
(2001) 10 PAT CK 0016
In the Patna High Court
Case No : C.W.J.C. No. 7900 of 2001

Dr. Vidya Sagar Yadav

APPELLANT

Vs

The Chancellor and Others

RESPONDENT

Date of Decision : 05-10-2001

Acts Referred:

Citation : (2001) 10 PAT CK 0016

Final Decision : Allowed

Judgement

Shashank Kr. Singh, J.—In this writ application the Petitioner has prayed for quashing of the directions issued by the Chancellor of the Universities of Bihar communicated to the Petitioner vide letter No. 1170/GS(i) dated 4.6.2001 as contained in Annexure-17 whereby and where under it has even held that the Petitioner had absented himself from University service since the year 1994, his joining report given in Patna University in the year 2001 does not appear to be in accordance with rules, the service of the Petitioner as Registrar either in Patna University or in Tilkamanjhi Bhagalpur University had not been confirmed in consequence to which the Petitioner does not have any lien on the post of Registrar of the aforesaid two Universities and it has been directed that the Petitioner should give his joining on the post of Deputy Registrar in L.N.M. University, Darbhanga provided the Petitioner had been regular and substantive incumbent of the said post and had not completed the age of superannuation. The Petitioner has also prayed for quashing of notification bearing No. 807 dated 8.5.2001 issued under the signature of the Secretary, Department of Higher Education, Government of Bihar, Patna, as contained in Annexure-14 relieving the Petitioner from the post of Director, Higher Education, Bihar and directing him to obtain instructions from the office of the Chancellor regarding the place where he should give his joining and a direction to the Vice Chancellor of Patna University to accept his joining on the post of Registrar, Patna University.

2. According to the Petitioner, he was appointed as Lecturer in Geography under Magadh University on 12.9.1964 and he functioned as such till after proper

selection, he was appointed and joined the post of Deputy Registrar in L.N.M. University on 15.6.1973. It appears that the Petitioner was thereafter transferred to the post of Controller of Examinations, Ranchi University where he joined on 19.10.1981 and subsequently he was re-transferred to the post of Deputy Registrar-(i) in L.N. Mithila University on 14.7.1985. It appears that an advertisement bearing No. 1/151/USC/90 was issued by the Bihar State Universities (Constituent College) Service Commission, Patna in the year 1990 for appointment to the post of Registrar, Patna University on temporary basis. The Petitioner along with others applied for the said appointment and was called for interview on 8.3.1991. By the said Commission's letter No. 17/C dated 18.3.1991 (Annexure-A to the counter-affidavit of Respondent No. 1) the name of the Petitioner was recommended for the said appointment in pursuance to which by notification dated 20.3.1991 (Annexure-2) the Petitioner was appointed as Registrar, Patna joined the said post on 22.3.1991 and continued to function as such till the Chancellor, Universities of Bihar in purported exercise of power vested in him under Sections 9 and 16(e) of the Patna University Act as it then stood (i.e. prior to the amendment made by Act 13 of 1995) transferred the Petitioner from the post of Registrar, Patna University to Bhagalpur University vide notification dated 24.3.1992 (Annexure-4). Although it has been pleaded by the Petitioner that he represented against the said order of transfer to the Chancellor but in obedience to the direction of the Chancellor he joined the post of Registrar, Bhagalpur University on 2.4.1992. Subsequently, by another notification dated 29/ 30.8.1994 issued from the office of the Chancellor (Annexure-5) the Chancellor was pleased to transfer the Petitioner from the post of Registrar, Bhagalpur University to the post of Inspector of Colleges (Arts) at Vinoba Bhave University, Hazaribagh. This notification was issued u/s 8 of the Bihar State Universities Act. It has further been asserted by the Petitioner that he represented against the aforesaid transfer to the Chancellor on 12.9.1994 vide Annexure-6 and thereafter filed reminder/representation on 21.10.1994. However, in the meantime since the Petitioner was appointed as Director Higher Education, Bihar by way of deputation by the State Government under notification No. 696 dated 28.11.1994 (Annexure-7) he joined the said post. It has further been stated on behalf of the Petitioner that even thereafter he made repeated requests for hearing in the matter of the representation filed earlier on his behalf. According to the Petitioner, since it was provided in the order of appointment of the Petitioner on deputation as Director, Higher Education, (Annexure-7) that the condition of his service, and deputation would be decided subsequently, the State Government later fixed his service condition vide letter No. 1407 dated 31.8.1995 (Annexure-9) issued under the signature of the Secretary, Higher Education, Government of Bihar which was addressed to the Accountant-General, Bihar and a copy of the same was also sent to different officials including the Petitioner. In the said Government order it has been mentioned that during the course of functioning of the Petitioner as Director, Higher Education, Government of Bihar, the Petitioner would hold lien of his original post of Registrar, Patna University. By the said letter certain other

