

GAHC010028692017



2025:GAU-AS:6087

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3864/2017

1. DR. BISWAJIT SARMA
S/O- DUGDHA NATH SARMA, R/O- BELTALA SURVEY, GHY-28,
ASSAM

VERSUS

1. THE STATE OF ASSAM and 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
EDUCATION HIGHERTechnicalDEPTT., ASSAM, SECRETARIAT,
DISPUR, GHY-6

2:THE JOINT SECRETARY
GOVT OF ASSAM
EDUCATION HIGHERTechnical DEPTT.
DISPUR, GHY-6

3:THE DIRECTOR OF TECHNICAL EDUCATION
ASSAM
KAHILIPARA, GHY-19

4:THE PRINCIPAL
JORHAT ENGINEERING COLLEGE
JORHAT-7, ASSAM

Advocate for the Petitioner : MR.P SAIKIA, MR.D K BAGCHI,MR.S SAIKIA

Advocate for the Respondent : , SC, HIGHER EDUCATION

Linked Case : WP(C)/6604/2022

1: DR. BISWAJIT SARMA
SON OF LATE DUGDHA NATH SARMAH
RESIDENT OF RAJAMAIDAM
P.S. AND P.O- JORHAT

DIST- JORHAT
ASSAM, PIN- 785001.

VERSUS

1: THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECRETARY
EDUCATION (HIGHER) DEPARTMENT
DISPUR
GUWAHATI- 06, ASSAM.

2: THE DIRECTOR OF TECHNICAL EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 781019.

3: THE PRINCIPAL
JORHAT ENGINEERING COLLEGE
DISTRICT- JORHAT
ASSAM, PIN- 785007.

4: THE ACCOUNTANT GENERAL
ASSAM
MAIDAMGAON
GUWAHATI- 781014.

Advocate for : MR. U K NAIR
Advocate for : SC
HIGHER EDU appearing for THE STATE OF ASSAM AND 3 ORS

BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE

JUDGMENT

Date : 16-05-2025

Heard Mr. I. Choudhury, learned Senior Counsel assisted by Mr. T. Das, learned counsel for the petitioner. Also heard Mr. K. Gogoi, learned Standing Counsel for the Higher Education Department and Mr. C. Baruah, learned Standing Counsel for the Accountant General, Assam.

2. The challenge made in these Writ Petitions is to the order dated

21.04.2017, issued by the Secretary to the Government of Assam, Higher Education (Technical) Department, whereby the lien granted to the petitioner, namely, Dr. Biswajit Sarma, Associate Professor in Geology Department, Jorhat Engineering College, Jorhat, for a period of one year vide order dated 25.06.2016, is terminated w.e.f. 27.06.2016, on completion of one year. The petitioner is also prayed for a direction to the respondent authorities to allow the petitioner to join in the post of Associate Professor (Geology) in Jorhat Engineering College, as per the joining report dated 25.04.2022.

3. As the issue involved in these two writ petitions are one and same, were heard analogously and disposed of by this common judgment and order.

4. Briefly put, the case of the petitioner is that the petitioner is a Master Degree and Ph.D. from the Indian Institute of Technology (IIT), Roorkee, with specialization in Remote Sensing and Geographical Information System (GIS). He has joined as Associate Professor in Civil Engineering (Geology) in Jorhat Engineering College, Jorhat in the year 1992 and his service was regularized in the year 1995.

5. While serving as an Associate Professor in Civil Engineering (Geology) in Jorhat Engineering College, Jorhat, pursuant to the Advertisement No.NTS-1/2013, in the month of March, 2013 issued by the Registrar of Gauhati University for the post of Director, College Development Council, Gauhati University, the petitioner offered his candidature by submitting necessary documents. After due process of selection, the petitioner was selected for the post of Director, College Development Council, Gauhati University and appointed vide order dated 11.06.2015, by the Gauhati University and subsequently,

approved by the Executive Council, Gauhati University. Accordingly, the petitioner joined in the post of Director, College Development Council, Gauhati University on 27.06.2015.

6. Upon appointment as Director, College Development Council, Gauhati University, the Government of Assam granted lien to the petitioner for a period of one year vide notification dated 25.06.2015. After completion of a period of one year, vide impugned order dated 21.04.2017, issued by the Secretary to the Government of Assam, Higher Education (Technical) Department, Assam, the lien of the petitioner has been terminated w.e.f. 27.06.2016, and consequently he has not been allowed to rejoin as Associate Professor (Geology) in Jorhat Engineering College, Jorhat, after the completion of five (5) years period in the post of Director, College Development Council, Gauhati University.

