

THE INDIAN LAW REPORTS

APPELLATE CIVIL.

Before Bhandari, C. J. and Falshaw, J.

RATTAN LAL GULATI,—*Plaintiff-Appellant.*

versus

UNION OF INDIA,—*Defendant-Respondent.*

Regular Second Appeal No. 12-D of 1954.

Constitution of India (1950)—Article 311—Fundamental Rules—12 to 15 and 49—Permanent Government servant holding a temporary post in a substantive capacity—Whether can be transferred to a post carrying a lesser pay without being afforded a reasonable opportunity of showing cause against the action proposed to be taken in regard to him—Rights and privileges of a Government servant holding a temporary post in a substantive capacity—Lien on post—By whom acquired—Effect of lien—Central Civil Service (Temporary Services), Rules 1949—Articles 156 and 159—Intention and scope of.

1954

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Held that the provisions of Fundamental Rules Nos. 12 to 15 and 49 make it quite clear that substantive appointment to a permanent post creates a lien and that the creation of a lien on a permanent post confers the rights enumerated in rules 12 to 15. If no lien were created, no rights would be conferred and a person having no lien on a post carrying a higher pay could be transferred to a post carrying a lower pay without attracting the provisions of Article 311 of the Constitution of India.

Held, that a permanent Government servant holding a temporary post in a substantive capacity does not acquire a lien on the temporary post and has no right to hold the same post for such time as the post is in existence. His appointment to a temporary post in a substantive capacity confers

certain rights and privileges in regard to pay and leave but no right to hold the post for any particular length of time. He may be removed or transferred to a post carrying a lower salary without contravening the provisions of the Fundamental Rules. The main benefit is in regard to fixation of pay under Article 156, Civil Service Rules.

Held, that a person who is appointed substantively to a permanent post acquires a lien on the said post and this lien cannot be suspended or terminated except in the circumstances mentioned in Fundamental Rules 14, 14A and 14B. He can be transferred from a post carrying a higher salary to a post carrying a lower salary only in accordance with the provisions of Fundamental Rule 15.

Held, that Article 156 of Civil Service Rules is intended to regulate pay on substantive appointment both to permanent and temporary posts. The words 'present substantive pay' occurring in Article 156, Civil Service Rules, are intended to include 'substantive pay' in respect of a temporary post. Similarly, the period of interruption of service in the temporary post held substantively by duty in another post or by leave (other than extraordinary leave) counts for increment in the time-scale applicable to the temporary post (*vide* Article 159, Civil Service Rules.).

Second Appeal from the decree of the Court of Shri Gurdev Singh, 1st Additional District Judge, Delhi, dated the 10th day of February, 1954, reversing that of Shri Hans Raj, Sub-Judge, 1st Class, Delhi, dated the 10th March, 1953, and dismissing the plaintiff's suit and ordering the parties to bear their own costs throughout.

Appellant in person.

BISHAMBAR DYAL, Government Pleader, for Respondent.

JUDGMENT.

Bhandari, C. J. Bhandari, C. J.—This appeal raises the question whether a permanent Government servant, who is holding a temporary post in a substantive capacity, can be transferred to a post carrying a lesser pay without being afforded a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

One Rattan Lal Gulati is the plaintiff in this case. He entered service as a Junior Clerk in the office of the Deputy Commissioner at Lahore in the year 1930 and was confirmed in his appointment in the year 1934. In September, 1943, when he was drawing a salary of Rs. 48 per mensem his services were placed at the disposal of the Directorate-General of Industries and Supplies in the Government of India and he commenced drawing a salary of Rs. 48 per mensem plus an officiating allowance of Rs. 32 per mensem. On the 4th August, 1944, he was appointed to a temporary post of Assistant in the scale of Rs. 200—15—500, and on the 7th October, 1946, he was transferred on the same salary to another temporary post of Assistant in the Education Department. He assumed charge of his duties on the 10th October, 1946, and was appointed to the said post in a substantive capacity with effect from the 13th January, 1947. His lien on the post of junior clerk in the Deputy Commissioner's Office at Lahore was transferred to the Deputy Commissioner's Office at Amritsar in the month of August, 1950. On the 18th November, 1950, when he was drawing a salary of Rs. 290 per mensem he was directed to report himself immediately for duty to the Deputy Commissioner, Amritsar. He asked for and was granted leave for a period of four months with effect from the 11th December, 1950. He was due to join his substantive post in Amritsar on the expiry of his leave but he declined to do so and on the 12th April, 1951, he brought the suit, out of which this appeal has arisen, for a declaration that the order reverting him from the post of an Assistant to that of a junior clerk was void and of no effect as he was reduced in rank without being informed of the grounds on which it was proposed to take action and without being afforded a reasonable opportunity of defending himself. The trial

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Court granted the decree prayed for, but the learned District Judge came to a contrary conclusion and dismissed the plaintiff's suit. The plaintiff has come to this Court in second appeal and the question for this Court is whether the District Judge has come to a correct determination in point of law.

