

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.910 OF 2019

DISTRICT : THANE

Shri Suhas Padmanand Dhavan.)
Age : 40 Yrs., Occu.: Surveyor/Clerk-cum-))
Typist in the office of Respondent No.1 and))
Residing at Rounak City, Phase – II,))
B/5/503, Aadharwadi, Kalyan (W),))
District : Thane.)...**Applicant**

Versus

1. The Joint Director of Vocational)
Education and Training (Regional)
Office), Mumbai Region, Having)
Office at 49, Kherwadi, Bandra (E),)
Mumbai – 400 051.)
2. The Deputy Director of Land Records))
Konkan Region, Mumbai, having)
Office at D.D. Building, 1st Floor,)
Old Custom House, Fort, Mumbai-1.)
3. The State of Maharashtra.)
Through Principal Secretary,)
Skilled Development and)
Entrepreneurship Department,)
Mantralaya, Mumbai – 400 032.)...**Respondents**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 31.03.2021

JUDGMENT

1. The Applicant has challenged the communication dated 10.08.2018 issued by respondent No.1 thereby refusing to get him join on the post of Craft Instructor on the ground that he was already relieved to join the post of Maintenance Surveyor, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Briefly stated facts giving rise to this O.A. are as under :-

In the year 2011, the Respondent No.1 had published Advertisement to fill-in vacant post of Craft Instructor [Interior Decoration and Design]. The Applicant applied for the post and participated in the Recruitment Process and was selected. Accordingly, the Respondent No.1 by order dated 28th July, 2011 appointed the Applicant on the post of Craft Instructor in the pay scale of Rs.9300-34800 + GP 4300. The Applicant accordingly joined the said post. Later in 2015, he applied for the post of Maintenance Surveyor / Clerk-cum-Typist with No Objection Certificate of Respondent No.1. The Applicant participated in the recruitment process for the post of Maintenance Surveyor / Clerk-cum-Typist and got selected. The Respondent No.2 by order dated 9th January, 2018 appointed the Applicant in pay scale of Rs.5200-20200 + GP 1900 and was posted in the office of Deputy Superintendent of Land Records, Thane on vacant post. The Applicant, therefore, requested Respondent No.1 by application dated 13.01.2017 to relieve him, so as to join new post with specific mention that he is exercising lien over the post of Craft Instructor on the establishment of Respondent No.1. Accordingly, the Respondent No.1 by letter dated 07.02.2017 directed Principal, I.T.I, Lower Parel, Mumbai to relieve the Applicant. Consequent to it, the Principal, ITI, Lower Parel, Mumbai by his letter dated 28.02.2017 relieved the Applicant from the post of Craft Instructor. In the relieving order, nothing was stated about the lien exercised by the Applicant in his letter. Accordingly, the Applicant joined the Office of Deputy Superintendent of Land Records, Thane on

01.03.2017. After 6 to 7 months of joining, he again requested Respondent No.1 to repost him on the post of Craft Instructor in view of lien exercised by him on the post of Craft Instructor. He, thereafter, sent reminder dated 13.03.2018, but in vain. Ultimately, Respondent No.1 by order dated 10.08.2018 informed the Applicant that he was already relieved from the post of Craft Instructor, and therefore, he cannot be allowed to join the said post again. The Applicant has challenged this communication dated 10.08.2018 *inter-alia* contending that in view of lien exercised by him, he is entitled for reposting on the post of Craft Instructor since he does not want to continue on the post of Maintenance Surveyor. It is on this background, the Applicant has challenged the communication dated 10.08.2018.