7. It is the contention of the petitioner that that Government of Assam granted the lien to the petitioner for a period of one year vide notification dated 25.06.2015, upon appointment as Director, College Development Council, Gauhati University, which conclusively establishes the fact that the petitioner had lien against the post of Associate Professor (Geology) in Jorhat Engineering College, Jorhat. The fact that the petitioner continued to hold the lien against the post of Associate Professor (Geology) in Jorhat Engineering College is fortified from the fact that the Government of Assam has decided to terminate the lien vide impugned order dated 21.04.2017. Therefore, it is evident that the authority concerned were fully aware that the petitioner held the lien to the post of Associate Professor in Civil Engineering (Geology) in Jorhat Engineering College, Jorhat and as a natural corollary could not have acquired the lien against the post of Director, College Development Council, Gauhati University,

since it is a settled position of law that a Government servant cannot acquire and hold lien against two posts simultaneously.

8. Mr. I. Choudhury, learned Senior Counsel for the petitioner, submits that it is not in dispute that the petitioner was appointed in substantive capacity against a permanent post of Associate Professor in Jorhat Engineering College in the year 1992. While he was serving against such post, there was an advertisement issued by Gauhati University for the post of Director, College Development Council. It was mentioned in the advertisement that the appointment will be initially for a period of 5 years. Pursuant to a selection process, the petitioner was selected and thereafter appointed vide appointment letter dated 11.06.2015. Although in the appointment letter, the nature of the post was stated to be permanent, there was no mention as regards the nature of the appointment. In such view of the matter, it can logically be presumed that although the post in question was a permanent post, the appointment was temporary in nature, particularly since under FR 9 (30-A), the 'Tenure Post' is defined to mean a permanent post which an individual Government Servant may not hold for more than a limited period. In the instant case, the use of the word 'initially' before the words 'for a period of 5 years', clearly indicates that the petitioner could continue to hold the post beyond the limited period of 5 years as opposed to the definition of 'Tenure Post' under FR 9 (30-A). It is further fortified from the fact that the petitioner was released from the post of Director, College Development Council by Gauhati University after 5 years and 8 months of service.

9. Mr. Choudhury, learned Senior Counsel, submits that upon his appointment as Director, College Development Council under Gauhati University,

the Government of Assam granted lien to the petitioner for a period of 1 (one) year vide notification dated 25.06.2015. This aspect of the matter conclusively establishes the fact that the petitioner held a lien against the post of Associate Professor in Jorhat Engineering College. The fact that the petitioner continued to hold the lien against the post of Associate Professor in Jorhat Engineering College is further fortified from the fact that the Government of Assam decided to terminate the lien vide impugned notification dated 21.04.2017. Therefore, it is evident that the authorities concerned were fully aware that the petitioner held a lien to the post of Associate Professor of Jorhat Engineering College and as a natural corollary could not have acquired a lien against the post of Director, College Development Council, Gauhati University.

10. Mr. Choudhury, learned Senior Counsel submits that FR- 9(13) defines "Lien" to mean the title of a Government servant to hold substantively a permanent post including a tenure post to which he has been appointed substantively. F.R. 12-A provides that 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. In terms of F.R. 14(a), the State Government has the power to suspend the lien of a Government servant if he is appointed in a substantive capacity to a tenure post. Even such suspension of lien gets revived under F.R. 14(e). In terms of F.R. 14-A(a), a Government servant's lien on a permanent post in no circumstances be terminated even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post. In terms of F.R. 14-A(b), a Government servant's lien on a permanent post stands terminated only on his acquiring a lien on a permanent post outside the cadre on which he is borne.

11. Mr. Choudhury, learned Senior Counsel contends that on the face of the above provisions of the Rules, the petitioner admittedly did not acquire a lien against the post of Director, College Development Council under Gauhati University. This aspect of the matter becomes crystal clear from the fact that firstly, the petitioner was allowed to continue to serve in the said post beyond the period of 5 years thereby signifying the fact that it was not a tenure post. Secondly, the fact that the petitioner was merely released from the post of Director, College Development Council of Gauhati University after a period of 5 years and 8 months by itself demonstrates that the petitioner had never acquired a lien against the said post, particularly since otherwise the service of a public servant appointed on substantive capacity against a permanent post can be terminated only in accordance with the constitutional mandate laid down under Article 311. He submits that even assuming but not admitting that the appointment to the post of Director, College Development Council, Gauhati University can be said to be against a tenure post, the petitioner's lien could only have been suspended in exercise of powers under F.R. 14(a) and even such suspension of lien would have automatically stood revived as soon as the petitioner ceased to hold the post of Director, College Development Council under Gauhati University. Therefore, looked at from any angle, the petitioner cannot, by any stretch of imagination, be said to have acquired a lien against the post of Director, College Development Council under Gauhati University.