The plaintiff has argued this case on his own behalf while Mr. Bishambar Dyal has argued it on behalf of the Union of India.

The plaintiff's case briefly is that when he was appointed substantively to the temporary post of Assistant in the Ministry of Education, he acquired a lien on the said post and had a right to hold it as long as the post continued to exist and consequently that his transfer from a post in which he was drawing a higher salary to a post in which he was to draw a lower salary must be deemed to be a reduction in rank which could not be ordered except after complying with the statutory formalities set out in Article 311 of the Constitution of India.

Our attention has been invited to a decision in *Kashinath Patnaik v. Sri P. K. Kapila* (1). In this case, the petitioner was a permanent lower division clerk of Puri Collectorate on a pay of Rs. 50—2—70—2—90 per mensem. On the 20th May, 1946, he was appointed temporarily as Head Assistant of the Puri District Civil Supply Office on a pay of Rs. 100 per month. On or about the 20th May, 1946, he was deputed to act as Head Clerk in the Civil Supply Office at Dhenkanal and was given this temporary post in a substantive capacity. On the 12th July, 1951, he was reverted to his permanent post in the Puri Collectorate. A Division Bench of the Orissa

(1) A.I.R. 1952 Orissa, 285

High Court held that as soon as a Government servant is substantively appointed to a post, he gets a right to that post which has been described as "lien" and can be removed from that post only after charges have been framed against him. It was held further that where a person holding a substantive appointment as a lower division clerk is appointed temporarily to a higher substantive post, carrying a higher scale of pay, his reversion to his substantive appointment as a lower division clerk will amount to "reduction in rank". In Civil Writ No. 254 of 1953 a Division Bench of this Court held that Article 311 only comes into play when a Government servant has the right to hold a post and is deprived of that right by either being removed or being reduced in rank.

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Prima facie a Government servant in temporary service is governed by the provisions of the Central Civil Services (Temporary Service) Rules, 1949. He may hold a temporary post either in an officiating or a substantive capacity and he may either be in service which is quasi-permanent or in service which is not quasi-permanent. He is deemed to be in quasi-permanent service if he has been in continuous Government service for a period exceeding three years and if the appointing authority has issued a certain declaration in regard to him; he is not deemed to be in quasi-permanent service if no such declaration has been issued in regard to him. One of the privileges to which a person in quasi-permanent service is entitled is that, except in the event of reduction in the number of posts in the cadre or grade concerned, his services can be terminated in the same circumstances and in the same manner as those of a Government Servant in permanent service (Rule 6). His services cannot be terminated on grounds of indiscipline or inefficiency unless formal proceedings are initiated against him. He is entitled

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to this very valuable right even if he is holding the temporary post in an officiating capacity. If, on the other hand, he has not been declared quasi-permanent, he is entitled to no such rights or privileges and his services can be terminated at any time even though he is holding the temporary post in a substantive capacity. Explanation to rule 49 of the Civil Services (Classification, Control and Appeal) Rules which enumerates the penalties which may be imposed upon a Government servant declares that the termination of employment of a temporary Government servant appointed otherwise than under contract in accordance with rule 5 of the Rules of 1949 does not amount to removal or dismissal within the meaning of rule 49 or rule 55 of the said Rules. It will be seen, therefore, that if a question arises whether a Government servant in temporary service is entitled to the safeguards provided by Article 311, it will be the duty of the Court to enquire whether he is to be deemed to be in quasi-permanent service and not whether he is holding the temporary post in a substantive capacity.

The plaintiff in the present case is not governed by the Rules of 1949 for rule 1 of the said Rules declares that they shall not apply to a person who holds a lien on any post under the Government of India or any Provincial Government. Had these Rules applied to him, there can be no manner of doubt that his services could be terminated on a month's notice for he has not been declared to be in quasi-permanent service and is not entitled to the benefit of the Rules applicable to such service.

