

(1997) 04 AP CK 0015
In the Andhra Pradesh High Court
Case No : Writ Petition No. 7073 of 1997

K. Sadanandam

APPELLANT

Vs

A.P. State Co-op. Bank Limited and Others

RESPONDENT

Date of Decision : 22-04-1997

Acts Referred:

Citation : (1997) 4 ALT 529

Hon'ble Judges : B.K. Somasekhara, J

Bench : Single Bench

Advocate : P. Balakrishnamurthy, for the Appellant; M.V.K. Viswanadham, for Respondent Nos. 1 and 2 and T. Durga Reddy, for the Respondent

Final Decision : Allowed

Judgement

B.K. Somasekhara, J.—The petitioner was working as Assistant General Manager with the third respondent-Bank. At the moment he is working as the Deputy General Manager with the first respondent. The 2nd respondent is the Managing Director of A.P. State Co-op. Bank Limited, Troop Bazaar, Hyderabad. He was one among the candidates who applied for selection to Class-II cadre of officers to the second respondent. He was selected after interview and he was successful. The order of appointment was issued to him by the 2nd respondent in Reg. No. Cadre/F/713/4283 dated 31-7-1996 and the posting was given to him to work at Medak. He accordingly reported to duty on 16-8-1996. Having due regard to the petitioner completing 58 years of age on 25-4-1997, he has been asked to retire from service on 30-4-1997 through notice dated 15-12-1996. He made a representation to the third respondent on 26-3-1997 to extend his service up to two years subject to his repatriation by the first respondent regarding which he made a representation to the second respondent on 20-3-1997. That came to be rejected by the second respondent under the proceedings, dated 26-3-1997. Aggrieved by that this Writ Petition is filed to declare that the second respondent cannot retire the petitioner from service by 30-4-1997 on the ground of his completing the age of 58 years, to direct the 2nd respondent to send him back to

the third respondent bank to his substantive post of Asst. General Manager, to direct the third respondent to continue him in service till he completes the age of 60 years and to direct the second respondent to continue him till he was sent back to the third respondent bank.

2. The respondents have resisted the petition. On behalf of respondents 1 and 2 it is contended that the petitioner voluntarily chose to be selected as the Dy. General Manager upon which he was interviewed and selected and was given a posting and he knew all the regulations relating to the first respondent before he accepted the job. It is further contended that there is no regulation providing for repatriation in the manner claimed by the petitioner by virtue of the existing regulations. On the other hand, the relevant regulation only authorises the first respondent either to confirm subject to the work of the petitioner found to be satisfactory or to repatriate if it is not found to be satisfactory and the petitioner having no sufficient period to complete the probation as required under the rules knowing fully well the consequences of his being selected, now cannot turn back and seek repatriation to the third respondent against the Regulations. It is further contended that the petitioner has not retained the lien in his parent department nor the third respondent has retained his lien in the Bank. In other words, it is contended that the petitioner has voluntarily foregone his lien and now he cannot acquire any lien by seeking repatriation. It is also contended that for all practical purposes, the petitioner leaving the third respondent and joining the 1st respondent amounts to resignation of the post in the parent department. It is pointed out in the counter-affidavit of respondents 1 and 2 that the petitioner having secured the benefit of the job with the 1st respondent now cannot think of going back with the intention of gaining the extension of service as per the regulations of the third respondent. The learned Counsel for the third respondent has adopted the contentions of respondents 1 and 2 as above on principle.

3. The learned Counsel for the petitioner has tried to repel the above contentions of the respondents on the ground that although the petitioner sought the post of the first respondent under the circumstances prevailing then, the post to which he is appointed by the 1st respondent has been purely on a temporary and ad hoc basis clearly prescribing the period of probation which the petitioner doesn't have and the 1st respondent who is unable to continue the petitioner for more than 58 years as per the regulations cannot prevent the petitioner from seeking the benefit with the third respondent by repatriation as he did not give up the lien either expressly or with necessary implication nor the third respondent removed the lien nor the first respondent created lien in the post and thus the first respondent has no justification in not repatriating the petitioner to the third respondent. It is also contended by him that no prejudice will be caused to the first respondent or the third respondent under the circumstances.