12. Mr. Choudhury, learned Senior Counsel submits that the petitioner never acquired a lien against the post of Director, College Development Council under Gauhati University, neither the petitioner can be said to have ceased to hold any lien against the post of Associate Professor under Jorhat Engineering College under F.R. 12-(A) nor could his lien against the said post be deemed to have

been terminated under F.R. 14-A(b) since his lien against the said post of Associate Professor can in no circumstances be terminated even with his consent, since the result will be to leave him without a lien or a suspended lien against a permanent post as per F.R. 14-A(a). In such view of the matter, he submits that neither has the petitioner's lien ceased under F.R. 12(A) nor has it stood terminated under F.R. 14-A(a). Moreover, the petitioner's lien against the post of Associate Professor under Jorhat Engineering College could not have been terminated as per F.R. 14-A(a).

13. In view of above, Mr. Choudhury, learned senior counsel submits the impugned notification dated 21.04.2017 terminating the lien of the petitioner against the post of Associate Professor in Geology, Jorhat Engineering College may be set aside and quashed and a direction may be issued to the respondent authorities to allow the petitioner to join as Associate Professor in Jorhat Engineering College forthwith and since the petitioner had approached the Jorhat Engineering College on 25.04.2022 by submitting his joining report expressing his willingness to join as Associate Professor under the Jorhat Engineering College and he has been illegally deprived of rendering his services. Further a direction may be issued to the respondent authorities to pay back wages with effect from 25.04.2022. _

14. In support of his submissions, Mr. I. Choudhury, learned Senior Counsel for the petitioner has placed reliance on the following judgments of the Hon'ble Supreme Court:

- 1. The Divisional Controller, KSRTC vs. Mahadeva Shetty and another, reported in (2003) 7 SCC 197,**

2. **Uttaranchal Road Transport Corporation and others vs. Mansaram Nainwal** reported in **(2006) 6 SCC 366,**
3. **Bhavnagar University vs. Palitana Sugar Mill Pvt. Ltd. & Ors,** reported in **(2003) 2 SCC 111,**
4. **Haryana Financial Corporation & another vs. M/S. Jagdamba Oil Mills & another** reported in **(2002) 3 SCC 496,**
5. **State of Haryana vs. Shri Des Raj and another,** reported in **(1976) 2 SCC 844,**
6. **T.R. Sharma vs. Prithvi Singh and another,** reported in **(1976) 1 SCC 226,**
7. **Commissioner, Karnataka Housing Board vs. C. Muddaiah,** reported in **(2007) 7 SCC 689,** and
8. **State of Rajasthan and another vs. S.N. Tiwari and others** reported in **(2009) 4 SCC 700.**

15. Per contra, Mr. K. Gogoi, learned Standing Counsel, for the Higher Education Department, submits that from the Notification No.ATE.29/2011/219 dated 25.06.2015, it is an admitted position that the petitioner was granted lien for a period of 1 (one) year only with effect from the date of handing over charge with a condition that the petitioner must return to the parent Department on completion of the admissible lien period or to resign from his post, failing which his lien will be terminated. However, in-spite of expiry of the aforesaid lien period, the petitioner neither reverted back nor resigned from the post of Director, College development Council, Gauhati University. Situated thus, the authority vide Notification No.ATE.29/2011/230 dated 21.04.2017, terminated the lien granted to the petitioner with effect from 27.06.2016 on completion of 1 (one) year of the lien period.

16. Mr. Gogoi, learned Standing Counsel, submits that the aforesaid order dated 21.04.2017, terminating the lien of the petitioner was put to challenge in one of these writ petitions being W.P(C) No.3864/2017 and the Hon'ble Court vide its order dated 22.06.2017 was pleased to stay the operation of the said order and the said interim order was further extended until next date vide another order dated 22.06.2017, but the said interim order was passed by this Hon'ble Court on a different premise that although the maximum limit for granting lien as per O.M. dated 23.12.1997 is three years but the petitioner was granted lien only for a period of one year. He submits that although the authority has never extended the lien period of the petitioner but even if for the sake of argument it is presumed that the petitioner was entitled to lien for a period of 3 years as per O.M. dated 23.12.1997 but in that case also the petitioner, in-spite of expiry of the aforesaid lien period of three years, neither reverted back nor resigned from the post as per provisions of the FR & SR.