The Fundamental Rules, by which the conditions of service of the plaintiff are regulated, draw a distinction between a Government servant who is holding a permanent post in a substantive capacity and a Government servant who is holding a

temporary post in a similar capacity. A Government servant, who is appointed substantively to a permanent post, acquires a lien on that post for the expression "lien" as defined in Fundamental Rule 9(13) means the title of a Government servant to hold substantively the permanent post, including a tenure post, to which he has been appointed substantively. His lien may be suspended under rule 14(b), but except in the cases mentioned in rule 14-A it may in no circumstances be terminated even with his consent if the result would be to leave him without a lien or a suspended lien on a permanent post (F.R. 14-A). He can be transferred from one post to another, but except (1) on account of inefficiency or misbehaviour or (2) on his written request, he cannot be transferred substantively to or, except in a case covered by rule 49, appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds a lien (F.R. 15). These provisions make it quite clear that substantive appointment to a permanent post creates a lien and that the creation of a lien on a permanent post confers the rights enumerated in rules 12 to 15. If no lien were created, no rights would be conferred and a person having no lien on a post carrying a higher pay could be transferred to a post carrying a lower pay without attracting the provisions of Article 311 of the Constitution of India.

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But what are the rights and privileges of a Government servant who is holding a temporary post in a substantive capacity? The rights of a temporary Government servant are obviously regulated by the Central Civil Services (Temporary Service) Rules, 1949, and those of a permanent Government servant by the Fundamental Rules. It is contended that the rights of a Government servant who is holding a temporary post in a substantive capacity are exactly the same as those

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of a Government servant who is holding a permanent post in a substantive capacity. I regret I am unable to concur in this contention. A person who is appointed substantively to a permanent post acquires a lien on the said post and this lien cannot be suspended or terminated except in the circumstances mentioned in Fundamental Rules 14, 14-A and 14-B and he can be transferred from a post carrying a higher salary to a post carrying a lower salary only in accordance with the provisions of rule 15. On the other hand, a person who is appointed substantively to a temporary post cannot acquire a lien on the said post for, as stated above, a lien can be acquired only on a permanent post or a tenure post and not on a temporary post. It follows as a consequence that a person holding a temporary post in a substantive capacity has no right to hold that post indefinitely and may be removed or transferred to a post carrying a lower salary without contravening the provisions of the Fundamental Rules. Indeed, the Rules appear to have provided for a contingency of this kind. Fundamental Rule 49 empowers a Provincial Government to appoint one Government servant to hold substantively, as a temporary measure, or to officiate in, two or more independent posts at one time. Fundamental Rule 15 declares that in a case covered by Fundamental Rule 49 a Government servant may be appointed to officiate in a post carrying less pay than the pay of the post on which he holds a lien.

But this statement should not be construed to imply that the expression 'substantive' when used with reference to a temporary post is completely meaningless and has been employed without rhyme or reason. A person, who is appointed substantively to a temporary post, may not acquire a lien on that post but he certainly obtains valuable rights in regard to pay and leave etc. The

main benefit is in regard to fixation of pay under Article 156, C.S.R. which is intended to regulate pay on substantive appointment both to permanent and temporary posts. The words 'present substantive pay' occurring in Article 156, C.S.R., are intended to include 'substantive pay' in respect of a temporary post. Similarly, the period of interruption of service in the temporary post held substantively by duty in another post or by leave (other than extraordinary leave), counts for increment in the time scale applicable to the temporary post (*vide*,—Article 159, C.S.R.)

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For these reasons, I am of the opinion that as the plaintiff could not acquire a lien on a temporary post, he had no right to hold the same post for such time as the post was in existence. His appointment to a temporary post in a substantive capacity conferred certain privileges in regard to pay and leave but no right to hold the post for any particular length of time. The appeal must in the circumstances be dismissed; but having regard to the difficult nature of the case, I would leave the parties to bear their own costs.

Falshaw, J.—I agree.

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REVISIONAL CIVIL.

Before Bhandari, C. J.

THE MUNICIPAL COMMITTEE, PATHANKOT,—
Petitioner.

versus

ROSHAN LAL,—Respondent.

Civil Revision Application No. 361 of 1955.

Municipal Committee—Delegation of powers—Validity and extent of—Sanction accorded by a Municipal Committee to defend a suit filed against it—Whether fresh sanction to file an appeal against the decision of the trial Court necessary.

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