



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 5145/2022

Dr. Shiv Kumar

Petitioner

Versus

1. State Of Rajasthan, Through Chief Secretary, Govt. Of Rajasthan, Secretariat, Jaipur.
2. Principal Secretary, Medical And Health Department, Govt. Of Rajasthan, Secretariat, Jaipur.
3. Dy. Secretary, Medical And Health (Group-2) Department, Govt. Of Rajasthan, Secretariat, Jaipur.
4. Director (Public Health), Medical And Health Services, Rajasthan, Swasthya Bhawan, Tilak Marg, C-Scheme, Jaipur.
5. Chief Medical And Health Officer, Bharatpur.

----Respondents

For Petitioner(s) : Mr. R.D. Meena
For Respondent(s) : Dr. Vivek Tyagi

HON'BLE MR. JUSTICE GANESH RAM MEENA

Order

Date of Reserve : January 18, 2024
Date of Pronouncement : February 20, 2024

1. The factual matrix of the case is that the petitioner was initially appointed on the post of Biologist after being selected through direct recruitment conducted by the Rajasthan Public Service Commission (for short 'the RPSC') under the Medical and Health Department and was posted at Bharatpur and later on he was confirmed on the post



of Biologist in State service w.e.f. 10.09.1982 vide order dated 25.09.1982.

The petitioner in the meantime was selected as Deputy Assistant Director (Entomology) with National Institute of Communicable Disease, Ministry of Health, Government of India and an order dated 02.10.1982 was issued in regard to his relieving for joining on the post of Deputy Assistant Director (Entomology) keeping his lien with the State Government for one year. In furtherance of the selection and relieving, the petitioner joined on the post of Deputy Assistant Director (Entomology) by maintaining his lien with the Government of Rajasthan.

2. The Office of Deputy Chief Medical and Health Officer (Malaria), Bharatpur on 24.05.1983 issued one No Objection Certificate (for short 'the NOC') to the petitioner for taking up a job under the Ministry of Health Kingdom of Saudi Arabia. On 16.06.1983, the petitioner intimated the Director (Public Health, Medical and Health Services), Rajasthan about his selection and appointment in the Ministry of Health Kingdom of Saudi Arabia. In view of the application submitted by the petitioner, the Government of India, Ministry of Home Affairs, Department of Personnel & A.R. vide letter dated 01.07.1983 intimated to the petitioner that they have no objection in taking up the assignment with the Government of Saudi Arabia if the employer i.e. Government of Rajasthan is agreeable to relieve him





for taking up the assignment. In furtherance of the application and NOC issued by the Government of India, the Government of Rajasthan, Medical and Public Health Department issued a NOC on 08.07.1983 stating that the Governor of Rajasthan has no objection if the petitioner joins the foreign assignment as an Entomologist. In the aforesaid NOC dated 08.07.1983 it was also mentioned that the lien of the petitioner will be maintained on the post with the Rajasthan Government. After issuing NOC and the relieving order by the respondents, the petitioner joined in foreign assignment. On 20.01.1988, contract for foreign assignment of the petitioner was renewed. On 09.02.1988, the Embassy of India, Riyadh (Saudi Arabia) also wrote a letter to the Secretary, Government of Rajasthan, recommending for extension of deputation period of the petitioner. The period for foreign assignment was extended from time to time and the petitioner was relieved from foreign assignment on 13.09.2009 to join his parent department under the Government of Rajasthan. The petitioner after being relieved from the foreign assignment, on 23.09.2009 submitted his joining before the Medical and Health Department, Government of Rajasthan, for assuming the duty on the post of Biologist, which is still lying vacant. Certain representations were also submitted by the petitioner before the respondents authorities, which are part of the record, for allowing him to join on the post of Biologist.



3. Pursuant to the representations submitted by the petitioner, the Directorate of Medical and Health Services, Government of Rajasthan issued a letter dated 02.09.2021 to the petitioner demanding certain information for grant of service and retirement benefits. In response to the letter dated 02.09.2021, the petitioner submitted a representation along with the relevant documents on 21.09.2021, 22.09.2021 and also a notice for demand of justice on 03.03.2022.

4. The petitioner has prayed in the writ petition to issue directions to the respondents regarding his retirement from the service from the date of attaining the age of superannuation w.e.f. 28.02.2014 treating him to be in service with the respondents- Government of Rajasthan after returning back from deputation (foreign assignment) on 23.09.2009. The petitioner has also prayed for the other consequential benefits and the salary for the period he was put to remain out of the service without any fault on his part.

