

(2009) 09 MAD CK 0125

In the Madras High Court

Case No : Writ Petition No. 28103 of 2006 and (O.A. No. 343 of 1997)

S. Nagaraj

APPELLANT

Vs

The State of Tamil Nadu and C.N. Narasimhaiah

RESPONDENT

Date of Decision : 30-09-2009

Acts Referred:

Tamil Nadu Secretariat Service Rules — Rule 3, 4(4), 6, 7

Citation : (2010) WritLR 135

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : L. Chandrakumar, for the Appellant; R. Neelakantan, G.A. for R1 and R3 and Satish Parasaran, for R2, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—Heard both sides.

2. This writ petition arises out of O.A. No. 343 of 1997 filed before the Tamilnadu Administrative Tribunal. The said OA was filed by the petitioner seeking to set aside the order of the second respondent dated 25.11.1996 and consequently to direct the respondents to retain the applicant in the Governor's Secretariat Office, Raj Bhavan, Chennai with all monetary and service benefits.

3. The Original Application was admitted and pending the Original Application, the Tribunal granted an interim order dated 24.01.997, staying the impugned proceedings. The said order was directed to be continued until further orders by a subsequent order of the Tribunal.

4. By the impugned order dated 25.11.1996, the second respondent relieved the petitioner from the post of Assistant Section officer (ASO), Governor's Secretariat and directed to report before the Director of Animal Husbandry, Chennai -6.

5. The facts leading to the case of the petitioner are as follows:

5.1. The petitioner's name was sponsored by the Employment Exchange and he was appointed as a Steno-typist in the Animal Husbandry Department on 01.08.1983. His services were regularised in the said post and he had also satisfactorily completed his probation on 25.06.1986. By a circular issued by the second respondent dated 01.09.1987, volunteers were called for appointment to the post of Assistant by recruitment by transfer from among the Junior Assistants/Personal Clerks eligible for appointment as Junior Assistant in the Tamilnadu Ministerial Service. The petitioner opted for the said post. Therefore, by proceedings dated 04.02.1988, the petitioner, who was Acting Steno-Typist under the Directorate of Animal Husbandry was appointed as Acting Assistant in the second respondent's Secretariat on transfer, in terms of Rule 4(4)(iii) of the Tamil Nadu Secretariat Service Rules with effect from 21.01.1988. He was also sent for Foundational Training Examination in the XIV batch from 29.08.1988 to 02.09.1988 at the Secretariat Training Institute. The petitioner was also promoted as Officiating Assistant Section Officer by an order dated 27.03.1989. Subsequently, his pay in the post of Assistant Section Officer was fixed in terms of the pay fixation order.

5.2. The petitioner was also allotted a quarters inside the Raj Bhavan, by proceedings dated 01.10.1989. He was also sent for further in-service training during February 1990. His scale of pay was also revised by a further proceedings dated 16.07.1991 and he was given appropriate increment. On 07.10.1994, the petitioner was posted to act as Personal Clerk to the Deputy Secretary to Governor in the cadre of Assistant Section Officer. When the Section Officer in the Governor's Secretariat by name, P. Thankaraj got reverted to his parent department, the petitioner was directed to take over the charge from P. Thankaraj.

5.3. The petitioner by his letter dated 04.10.1996, addressed to the second respondent requested them to consider him for promotion to the post of Private Secretary to the second respondent or his post should be upgraded as a Section Officer. It transpires that His Excellency, the Governor of Tamilnadu also made a note endorsement on the said representation. For reasons best known, within few days after the said representation, the petitioner was reverted to his so called parent department.

6. The petitioner was given a posting order by the Director of Animal Husbandry, vide posting order dated 30.11.1996 in the post of Steno-Typist. The Director of Animal Husbandry, by his proceedings dated 18.12.1996 addressed to the second respondent stated that there is no post of Steno-Typist available at Chennai and therefore, his claim may be considered in the Governor's Secretariat.

7. It was thereafter the petitioner moved the Tribunal seeking to set aside the impugned order and the consequential reversion in the Governor's Secretariat. The Tribunal granted an interim order dated 24.01.1997 staying the operation of the impugned order. The said interim order was also extended until further orders by the Tribunal.

8. In the meanwhile, the third respondent, Director of Animal Husbandry filed M.A. No. 3064 of 1997 stating that they are unnecessary party and due to the interim order, the petitioner had already been retained in the service of Governor's Secretariat.

9. The second respondent has also filed a reply affidavit dated 25.02.1997 stating that though the petitioner was relieved, he was allowed to join duty in terms of the interim order and that the stay should be vacated. They have also given the names of several persons in the Annexure, who were appointed and subsequently relieved to take employment in the parent department.

10. Mr. L. Chandra Kumar, learned Counsel for the petitioner contended that the petitioner having opted to work under the second respondent by invoking Rule 4(4)(iii) of the Tamil Nadu Secretariat Service Rules, the question of retransfer may not arise. The petitioner had opted to serve in the second respondent Secretariat. It was only because the petitioner staked his claim for the post of Private Secretary, the impugned order of reversion came to be made. During the service in the second respondent, the petitioner never requested for reversion to his parent department.