conditions with respect to salary, allowance leave etc. were also fixed. It has further been asserted in the writ application that the matter of granting lien from Patna University in pursuance to the aforesaid Government letter dated 31.8.1995 was placed in the meeting of the Syndicate of Patna University scheduled to be held on 6.9.1997 vide Agenda item No. 3. It has been further stated that though he has not got copy of the decision of the Syndicate meeting of Patna University held on 6.9.1997 but the Syndicate had approved the Government letter in question. It has further been asserted that the Syndicate of the Patna University in its meeting held on 21.3.1997 resolved to credit the contribution received by the Petitioner with regard to Provident Fund G.I.S. contribution etc. to the proper accounts of the University. The Petitioner has pleaded that since the Patna University is accepting the contributions made by the Petitioner towards the said amounts the same shows that the Patna University is treating the Petitioner to hold lien on the post of Registrar on which the Petitioner was earlier functioning. Later, by one letter dated 11.9.2000 (Annexure-12) it was communicated to the Petitioner that the Petitioner had remained absent from University service since last five years and nine months without obtaining approval regarding such absence from the concerned University or from the Chancellor. Consequently, the Petitioner was directed to return back to his original post by 26.9.2000 failing which it would be presumed that the Petitioner was not interested in returning back to University services and also his lien would be terminated. Subsequently by Annexure-14 (notification dated 8.5.2001) the State Government relieved the Petitioner from the post of Director, Higher Education for joining University service. In the said notification itself it has been mentioned that the Petitioner should obtain directions from the office of the Chancellor regarding the place where he should give joining. However, the Petitioner treating himself to be holding the lien of the post of Registrar, Patna University gave his joining before the Vice Chancellor, Patna University on 8.5.2001 itself vide Annexure-15. However, when no notification accepting the joining of the Petitioner was issued by the Patna University the Petitioner represented in that regard. However, in the meantime, by order as contained in letter dated 4.6.2001 (Annexure-7), the Petitioner as noted above, has been directed to join on the post of Deputy Registrar, Lalit Narain Mithila University.

3. It has been vehemently contended on behalf of the Petitioner that the post of Registrar of Patna University is a statutory post and is of substantive nature. Petitioner having gone subsequently to Bhagalpur University on the basis of order passed by the Chancellor the service statute which is applicable to all Universities has to be interpreted in such a manner as to hold that the Petitioner became a substantive Registrar as he completed two years as Registrar in Patna University and Bhagalpur University. In any case, the Petitioner being a direct recruit to the post of Registrar cannot now be asked to join the post of Deputy Registrar which would amount to reduction of rank of the Petitioner without any justifiable basis. On the other hand, the Chancellor of the Universities of Bihar

