
(2014) 09 AHC CK 0038
In the Allahabad High Court
Case No : Writ A. No. 19314 of 2014

Susheel Kumar Shukla and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Constitution of India, 1950 — Article 12
Sales of Goods Act, 1930 — Section 62

Citation : (2015) 1 ALJ 103 : (2015) LabIC 968

Hon'ble Judges : Suneet Kumar, J

Bench : Single Bench

Advocate : Bhoopendra Nath Singh and Devendra Pratap Singh, Advocates for the Appellant

Judgement

Suneet Kumar, J.—The petitioners are three in number and are assailing the notice dated 01.11.2013, retiring the petitioners w.e.f. 30.04.2014, the order dated 05.03.2014 rejecting the representation of the petitioners and further seeking a direction not to retire the petitioners at the age of 58 years. The petitioners were selected on the post of Computer (Sangadak) by the respondent No. 4, Secretary/Commissioner, Board of Revenue, U.P. Lucknow on temporary basis and their services could be terminated without prior notice. The petitioner No. 1 was appointed on 26.08.1982, petitioner Nos. 2 and 3 were appointed on 05.11.1991. The Department of Rural Development, Govt. of U.P. vide office order dated 05.02.1986 transferred the petitioners along with ten other persons against the newly created post of Statistical Assistant in Department of Rural Development Agency (DRDA) in the districts mentioned against their names. The order provided that the persons could be repatriated to their original post and no deputation allowance is payable. Pursuant to the order dated 05.02.1986, Secretary, Board of Revenue, relieved the petitioners but clearly stated that their lien will not be maintained by the Board.

2. The submission of learned counsel for the petitioners is that the petitioners"

lien is with the Board of Revenue and they were never absorbed in the service of DRDA, hence they cannot be treated to be employees of respondent No. 6 (DRDA) thus, are employees of the Board, therefore, cannot be retired at the age of 58 years, hence are entitled to continue until 60 years.

3. In rebuttal, Dr. Y.K. Srivastava, learned Standing Counsel, submits that the petitioners were given appointment in 1982 against temporary post of computer under a short term scheme of Government of India namely The appointment was purely temporary co-terminus with the scheme which was to end in 1986. On the joint application submitted by the petitioners and on the request made by the Board of Revenue, the petitioners were permitted to join the post of Statistical Assistant in the pay-scale of 570-1100, in the newly created Department of Rural Development (D.R.D.A.) and pursuant thereto were relieved by the Board of Revenue on 24.02.1986. The order dated 24.02.1986 contains a specific recital that the Board of Revenue has not retained the lien of these persons. The Board of Revenue has taken a consistent stand, as is reflected from letter dated 15.04.1993, that the petitioners did not have lien with the Board of Revenue. It is further submitted that the reference made in respect of some of the persons who were taken back by the Board of Revenue is not correct as of the 13 persons relieved by the Board for joining various posts in the department of Rural Development in different districts, 8 persons did not submit their joining and were subsequently taken back by the Board of Revenue. The petitioners continued with the DRDA and being regular employees of the DRDA retired as per the terms and conditions of service applicable to the employees of the DRDA.

4. Rival submissions fall for consideration.

5. The petitioners were initially appointed on the post of computer and the letter of appointment clearly specifies that they were being appointed against a scheme on temporary basis in pay scale of Rs. 470-735/- and their services could be terminated at any time without notice, thus the petitioners were not regular employees of the Board appointed after facing regular selection as per the rules. The Government of India scheme was to continue till 1986, hence, all the persons working on the scheme made request for alternative appointment and on the recommendation by the Board of Revenue, the Government appointed the petitioners by way of transfer in the newly created Department of Rural Development Agency (D.R.D.A.) on the post of Statistical Assistant. The orders relieving/transferring the petitioners clearly stated that it will not be possible for the Board of Revenue to maintain their lien. The petitioners joined the post in DRDA without protest, rather it was on their own request. The Commissioner Village Development U.P. vide letter dated 26.02.1988 addressed to the Secretary, Board of Revenue, sought clarification as to whether the petitioners, appointed in the DRDA, can object that their lien is not being maintained by the Board of Revenue, the letter further stated that at this stage no purpose will be served to maintain the lien with the Board of Revenue. The Commissioner/Secretary, Board of Revenue vide letter dated 15.04.1993 addressed to the

Special Secretary, Government of U.P. clarified that the petitioners had no lien with the Board of Revenue, therefore, the question of their repatriation is not possible.

6. The contention of learned counsel for the petitioners that the petitioners continued to be the employees of the Board and had come on deputation to the DRDA is not borne out from the record nor the appointment (05.02.1984) by way of transfer was questioned or challenged by the petitioners, rather they continued in DRDA as regular employees.