4. We are confronted with a situation of an employee going from one bank to the other now wanting to go back to his parent bank viz., the third respondent. The

whole matter is hinging upon the right of the petitioner either with the third respondent or with the first respondent having due regard to the circumstances under which his service came to be commenced with the 1st respondent from a particular date. We are not having the materials to know the manner and the method in which the petitioner was permitted by the third respondent to either take the interview with the 1st respondent for the post or to be appointed consequent to the interview. Therefore, it should be taken that the petitioner was permitted to take the interview with the 1st respondent like any other candidate regarding which the third respondent had no objections and accordingly by virtue of the interview he was selected and posted. The proceedings dated 31-7-1996 issued by the first respondent clearly indicates that the petitioner who was working as Asst. General Manager with the third respondent was provisionally selected and temporarily appointed as Class II Officer under the cadre authority for being posted as Asst. General Manager in any of the Dist. Co-op. Central Banks in the State in the time scale of Rs. 2700-120/13/426-130/3-4650 with other benefits mentioned in the order. Later on he was promoted by the 1st respondent as Dy. General Manager, Class II Officer, Cadre authority in proceedings dated 16-8-1996. Therefore, the initial appointment of the petitioner by the 1st respondent was as Class II Officer under Cadre authority to be posted as Asst. General Manager which post he held with the third respondent at the relevant time till he was promoted on 16-8-1996. The appointment order issued to the petitioner by the first respondent puts a clear and categorical condition as follows:-

"He is specifically informed that the above appointment is on a provisional and ad hoc basis and also subject to final result in Writ Petitions 17378/91 and batch pending before the High Court of A.P., and he shall be on probation for a minimum period of one year."

Beyond this there is no other material for the first respondent to show that either the above condition was relaxed or varied or given up. In other words, the petitioner has been continuing in the post with the first respondent with such conditions supra. No interpretation or explanation to the above expressions is necessary except to mean that the appointment of the petitioner with the first respondent was not only provisional but also ad hoc. It did not acquire even the character of a temporary appointment muchless acquire the permanent character even when the order of promotion was issued on 16-8-1996. The counter affidavit of the respondents also did not indicate that the conditions existed as above in the order of appointment were changed either by events or by the disposal of the pending writ petitions by the High Court to mean that the petitioner continued to be provisional and ad hoc employee of the first respondent from the date of appointment till the date of promotion and till now. It is nobody's case that the probation of the petitioner has been declared by the 1st respondent as having been satisfactorily completed in view of the clear expression that he was to be on probation for a minimum period of one year as no order except the one dated 31-7-1996 was passed till to-day. The law in

regard to temporary service or ad hoc or stop gap appointment is well settled. The Supreme Court in S.K. Varma v. State of Punjab, 1979 SLJ 477 = 1979 (2) SLR 164.explained the term "ad hoc appointment" as follows:-

"To our mind, the term "ad hoc employee" is conveniently used for a wholly temporary employee engaged for a particular purpose and one whose services can be terminated with the maximum of ease. The dictionary meaning of ad hoc in Webster's New International Dictionary has been given as "pertaining to or for the sake of this case alone".

In Vishnu v. State of Bihar, 1981 (3) SLR 467, the Supreme Court in brief explained that an ad hoc appointment is made due to exigency of a particular situation without considering the respective merits of all those who are eligible and does not confer any right to continue even on temporary basis. A Division Bench of our own High Court (of which I happened to be one of the members) while dealing with such a question in K.S.Ch.S. Prasad v. The AP IIC Limited, 1995 (1) An.W.R. 219 = 1995 (1) ALD 536 (D.B.) concluded the law on the question as follows:-

".....The service jurisprudence navigates the tenure of temporary and permanent employees. As the very expression "temporary" connotes, the dictionary of law imprints upon it a non-permanent seal. It is at sufferance till confirmed or terminated. The tenure strikes a note of uncertainty or ephemeral. In a colloquial sense it is ad hoc whether the very words are used or not. It lasts till it is made permanent by existence of permanency or continuity to conclude the finality in the service. A temporary employee has no right or tenure of service to bear upon the seniority or benefits as against the regularly appointed candidates. No sympathy or compassion of Courts can cure such service law consequences."

