

(2014) 10 MP CK 0031
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5086/2009(S)

Sitaram Yadav

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-10-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 227
Sales of Goods Act, 1930 — Section 62

Citation : (2014) 10 MP CK 0031

Hon'ble Judges : S.K. Gangele, J; Rohit Arya, J

Bench : Division Bench

Advocate : M.P.S. Raghuvanshi and Ajay Bhargav, Advocate for the Appellant;
H.D. Gupta, Sr. Advocate and Santosh Agarwal, Advocate for the Respondent

Judgement

Rohit Arya, J.—This petition under Article 227 of the Constitution of India is directed against the order dated 10/02/2009 in O.A. No.701 of 2007 by Central Administrative Tribunal, Jabalpur Bench Circuit Bench at Gwalior (hereinafter referred to as "the CAT").

2. Relevant facts for the disposal of this petition are to the effect that petitioner No. 1, Sita Ram Yadav was initially appointed on the post of Store Issuer with effect from 26/10/1981 and since then, he is working on the said post. Likewise petitioner No. 2, Surendra Prasad was initially appointed as Store Chaser with effect from 02/12/1983 and since then, he is working on the said post. Pay scales of both the posts are one and same, i.e., Grade of Rs. 210/- + DA. Both the petitioners were conferred the temporary status with effect from 01/01/1984 & 26/11/1984 vide orders dated 15/12/1986 and 24/11/1986, respectively. Thereafter they were placed in the pay scale of Rs. 210-270/ (Annexure A/2 annexed with the writ petition at page No. 41). Vide order dated 20/03/1998, the petitioners working in the construction organization were posted against the newly created work charged post of Store Chaser in the grade of Rs. 2750-4400 (RSRP) (Annexure R/4 annexed with the petition at page No. 69). With the

aforesaid facts, petitioners sought parity with Material Clerk posted in stores on the premise that mode of selection/appointment for all the three posts is identical and nature of duties are also same, however, the pay scale of Material Clerk was higher. Therefore, they are entitled for the pay scale as payable to Material Clerk, i.e., Rs. 3,050-4590 (RSRP) as against pay scale of Rs. 2750-4400 (RSRP). Petitioners drew strength from the judgment of the Supreme Court in the case of Ram Kumar and Others Vs. Union of India (UOI) and Others, , relevant portion is quoted below:

"The casual labour engaged in work charged establishment of certain department who get promoted to semi skilled and highly skilled categories due to non-availability of the regular departmental candidates and continue to work as casual employees for long period can straightway be absorbed in regular vacancies in skilled grades provided they have passed the requisition trade test to the extent of 25% of the vacancies reserved for departmental promotion from the unskilled and semi skilled categories. These orders are also apply to the casual labours who are recruited directly in the skilled categories in work charged establishment after qualifying in the trade test."

Besides, the Railway Board vide letter dated 3/6/2004 communicated the minutes of meeting of the DC/JCM Railways held on 16th and 17th March, 2001 has resolved after deliberations and duly communicated to the General Managers of All Indian Railways and Production Units which reads as under:

"Federation"s attention was drawn to Board"s letter dated 7.8.1991 vide which the instructions contained in Board"s letter dated 11.8.1988 have been revised. Accordingly the Material Checkers (Stores Chaser) performing the duties of Material Clerks Stores Chaser) performing duties of Material Clerk are allowed the pay scale of Rs. 3050-4590. Thus, the post of Stores Chaser who are required to perform the duties of Material Clerk shall be created in appropriate Grade viz. Rs. 3050-4590."

3. It was contended that they were accorded temporary status of Store Issuer/Store Chaser and thereafter were posted in the newly created Work Charged posts of Store Issuer/Store Chaser with immediate effect in the grade of Rs. 2750-4400 (RSRP) respectively, vide order dated 20/03/1998.

4. With the aforesaid pleadings, the petitioners filed O.A. No.198 of 2005 before the CAT at Jabalpur with prayer that they be accorded the benefit of Grade of Rs. 3050-4590 (RSRP) at par with Material Clerk posted in Stores.