3. The Respondent No.1 resisted the O.A. by filing Affidavit-in-reply *inter-alia* contending that when the Applicant was relieved to join the post of Maintenance Surveyor, the decision was taken by the Office not to accept request of the Applicant exercising lien on the post of Craft Instructor and accordingly, he was relieved for joining the post of Maintenance Surveyor. The Respondents, therefore, denied that the Applicant has got lien on the post of Craft Instructor and is not entitled for reposting on the said post and prayed to dismiss the O.A.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant has submitted that the appointment of the Applicant was on substantive post in a permanent clear vacancy and was entitled to exercise lien as contemplated under Rule 20 of Maharashtra Civil Services (General Conditions of Services) Rules, 1981 (hereinafter referred to as 'Rules of 1981' for brevity). He has further pointed out that at the time of joining new post of Maintenance Surveyor, by application dated 13.01.2017, he had specifically exercised right to lien as contemplated under Rule 20 of 'Rules of 1981' and by relieving order dated 17.01.2017, he was simply relieved without any mention of retention of lien on the post of Craft Instructor. He has further pointed out that the post of Craft Instructor

on which the Applicant was appointed was substantive post and still it is vacant. He, therefore, submits that the rejection of the Applicant's request for reposting on the post of Craft Instructor is totally unsustainable in law. In this behalf, he placed reliance on the decision of Hon'ble Bombay High Court in ***Writ Petition No.4578/2013 (Shirish S. Thatte Vs. State of Maharashtra) decided on 26.11.2014*** arising from similar situation.

5. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer sought to justify the impugned communication contending that when the Applicant was relieved the Office of Respondent NO.1, had taken decision on the file noting rejecting the right to lien sought to be exercised by the Applicant. She admits that in relieving order, there is no such reference of rejection of retention of lien. However, according to her, since the decision was already taken as apparent on the File Noting, the absence of its communication does not matter and Applicant cannot be allowed to join the post of Craft Instructor again. She has pointed out that, initially, the Applicant was appointed on the post of Craft Instructor in the pay scale of Rs.9300-34800 + GP 4300, but later he opt for the post of Maintenance Surveyor / Clerk-cum-Typist in the pay scale of Rs.5200-20200 + GP 1900 and after joining the said post, he wants to come back in view of disparity in pay scale. But since the Applicant was already relieved from the post of Craft Instructor on his own request, now he cannot be allowed to join on the post of Craft Instructor, and therefore, the question of lien does not survive.

6. In view of submission advanced at the Bar, the question posed for consideration is whether the Applicant had lien on the post of Craft Instructor on the establishment of Respondent No.1 and is entitled to rejoin the said post.

7. Following are the provisions in 'Rules of 1981' relating to lien.

20. Acquiring and ceasing of a 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.

21. Restrictions over holding of lien on posts by Government servant at same time.- (1) Two or more Government servants cannot be appointed substantively to the same permanent post at the same time.

(2) A Government servant cannot be appointed substantive to two or more separate and permanent posts at the same time.

(3) A Government servant cannot be appointed substantively to a post on which another Government servant holds a lien.

22. Retention of a lien.- Unless his lien is suspended under Rule 23 or transferred under Rule 26, a Government servant holding substantively a permanent post retains a line 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, or holding a post the pay of which is charged to works or contingencies;

(c) during joining time on transfer to another post, unless he is transferred substantively to a post on lower pay, in which case 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 other than refused leave granted after the date of retirement;

(e) while under suspension.

Note.- A Government servant confirmed in a permanent post, which is subsequently held in abeyance (because it is not required for active duty) continues to hold a lien on that post during the period the post is held in abeyance.”

