
(1968) 08 MP CK 0008

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 97 of 1963

B.S. Birthare

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 07-08-1968

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2), 313
Fundamental Rules — Rule 14, 14A, 9(13)

Citation : AIR 1969 MP 60 : (1972) ILR (MP) 902 : (1968) JLJ 1054 : (1970) 1 LLJ 140 : (1968) 13 MPLJ 757 : (1968) MPLJ 757

Hon'ble Judges : P.K. Tare, J;K.L. Pandey, J

Bench : Division Bench

Advocate : C.P. Sen, for the Appellant; K.K. Dube, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Pandey, J.

This petition under Article 226 of the Constitution is directed against two orders, one dated 31st October 1964 whereby the Inspector General of Prisons terminated the petitioner's services as an assistant jailor and another dated 10th November 1964 by which the Divisional Forest Officer declined to take him back as a lower division clerk on the ground that he had no lien on that post.

The material facts giving rise to this petition may be shortly stated. By an order dated 30 August 1954, the petitioner was appointed a lower division clerk in the office of the Chief Conservator of Forests, Indore. By another order dated 26 July 1956, he was confirmed on that post with effect from the same day. In course of time, he was transferred to the office of the Divisional Forest Officer, Indore, where he was working as Camp Clerk. While he was so employed, he was allowed to apply for the post of an assistant jailor. After the usual interview, he was selected for the post and appointed temporarily until further orders as officiating assistant jailor in the Central Jail, Rajpur. In pursuance of this order

dated 5 December 1962, he joined his duties on 18 December 1962. It transpired that, at Rajpur, he developed pulmonary tuberculosis and had to proceed on long leave. Although he recovered in the sense that his lungs were clear and he had resumed his duties also, he was still weak. Therefore, when he was subsequently transferred to the Training Centre, Central Jail, Jabalpur, and he took charge of that post on 22 October 1964, he had to make a request that he should be given only table work. He was then put on the sick list and, by the impugned order dated 31 October 1964, his services were terminated "as no longer required". A copy of that order was sent to the Chief Conservator of Forests as well as to the Divisional Forest Officer, Indore, with the intimation that the petitioner's services were replaced at the disposal of the Forest Department where he had a lien on the post formerly held by him. However, he was not taken back by that department because, by the impugned order dated 10 November 1964, the Divisional Forest Officer, Indore, took the view that the petitioner, who had voluntarily undertaken not to claim lien on any post in the Forest Department, had no right of reappointment on the post formerly held by him. Thereafter, the petitioner made several representations to various authorities, but he did not get any redress of his grievances. As a last resort, he has moved this Court for relief.

Having heard the counsel, we have reached the conclusion that this petition must be allowed. So far as the challenge to the order of the Inspector General of Prisons, is concerned, it must fail. The petitioner was appointed "temporarily until further orders as officiating assistant jailor" on the condition that "the appointment is liable to be terminated without notice". There is nothing in the order or elsewhere to show that the petitioner's services were terminated as a measure of punishment. A person holding a post temporarily or officiating in it, until further orders has no right to hold that post and if his services are terminated or he is reverted to the post formerly held by him, there is, without more, no punishment because this could be done under the very condition of his appointment: *The State of Bombay Vs. F.A. Abraham*, ; *Divisional Personnel Officer, Southern Railway Vs. S. Raghavendrachar*, and *Hartwell Prescott Singh Vs. The Uttar Pradesh Government and Others*, . In our opinion, the order of termination of the petitioner's services as officiating assistant jailor is not assailable as offending Article 311(2) of the Constitution.