When the first respondent used the very words "provisional and ad hoc", i really meant that the petitioner could never be even a temporary employee much less a permanent one. It was a pure and simple ad hoc employment at sufferance till confirmed or terminated and confirmation was a total impracticable situation as it could not be done till he puts in one year of service. Therefore, the contention of the respondents 1 and 2 that the petitioner was regularly appointed with the 1st respondent has no force at all. The meaning that it was ad hoc means that it was to be such till he was confirmed, terminated or sent back to the third respondent. In that sense, when the petitioner asked the 1st respondent to repatriate him, it was a formal administrative act which was bound to be adopted by virtue of the terms of employment. The contention that there is no provision for repatriation in the regulations of the first respondent is no answer to the real situation in the matter. It is true that there is no regulation for repatriation as such. But regulation No. 13.2 provides for repatriation when even after extending the period of probation the work and conduct of the probationer continued to be unsatisfactory when he will be reverted to a lower post and repatriated. That contingency will never occur in the present case as the petitioner cannot be

reverted or repatriated on such a ground. It is a total myth to apply such a regulation to the petitioner by the first respondent. The learned Counsel for respondents 1 and 2 has also pointed that Regulation No. 13.2 in regard to the period of probation required as above and it goes with the same consequence without improving the situation.

5. Now coming to the question of lien of the petitioner either with the third respondent or the first respondent the very terms of appointment of the petitioner by the first respondent is sufficient to hold that he can never have either commenced or concluded his lien with the first respondent. Admittedly he had lien with the third respondent till he was appointed by the first respondent. Therefore, unless that lien is proved to have been put an end to either by volition or by operation of law or by inevitable consequences, it must be presumed that lien is continued. There appears to be some misconception about lien of employment while the controversies were considered in this case. The service law is definite and explained the expression "lien" which is not defined elsewhere. Lien has been defined in the service rules as 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 tenure post to which he has been appointed substantively. A person acquires a lien on a particular post to which he is substantively appointed or confirmed; once a person acquires a lien on a particular post, he continues to hold the lien until he is substantively appointed to some other post or removed or retired from service. The rules further provide that lien of a Government servant may in no circumstances be terminated even with his consent, if the result would be to leave him without a lien or a suspended lien upon a permanent post. Therefore, a person holding a post after confirmation holds a lien against the said post. On selection and appointment to another post he continues to hold the lien in the former post until he is confirmed in the latter post and acquires a lien in that post. (P.524 and 525 of Services under the State by Justice M. Rama Jois, 1987 Edition). It is true as rightly pointed by the learned Counsel for the petitioner that lien can be transferred on appointment elsewhere when once the appointment is made to a substantive post. If the petitioner had been appointed by the first respondent to a substantive post, then possibly the petitioner would have lost the lien with the third respondent and acquired it with the first respondent, but that has not happened in the present case. On the other hand, the petitioner was appointed to an ad hoc post provisionally subject to so many conditions which could not have been at all fulfilled for any length of time. It is true that a lien may be lost by subsequent substantive appointment even where one chooses to go to a lower post. It is also true that when a person holding a lien is appointed substantively to another post, he acquired a lien against the latter post and the lien previously held stands automatically cancelled notwithstanding an entry to the contrary in the service records and that has also not occurred in this case. The law appears to be that even where a lien was removed with consent unless the lien is lost or created elsewhere, the retention of the lien in the parent department will not be

lost. In *B.S. Birthare v. State of Madhya Pradesh*, AIR 1969 M.P. 60 even where an employee had voluntarily agreed for the cancellation of his lien, that furnishes no ground for the parent department to refuse to take him back when his services are terminated in the department to which he was transferred and was sent back to the parent department. The law was taken further to declare that refusal to take him back on the ground that he had agreed for the cancellation of lien is illegal. The High Court of Mysore in *State of Mysore v. Anthony Benedict*, 1978(1) Mys. L.J. 590 went to the extent of declaring the law that if there is any rule contrary to the concept of lien, it would be contravening Article 311(2) of the Constitution of India. It is popularly stated that lien to the post held by an employee is like the skin holding the body. It moves with him. It is said to be not beyond *lex loci*. It can be put an end to not merely by volition but according to law or otherwise it is repugnant to Article 311(2) of the Constitution of India amounting to termination of service except in accordance with law. To sum up the aspect of the matter, an employee has right to serve in the parent department, he may seek service elsewhere without forfeiting the lien, lien can be given up but cannot be compelled. But at the same time, the consent will not tantamount to a legal binding. Therefore, judging the matter in the settled background of law, the petitioner should be held to have not lost the lien with the third respondent nor he cannot be held to acquire lien with the first respondent. In the background of the legal position *supra* about the right of a person holding lien to a post in the parent department, repatriation by the department in which such employee works to the parent department becomes obvious and inevitable. The choice of repatriation firstly rests with the employee himself and later on with the parent department and also with the other department in which such services are either lent or taken over by circumstances. The expression "repatriation" is not defined in any law as such but it is a part of service law system in the situation of an employee moving from the parent department to the other department and back like a pendulum oscillating due to momentum and operation. Since the petitioner has desired to go back to the parent department viz., the third respondent, the first respondent has no option but to repatriate him. Similarly, as already pointed out, the law imposes an obligation on the parent department to provide the post to such a repatriated employee on either repatriation or otherwise the service law puts the action or the inaction of such authorities to illegality. Therefore in the factual and legal situation of the matter in question, the petitioner has a right to be repatriated to the third respondent by the 1st respondent.

