

L.R.Patil vs The Gulbarga University Gulbarga on 4 September, 2023

Author: J.K. Maheshwari

Bench: J.K. Maheshwari

2023INSC796

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3254 OF 2013

L.R. PATIL

Versus

GULBARGA UNIVERSITY, GULBARGA

JUDGMENT

J.K. Maheshwari, J.

1. The appellant assails the tenability and validity of the judgment dated 23.10.2009 of the Division Bench of the High Court of Karnataka, Circuit Bench at Gulbarga passed in W.A. No. 10003 of 2009, by which the order passed by learned Single Judge on 27.08.2008 in W.P. No. 4066 of 2006 allowing the petition holding that the appellant had lien over his previous post and directing respondent-University to pay service and pensionary benefits, was set-aside.

2. In the present case, the short questions of law which fall for consideration are –

(i) Whether the order dated 08.04.1993 passed by the Respondent- NEETA SAPRA Date: 2023.09.05 17:07:17 IST Reason:

Gulbarga University pursuant to Rule 252(b) of Karnataka Civil Service Rules (for short “KCS Rules”), ‘relieving’ the appellant to accept another appointment as ‘Assistant Registrar’ ought to be treated as an order accepting ‘resignation’, to take up the post on new assignment?

(ii) Whether in the facts of the case, on joining the new post, the appellant’s lien on the original/previous post will be continued to be maintained, until he is permanently absorbed in the new department or cadre in which he is subsequently

appointed?

(iii) Whether in the facts and circumstances of the case, the relief as prayed by the appellant in the writ petition to consider him for appointment on the post of Assistant Registrar in the previous/original cadre at par with his juniors and consequential benefits on retirement can be allowed? If yes, to what extent?

3. The undisputed facts are that, appellant was appointed on 10.08.1972 as Junior Assistant in Bangalore University. Later, he was transferred to Gulbarga University on 21.07.1981 and promoted to the post of 'Assistant Office Superintendent'. Eventually, vide office order dated 07.08.1987, appellant along with one 'Sri. A. Raghavendra' and other serving Assistant Office Superintendents, were promoted to the post of 'Office Superintendent' with immediate effect subject to satisfactory completion of probation period of 1 year. The University by office order dated 10.07.1990 declared that appellant had completed his probation 'satisfactorily' on 08.08.1988. In terms of the said declaration, the appellant was w.e.f. 07.08.1987, substantively appointed to the post of 'Office Superintendent'.

4. Subsequently, in 1993, the University invited applications for appointment to the post of 'Assistant Registrar' via direct recruitment. The appellant applied for the said post and was selected. As per the terms of the appointment, the appellant had to serve as a probationer for a period of two years, before he could be confirmed on the said post. On his appointment, respondent-University vide office order dated 08.04.1993 relieved the appellant from the post of Office Superintendent w.e.f. 04.02.1993, and duly recorded that he is being relieved to accept the another appointment as 'Assistant Registrar' in the Gulbarga University. The order further recorded that its contents shall be noted in the service book. The relevant extracts of the aforesaid office order dated 08.04.1993 is being reproduced for ready reference as under – "No. GUG/ADM-1/92-93/273 Dated:- 8/4/1993 ORDER In pursuance with the Rule 252(b) of KSCR's read with O.A. No. FD 263 SRS 71 dated 22.1.1972, Sri. L.R. Patil, Office Suptd. & P.S. to Vice- Chancellor, Gulbarga University, Gulbarga has been relieved from the duties on 4th Feb,'93 to accept another appointment as Assistant Registrar in G.U. Gulbarga Vide T.O. Notification No. referred to above (1).

Further, the contents of this order shall be noted in the Service Book concerned.

REGISTRAR" Pursuant thereto, the appellant joined on the post of Assistant Registrar in the respondent-University.

5. Meanwhile, Mr. A. Raghavendra, filed Writ Petition No. 5364 of 1993 and challenged the appellant's appointment on the ground of discrimination and arbitrariness. During pendency of the said writ petition, the respondent-University vide order dated 03.02.1996, promoted 'Sri. A. Raghavendra' and 'Sri Shankar Rao Kamble' looking to their seniority and posted them as Assistant Registrar, Examination Branch and Assistant Registrar, Administrative Branch respectively. It is pertinent to mention here that, on account of the pendency of aforesaid writ petition, the appellant continued on probation on the post of Assistant Registrar. Thereafter, the High Court vide order dated 24.06.1998 allowed Writ Petition No. 5364 of 1993 and quashed the appointment of the

appellant for reasons recorded in the order. Aggrieved, the appellant and the respondent-University filed separate Writ Appeals bearing Nos. 3261 of 1998 and 3246 of 1998 respectively, which came to be dismissed on 29.09.2000. However, the Division Bench pending the admission of writ appeals, stayed the operation of the order dated 24.06.1998 passed in Writ Petition No. 5364 of 1993.

