

Before : J. V. Gupta, C.J. & R. S. Mongia, J.

CHAMKAUR SINGH MANDER,—Appellant.

versus

STATE OF PUNJAB,—Respondent.

Letters Patent Appeal No. 291 of 1989

19th July, 1990

Punjab Civil Services Rules, Volume I, Part I—Rls. 3.12 & 3.14—Lien—Appointment as temporary engineer in Irrigation Branch substantively—Grant of permanent Commission in Indian Air Force in wake of national emergency—Appellant serving for 20 years, and subsequently released and granted pension—On being released appellant claiming lien on post of temporary engineer—On being granted regular commission Government servant loses lien against previous appointment—Appellant has not right to claim post of temporary engineer.

Held, that though the appellant's appointment as temporary engineer was substantive in nature, he cannot claim lien on the post of temporary engineer after having had his full innings in the Indian Air Force and having earned pension and cannot, therefore, be allowed to come back and claim the post of temporary engineer. Hence, it has to be held that the appellant did not hold any lien on the post of temporary engineer in the Irrigation Branch and he had no right to come back to the post.

(Paras 5, 8 & 9)

Letters Patent Appeal under Clause X of the Letter Patent Act against the Judgment order dated 25th January, 1989 passed by Hon'ble Mr. Justice Jai Singh Sekhon in Civil Writ Petition No. 6894 of 1986.

P. S. Patwalia, Advocate, for the Appellant.

S. K. Syal, D.A.G., Punjab, for the Respondents.

JUDGMENT

R. S. Mongia, J.

(1) This is a letters patent appeal under clause X of the Letters Patent, against the judgment of learned Single Judge, dated 25th January, 1989, dismissing C.W.P. No. 6894 of 1986.

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(2) Briefly the facts giving rise to this appeal are that the appellant (writ petitioner) was appointed as a temporary Engineer in the Public Works Department (Irrigation Branch) on 12th February, 1962. He was under training for a period of 6 months and was regularly appointed to the said post on 13th August, 1962 (This is so stated in the written statement on behalf of respondent No. 1). In the wake of the declaration of National Emergency after the Chinese Aggression in 1962, the appellant decided to join the Armed Forces. After being selected by the Services Selection Board, he joined the Indian Air Force on 15th April, 1963, after being released by the parent department on 8th April, 1963, in accordance with the general instructions of the Punjab Government issued,—vide letter No. 860-7GS-63-3567, dated 19th January, 1963. Even the joining period of the appellant i.e. from 8th April, 1963 to 15th April, 1963 was treated as on duty with the parent department in accordance with the Government instructions dated 8th July, 1963. The appellant applied for the grant of permanent commission in the Indian Air Force and was given the permanent regular commission in the Indian Air Force on 26th September, 1964. The appellant served Indian Air Force for over 20 years and attained the rank Squadron Leader. It was further averred that while the appellant was working with the Indian Air Force prior to 1966, he was asked by the Punjab Government to give his choice as to which of the State he would like to retain his lien at the time of the reorganisation of the erstwhile State of Punjab. The appellant after serving the Indian Air Force for over 20 years, was released and was granted pension by the Indian Air Force Authorities. It is the case of the appellant that he reported back to his parent department for joining as a temporary Engineer on being released from the Indian Air Force, as he held a lien on the post of a temporary Engineer. The department did not allow him to join the post of a temporary Engineer in spite of his repeated representations, which led to the filing of the writ petition, and the same has been dismissed by learned Single Judge.

(3) The learned Single Judge held that the appellant did not hold the post of temporary Engineer substantively, and, therefore, it could not be said that the appellant's lien was retained against the civil post. The learned Single Judge further held that the mere factum that the name of the appellant continued figuring in the gradation lists upto the year 1963 in his parent department was of no consequence as the State Government had averred that

it was not to its knowledge that the appellant had got regular permanent commission in the Indian Air Force and this fact had been concealed by the appellant, which led to the appellant's name being shown in the gradation list of the parent department. Accordingly, the writ petition was dismissed in view of the fact that the appellant held no lien on the post of a temporary Engineer and as such had no right to come back and claim that post.

(4) The learned counsel for the appellant, Mr. P. S. Patwalia, has reiterated the contentions which were raised before the learned Single Judge. He has contended that the post which was held by the appellant as a temporary Engineer in the Public Works Department (Irrigation Branch) was held by him substantive, and, therefore, under Rule 3.12 of the Punjab Civil Services Rules, Volume I, Part I, he held lien on this post and even after his permanent regular commission in the Indian Air Force, his lien had not been terminated under Rule 3.14 of the Punjab Civil Services Rules, Volume I, Part I (hereinafter called the Rules). He had a right to come back and claim the post of temporary Engineer irrespective of the fact that he had been released from the Indian Air Force after getting pension from there. In support of the contention that since his lien had not been suspended/terminated in the parent department and he had the right to come back to the post of temporary Engineer in his parent department, he relied on a Supreme Court judgment in *T. R. Sharma v. Prithvi Singh and another etc.* (1).