6. The question is about the post to which the petitioner has to be accommodated with the third respondent. It depends upon the post which he occupied at the time of relieving by the third respondent and that is a matter to be considered by the third respondent regarding which the petitioner might not have any right. Particularly when his status by promotion or otherwise in the present post has been due to the subsequent event of his appointment with the first respondent, that is a matter to be decided by the third respondent on

repatriation.

7. The first respondent has strongly resisted the petition mainly on the ground that the attitude of the petitioner to go back to the parent department is motivated to get the benefit of retirement age. The whole approach of the matter by the first respondent is misconceived. Motives play no role in determining the rights of the parties. If the first respondent prevents such a right to be enforced, it may amount to malice and deliberate attitude by preventing the petitioner from having his right regarding which it will be exposed to serious consequences including prosecution. However, as rightly pointed out by the learned Counsel for the third respondent and also as conceded by the petitioner, the age of superannuation with the first respondent if the petitioner continues in service is only 58 as per Reg. No. 17 (a). Therefore, in the normal circumstances, the 1st respondent cannot be compelled to continue the petitioner in service beyond 58 years of age unless by its own conduct the 1st respondent prevents the petitioner from going back to the parent department and the risk is so patent in such a situation that the 1st respondent should give the benefit of retirement age of the petitioner by virtue of the regulations of the third respondent if he is entitled to continue beyond the age of 58 years. Because, as already pointed out, an employee carries all his rights with him which he had in the parent department while his services are taken over or deputed or lent to another department as the case may be. If the first respondent still insists that the petitioner cannot be relieved by way of repatriation, it must be prepared to consider the right of the petitioner which he enjoyed with the third respondent in regard to which we are going to examine now.

8. By virtue of the award of the Industrial Tribunal, Hyderabad, in I.D. No. 13/67 published on G.O.Ms. No. 576, Home (Labour-I) Department dated 23-4-1970 as per Ch.XVI of the award, the employees of the third respondent who are under the non-subordinate category shall retire on attaining the age of 58 years. However, the third respondent could grant for an employee who continues to be physically fit and efficient extension of service upto sixty years. The petitioner admittedly fits into such a category. Normally speaking, he retires at the age of 58 years even while working under the third respondent. But subject to the contention as stipulated above, he may be continued in service upto 60 years. On the face of it, such a benefit to be granted to such employees is not mandatory and is within the discretion of the third respondent and subject to the conditions fulfilled under the relevant clause. But the law appears to be settled that normally such extension will be granted unless the employer finds that the petitioner cannot fulfil such conditions with all possible considerations. Therefore, the petitioner stands a chance for being considered to extend his services upto 60 years by the third respondent, which the first respondent is trying to prevent.

9. Under the circumstances, the petitioner should succeed and the respondents 1 and 2 cannot prevent the petitioner from being repatriated to the third respondent and seek the extension of the retirement age according to the award

aforementioned. Thus, the impugned order of the second respondent cannot be supported or enforced.

10. The Writ Petition is allowed. The impugned proceedings of the second respondent dt. 20-3-1997 rejecting the request of the petitioner for repatriation is quashed. The petitioner shall be entitled to be repatriated to the third respondent by the first respondent which shall be done forthwith on receipt of the direction of this Court by wire. The petitioner shall be entitled to seek any benefits as per the award regarding extension of service and retirement age from the third respondent who shall consider it in accordance with the implications of the award. However, it is made very clear that the third respondent shall be bound to accommodate the petitioner in any employment to which he is entitled and allow him to retire from service there only in accordance with the terms of the award. If the first respondent fails to relieve the petitioner immediately on receipt of this direction, the Registry is directed to initiate contempt proceedings against the first respondent immediately and the petitioner shall be entitled to have the benefit of the terms of the award for which he is entitled with reference to the third respondent to be given by the first respondent and also get the costs of Rs. 10,000/- from the 1st respondent.