6. Pursuant to the dismissal of the writ appeals, the respondent-University in compliance of the orders, withdrew the appointment of the appellant as Assistant Registrar vide office order dated 23.12.2000 (hereinafter referred to as “Resolution”) and retained/placed him back in his previous post of ‘Office Superintendent’ with immediate effect. The relevant portion of the Resolution is reproduced as thus:

“PREAMBLE x x x x The above matter was placed before the Syndicate meeting held on 14.7.1998 and it was decided to prefer W.A. before the Division Bench of the Hon’ble High Court of Karnataka. Accordingly, the University filed W.A. No. 3246/98 in the High Court in Addition to the W.A. No. 3261/98 filed by Sri L.R. Patil praying to set aside the order dated 24.6.1998 passed in W.P. 5364/93. The High Court passed an Interim Order that the operation of the earlier order dated 24.6.1998 passed in W.P. No. 5364/1993 was stayed pending admission of W.A. The Division Bench of the Hon’ble Court of Karnataka has held in its order dated 29th Sept. 2000 in both the W.A.s that the learned Single Judge was right in quashing the order of appointment dated 4.2.1993 in respondent (sic) of Sri L.R. Patil as Assist. Registrar in Gulbarga University, Gulbarga. There is neither irregularity nor illegality in the order of the learned Single Judge. The above appeals were dismissed by the High Court.

It is observed that Sri L.R. Patil, has not maintained the lien on his previous post, i.e., Office Superintendent with the approval of competent authority as required under General Rules 17 of K.C.S.Rs.”

7. In furtherance to the above said Resolution, the appellant was retained in the previous post of Office Superintendent with immediate effect and his fixation in the pay-scale was made accordingly. Soon thereafter, on joining, the appellant submitted a representation dated 16.01.2001 to the University and sought ‘re- fixation of his seniority’ in the cadre of Office Superintendent and further requested for promotion on the vacant post of Assistant Registrar at par with his two juniors namely ‘Sri. A. Raghavendra’ and ‘Sri. Shankar Rao Kamble’ who were promoted to the post of Assistant Registrar by the respondent-University. On getting no response from respondent-University, the appellant sent reminder letters dated 27.03.2001 and 20.04.2001, however, neither any reply was given to appellant, nor any action was taken by respondent-University.

8. Aggrieved by the indolence on the part of the respondent-University, the appellant filed Writ Petition No. 22838 of 2001, which was disposed of on 21.03.2005 with a direction to the University to consider the representations/reminders of appellant and pass appropriate orders in accordance with law within a period of four months affording due opportunity of hearing to the appellant and other affected employees. In compliance, respondent-University considered the case of appellant

and rejected his representation on 08.02.2006. In the meantime, the appellant superannuated on 30.06.2007 from the post of 'Office Superintendent'.

9. Being aggrieved, the appellant filed Writ Petition No. 4066 of 2006 challenging the rejection order dated 08.02.2006 and prayed for restoration of his seniority in the cadre of 'Office Superintendent' from the date of his original appointment. The appellant also prayed for consideration of his case for promotion at par with his juniors w.e.f. 03.02.1996, i.e., the date when they were promoted to the post of Assistant Registrar.

10. The learned Single Judge vide order dated 27.08.2008 allowed the writ petition and relying on the Resolution dated 23.12.2000 observed that the services of the appellant did not get severed since he was retained to the original post and maintained the lien in terms of the Rule 20 Note-4 of KCS Rules. In other words, the learned Single Judge was of the opinion that there was continuation of service on the previous post as per said Rule, which states that if a government servant has secured employment in the same or other Department and is subsequently relieved from the previous post to join the new post, his lien on the previous/original appointment shall be continued to be maintained till he is 'permanently absorbed' in the Department or cadre in which he is newly appointed. However, regarding promotion, it was observed by the Single Bench that since the appellant has already superannuated from service, he may not derive the benefits of promotion at par with juniors but would be eligible for monetary benefits including pensionary and service benefits.

11. Challenging the said order dated 27.08.2008, respondent-University filed Writ Appeal No. 10003 of 2009 and contended that the appellant did not have a lien over the post of Office Superintendent and ceased to have any association on the earlier post w.e.f. 04.02.1993 except to the extent of leave and pension. The writ appeal vide impugned order was allowed setting aside the order dated 27.08.2008 passed by learned Single Judge dismissing the Writ Petition No. 4066 of 2006.