5. The respondents/Railways denied the claim of petitioners inter alia contending that the petitioners have been regularized on the post on which they were working and the scales attached to those posts have been given to them. It was also submitted that petitioners" lien has been fixed in the grade of "Gangman".

6. The tribunal having considered the aforesaid averments made in the Original Application and the reply of the Railways while passing order on 05/10/2006

observed that the issue of parity as claimed by the petitioners required to be addressed by the competent authority by assessing the nature of duties performed by the petitioners vis-a-vis Material Clerk in the light of existing Railway Board circulars/instructions/guidelines and thereafter to pass a detail reasoned order. It was further directed that if decision is taken in favour of the petitioners, it shall have only prospective effect. The tribunal, however, refrained from addressing on submission of the petitioners, that lien could not have been fixed in the grade of "Gangman" as the post of Gangman is group "D" post whereas the petitioners were appointed since the years 1981 and 1983 respectively; on the post on which petitioners are working in group-C post and with the passage of time, they have been accorded temporary status. Till now they are working as such. Therefore, the lien should be fixed in the appropriate group-C post instead of group-D post, on the premise that this relief was not sought in their original application.

7. It appears that the respondents/Railways in the purported compliance of the aforesaid order of the CAT has passed an order on 09/05/2007 in terms of Hq. Office/Construction letter No. 13E/ CAO/C/Court Case/GWL dated 08/05/2007 showing petitioner No. 1, Sita Ram promoted from the post of Store Issuer in the Grade of Rs. 2750-4400 (RSRP) on ad hoc basis against the newly upgraded work charged post of Material Clerk in the grade of Rs. 3050-4590 (RSRP). Likewise, petitioner No. 2, Surendra Prasad promoted from the post of Store Chaser in the Grade of Rs. 2750-4400 (RSRP) on ad hoc basis against the newly upgraded work charged post of Material Clerk in the grade of Rs. 3050-4590 (RSRP).

8. However, petitioners' lien are shown to have been fixed in the post of "Gangman" in the grade of Rs. 2610-3540 (RSRP) with ADEN Gwalior for seniority and further regular promotions.

9. Feeling aggrieved by the aforesaid order dated 09/05/2007 passed by the respondents/Railways, petitioners' have preferred O.A. No.701 of 2007 with the contentions, firstly; the petitioners' since their appointment are working on the post of Store Issuer and Store Chaser which carry pay scale of Rs. 2750-4400 (RSRP), whereupon they have been granted temporary status. The nature of duties performed by them is identical with that of Material Clerk in the pay scale of Rs. 3050-4590 (RSRP). Besides, method of appointment of all the three posts is identical in nature and same. Therefore, they are entitled for the pay scale of Rs. 3050-4590 (RSRP) at par with Material Clerk from the date, they have been performing duties as Store Issuer and Store Chaser respectively. Denial of the aforesaid benefit is contrary to the judgment of the Hon'ble Supreme Court in the case of Ram Kumar and others (supra) and that of the decision taken by the Railway Board in the meeting as resolved after deliberations of the DC/JCM railways, held on 16th & 17th March, 2001 (supra), the benefit whereof has been extended to others; secondly; the fixation of lien on the post of Gangman in the grade of Rs. 2610-3540 (RSRP) which is group "D" post is on incorrect premise.

Petitioners" have never worked on the post of Gangman. The pay scale of the petitioners since the beginning of their appointment is on the post of Store Issuer and Store Chaser, as such, they are working in the higher pay scale than that of Gangman. They are at par with Material Clerk, group "C" post. As such, entitled for fixation of their lien in the newly upgraded work charged post of Material Clerk in the grade of Rs. 3050-4590 (RSRP) which actually accorded to them vide order dated 09/05/2007 (supra). As they have been placed in the newly upgraded work charged post of Material Clerk, their lien cannot be fixed on the lower post of Gangman in the grade of Rs. 2610-3540 (RSRP) and thirdly; the competent authority of the Railways were required to assess the nature of duties performed by the petitioners for the purpose of determination of their claim of giving the pay scale of Material Clerk since the time of their discharging the duties as Store Issuer and Store Chaser respectively on the basis of existing circulars/instructions/guidelines of the Railway Board on the subject as ordered by CAT.