8. At the very outset, material to note that the Applicant was appointed on the post of Craft Instructor in pursuance of recruitment process undertaken by Respondent No.1 to fill-in vacant post. Accordingly, by order dated 28.07.2011, he was appointed in pay scale of Rs.9300-34800 + GP 4300 and worked there till he was relieved on 31.01.2017. Thus, admittedly, he worked on the post of Craft Instructor

continuously for more than six years. There is no denying that when he applied for the post of Maintenance Surveyor, in application dated 13.01.2017, he has categorically stated that he is exercising lien on the post of Craft Instructor and subject to lien requested to relieve him. In relieving order, all that it was stated that the Applicant was relieved to join the post of Maintenance Surveyor. The letter is silent about the retention of lien exercised by the Applicant. The perusal of record reveals that when the Applicant had requested to relieve him with lien on the post of Craft Instructor, the Office had placed Note before Respondent No.1 – Joint Director, Vocational Education and Training. The Applicant had availed the copies of File Noting under Right to Information Act and placed the same in O.A. (At Page Nos.38 to 40). The Office had specifically pointed out to the Joint Director, Vocational Education and Training that the Applicant had exercised lien on the post of Craft Instructor and quoted the provisions contained in Rules 20 to 27 of 'Rules of 1981'. The Office accordingly placed the matter before the Joint Director, Vocational Education and Training for necessary orders. The Joint Director, Vocational Education and Training made a note "धारणा अधिकार न देवता कार्यमुक्त करावे.". In pursuance of it, the Applicant was simply relieved without mentioning that Office has not accepted retention of lien exercised by the Applicant. If the Office had taken such decision, then it should have been specifically communicated to the Applicant that his request for retention of lien is rejected. So that he can avail legal remedy. However, without mentioning anything about the retention of lien, the Applicant was simply relieved. Be that as it may, now next material question comes whether the Applicant had right to exercise lien on the post of Craft Instructor and is entitled for reposting on the said post.

9. At the very outset, material to note that Respondent No.1 did not assign any reason in File Noting for rejecting lien claimed by the Applicant. He simply said that Applicant be relieved without allowing to

hold lien. Such course of action is totally arbitrary. He should have assigned reason for the same, so as to test its legality.

10. At this juncture, it would be apposite to see File Noting made by the Office while processing the application made by the Applicant for reposting as Craft Instructor, which is at Page Nos.42 to 45 of P.B. Significant to note that the Office has categorically pointed out that after expiration of initial period of six months to the Applicant as Craft Instructor, continuity was given to him and had completed six years' service. It is further pointed out by the Department that the post on which the Applicant was working is still vacant and the appointment as Maintenance Surveyor was purely temporary and the Applicant has not acquired permanency on the post of Maintenance Surveyor. The Officer has, therefore, concluded that the lien of the Applicant on the post of Craft Instructor still subsists and recommended for reposting of the Applicant as Craft Instructor. Despite this factual position, vis-à-vis legal scenario, the Respondent No.1 rejected the request of the Applicant for reposting by issuing order dated 10.08.2018 simply stating that since he was relieved earlier not entitled for rejoining.

11. It is thus explicit that the post of Craft Instructor on which the Applicant was initially appointed and served for more than six years is still vacant. Significant to note that the reply filed by the Applicant is conspicuously silent about the specific stand taken by the Applicant in Para No.6.17B of O.A, which is as under :-

“6.17B That admittedly was appointed by way of direct recruitment in Class-III post. That as per the Recruitment Rules of the said post, that there is no provision of appointment on probation. That in such circumstances very initial appointment of the Petitioner in the said post was for all legal and valid purposes regular / permanent appointment right from the first date of appointment. This is more so, when the appointment of the Petitioner in the said post was substantive appointment and that too in a permanent, clear and sanctioned vacancy.”

12. Curiously, in reply to Para No.6.17B, all that Respondent No.1 stated as under :-

“With reference to Paragraph No.6.17B of the Original Application (i.e. the Grounds), I say and submit that admittedly the Applicant was appointed by way of direct recruitment with the terms and conditions set out in the appointment letter dated 28.07.2011 issued to the Applicant by Respondent No.1.”

13. Suffice to say, there is no specific denial to the Applicant’s contention that he was appointed on substantive post in a permanent, clear and sanctioned vacancy. This aspect assumes much importance while examining the entitlement of the Applicant for retention of lien. In terms of Rule 20 of ‘Rules of 1981’, a Government servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired for any other post. As such, it is by operation of law, the Applicant being appointed on substantive post in permanent, clear vacancy, he exercised the lien. In other words, the retention of lien is by operation of law.