12. Learned counsel appearing for the appellant submits that in furtherance to the Office order dated 08.04.1993, the past service of the appellant was protected for pensionary and monetary benefits, retaining his lien on the previous post and noted to record the said contents in his service book in terms of the Rule 252(b) of KCS Rules and Office Memorandum dated 22.01.1972. It is further contended that Rule 20 Note 4 of the KCS Rules protects the lien of the appellant until he is permanently absorbed on the new post. On account of pending litigation, the appellant continued to be on probation throughout and he was never confirmed substantively on the post of Assistant Registrar. Ultimately, his appointment was quashed by the High Court, whereafter, he was retained on his previous post of his Office Superintendent. However, it is urged that on his retention to the previous post, his past service cannot be washed away and his lien cannot be negated during the vulnerable period in which he was on probation in the new appointment. In support of the said contention, the contents of the Resolution dated 23.12.2000 re-appointing him as Office Superintendent was relied upon. In support his submissions, counsel for the appellant placed reliance on the judgment dated 25.02.2021 passed by Division Bench of High Court of Karnataka at Bengaluru in Writ Appeal No. 596 of 2020 (S-RES) titled "Sanjay Gandhi Institute of Trauma &

Orthopaedics Vs. State of Karnataka and Others” and “Sitikanatha Mishra Vs. Union of India and Others, (2015) 3 SCC 670”.

13. Per contra, learned counsel representing respondent-Gulbarga University has submitted that the appellant tendered his resignation from the post of Office Superintendent to join as ‘Assistant Registrar’ and in pursuance of the same, he was relieved from his duties. Therefore, in terms of Rule 252(b) of KCS Rules, it is to be treated as ‘resignation’ from previous employment. It is further submitted that, in absence of any representation made by the appellant seeking preservation/maintenance of his lien on the previous post during the pendency of litigation, he lost his right of lien and claim of seniority. Therefore, rejection of his representation by respondent-University on 08.02.2006 was in accordance with law and has been rightly upheld by impugned judgment while setting aside the order of the learned Single Judge.

14. Having heard learned counsel for the parties and considering the nature of issues involved, we deem it appropriate to deal with the questions as framed simultaneously. As the order dated 08.04.1993 relieving the appellant from the duties of Office Superintendent was passed in pursuance to Rule 252(b) of KCS Rules and Office Memorandum dated 22.01.1972, therefore, at the very outset, it is necessary to refer the said Rule and Office Memorandum which are reproduced as thus for ready reference – “Rule 252(b) – Registration (sic1) of an appointment to take up, with proper permission, another appointment, whether permanent or temporary, service in which counts in full or in part, is not a resignation of public service.” “Office Memorandum No. FD 262 SRS 71 dated 22.1.1972 Under Rule 252(b) of KCSRs, resignation of an appointment to take up with proper permission another appointment, whether permanent or temporary service in which counts in full or part, is not resignation from public service. A question has been raised whether in such cases a separate sanction should be issued indicating that the resignation has been accepted under the above provision, in order to enable the audit/Administrative Officer to regulate the consequential benefits in the matter of pay fixation, carry forward of leave, pension etc. The matter has been considered and it has been decided that in cases of the above type the order accepting the resignation should clearly Registration indicate that the employee is resigning to join another appointment with proper permission and that the benefits under Rule 252(b) ibid will be admissible to him. The contents of the above order should also be noted in the Service Book of individuals concerned under proper attestation. The issue of any separate sanction is considered not necessary.” At this juncture, reference to Rule 20 Note 4 of KCS Rules is also relevant and same is reproduced as under – “Rule 20 Note 4 – When a Government servant who has secured employment in one Department of Government under the rules of recruitment, seeks employment on his own accord in another unit or Department or in another cadre or grade in the same Department, his lien on the original appointment shall be continued to be maintained provided he has already been confirmed in the post till he is permanently absorbed in the Department or cadre in which he is newly appointed and he shall be given the benefit of the past service for purposes of leave and pension. If, however, he is temporary in the first appointment, he will cease to have any connection with his old appointment but he shall be given only the benefit of the past service for leave and pension.” On perusal of the aforesaid Rule, 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 continued to be maintained until absorbed in the

department or cadre in which he/she is newly appointed. In case the employee is absorbed, he/she shall be entitled to the benefit of the past service for the purpose of leave and pension.