10. It is contended that the aforesaid averments in all fairness ought to have been considered in the light of the judgment of the Hon'ble Supreme Court in the case of Ram Kumar and others (supra) and that of the decision taken by the Railway Board as resolved after deliberations in the meeting of the DC/JCM railways, held on 16th & 17th March, 2001 (supra). That exercise has not been done. Therefore, there was no reasonable justification to deny them the aforesaid claim. Instead of showing them to have been promoted on ad hoc basis in the newly upgraded work charged post of Material Clerk in the grade of Rs. 3050-4590 (RSRP), they should be treated to be posted on regular basis vide order dated 09/05/2007 (supra).

11. The aforesaid claims of the petitioners" were denied by the respondents/ Railways on the same grounds as was done in the earlier round of litigation before the CAT.

12. The CAT has not addressed upon the aforesaid issues on merits and dismissed the same being impressed upon the fact that the petitioners have been given ad hoc promotion on the post of Material Clerk in the grade of Rs. 3050-4590 (RSRP) in accordance with the existing guidelines and instructions issued by the Railway Board. The earlier order of CAT stands complied with and did not find fault with the impugned order whereby the petitioners" lien was fixed in the post of Gangman in the pay scale of Rs. 2610-3540 (RSRP) by the respondents/Railways. Consequently, OA was dismissed.

13. Petitioners feeling aggrieved have preferred this writ petition challenging the order of CAT dated 10/02/2009 in O.A. No.701 of 2007 (Supra).

14. Petitioners have made the following submissions:

(i) that, in terms of order passed by CAT dated 05/10/2006 while disposing of O.A. No.198/2005, the respondents/Railways have not carried out the exercise of assessing the nature of duties performed by the petitioners as Store Issuer and

Store Chaser in the grade of Rs. 2750-4400 (RSRP) to determine the claim of parity of treatment in the matter of granting the pay scale of Material Clerk in the grade of Rs. 3050-4590 (RSRP) in the light of existing circulars/instructions/guidelines of the Railway Board and the judgment of the Hon'ble Supreme Court in the case of Ram Kumar and others (supra). Therefore, the CAT has committed grave error of law while recording its satisfaction that the earlier order of CAT dated 05/10/2006 (supra) has been complied with by passing the order dated 09/05/2007 by the respondents/Railways;

(ii) that, the fact that the petitioners have been shown to have been given the pay scale of Rs. 3050-4590 (RSRP) in the newly upgraded work charged post of Material Clerk itself denotes the fact that the duties performed by petitioners are identical with that of Material Clerk in the absence of any dispute or denial as regards similarity of method of appointment on both the posts and identical nature of posts as well as similar duties; there was no reasonable justification to deny the claim of grade of Rs. 3050-4590(RSRP) from the date of performance and discharging the duties as Store Issuer and Store Chaser; and

(iii) that, it is submitted that the petitioners were working as Store Issuer and Store Chaser with effect from 01/01/1984 and 26/11/1984 in the grade of Rs. 2750-4400 (RSRP), followed by the order dated 20/03/1998 whereupon they have been given ad hoc promotion against newly upgraded work charged post of Material Clerk in the grade of Rs. 3050-4590 (RSRP) vide order dated 09/05/2007 which is group "C" post. Therefore, under such circumstances, their lien could not said to have been fixed as Gangman which is lower post of group "D" carrying grade of Rs. 2610-3540 (RSRP).