and Patna University have taken a firm stand that the Petitioner does not have any lien on the post of Registrar of Patna University specially when this appointment as Registrar in Patna University was of temporary nature and he was transferred as such just after one year from Patna University to Bhagalpur University. It has been contended that as per the provisions of Clause 3(3) of the statutes (general conditions of service of employees of the Patna, Bihar, Ranchi, Bhagalpur, Magadh, L.N.M.U. and K.S.D. Sanskrit Universities as approved by the Chancellor on 29.9.1980 vide letter No. B.S.U. 36/805270-GS(1) dated 18.11.1980) whenever a permanent post in any cadre and pay scale is available for substantive appointment, the claim of a University servant who has been holding a tenure or temporary post for not less than two years and possesses requisite qualifications prescribed for the post and his work is found to be satisfactory, may be considered in the first instance for substantive appointment to that permanent post. It has been submitted that the Petitioner not having completed two years of service in Patna University as Registrar, where he was working on temporary basis cannot be said to be holding substantive appointment to the permanent post of Registrar and consequently the Petitioner did not acquire any lien on the post of Registrar, Patna University. It has further been submitted that only a University servant of substantive appointment to any permanent post acquires the lien on that post as stipulated in clause-7 of the said statute. So far as the claim of the Petitioner regarding making deposits in Patna University towards Provident Fund and G.I.S. contributions is concerned, it has been pointed out that the deposits made by the Petitioner had been accepted only because the Registrar, Patna University vide order passed on 4.12.1996 (extract of which has been produced along with the written notes of arguments filed on behalf of Patna University in terms of order dated 28.8.2001 passed in this case) had felt that though the question relating to lien of the Petitioner on the post of Registrar, Patna University had not been decided such deposit should be accepted because even if it would be held that the Petitioner did not hold lien of the said post, the said amount would be sent to the appropriate place subsequently. It was on the basis i.e. on the basis of the note put up by the Registrar mentioned above that the Syndicate of Patna University in its meeting dated 21.3.1997 resolved to accept deposit of the Provident Fund and other dues of the Petitioner in Patna University presently which would be available for being forwarded to the concerned authority at the relevant time. It has further been stated that the syndicates in its meeting held on 21.3.1997 did not take any decision to grant lien to the Petitioner from the post of Registrar, Patna University. In the counter-affidavit of the Patna University it has specifically been Stated that the contention of the Petitioner that the Syndicate of the Patna University had decided to grant lien to the Petitioner on the post of Registrar, Patna University in its meeting held on 6.9.1997 is not correct. A copy of the minutes of the meeting of Syndicate, Patna University dated 6.9.1997 has been annexed as Annexure-A to the said counter-affidavit wherein it has been recorded that the question regarding grant of lien to the Petitioner should be placed again before the syndicate after taking legal opinion. It has further been

stated that the said matter was never placed before Syndicate thereafter. It has been vehemently contended on behalf of the respondents that the Petitioner joined the post of Director, Higher Education, Government of Bihar without obtaining leave from anywhere and the State Government letter dated 31.8.1995 (Annexure;-9) treating the Petitioner to hold a lien on the post of Registrar, Patna University is unauthorised because neither the State Government had jurisdiction to decide the question of lien nor the State Government was competent to unilaterally transfer the services of the Petitioner to State Government service from University Service. It has been asserted that there is no order either approving leave to the Petitioner to join as Director, Higher Education nor any order approving, the joining of the Petitioner on the said post issued by any University or the office of the Chancellor. In sum and substance, it has been contended that the Petitioner out of his own sweet free will, functioned as Director, Higher Education without seeking and obtaining permission or approval for doing so from any University or the office of the Chancellor and thus the entire period which he spent as Director, Higher Education, was virtually a period of unauthorised absence of the Petitioner from University service. A counter-affidavit has also been filed on behalf of the State wherein it has only been contended that no relief has been sought against the State Government and since the Petitioner was/ is in University service, the State Government has very little, rather no role to play in the matter of transfer of University personnel.