5. Mr. R.D. Meena, learned counsel appearing for the petitioner submitted that the petitioner was selected for foreign assignment on an application submitted by him after seeking NOC from the Government of Rajasthan and on being selected, he was assigned the foreign assignment. The petitioner was relieved by the Government of Rajasthan in pursuance to the order dated 08.07.1983 to join the foreign assignment keeping the lien of the



petitioner with the Government of Rajasthan with no definite period. Counsel further submitted that the period of foreign assignment of the petitioner was extended from time to time and the petitioner informed in advance to the respondent- Government of Rajasthan. It has also been submitted by the counsel that after completion of the period of foreign assignment, when the petitioner came back and submitted joining for allowing him to perform the duties on the post of Biologist, the respondents did not allow him to join even after making several representations. Counsel also submitted that the petitioner has also submitted the complete details and the documents as required by the respondents authorities vide letter dated 02.09.2021. Counsel also submitted that the action of the respondents in not allowing the petitioner to join the duty back and in not issuing an order of his retirement on attaining the age of superannuation w.e.f. 28.02.2014, is illegal, arbitrary and unjustified.

6. Mr. Vivek Tyagi, Dy. Government Counsel appearing for the respondents submitted that it is not in dispute that the petitioner was allowed foreign assignment after issuance of NOC by the Government of Rajasthan but his lien with the Government of Rajasthan was only for a period of one year as mentioned in the letter dated 02.10.1982 while he was relieved for joining on the post of Deputy Assistant Director (Entomology) with the Government of India. Counsel also submitted that



since the lien of the petitioner was only for a period of one year, as given in the letter dated 02.10.1982, he cannot be allowed to join back in service after such a long period because he has no right to come back on duty under the Government of Rajasthan.



7. Considered the submissions advanced by both the counsels appearing for the respective parties and carefully scanned and scrutinized entire material made available to the Court.

8. On the basis of the factual matrix of the case and the submissions advanced by the learned counsel appearing for the petitioner, one of the issue which requires to be adjudicated by this Court is “whether on the date of coming back of the petitioner from the foreign assignment on 23.09.2009, the lien of the petitioner survives on the post of Biologist with the Government of Rajasthan or not?”. The other question is that in case the lien of the petitioner survives on the date of coming back and submitting the joining on 23.09.2009 for relief, the petitioner would be entitled with other consequential benefits in view of the fact that he has attained the age of superannuation on 28.02.2014.

9. It is not in dispute that the petitioner opted for foreign assignment with the Kingdom of Saudi Arabia after seeking NOC dated 24.05.1983 issued by the Medical and Health Department, Government of Rajasthan. In furtherance of



assignment of foreign contract, the petitioner was ordered to be relieved to join the foreign assignment vide letter dated 08.07.1983 issued by the Medical Health and Public Department. The aforesaid order dated 08.07.1983 was endorsed to the Director General of Health Services, Nirman Bhawan, New Delhi with a specific mention that the petitioner may be relieved for his new assignment in Saudi Arabia under intimation to this Department as his lien will be maintained on the post with Rajasthan Government.

10. Rules 15 to 19 of the Rajasthan Service Rules, 1951 (for short 'the Rules of 1951') deals with the lien of the Government servants on substantive appointment to any permanent post.

11. The word 'lien' has been defined under Rule 7(17) of the Rules of 1951, which is as under:-

*“(17) **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.”*

The 'lien' of a Government servant only ceases to exist when he/ she is appointed on another post substantively / confirmed or absorbed permanently. Otherwise, his/ her lien would continue on the previous post as has been observed by the Hon'ble Apex Court in the case of **L.R. Patil Vs. Gulbarga University, Gulbarga (Civil Appeal No. 3254/2013) decided on 04.09.2023.**



12. Rules 15 & 16 of the Rules of 1951 are relevant, which are quoted as under:-

“15. Lien. Unless in any case it be otherwise provided in these rules, a Government 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.



Rule 16. Unless his lien is suspended under Rule 17 or transferred under Rule 19 a Government servant holding substantively a permanent post retains a lien on that post-

(a) while performing the duties of that post ;

(b) while on foreign service or holding a temporary post, or officiating in another post;

(c) during joining time on transfer to another post, unless he is transferred substantively to a post on lower pay, in which case his lien is transferred to the new post from the date on which he is relieved of his duties in the old post;

(d) while on leave; and

(e) while under suspension”

13. Rule 17 of the Rules of 1951 deals with the suspension of lien of a Government servant and Rule 18 of the Rules of 1951 deals with the termination of the lien of a Government servant and Rule 19 deals with the transfer of lien of a Government servant.