11. In the present case, it must be noted that the petitioner's appointment was made in terms of statutory rules and the petitioner having got permanently appointed to the Secretariat Service, the question of reverting him to the so called parent department does not arise. In this context, Rule 3(a) of Tamilnadu Secretariat Service Rules which also applies to the staff of the Governor's Secretariat, reads as follows:

Category

Method of appointment

3(a) Assistants in the Departments of Secretariat other than the Law Department and the Governor's Secretariat

i) by recruitment by transfer from the category of Junior Assistants in the Tamil Nadu Ministerial Service or in the Tamil Nadu Judicial Ministerial Service.

ii) by promotion from the category of Personal Clerks or Typists; or

iii) for special reasons, recruitment by transfer from any other service

12. It is now stated that amendments were issued amending the Special Rules for the Tamil Nadu General Service by G.O.Ms. No. 1728 Public (Political.B) Department dated 10.10.1984 with retrospective effect from 13.06.1973. The said amendment deals with the posts relating to:

Under Secretary to the Governor

Personal Assistant to the Governor

Section Officer, Governor's Secretariat

13. In Rules 6 and 7, it was stipulated as follows:

6. Tenure of appointment:

(a) Appointment to the posts by recruitment by transfer of a member of any service, other than the Tamil Nadu Secretariat Service, shall be for such a period as the appointing authority considers it necessary.

b) A member of any service, other than the Tamil Nadu Secretariat Service, appointed to the posts by recruitment by transfer shall not, by reasons only of such appointment, cease to be a member of the service from which he has been appointed nor shall such appointment confer on him any claim to substantive appointment to the post or appointment thereto in any subsequent acting or temporary vacancy.

7.(a) Nothing contained in these rules shall adversely affect any person who was appointed to the post of Personal Assistant to the Governor or Section Officer, Governor's Secretariat before the date of publication of these rules and of the rights and privileges, including probation and right for reappointment or confirmation to which he was entitled under any rules or orders applicable to him before that date.

14. It was contended by the petitioner that he was never appointed in terms of these Rules to any one of the posts mentioned in the amendments to the Special Rules. On the contrary, he was governed by the old Rules and was appointed only as an Assistant in the second respondent Secretariat. Therefore, the contention that he was appointed with conditionalities prescribed under the amended Rules is not borne out by records. Further in the annexure to the reply affidavit dated 25.02.1997, the names furnished therein were all related to persons who had specifically opted to go back to their parent departments. All the posts mentioned therein related to the posts of Private Secretary, Assistant Section Officer, Deputy Secretary, PRO etc.,

15. When the matter came up before this Court, Mr. Satish Parasaran, learned Counsel appearing for the second respondent was directed to produce the records relating to the petitioner giving any option or consent to get relieved from the second respondent Secretariat and also to show whether any condition was stipulated for holding lien with his parent unit and that the period of service in the second respondent Secretariat was only on deputation basis. The learned Counsel fairly stated that the second respondent office do not have any records in their custody.

16. Since the petitioner do not have any lien over his parent department and was permanently appointed in the Governor Secretariat, it has to be seen whether he could be repatriated to his non-existence parent department. In this context, it is necessary to refer to the Judgment of the Supreme Court in Ramlal Khurana (Dead) By Lrs. Vs. State of Punjab and Others, . In Paragraph 8, it was averred as follows:

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 Article 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.

17. The Supreme Court subsequently in *State of Punjab and Others Vs. Inder Singh and Others*, considered the scope of deputation of a Government servant to another post and in paragraph 18 it was stated as follows:

18. The concept of "deputation" is well understood in service law and has a recognised meaning. "Deputation" has a different connotation in service law and the dictionary meaning of the word "deputation" is of no help. In simple words "deputation" means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The law on deputation and repatriation is quite settled as we have also seen in various judgments which we have referred to above. There is no escape for the respondents now to go back to their parent departments and working there as Constables or Head Constables as the case may be.

18. Very recently, the Supreme Court occasioned to consider the true meaning of the word lien over a post in *State of Rajasthan and Another Vs. S.N. Tiwari and Others*, . In paragraphs 17 to 21 it was observed as follows:

17. It is very well settled that when a person with a lien against the post is appointed substantively to another post, only then he acquires a lien against the latter post. Then and then alone the lien against the previous post disappears. Lien connotes the right of a civil servant to hold the post substantively to which he is appointed. The lien of a government employee over the previous post ends if he is appointed to another permanent post on permanent basis. In such a case the lien of the employee shifts to the new permanent post. It may not require a formal termination of lien over the previous permanent post.

18. This Court in *Ramlal Khurana v. State of Punjab* observed that: (SCC p.102, para 8)

8. ...Lien is not a word of Article It just connotes the right of a civil servant to hold the post substantively to which he is appointed.

19. The term "lien" comes from the Latin term "ligament" meaning "binding". The meaning of lien in service law is different from other meanings in the context of contract, common law, equity, etc. The lien of a government employee in service law is the right of the government employee to hold a permanent post substantively to which he has been permanently appointed.

20. The High Court upon appreciation of the material available on record found that lien of the respondent employee always continued in the Department of Economics and Statistics. His urgent temporary appointment as homeopathic doctor vide order dated 3.12.1980 was not a substantive appointment for any definite period. The mere fact that the respondent employee continued to work for a long period itself would not result in loss of lien in the parent Department of Economics and Statistics. That even after the respondent employee joined as homeopathic doctor in ESI corporation in 1980 the parent department treated the respondent employee as belonging to its own cadre. We find no infirmity in the order passed by the High Court.

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.

19. If it is seen in this context, it can be clearly ruled that the petitioner do not have any lien over his parent department and he has been permanently appointed to the Governor Secretariat and he was also ordered promotion though temporarily.

20. It must be emphasised that once a person was regularly appointed to a post, by direct recruitment or by promotion or by transfer from other service, in accordance with the existing rules and in the absence of anything contrary to the Rules, he cannot be involuntarily repatriated to his parent department.

21. In the light of the above, the writ petition stands allowed. However, there will be no order as to costs.