4. Later, by an amendment petition filed on 20.8.2001, the Petitioner has prayed for quashing of the advertisement issued by the Bihar State University Service Commission (Annexure-21) and the interview programme relating to appointment to the post of Registrar, Patna University fixing 3.9.2001 to 11.9.2001 for appointment to the post of Registrar, Patna University (Annexure-22) on the ground that if the said process of selection is allowed to go ahead the case of the Petitioner would become infructuous.

5. The first and foremost question which arises for consideration in the present writ application is as to whether the Petitioner had acquired lien on the post of Registrar, Patna University. The lien has not been defined either in the Patna-University Act or the concerned statutes. However, it may be useful to refer to the case of *Triveni Shankar Saxena v. State of U.P. and Ors.* (A.I.R. 1992 S.C.490) wherein the meaning of the word "lien" has been considered and explained. Paragraph Nos. 16 to 22 of the said judgment are quoted hereinbelow:

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. 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 as regards Scotland, "lien" is defined as including "the right of retention" (Sale of Goods Act, 1893 (c.71), Section 62), or it "shall mean and include right of retention" (Factors (Scotland) Act, 1890 (c.40), Section 1), See hereon Great Eastern Railway. v. Lords Trustees (1909) AC109.

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 stand point, 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. Waddello, 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. Sheiat, J. In Paresh Chandra v. Controller of Stores, AIR SC 359 while interpreting Clause 14 of Rule 2003 of the Railway Fundamental Rules which defines lien has observed (at p. 360 of A.I.R.).

Rule 2003 of the Railway Fundamental Rules defines in clauses 3 and 14 the terms "cadre" and "lien", "lien", as defined in CI. 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. Tiwari 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 *Parshotam Lal Dhingra Vs. Union of India (UOI)*, has observed that "a person can be said to acquire a lien on a post only when 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 Rules 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 other side of the Appellant, we are constrained to hold that he was employed 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.

6. So far as the present case is concerned, similar provision with regard to lien is in existence vide the statute relating to general conditions of service of the employees of Patna and other Universities. Clause 3(3) lays down that whenever a permanent post in any grade and pay scale is available for substantive appointment, the claim of a university servant who has been holding a tenure for temporary post for not less than two years and possess the requisite qualifications prescribed for the post, and also his work is found to be satisfactory, may be considered in the first instance for substantive appointment to that permanent post. It has further been provided that in case of a teacher or Registrar or Finance officer or Inspector of colleges, the temporary or tenure appointment which he may be holding must have been made on the recommendation of the Commission. Vide Clause 7 of the Statute, it has specifically been laid down that a University 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 Petitioner was admittedly appointed on temporary basis as Registrar of Patna University on the recommendation of

the Commission. The Petitioner admittedly did not complete two years of service as Registrar, Patna University, the Petitioner was never confirmed on the post of Registrar, Patna University nor he completed the minimum required period of two years for being considered for permanent appointment to the said post of Registrar, Patna University. In such a situation, the Petitioner cannot be said to hold any lien of the post of Registrar, Patna University.

7. Subsequently, the Petitioner was transferred to Bhagalpur university where he remained for little over two years. The Petitioner could have been considered for appointment against a permanent post of Registrar, Bhagalpur University according to Clause 3(3), had he applied for such permanent post whenever it became vacant but the Petitioner as is evident from the facts narrated above, was more interested in availing the duties, responsibilities and status of the post of Director, Higher Education, Government of Bihar when such appointment was offered to him in the year 1994. It is clear from the affidavits that in pursuance to order of transfer passed by the Chancellor on 29/3.8.1994 (Annexure-5) the Petitioner did not give his joining in Vinova. Bhave University, Hazaribagh as Inspector of Colleges (Arts). The Petitioner did not challenge any of the orders of transfer earlier and without obtaining leave from any University or from the Chancellor treated himself to be deputed to the State Government service in pursuance to his order of appointment dated 28.11.1994 (Annexure-7) as Director, Higher Education, Bihar. Obviously, it was the business of the employer (concerned University) to relieve the Petitioner for going on deputation to the State Government service and the State Government treating his deputation to be valid and observing that the Petitioner holds a lien of the post of Registrar, Patna University vide letter dated 31.8.1995 (Annexure-9) obviously exceeded its jurisdiction and authority.