14. Rule 9(3) of ‘Rules of 1981’ defines “lien” as under :-

“**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.”

15. Whereas, “Permanent post” is defined in Rule 9(40) of ‘Rules of 1981’ as under :-

“**Permanent post**” means a post carrying a definite rate of pay sanctioned without limit of time.”

16. Needless to mention, if a Government servant is appointed after due process of selection on permanent post, it cannot be termed as a fortuitous appointment, so as to deny entitlement to lien. As stated earlier, the Applicant was appointed on the post of Craft Instructor on substantive post. The Applicant, therefore, will have to be said to hold

the post in substantive capacity when he is appointed after following the due process of law in clear, sanctioned vacancy and was continued on the said post for more than six years.

17. As rightly pointed out by the learned Advocate for the Applicant that the Government of Maharashtra by Resolution dated 19th September, 1975 had made it clear that every Government servant who had rendered continuous service for not less than three years in a post could be deemed to be permanent Government servant for all purposes including the admissibility of full pensionary benefits. In other words, the Government servants who were temporary but had put in continuous service of not less than three years to be treated as permanent. Indeed, in the present case, it is amply clear that the Applicant was appointed on substantive post in clear, vacant and sanctioned post after due process of law. Suffice to say, it cannot be said that the Applicant was holding temporary post or officiating post, so as to disentitle him for retention of lien.

18. As such, it is by the operation of law, the Applicant acquires lien on the post of Craft Instructor. Even if Respondent No.1 as per File Noting has rejected a requested for retention which is in fact without giving any reason, it has no meaning in law and the Applicant's lien on the post of Craft Instructor cannot be defeated.

19. Shri Bandiwadekar, learned Advocate for the Applicant in this behalf rightly referred to the decision of Hon'ble High Court in **Writ Petition No.4578/2013** (cited supra) arising from similar situation. In that case, the Petitioner was appointed as Junior Clerk on the establishment of District and Sessions Court, Parbhani after going through due selection process. Later, he applied for the post of Stenographer on the establishment of Assistant Director of Public Prosecutor through proper channel and on selection, joined as

Stenographer. Later, he made an application to the District and Sessions Court, Parbhani for keeping his lien on the post of Junior Clerk, but his request was declined. In that context, he challenged the said decision by filing Writ Petition. The Hon'ble High Court held that the Petitioner was appointed on substantive post and by operation of law, he acquires lien on the post of Junior Clerk on the establishment of District and Sessions Court, Parbhani, but his application for keeping lien was erroneously rejected. Hon'ble High Court discussed the provisions of 'Rules of 1981' and allowed the Writ Petition with direction to District and Sessions Court, Parbhani to allow the Petitioner to join as Junior Clerk. Whereas, in the present matter, there is no communication of rejection of lien to the Applicant and all that it was noted in File Noting only. Thus, the Applicant's case is in fact on better footing. The decision of Hon'ble High Court in **Writ Petition No.4578/2013** is squarely attracted to the present case.

20. In view of above, it will have to be hold that the Applicant is entitled to hold lien on the post of Craft Instructor on the establishment of Respondent No1 and impugned communication dated 10.08.2018 refusing to join him on the post of Craft Instructor is totally unsustainable in law. The O.A, therefore, deserves to be allowed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned communication dated 10.08.2018 issued by Respondent No.1 is quashed and set aside.
- (C) The Applicant is held entitled to hold lien on the post of Craft Instructor on the establishment of Respondent No.1.

- (D) The Respondent No.1 is directed to allow the Applicant to join as Craft Instructor [Interior Decoration and Design] on his establishment within a month from today.
- (E) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 31.03.2021

Dictation taken by :

S.K. Wamanse.

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