17. Mr. Gogoi, learned Standing Counsel, by referring to the provisions of F.R. & SR, submits that on a conjoint reading of the FR-9 Rule-13, F.R.-9 Rule-30A and F.R.-12-A, it is clear that a tenure post is a permanent post and as and when it is a permanent post there is no question of holding the previous lien. Therefore, in view of the facts of the present case when the Petitioner was absorbed in a particular term period of 5 (five) years, the lien in the Jorhat Engineering College automatically ends. Moreover, the judgment and Order dated 25.02.2022, passed by this Hon'ble court in W.P(C) No.1447/2021, this Hon'ble Court returned with a finding that although the petitioner was appointed by the University to serve for a fixed tenure of 5 (five) years but the petitioner was appointed in a permanent post.

18. Mr. Gogoi, learned Standing Counsel, submits that the provisions of F.R. 14-A which has been relied upon by the petitioner will not be applicable herein this case because the said provision talks about non termination of lien of a Government Servant on the premises that if such termination would result into leaving the government servant without a lien or a suspended lien upon a permanent post, whereas this is not the case herein. In view of the above facts and circumstances and in the light of the decisions of the Hon'ble Supreme Court, the writ petitions filed by the petitioner are devoid of any merit and is liable to be dismissed.

19. In support of his submissions, Mr. Gogoi, learned Standing Counsel, has relied upon the following judgments of the Hon'ble Supreme Court:

1. ***Ramlal Khurana vs. State of Punjab and others***, reported in **(1989) 4 SCC 99**, and
2. ***Dr. S.K. Kacker vs. All India Institute of Medical Science and others*** reported in **(1996) 10 SCC 734**.

20. Mr. I. Chowdhury, learned senior counsel, rejoining his submission, submits that the respondents have placed heavy reliance upon the judgment of the Hon'ble Supreme Court in the case of **Dr. S.K. Kacker** (Supra) which is clearly and fundamentally distinguishable on several aspects as it has been expressly recorded in that case that Dr. S.K. Kacker's appointment was made on regular basis and held that appointment was an independent permanent appointment. Such conclusion was drawn on the basis of the fact that such appointment entailed undergoing a probation of 1 year it has been conclusively held that Dr. S.K. Kacker lost his lien on the previous post. Each of the above distinguishable

aspects are totally absent in the instant case and hence, the said Judgment is not applicable. In support of his submission pertaining to non-applicability of the Judgment rendered in the case of Dr. S.K. Kacker (*Supra*), he has placed reliance on the following Judgments of the Hon'ble Supreme Court, namely - ***Mahadeva Shetty (Supra)***, ***Mansaram Nainwal (Supra)*** and ***M/S. Jagdamba Oil Mills & another (Supra)***, to show that the Hon'ble Supreme Court has held that a judgment ordinarily is a decision of the case before the Court. It has been laid down that "A decision often takes its colour from the question involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation". A judgment is an authority for what it actually decides. It has further been held in *Palitana Sugar Mill Pvt. Ltd.(supra)* by the Hon'ble Supreme Court that little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorem nor as provisions of the statute. These observations must be read in the context in which they appear.

21. I have considered the submissions of learned counsel for the parties and also perused the materials brought on record.

22. The petitioner was appointed against a permanent post of Associate Professor (Geology) in Jorhat Engineering College, Jorhat in the year 1992. Pursuant to the advertisement, issued by the Registrar of Gauhati University for the post of Director, College Development Council, Gauhati University, the petitioner was selected and appointed as the Director, College Development

Council, Gauhati University vide order dated 11.06.2015, by the Gauhati University and accordingly, the petitioner joined in the post of Director on 27.06.2015.

23. On such appointment as Director, College Development Council, Gauhati University, the Government of Assam granted lien to the petitioner for a notification of one year vide notification dated 25.06.2015. Vide impugned notification dated 21.04.2017, issued by the Secretary to the Government of Assam, Higher Education (Technical) Department, Assam, the lien of the petitioner was terminated w.e.f. 27.06.2016.

24. The grant of lien to the petitioner for a period of one year vide notification dated 25.06.2015, upon appointment as Director, College Development Council, Gauhati University, shows that the petitioner had lien against the post of Associate Professor (Geology) in Jorhat Engineering College, Jorhat and continued to hold the lien against the post of Associate Professor (Geology) till the lien was terminated vide notification dated 21.04.2017. The petitioner could not have acquired the lien against the post of Director, College Development Council, Gauhati University, as he cannot acquire and hold lien against two posts simultaneously and in fact, was holding lien against the post of Associate Professor (Geology) in Jorhat Engineering College, Jorhat.