14. The letter/order dated 08.07.1983 clearly speaks that the lien of the petitioner shall be



maintained with Rajasthan Government without there being any definite period and also the Rules do not provide for any specific period for lien of a Government servant on a post under a Government. The respondents have no case that the lien of the petitioner was ever suspended, terminated or transferred. In such circumstances, it cannot be said that the lien of the petitioner came to an end after a period of one year.

15. On perusal of the provisions of the Rules of 1951 it is clear that if a Government servant seeks employment in another unit or department or in another cadre or grade in the same department under the Rules, his/her lien on the original appointment shall be allowed to be maintained until absorbed in the department or cadre in which he/she is newly appointed.

16. On the said issue, the law has been well-settled by this Court in the case of ***"Ramla Khurana (dead) by Lrs. Vs. State of Punjab & Others, (1989) 4 SCC 99"***, wherein this Court observed that 'lien' is not a word of art and it connotes the right of a civil servant to hold the post substantively to which he is appointed, meaning thereby, the appointment of government servant on the said post must be substantive as he/she cannot hold two posts simultaneously in two different cadres and maintain lien on both of them at the same time. Further, in the case of ***"Triveni Shankar Saxena Vs. State of U.P. and Others, 1992 Supp (1)***



SCC 524", while primarily dealing the question of acquisition of lien, this Court 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.



17. In a 3-Judge Bench judgment in the case of **"State of Rajasthan and Another Vs. S.N. Tiwari and others, (2009) 4 SCC 700"**, while interpreting the word 'lien' against the post appointed substantively with respect to another post, this Court held as thus:

"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."

Similarly in the case of **"State of Madhya Pradesh and Others Vs. Sandhya Tomar and Another, (2013) 11 SCC 357"**, this Court held that the lien is a civil right of a civil servant to hold the post to which he is appointed substantively. The relevant part of the order is reproduced below as thus –



“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.”

Thus, as per settled legal position, we observe that ‘lien’ of a government servant only ceases to exist when he/she is appointed on another post ‘substantively’/confirmed or absorbed permanently. Otherwise, his/her lien would continue on the previous post.

18. In view of above, this Court can safely held that on returning of the petitioner from foreign assignment on 23.09.2009, he was having a lien on the post of Biologist under the Medical Health and Public Department, Government of Rajasthan as he was not substantively absorbed on



any other post and he was entitled to join back the duty and also to remain continue in service. The petitioner after returning from foreign assignment on 23.09.2009, was not allowed to join the duty on the post of Biologist and he was also not granted other service benefits by the respondents even after submitting several representations, notice for demand of justice and so also the submission of documents in furtherance of the letter dated 02.09.2021. The petitioner attained the age of superannuation on 28.02.2014. Since this Court has already held that the petitioner was having lien with the respondents on returning from the foreign assignment on 23.09.2009, he was entitled for joining back as Biologist under the respondents and the respondents were under an obligation to allow joining and continue the petitioner in service. Therefore, the petitioner is entitled for all service benefits as if he was allowed to join after returning from foreign assignment on 23.09.2009 and further all service and retiral benefits accrued to him treating him to be in service.

19. Accordingly, the present writ petition is allowed and the directions issued are as under:

A. The petitioner be treated back in service on the post of Biologist w.e.f. 23.09.2009 under the respondents;

B. Since the petitioner has attained the age of superannuation on 28.02.2014, the respondents shall issue a formal order of his retirement w.e.f.



28.02.2014 and he shall be granted all retiral benefits;

C. The respondents shall allow all service benefits to the petitioner including his pay fixation, seniority, promotion etc. in accordance with the relevant rules;

D. Since there is no fault on the part of the petitioner because the respondents have illegally deprived him from joining the duty back on 23.09.2009 after returning from the foreign assignment, he is held to be entitled for service benefits w.e.f. 23.09.2009;

E. The respondents shall issue requisite orders for treating the petitioner in service and retiring from service and so also the other benefits within a period of two months from the date of submitting a certified copy of this order.

F. The respondents shall also calculate the amount of salary and retiral benefits as referred to above within two months thereafter and shall pay all the arrears to the petitioner within next two months from the date of submission of a certified copy of this order.

20. Since the main petition has been disposed of, the stay application and pending application/s, if any, also stand disposed of.

(GANESH RAM MEENA),J

Sharma NK/Dy. Registrar