15. Coming to the facts in the present case, the appellant vide order dated 08.04.1993 was appointed by the respondent-University as Assistant Registrar and the said fact was duly noted in his service book. His appointment was successfully challenged and resultantly it was quashed by the High Court. Appeals against the said order were dismissed. In view of dismissal of appeals, the respondent-University vide Resolution dated 23.12.2000 resolved to retain the appellant back on his previous post i.e., 'Office Superintendent'. In this context, the 'Preamble' of the Resolution reveals that the appellant was relieved to take up the new appointment on permanent post with 'formal permission' from the competent authority to avail the benefit of past service for the purpose of pension and leave as contemplated under Rule 252(b) KCS Rules. It is also subsequently noted in the Resolution that during the pendency of appeal against the order quashing the appellant's appointment, the Division Bench of the High Court passed an interim order and stayed the operation of the order of learned Single Judge quashing the appointment pending admission of appeal. In the said perspective, it is apparent that, subject to pending litigation assailing the appellant's appointment as Assistant Registrar, he throughout continued to be on the post of Assistant Registrar as probationer and was never confirmed or was permanently absorbed on the said post. Be that as it may, if the appellant was never permanently absorbed or confirmed on the post of 'Assistant Registrar', then as per mandate of Rule 20 Note 4 of KCS Rules, his lien shall continue on the original post of the Office Superintendent.

16. On the said issue, the law has been well-settled by this Court in the case of "Ramlal 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.” All the aforesaid judgments have been duly considered again by this Court in another 3-Judge Bench judgment in the case of Sitikanatha Mishra (supra).

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. Reverting to the instant case, on a conjoint reading of the Rules applicable, i.e., Rule 252(b), Rule 20 Note 4 and Office Memorandum dated 22.01.1972 in consonance with the settled law as discussed, we are of the considered view that the lien of the appellant on the previous post of ‘Office Superintendent’ is squarely protected and his lien shall be continued under Rule 20 Note 4. We say so particularly because of the fact that the appellant was never appointed substantively on the new post of ‘Assistant Registrar’ and was continued temporarily on the said post subject to the outcome of the pending litigation challenging his appointment. The said fact also finds support from the Preamble of the Resolution of the University dated 23.12.2000. Further, the appointment of appellant to the new post was subject to probation of two years and due to pending litigation, he was continued on a temporary basis despite completion of two years. Nothing has been brought on record by respondent-University to negate the applicability of mandate of Rule 20 Note 4 of KCS Rules on appellant.

19. Further, it is not the case of the respondent-University that the appellant was permanently absorbed or confirmed on the new post. Conversely, the respondent’s case is that, in absence of any representation made by the appellant seeking continuation of his lien on the previous post, he cannot claim it subsequently on being retained after quashing of his appointment. In our view, the said stand of the University cannot be countenanced in terms of Rule 20 Note 4 of KCS Rules. As per the language of the said Rule, the lien of a government servant on the previous post stands protected till his or her continuation on probation period on the new post. The intention of the said rule is clear, viz., to protect the past service of the government servant in cases where the government servant is not confirmed or absorbed substantively on the new post on account of his/her failure to satisfactorily complete the probation period or for any other reason.

20. So far as question of the 'relieving order' being treated as resignation is concerned, in terms of Rule 252(b) of KCS Rules, it cannot be treated as resignation. The said Rule makes it clear that if another appointment is taken up by a government servant with proper permission, then it cannot be termed as resignation of public service. Thus, the finding as recorded by the Writ Appellate Court are not sustainable.

21. In view of the discussion made herein above, we answer the questions framed above as follows –

(i) Order dated 08.04.1993 passed by respondent-University, relieving the appellant to take up the new appointment as 'Assistant Registrar' is not to be treated as resignation in terms of Rule 252(b) of KCS Rules.

(ii) The appellant's lien on the original/previous post of 'Office Superintendent' shall be maintained and deemed to be continued from the date when he was relieved by respondent- University, i.e., 08.04.1993.

(iii) Considering the facts and circumstances of the case and in order to do complete justice, the appellant will be entitled to all the service benefits including seniority, consequential promotions and pensionary benefits at par with his juniors, though notionally, since he superannuated on 30.06.2007 and has not worked on the promoted post.

22. Accordingly, the appeal is allowed and the impugned order dated 23.10.2009 passed in Writ Appeal No. 10003 of 2009 (S-RES) is hereby set-aside. The order dated 27.08.2008 passed by learned Single Judge in Writ Petition No. 4066 of 2006 is restored subject with the above modifications. No order as to costs.

.....J. (J.K. MAHESHWARI)J. (K.V. VISWANATHAN)
NEW DELHI;

SEPTEMBER 4, 2023