15. Heard. Record of the case has been perused.

16. Upon perusal of the judgment of the Hon'ble Supreme Court in the case of Ram Kumar and others (supra) coupled with the decision taken by the Railway Board as resolved after deliberations in the meeting of the DC/JCM railways, held on 16th & 17th March,2001 (supra) that the Store Issuer and Store Chaser are performing the duties of Material Clerk shall be created in appropriate Grade of Rs. 3050-4590, we are of the opinion that in view of the fact that the petitioners No. 1 and 2 have been performing the duties of Store Issuer with effect from 26/10/1981 and Store Chaser with effect from 02/12/1983 respectively, in all fairness the respondents/Railways ought to have considered their claim as regards their entitlement in the Grade of Rs. 3050-4590 (RSRP) in accordance with the decision taken by the Railway Board as resolved after deliberations in the meeting of the DC/JCM railways, held on 16th & 17th March,2001 (Supra). That has not been done. Instead they have been shown to have been promoted on ad hoc basis in the newly upgraded work charged post of Material Clerk, Grade Rs. 3050-4590 (RSRP) without even referring to the order passed by the Railways in existence as ordered by the CAT on 05/10/2006 (Supra). However, this Court cannot lose sight of the fact that entitlement of the petitioners in the grade of Rs. 3050-4590 (RSRP) as ordered by the CAT was to be prospective in

nature. Therefore, the benefit accorded to the petitioners in the grade of Rs. 3050-4590 (RSRP) shall though be effective prospectively, i.e., after the date of order dated 05/10/2006 passed in O.A. No.195 of 2005 but on regular/permanent basis and not on ad hoc basis as shown in the impugned order dated 09/05/2007 passed by the respondents/Railways (supra).

(Emphasis supplied)

17. Before advertng to the submission as regards lien on the post held by petitioners, it is considered apposite to refer to the meaning and concept of "lien" in service jurisprudence is well known and understood for its legal connotation as judicially interpreted by the Hon"ble Supreme Court and High Courts In the case of Triveni Shankar Saxena Vs. State of U.P. and others, , the Hon"ble Supreme Court has held as under:

"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 contexts such as "contractual lien", equitable lien", "specific lien", "general lien", "partners lien", etc., In Halsubury's Laws of England, (4th edn. 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 edn. 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. So, as regards Scotland, "lien" is defined as including "the right of retention" [Sale of Goods Act, 1893 (c.71) S. 62], or it "shall mean and include right of retention" [Factors (Scotland) act, 1890 (c.40), S.1]; see hereon Great Eastern Railway Co. Vs. Lord's Trustees, (1909 AC 109).

19. 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 standpoint, embodies the idea of a deed or bond, and necessarily implies that there is something in existence to which it attaches."

22. In Black's Law Dictionary, (6th edn., 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."

24. A learned Single Judge of the Allahabad High Court in M.P. Tewari Vs. Union of India, 1974 ALL LJ 427 following the dictum laid down in the above Paresh

Chandra Nandi Vs. Controller of Stores, N.F. Railway, Pandu and Others, and 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 he has been confirmed and made permanent on that post and not earlier", with which we are in agreement."

18. Therefore, contention of the petitioners that their lien cannot be fixed on the post of Gangman has substantial force. Petitioners have never been appointed and posted as Gangman nor performed the duties. Further, there is no denial to this effect by the respondents/Railways. As such, their lien cannot be fixed on the said post. As a matter of fact, this act of the respondents/Railways shall do violence with the concept of lien and shall be against the basic law regulating right to hold lien to the post held. Instead petitioners" are eligible for lien to the post, on which they were appointed and performed duties, as per law. In terms of the language and authority of the decision taken by the Railway Board as resolved after deliberations in the meeting of the DC/JCM railways, held on 16th & 17th March,2001 (supra), petitioners" lien deserves to be maintained in the newly upgraded work charged post of Material Clerk in the grade of Rs. 3050-4590 (RSRP) which is group "C" post. As such, the impugned order dated 09/05/2007 (supra) passed by the respondents/Railways fixing petitioners" lien on the post of Gangman in the grade of Rs. 2610-3540 (RSRP) with ADEN Gwalior for seniority & further regular promotions which is lower post of group "D" cannot be sustained being violative of Articles 14 and 16 of the Constitution of India and they are entitled for the benefit of the decision taken by the Railway Board as resolved after deliberations in the meeting of the DC/JCM railways, held on 16th & 17th March,2001 (supra).

19. In view of the above, to the extent indicated above, the impugned order dated 09/05/2007(supra) passed by the respondents/Railways is hereby quashed.

20. Consequently, the order impugned passed by the CAT dated 10/02/2009 is set aside.

21. Accordingly, writ petition is allowed to the aforesaid extent.