(5) The finding of the learned Single Judge that since the appellant did not hold any substantive post in his parent department in the Irrigation Branch, and therefore, he did not hold any lien as such cannot be sustained. It has been admitted by the State Government in its reply that the appellant was regularly appointed as temporary Engineer on 13th August, 1962, after he had joined as a temporary Engineer (under training) with effect from 12th February, 1962. Apart from that, by a Misc. application-Civil Misc. No. 52 of 1990 in this appeal, the appellant has placed on record his appointment letter (Annexure 'A' to the application) to show that his appointment was substantive in nature. While he was appointed along with others, the provisional appointment of some other temporary Engineers was terminated to make room for them and that their appointments were against regular existing

(1) 1976 (1) S.L.R. 55.

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vacancies. In view of these it can be safely held that the appellant's appointment as temporary Engineer was substantive in nature. In fact, the learned counsel for the State has also not seriously contested this. Otherwise also, the stand of the State Government is that the appellant's lien was there, but the same was not terminated inasmuch as it was not made known to the State Government that the appellant had been granted permanent regular commission in the Indian Air Force and that is why his name was being shown in the various gradation lists upto 1983. If once it is held that the appellant was holding the post of a temporary Engineer substantively, it automatically follows that he held a lien on this post under Rule 3.12 of the Rules.

(6) In spite of the fact that it is being held that the appellant did have a lien against the post of a temporary Engineer in the Irrigation Branch, the point that still remains to be decided is whether the appellant after having been granted permanent regular commission in the Indian Air Force and he having been released on pension from there, can have a right to come back to the post of temporary Engineer? Incidentally it may be mentioned that while calculating the pension of the appellant by the Indian Air Force Authorities, the service rendered by the appellant in the Irrigation Branch has also been taken into consideration. As stated above, for claiming the post of temporary Engineer by the appellant on his release on pension from the Indian Air Force, the appellant relied on *T. R. Sharma's case* (supra). In *T. R. Sharma's case* (supra) the facts were that Tuhi Ram Sharma had joined as an Agricultural Inspector in the Agriculture Department of the Punjab Government in 1945. Teja Singh and some others had joined the same posts in the year 1950 and thereafter. Tuhi Ram Sharma was confirmed as an Agricultural Inspector in 1959. In 1961 he was appointed against a temporary post of Block Development and Panchayat Officer in the Development Department of the State and on 28th October, 1966, the said Tuhi Ram Sharma was made substantive permanent Block Development and Panchayat Officer with effect from 1st April, 1964. The lien of Tuhi Ram Sharma on the post of Agricultural Inspector was not suspended under Rule 3.14(a) (2) of the Rules. On the request of Tuhi Ram Sharma, the Governor of Haryana (to which State Tuhi Ram Sharma had been allocated), on 29th March, 1969 deconfirmed Tuhi Ram Sharma from the post of Block Development and Panchayat Officer and sent him back to the Agriculture Department. This repatriation of Tuhi

Ram Sharma was objected to by Bhale Ram and other Inspectors working in the Agriculture Department. It was held in the above noted case that since the lien of Tuhi Ram Sharma had not been suspended as required under Rule 3.14(a)(2) of the Rules, he had a right to come back to the post and he cannot be made to suffer for the inaction on the part of the State Government. This was all said in the context that the appellant did not hold the post on permanent basis as Block Development and Panchayat Officer as he got himself de-confirmed.

(7) The Apex Court had an occasion to consider the matter again in *Ramlal Khurana (dead) by RRs. v. State of Punjab & others*, (2), in which *Tuhi Ram Sharma's case* (supra) has been considered. It was held in that case that when a person with a lien is appointed substantively to another post, lien against his previous post automatically disappeared. What had happened in that case was that Ramlal Khurana had entered into service as Clerk in the Police Department. While working there, he appeared for selection to the post of Excise Sub-Inspector in the Excise Department. After being selected, he was appointed as such. In 1963 he was sought to be repatriated to his parent department. The said Ramlal Khurana challenged his repatriation by way of a civil suit, wherein it was held that the order of repatriation was illegal and void and he had a legal right to continue as a Sub-Inspector in the Excise Department, and his suit was decreed. Subsequently, the Competent Authority in the Excise Department passed an order compulsorily retiring Ramlal Khurana under the Punjab Civil Services (Premature Retirement) Rules, 1975. The said Officer challenged the order of premature retirement in the High Court, mainly on the ground that the Excise Department was not competent to make this order since he belonged to Police Department. He claimed that his lien in the Police Department was not removed and therefore the Inspector General alone was competent to deal with him. In support of his contention he had also relied on *Tuhi Ram Sharma's case* (supra). His writ petition

(2) 1989(3) Judgment today S.C. 430.

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was dismissed by this Court and the matter was taken to the Apex Court by said Ramlal Khurana. After taking note of *Tuhi Ram Sharma's case (supra)*, the Supreme Court observed in para 8 as under:—

"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 art. 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."

(8) The above being the position in law, the appellant after having been granted permanent regular commission in the Indian Air Force did not have any lien on the post of temporary Engineer, which post he is now claiming. Otherwise also, on equity it is not correct on the part of the appellant to claim that after having had his full innings in the Indian Air Force and having earned pension he should be allowed to come back and claim the post of temporary Engineer.

(9) Having held that the appellant did not hold any lien on the post of temporary Engineer and he had no right to come back to the post, the question of any benefit of his military service as claimed by the appellant under various Government instructions and under the Punjab Government National Emergency (Concession) Rules, 1965, which gave certain benefits/concessions to the employees who joined Government service after being released from the Armed Forces, does not arise.

(10) In view of what has been stated above, there is no merit in this appeal, which is dismissed. However, there will be no order as to costs.