25. The advertisement issued by Gauhati University for the post of Director, College Development Council pursuant to which the petitioner was appointed as Director prescribed that the appointment will be initially for a period of 5 years. The appointment letter reflects that the nature of the post to be permanent.

26. As noted hereinabove, upon appointment as Director, College Development Council, Gauhati University, the Government of Assam granted lien to the petitioner for a period of 1 (one) year vide notification dated 25.06.2015. The petitioner held a lien against the post of Associate Professor (Geology) in Jorhat Engineering College and continued to hold the lien. The termination of lien vide impugned notification dated 21.04.2017 shows that the respondent authorities were fully aware that the petitioner held a lien to the post of Associate Professor (Geology) of Jorhat Engineering College and thus, the petitioner could not have acquired a lien against the post of Director, College Development Council, Gauhati University.

27. On consideration of the matter in its entirety, the issues arise for consideration or require to be determined are as to whether the petitioner, on his appointment, acquire a lien against the post of Director, College Development Council under Gauhati University Or as to whether the petitioner continued to hold lien against the post of Associate Professor (Geology) in Jorhat Engineering College or can it be terminated or stood terminated after expiry of one year period granted to the petitioner.

28. To appreciate, I deem it apposite to refer to the provisions of Fundamental Rules & Subsidiary Rules (FR & SR herein).

29. FR-9 (13) provides that "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. Under FR-9 Rule-30A, the meaning of "Tenure post" has been defined, which means a permanent post which an individual

Government servant may not hold for more than a limited period. As per FR-12-A, unless in any case it be otherwise provided in the 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.

As per FR.14 (a), the State Government has the power to suspend the lien of a Government servant if he is appointed in a substantive capacity to a tenure post. Even such suspension of lien gets revived under FR 14(e). In terms of F.R. 14-A(a), a Government servant's lien on a permanent post in no circumstances be terminated even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post. In terms of F.R. 14-A(b), a Government servant's lien on a permanent post stands terminated only on his acquiring a lien on a permanent post outside the cadre on which he is borne.

30. Vide notification dated 25.06.2015 issued by the Joint Secretary to the Govt. of Assam, Higher Education (Technical) Department, the petitioner was granted lien for period of one year, which is reproduced herein under:-

*“GOVERNMENT OF ASSAM
HIGHER EDUCATION (TECHNICAL) DEPARTMENT
DISPUR :: GUWAHATI-6.*

*ORDERS BY THE GOVERNOR
NOTIFICATION*

Dated Dispur, the 25th June, 2015

No.ATE.29/2011/219 : The Governor of Assam is pleased to grant lien to Dr. Biswajit Sarma, Associate Professor in Geology Department, Jorhat Engineering College, Jorhat on being appointed to the post of Director College Development Council, Gauhati University, Guwahati for a period of 1 (one) year with effect from the date of handing over charge in the present post in terms of Finance Departments O.M. No.FEG.11/97/1 dtd.23-12-1997 on the condition that

he must return to the parent Department on completion of the admissible lien period or resign from his post if he is permanently absorbed in the borrowing Department failing which his lien will stand terminated.

*Sd/- Anjali Saikia Baruah, ACS,
Joint Secretary to the Govt. of Assam,
Higher Education (Technical) Department.*

Memo No. ATE 29/2011/219-A

Dated Dispur, the 25th June, 2015

Copy to :-

- 1. The Accountant General. Assam. Maidanigaon. Beltola. Guwahati 29.*
- 2. The Vice Chancellor, Gauhati University, Jalukbari, Guwahati - 13.*
- 3. The Sr. Standing Counsel, Education (Higher) Department. Gauhati High Court. Panbazar. Guwahati-1.*
- 4. The Director of Technical Education, Assam. Kahilipara. Guwahati 19 with reference to letter No.TE(E)A 87/2004/2292 dtd. 15-06-2015.*
- 5. The Principal, Jorhat Engineering College, Jorhat. She is requested to release him immediately.*
- 6. The Treasury Office. Jorhat / Kamrup.*
- 7. Dr. Biswajit Sarma. Associate Professor. Department of Geology. Jorhat Engineering College, Jorhat.*

By order etc;

*Joint Secretary to the Govt. of Assam,
Higher Education (Technical) Department”.*

31. Bare perusal of the above notification, reflects that the petitioner was granted lien against the post of Associate Professor (Geology) in Jorhat Engineering College on appointment as Director, College development Council, Gauhati University on the condition that he must return to the his parent

Department on completion of the admissible lien period or resign from his post if he is permanently absorbed in the borrowing Department failing which lien will stand terminated. Thus, on the face of it and in normal circumstances the petitioner ought to have returned to the post of Associate Professor (Geology) in Jorhat Engineering College, Jorhat, on expiry of one year period or resign from the post if he was absorbed. However, since the petitioner was appointed although on a permanent post, but appointment appears to be temporary, his lien ought to have been extended, more so, when he was not absorbed.

