bilasipara in Goalpara (which we shall refer to as the 'New Office'), and the salary of the registering officer appointed to be the SubRegistrar in the New Office was not to be paid by the Government of Assam but on commission depending upon number of documents registered. The petitioner was a confirmed Lower Division Assistant in the office of the District Registrar Goalpara having a lien on his post which he was holding. After the establishment of the New Office, the petitioner was appointed as SubRegistrar temporarily on commission basis. The District Registrar released the petitioner under his order dated 8.7.76 without disturbing the petitioner's lien. While the petitioner was SubRegistrar in the New Office the petitioner was allowed Performa promotion temporarily to the post of Upper Division Assistant by the District Registrar under his Order No. 39 dated 24.10.70. However, the District

Registrar by his order dated 18.4.81, terminated the petitioner's lien without giving any reason technically. Being aggrieved by the order of the District Registrar, the petitioner approached the concerned authorities, but to no avail. Therefore, the petitioner preferred an appeal before the Assam Administrative Tribunal. The Tribunal set aside the order of termination of the petitioner's lien but it refused to give consequential reliefs of pensionary benefits for the period during which the petitioner was working as registering officer on commission basis. Hence this petition.

3. Under FR 12A, a Government servant on substantive appointment to a permanent post acquires a 'lien' on that post and ceases to hold any lien previously acquired on any other post. In view of FR 12A, a substantive appointment to a permanent post in public service confers the Government servant so appointed a substantive right to the post. Therefore, the service of the Government servant cannot be terminated except as provided under the conditions of service and Article 311 of the Constitution. That being the position, although salary of the petitioner was not paid by the Government and he was a registering officer on commission in the New Office, he did not cease to be a Government servant and he would remain as an employee in the office of the District Registrar. In other words, the service rendered in the New Office by the petitioner would be deemed to have been rendered in an office of a SubRegistrar under the control and superintendence of the District Registrar in whose district New Office was situated in view of section 68 of the Registration Act. The reason is simple. The petitioner was appointed substantively to a permanent post having lien on his permanent post. Under FR 14A, a Government servant's lien on a post in no circumstances be terminated even with his consent, if the result would be to leave him without a lien or suspended lien upon a permanent post. It is true that his salary was not paid by the Government, but the commission he was receiving was not from the pockets of the persons who presented documents for registration. He was drawing a percentage of the receipts, that is to say, he was paid out of the money received by the Government on registration of documents. He was discharging his official functions provided under the Registration Act as a registering officer. While he was functioning as registering officer or SubRegistrar he was to comply with all the provisions of the Registration Act. An appeal shall lie to the Registrar from his order refusing registration as provided under section 72 of the Registration Act.

4. For the reasons stated above, the termination of the petitioner's lien was illegal as the result of the termination of petitioner's lien would be to leave the petitioner without a lien or a suspended lien upon a permanent post, which is against FR 14 A and, therefore, the Tribunal has rightly set aside the order of terminating the petitioner's lien. The result of setting aside the order of termination of petitioner's lien was that his lien on the post of Lower Division Assistant would continue until a substantive appointment to another permanent post under FR 12A. On the facts and in the circumstances of the case the petitioner could not be disentitled to his pensionary benefits notwithstanding he

was working as a Sub Registrar on commission. For these reasons, we quash the order of Tribunal refusing to grant pensionary benefits to the petitioner for the period of his service as a SubRegistrar on commission.

5. In the result, the petition is allowed, and the petitioner shall be entitled to the pensionary benefits available to him notwithstanding he was a SubRegistrar on commission. No costs.