7. On the contrary, Board of Revenue has consistently stood by its stand that the petitioners have no lien with the Board as they were appointed against a scheme, the appointment was co-terminus with the term of the scheme.

8. The Supreme Court in *Triveni Shankar Saxena Vs. State of U.P. and others*, explained the concept of lien as defined under the U.P. Fundamental rules and observed:--

"15. Rules 14-A and 14-B of the UP. Fundamental Rules read as follows:

"14-A. (a) 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 lien upon a permanent post.

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. 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) Alien-(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), 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) AC 109."

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."

21. 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. Waddell*, 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 & Loan Ass'n v. Robretson*, 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. Shelat, J. in *Paresh Chandra Nandi Vs. Controller of Stores, N.F. Railway, Pandu and Others*, while interpreting Clause 14 of Rule 2003 of the Railway Fundamental Rules which defines lien has observed (at p. 360 of AIR):

"Rule 2003 of the Railway Fundamental Rules defines in Clauses 3 and 14 the terms "cadre" and "lien". "Lien", as defined in Clause 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. Tewari v. Union of India*, 1974 ALJ 427 following the dictum laid down in the above *Paresh Chandra's* case and distinguishing the decision of this Court in *PL. Dhingra v. Union of India* 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 view we are in agreement."

9. The Supreme Court in *State of Madhya Pradesh and Others Vs. Ku. Sandhya*

Tomar and Another, , observed:--

"9. There can be no dispute with respect to the settled legal proposition that in the event that a person is not appointed on a regular basis, and if his service is not governed by any Statutory Rules, he shall be bound by the terms and conditions that have been incorporated in his appointment letter. (Vide: State of Punjab and others Vs. Surinder Kumar and others, . In such an eventuality, there can be no reason with respect to why the terms and conditions incorporated in the appointment letter should not be enforced against such an employee. In the instant case, respondent No. 1 was temporarily appointed in a project and thus, she had at no point of time, been appointed on a regular basis, owing to which, she cannot claim any lien with respect to the said post.

10. "Lien" connotes the civil right of a Government servant to hold the post "to which he is appointed substantively". The necessary corollary to the aforesaid right is that such appointment must be in accordance with law. A person can be said to have acquired lien as regards a particular post only when his appointment has been confirmed, and when he has been made permanent to the said post. "The word "lien" is a generic term and, standing alone, it includes lien acquired by way of contract, or by operation of law." Whether a person has lien, depends upon whether he has been appointed in accordance with law, in substantive capacity and whether he has been made permanent or has been confirmed to the said post. (Vide: Parshotam Lal Dhingra Vs. Union of India (UOI), ; S. Pratap Singh Vs. The State of Punjab, ; T.R. Sharma Vs. Prithvi Singh and Others, ; Ramlal Khurana (Dead) By Lrs. Vs. State of Punjab and Others, ; Triveni Shankar Saxena Vs. State of U.P. and others, ; Dr. S.K. Kacker Vs. All India Institute of Medical Sciences and Others, ; S. Narayana Vs. Md. Ahmedulla Khan and Others, ; and State of Rajasthan and Another Vs. S.N. Tiwari and Others, .

10. In the case of the petitioners, there was no deputation from the Board to DRDA as the petitioners were not the employees of the Board but were appointed and working on a scheme sponsored by the Government of India terminable as per the terms and conditions of appointment and their term of appointment was co-terminus to the term of the scheme

11. In Umapati Choudhary Vs. State of Bihar and Another, , the Supreme Court clarified the legal position with regard to deputation as follows:--

"Deputation can be aptly described as an assignment" of an employee (commonly referred to as the deputationist) of one department or cadre or even an organisation (commonly referred to as the parent department or lending authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not."

12. The concept of deputation carried with it the concept of offering and borrowing with the consent of the person, who is to be sent on deputation. Meaning thereby, there must be a department in which a particular employee is working, the department is willing to lend the service of the employee for another department, the other department is willing to accept the employee so lend for its service and the employee has given his consent and is ready and willing to work with the borrower. In absence of any of the aforesaid three conditions, there cannot be any deputation.

13. For deputation there must be lending of service of the employee by the department in which the employee is working, in the facts of the case, the petitioners were not employees of the Board but were working on the scheme sponsored by Government of India, their services being co-terminus with the term of the scheme which was to end in 1986, therefore, were given fresh appointment by way of transfer in the newly created DRDA.