32. As noted above, FR- 9(13) defines lien to mean the title of a Government servant to hold substantively a permanent post including a tenure post to which he has been appointed substantively. FR 12-A provides that 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. As per FR.14 (a), the State Government has the power to suspend the lien of a Government servant if he is appointed in a substantive capacity to a tenure post. Even such suspension of lien gets revived under FR 14(e). In terms of F.R. 14-A(a), a Government servant's lien on a permanent post in no circumstances be terminated even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post. In terms of F.R. 14-A(b), a Government servant's lien on a permanent post stands terminated only on his acquiring a lien on a permanent post outside the cadre on which he is borne.

33. The petitioner appears to have not acquired a lien against the post of Director, College Development Council under Gauhati University as the petitioner was allowed to continue to serve in the said post beyond the period of 5 years thereby implying the fact that it was not a tenure post. The fact that the

petitioner was released from the post of Director, College Development Council of Gauhati University after a period of more than 5 years shows that the petitioner had never acquired a lien against the said post of Director. Even if the appointment to the post of Director, College Development Council, Gauhati University can be said to be against a tenure post, at best the petitioner's lien could only have been suspended in exercise of powers under F.R. 14(a) and even such suspension of lien would have automatically stood revived as soon as the petitioner ceased to hold the post of Director, College Development Council under Gauhati University. Thus, I am of the considered view that the petitioner cannot be said to have acquired a lien against the post of Director, College Development Council under Gauhati University.

34. Since the petitioner appears to have not acquired a lien against the post of Director, College Development Council under Gauhati University, neither the petitioner can be said to have ceased to hold any lien against the post of Associate Professor (Geology) under Jorhat Engineering College under F.R. 12-(A) nor could his lien against the said post be deemed to have been terminated under F.R. 14-A(b). Thus, neither has the petitioner's lien ceased under F.R. 12(A) nor has it stood terminated under F.R. 14-A(a) and the petitioner's lien against the post of Associate Professor (Geology) under Jorhat Engineering College could not have been terminated.

35. Having considered above, this court finds that although the post of Director, College development council, Gauhati University was a permanent post, the appointment was temporary in nature, particularly since under FR-9 (30-A), the 'Tenure Post' is defined to mean a permanent post which an individual Government Servant may not hold for more than a limited period. Thus, I am in

full agreement with the learned senior counsel for the petitioner on the point that the word 'initially' before the words 'for a period of 5 years', clearly indicates that the petitioner could continue to hold the post beyond the limited period of 5 years as opposed to the definition of 'Tenure Post' under FR 9 (30-A) which is also indicative of the fact that the petitioner has been released from the post of Director, College Development Council by Gauhati University after more than 5 years of service.

36. Now, this court would refer to the relevant case laws relied on by the learned counsel for the parties.

37. In the case of **Shri Des Raj** (Supra), the Hon'ble Supreme Court has held which is reproduced herein under:

“9. There appears to be, however, considerable force in the second contention advanced on behalf of the respondent that on the abolition of the post of Panchayati Raj Election Officer, his services should not have been terminated. According to clause (a) (2) of rule 3.14 of Punjab Civil Services Rules Vol. I Part I as applicable to Haryana State, a competent authority shall suspend the lien of a Government servant on a permanent post which he holds substantively if he is appointed in a substantive capacity to a permanent post outside the cadre on which he is borne. According to clause (e) of that rule, a Government servant's lien which has been suspended under clause (a) of that rule shall revive as soon as he ceases to hold a lien on the post of the nature specified in sub- clauses (1), (2) or (3) of that clause. The above provisions were considered by us in the case of T. R. Sharma v. Prithvi Singh & Anr. (1) and it was held that in the absence of a written request by the employee concerned, the lien on the post permanently held by him cannot be terminated. It is nobody's case that any written request was made by the respondent for terminating his lien on the post of Head Assistant. As such, the lien of the respondent on the post of Head Assistant should be held to have immediately revived as soon as the post of Panchayati Raj Election Officer was abolished.”