8. Thus, there appears to be no infirmity in that part of the impugned order of the Chancellor as communicated to the Petitioner vide letter dated 4.6.2001 (Annexure-17) whereby the Petitioner has been held not to have acquired any lien of the office of Registrar, Patna University or of the post of Registrar, Bhagalpur University. The learned Counsel for the Petitioner had cited a decision as reported in O.P. Garg and others, Vs. State U.P. and others, in support of the proposition that since the post of Registrar, Patna University was a permanent one despite the appointment of the Petitioner on the said post being temporary the Petitioner has to be held to be a substantive appointee to the said post and subsequently he acquired lien on the post of Registrar, Patna University. The said decision cited by the Petitioner is distinguishable. In the said case, the inter se seniority was under consideration. It was held that the rule linking seniority with the date of confirmation was arbitrary and in that backdrop, it was observed in paragraph 24 of the said judgment that so long as the temporary post has an independent existence and is a part of the cadre strength the appointment against the said post has to be treated as substantive appointment. On the other hand, in the present case the statutes which are binding, clearly lay down vide Clause 3(3) thereof that a temporary appointee can be considered in the first

instance for the substantive appointment to a permanent post after putting in at least two years of service necessary period of service for being considered for substantive appointment against the permanent post was not put in by the Petitioner in Patna University. Moreover, the Petitioner applied for temporary appointment with open eyes and now he cannot be allowed to contend that his appointment was in reality, a substantive appointment against a permanent post.

9. The second aspect which has been submitted on behalf of the Petitioner is that he having been directly recruited to the post of Registrar, Patna University cannot be reduced in rank now and sent to the post of Deputy Registrar in Lalit Narain Mithila University. Reliance in this connection has been placed on a decision reported in 1990 (2) R.L.J.R. (S.C.) 1 (Hussain Sasan Saheb Kaladgi v. State of Maharashtra). In the said case, the Appellant had been served with an order reverting him to the post of Primary teacher. The Supreme Court held that a direct recruit to a post whether temporary or permanent cannot be reverted to a lower post. This submission made on behalf of the Petitioner appears to have some force. The Petitioner admittedly was appointed on the basis of selection to the post of Registrar of Patna University i.e. by way of direct recruitment though as held above, the Petitioner cannot be deemed to have acquired a lien for the post, of Registrar of Patna University or of any other University and even though his conduct does not appear to be satisfactory inasmuch as he did not obey some orders of his transfer and went on deputation to the State Government service without getting it sanctioned/approved by the concerned University or the Chancellor but the fact remains that even if the said period spent by the Petitioner on deputation in State Government service is treated to be a period of unauthorised absence even then nothing prevented the University concerned or the Chancellor to take appropriate disciplinary measure against the Petitioner. Hence that part of the order dated 4.6.2001 (Annexure-17) whereby the Petitioner has been directed to join on the post of Deputy Registrar, Lalit Narain Mithila University, Darbhanga is not sustainable and legal and consequently that part of the direction as contained in letter dated 4.6.2001 is quashed.

10. The Chancellor would be at liberty to post the Petitioner either on the post of Registrar or any other equivalent post in any University under his jurisdiction and the concerned Respondents would be further at liberty to take appropriate action against the Petitioner in accordance with law for his unauthorised absence from University service, if they so desire.

11. In the result the present writ application is allowed in part as indicated above.

12. However, before parting with the order this Court would like to bring on record the fact which came to the notice of the court while dictating the order that the Petitioner in the writ application as well as in the affidavit portion has described himself as Registrar, Patna University, a post which he was neither holding on the date of swearing of the affidavit or filing of the writ application nor today, a fact which cannot be appreciated. The Petitioner was required to come with clean hands.