The other order refusing to employ the petitioner in the Forest Department is unsustainable. The rules made by the Secretary of State for India in Council u/s 96B of the Government of India Act, 1915, are laws in force, which have been kept alive under Articles 313 of the Constitution: *Pradyat Kumar Bose Vs. The Hon'ble The Chief Justice of Calcutta High Court*, . Since Fundamental Rules are such rules, they continue to be operative and effective as laws in force. Lien, as defined in F. R. 9 (13) 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 had been appointed substantively. There is no question, and it is not disputed either, that

the petitioner, who had been confirmed on a permanent post of a lower division clerk, had a lien on that post. It is, however, argued that since he had himself given a declaration that he would not claim any lien on that post after his services were transferred to the Jail Department, it must be held that, upon such transfer, he ceased to hold that lien. This contention, grounded as it is upon the petitioner's declaration in disregard of the provisions of the relevant Fundamental Rules, is, as we would show immediately, not well founded and must be rejected.

The relevant Fundamental Rules are 14 and 14A which read:

"F. R. 14 (a) A local Government shall suspend the lien of a Government servant on a permanent post which he holds substantively if he is appointed in a substantive capacity--

(1) to a tenure post, or

(2) to a permanent post outside the cadre on which he is borne; or

(3) provisionally, to a post on which another Government servant would hold a lien had his lien not been suspended under this rule.

(b) A local Government may, at its option, suspend the lien of a Government servant on a permanent post which he holds substantively if he is deputed out of India or transferred to foreign service or, in circumstances not covered by Clause (a) of this rule, is transferred, whether in a substantive or officiating capacity, to a post in another cadre, and if in any of these cases there is reason to believe that he will remain absent from the post on which he holds a lien for a period of not less than three years.

(c) Notwithstanding anything contained in Clause (a) or (b) of this rule, a Government servant's lien on the tenure post may in no circumstances be suspended. If he is appointed substantively to another post, his lien, on the tenure post must be terminated.

(d) If a Government servant's lien on a post is suspended under Clause (a) or (b) of this rule, the post may be filled substantively, and the Government servant appointed to hold it substantively shall acquire a lien on it; provided that the arrangements shall be reversed as soon as the suspended lien revives.

(e) Except as provided in Sub-rule (3) of Rule 97, a Government servant's lien which has been suspended under Clause (a) of this rule shall revive as soon as he ceases to hold a lien on post of the nature specified in Sub-clause (1) or (3) of that clause.

(f) A Government servant's lien which has been suspended under Clause (b) of this rule shall revive as soon as he ceases to be on deputation out of India or on foreign service or to hold a post in another cadre, provided that a suspended lien shall not revive because the Government servant takes leave if there is reason to believe that he will, on return from leave, continue to be on deputation out of

India on foreign service or to hold a post in another cadre and the total period of absence on duty will not fall short of three years or that he will hold substantively a post of the nature specified in Sub-clause (1) or (3) of Clause (a). F. R. 14-A (a) Except as provided in clause (c) of this rule and rule 97, 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 Hen 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 servant remains in Government service.

(c) Notwithstanding the provisions of Rule 14 (a), the lien of a Government servant holding substantively a permanent post shall be terminated on his appointment substantively to any of the offices referred to in Sub-rule (1) of Rule 97 or to the post of Chief Engineer of the Public Works Department or on his appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman, or any other member of a State Public Service Commission."

It is not disputed that the case before us is pot covered by F. R. 97. That being so, the petitioner's lien on the post of lower division clerk which he held substantively as a permanent incumbent could be terminated as provided by F. R. 14 (c), if he was appointed substantively to a permanent post of assistant jailor. That he had not been so appointed is obvious and is not now disputed. That being so, as required by F. R. 14A (a), the petitioner's lien on the post of a lower division clerk could in no circumstances be terminated even with his consent, because the result would be to leave him without a lien or a suspended lien on another permanent post. It is manifest that the action taken in regard to the petitioner by the authorities of the Forest Department contravenes the statutory provisions contained in the Fundamental Rules and must, therefore, be struck down.

The petition succeeds and is allow ed. The order of the Divisional Forest Officer, Indore, dated 10 November 1964 is quashed and the respondents 3 and 4 are directed to give effect to the lien which the petitioner continues to hold on the post of a lower division clerk formerly held by him and so to re-employ him on that post. In the circumstances of the case, the petitioner shall have his costs from the respondents 1, 3 and 4. The security amount shall be refunded. Hearing fee Rs. 100/-.