38. In **T.R. Sharma (Supra)**, the Hon'ble Supreme Court has held which is reproduced herein under:

“6. The learned Judges constituting the majority of the Full Bench in holding that the appellant's lien on the post of Agricultural Inspector had stood terminated relied upon rule 3.12. Perusal of the above rule shows that normally 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. The opening words of the above rule, however, show that it would apply unless it be otherwise provided in the rules. Rule 3.14(a)(2) carves out an exception to the general rule contained in rule 3.12. According to rule 3.14(a)(2), a competent authority shall suspend the lien of a Government servant on a permanent post. which he holds substantively if he is appointed in a substantive capacity to a permanent post outside the cadre on which he is borne. When the appellant was appointed as Block Development and Panchayat officer in a substantive permanent capacity, his case squarely fell within the ambit of rule 3.14(a)(2) as the post of Block Development and Panchayat officer was outside the cadre of Agricultural Inspectors to which the appellant belonged: In the circumstances, it was imperative for the competent authority to suspend the lien of the appellant on the permanent post of Agricultural Inspector which he had held substantively. The competent authority, however, failed to suspend the lien of the appellant on the post of Agricultural Inspector. The appellant plainly cannot suffer because of such inaction or omission on the part of the competent authority. A reading of the rule leaves no doubt that a duty is cast upon the competent authority to suspend the lien of a Government servant on a permanent post which he holds substantively if he is appointed in a substantive capacity to a permanent post outside the cadre on which he is borne. The imperative nature of the rule is also clear from the use of the word "shall" in clause (a) as against the use of the word "may" in clause (b) of that rule. The appellant, in our opinion, cannot be penalised because of the omission of the competent authority to it in accordance with the mandatory provisions of rule 3.14 (a)(2). Clause (b) of rule 3.15 also makes it clear that in a case covered by sub-clause (2) of clause (a) of rule 3.14, the suspended lien of the Government servant concerned may not, except on the written request of that Government servant, be terminated while he remains in Government service. The note to rule 3.15 shows a way out in case any difficulty is experienced on account of the operation of rule 3.14(a) (2). It is nobody's case that any written request was made by the appellant for

terminating his suspended lien on the post of Agricultural Inspector. As such, we find it difficult to uphold the finding of the majority of the learned Judges that the. lien of the appellant on the post of Agricultural Inspector had stood terminated. In our opinion, the third Judge who was in the minority took a correct view of the matter when he observed that the Government servant is not to be penalised and cannot be deprived of the safeguards provided by rule 3.14 because of the fact that the competent authority had not taken the necessary steps.”.

39. In **S.N. Tiwari** (Supra), the Hon'ble Supreme Court has held which is reproduced herein under:

“16. It is not the case of the State that the respondent employee was made permanent as a Homeopathic Doctor in ESI Corporation. The respondent employee did not acquire any lien in the ESI Corporation. The question of termination of lien does not arise since the respondent employee did not acquire a lien on a permanent post outside the cadre on which he is borne.

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.

18. This Court in *Ram Lal Khurana Vs. State of Punjab* [(1989) 4 SCC 99] observed that:

“8.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”.

*19. The term “lien” comes from the Latin term “ligament” meaning “binding”. The meaning of lien in Service Law is different from other meanings in the context of contract, common law, equity, etc. The lien of a government employee in Service Law is the right of the government employee to hold a permanent post substantively to which he has been permanently appointed. [See *Triveni Shankar Saxena Vs. State of U.P.* (1992 Supp (1) SCC 524)].*

20. The High Court upon appreciation of the material available on record found that lien of the respondent employee always continued in the department of Economics & Statistics. His urgent temporary appointment as Homeopathic Doctor vide order dated 3.12.1980 was not a substantive appointment for any definite period. The mere fact that the respondent employee continued to work for a long period itself would not result in loss of lien in the parent department of Economics & Statistics. That even after the respondent employee joined as Homeopathic Doctor in ESI Corporation in 1980 the parent department treated the respondent employee as belonging to its own cadre. We find no infirmity in the order passed by the High Court”.

40. In the case of **Ramlal Khurana** (Supra), the Hon'ble Supreme Court has held which is reproduced herein 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”.

41. In **Dr. S.K. Kacker** (Supra), the Hon'ble Supreme Court has held which is reproduced herein under:

“9. The contention of Shri Jaitley is that since the appointment to the post of Director is on temporary basis, the appellant cannot be allowed to leave his lien in the permanent post held as Professor and Head of the ENT Department. We do not find that his contention is justified. Here is a case where, when the Government servant is either on deputation or on leave or on any other assignment, during the absence of his service on the post, he cannot be allowed to leave without lien upon the permanent post. On his appointment as Director which is a permanent post and a tenure post, he cannot continue to hold his parent post, namely, he cannot hold two posts, viz. of Director as well as of Professor and Head of the ENT Department, simultaneously. In this behalf, clause (d) 4 of F R. 14-A is relevant; it reads as under:

"A Government servant's lien on a post shall stand terminated on his acquiring a lien on a parent post (whether under the Central Government or a State Government) outside the cadre on which he is borne."