14. In *Ram Prakash Makkar v. State of Haryana*, AIR 1993 SCC 1974, the Supreme Court made a distinction between appointment by transfer or a case of deputation. The order of appointment stating that an employee was appointed on transfer basis also stating appointment to be purely temporary, the employee could be reverted, he shall be on probation for a stated period and his lien on previous service was to remain until he is confirmed in post of transfer. The Supreme Court held that the entire order of appointment must be read with other recitals of the order, thus holding that the appointment was by way of transfer and it was not a deputation. The Court observed as follows:

"The main question in this appeal is whether the appellant was appointed by transfer as an Assistant in the Directorate or whether it was a mere case of deputation. We have set out hereinbefore the order of his appointment in the Directorate. The order has to be read as a whole. It says that the appellant is "appointed on transfer basis" as an Assistant in the, Directorate. It also says that his appointment is purely temporary and that he can be reverted to his parent department as and when his services are not required. The order further says that the appellant shall be on probation for one year and that his lien in the Civil Secretariat Service will remain until he is confirmed in the Directorate. Now what do these three features read together mean? The Division Bench has laid emphasis upon the second feature, ignoring the first and the third. With respect we are unable to agree with its view."

15. What clearly holds the field at present is the principle laid down and reiterated by the Constitution Bench of this Court in *Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.*, wherein this Court categorically held:

"37. We wish to clear the air that the principle, while discharging public function and duties the Government companies/corporations/societies which are instrumentalities or agencies of the Government must be subjected to the same

limitations in the field of public law-constitutional or administrative law-as the Government itself, does not lead to the inference that they become agents of the Centre/State Government for all purposes so as to bind such Government for all their acts, liabilities and obligations under various Central and/or State Acts or under Private law."

16. From this judgment, it follows that merely because an Association falls under the expression "instrumentality of the State" within the meaning of Article 12 of the Constitution, it would not make them Government employees.

17. In *General Manager, Uttaranchal Jal Sansthan Vs. Laxmi Devi and Others*, , the issue was, whether daily wagers employees in Uttaranchal Jal Sansthan were Government Servants and whether defendants of such daily wagers would be entitled to appointment under the Dying-in-Harness Rules. After considering the Rules, the Supreme Court observed that the daily wagers are not Government servants.

18. Considering the above referred judgments and the material on record, it will be clear that firstly the DRDA is a Society registered under the Societies Registration Act. Its funding is 70 percent from the Central Government and 30 percent from the State Government. The members of the Society and also the working Committee are basically persons holding the posts in Government service, mostly in the State Government and some in the Central Government, as the object is of rural development. Bye-law 20(h) recognizes that the staff are to be appointed by the Governing Body. The accounts are to be approved by the Governing Body in its annual general meeting. Suits are to be filed against the society. Thus, there may be funding by the Central/State Governments and control by the State Government, nonetheless they are employees of the society. Some posts are filled up on transfer by the Governor and in respect of others, appointments are to be made by the Chief Executive Officer, who is the District Magistrate. The Division Bench of this Court in *State of U.P. and another v. Pitambar Dutt Sanwal* (Special Appeal No. 225 of 2008, decided on 27.04.2010), considering the afore referred cases held that the employees from DRDA do not hold civil posts in the service of the State, Rule 56 of the Fundamental Rule would not apply to them. Thus, it is held that petitioner are the employees of DRDA and are not holding civil posts in the service of State.

19. Appointment under a scheme cannot be equated with regular appointment.

20. The Supreme Court in *C.S.I.R. and Others Vs. Dr. Ajay Kumar Jain*, , held that the appointment under the scheme was not regular appointment under the Rules governing the organization and the Tribunal/court cannot direct to treat such employees as regular employee. The observation is as follows:--

"Employment under the Quick Hire Scheme was on contract basis. The respondent was not governed by CSIR Service Rules, 1994 for recruitment of Scientific, Technical and Support Staff as he would not be appointed under those Rules. An appointment under the Quick Hire Scheme cannot be equated with

regular appointment as per the relevant recruitment rules of CSIR against a sanctioned post. To be eligible for regularisation, the respondent had to come within the relevant rules. It is difficult to appreciate the directions issued by the CAT in the circumstances of the case. A Pool Officer or a Scientist Fellow under the Quick Hire Scheme cannot continue to hold on to the job till superannuation. The respondent has referred to certain instances where scientists were appointed on permanent contractual post by CSIR without following the selection procedure. If something wrong has been done in violation of the rules, we cannot use that as an example to perpetuate an illegality. In any case those cases are not before us and it is difficult for us to comment if there was violation of any rules regarding those scientists. Respondent, however, cannot take advantage of an illegality, if there is any."

21. In view of the law and reasons stated, hereinabove, the writ petition fails and is accordingly dismissed. No order as to costs.