10. It would indicate that on appointment to a permanent post, be it under the Central Government or the State Government, outside the cadre on which he is borne, his lien on the previous permanent post stands terminated on his acquiring a lien in a permanent post. The post of Director is not in the same cadre as the post of Professor in the AIIMS. The post of Director is the Head of the AIIMS and it is independent of all the Departments. The Director is enjoined to supervise not only the administrative work of the AIIMS, but also its management for and on behalf of the Institute Body. Therefore, on his appointment to the permanent post as a Director, he lost his lien on the post as a Professor and Head of the ENT Department. Resultantly, when the tenure of the appellant had expired on/by efflux of time or in case any of the eventualities mentioned in Regulation 30-A had happened, he cannot revert to the post of Professor and of

the Department”.

42. On consideration of the above case laws, it is settled position of law that Lien connotes the right of a Govt. 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 that no Government servant can have simultaneously two liens against two posts in two different cadres is a well accepted principle of service jurisprudence. The Hon'ble supreme court also rejected the contention that unless confirmed in the other Department, Govt. servant acquired no lien holding that same cannot be accepted. On F.R. 14-A, Hon'ble supreme court held that it would indicate that on appointment to a permanent post outside the cadre on which he is borne, his lien on the previous permanent post stands terminated on his acquiring a lien in a permanent post.

43. It is 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.

44. In the case of **Dr. S.K. Kacker** (Supra), the Hon'ble Supreme court observed that the post of Director is not in the same cadre as the post of Professor in the AIIMS. The post of Director is the Head of the AIIMS and it is

independent of all the Departments. The Director is enjoined to supervise not only the administrative work of the AIIMS, but also its management for and on behalf of the Institute Body. Therefore, on his appointment to the permanent post as a Director, he lost his lien on the post as a Professor and Head of the ENT Department. Resultantly, when the tenure of the Dr. Kacker had expired on/by efflux of time or in case any of the eventualities mentioned in Regulation 30-A had happened, he cannot revert to the post of Professor and of the Department. Thus, in my view the above case is distinguishable, as it has been expressly recorded that Dr. Kacker's appointment was made on regular basis and held that Dr. Kacker's appointment was an independent permanent appointment. Such conclusion was drawn on the basis of the fact that such appointment entailed undergoing a probation of 1 year and therefore, held that Dr. Kacker lost his lien on the previous post. In the present case, the petitioner was appointed as Director, College Development Council, Gauhati University, although the post of Director was a permanent post, the appointment was temporary in nature. The petitioner was granted lien for one year on his appointment as Director and was released from the post of Director, College Development Council, Gauhati University, after more than 5 years.

45. Reverting back to present case, the petitioner was appointed as Director, College development council, Gauhati University, although the post of Director was a permanent post, the appointment was temporary in nature as under FR-9 (30-A), the 'Tenure Post' is defined to mean a permanent post which an individual Government Servant may not hold for more than a limited period the petitioner had continued to hold the post beyond the limited period of 5 years as opposed to the definition of 'Tenure Post' under FR 9 (30-A) and thereafter, the petitioner has been released from the post of Director, College Development

Council by Gauhati University after more than 5 years of service.

46. In view of what has been discussed herein above, I am of the considered view that the petitioner, on his appointment, did not acquire a lien against the post of Director, College Development Council under Gauhati University and he continued to hold lien against the post of Associate Professor (Geology) at Jorhat Engineering College. Thus, the lien of the petitioner against the post of Associate Professor at Jorhat Engineering College, could not have been terminated or stood terminated.

47. Consequently, the impugned order dated 21.04.2017, issued by the Secretary to the Government of Assam, Higher Education (Technical) Department, terminating the lien granted to the petitioner against the post of Associate Professor in Geology Department, Jorhat Engineering College, Jorhat is hereby set aside and quashed. Consequently, the respondent authorities are directed to allow the petitioner to join in the post of Associate Professor (Geology) in Jorhat Engineering College, Jorhat. However, prayer for payment of back wages from 25.04.2022 is declined.

48. Writ petition stands allowed and disposed of accordingly. No order as to costs.

JUDGE

Comparing Assistant