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# **THE DOCTRINE OF LIEN IN PUBLIC EMPLOYMENT: A RIGHT-BASED FRAMEWORK FOR SECURITY OF TENURE AND ADMINISTRATIVE ACCOUNTABILITY**

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## **ABSTRACT**

This article undertakes a comprehensive analysis of the doctrine of lien in Indian public employment, placing it within the broader framework of service jurisprudence and constitutional governance. This research establishes that an employee's lien, once established through a substantive appointment, constitutes a legal right rather than a mere administrative privilege. The study also emphasises that the protection of lien is intrinsically linked to fundamental constitutional guarantees such as equality (Articles 14 and 16), the right to life and livelihood (Article 21), and procedural safeguards against arbitrary state action (Articles 310 and 311). Through a detailed review of landmark Supreme Court judgments, the paper traces the jurisprudential evolution of lien from a rule-based service condition to a constitutionally protected incident of public employment. An endeavour has been made to reveal how administrative action in treating lien as a regulatory incident subject to administrative control instead of a vested civil right inherent in substantive appointment has diluted its protective function, producing uncertainty in tenure security, seniority determination, and pensionary benefits. Lastly, authors advocate for a clear, structured framework to enhance administrative accountability, promote uniformity in service conditions, and ensure the predictability and fairness essential for public administration.

**Keywords:** Lien, Public Employment, Security of Tenure and Service Jurisprudence.

## Introduction

The origin of the term *lien* can be traced back to the Latin term *ligamentum*, which means “a binding or tie”. However, *lien* in the context of service regulations refers to a government servant’s right to retain a permanent post in public employment, even when temporarily transferred, placed on deputation, or sent on foreign service. *Lien* prevents arbitrary transfer/removal from service, and provides a measure of security for the post originally held by the said employee. It is a protective measure to ensure that employees on deputation are reinstated at their substantive posts without prejudicing seniority or continuity of service. The significance of the right to *lien* in Indian Service Law lies in its role in providing security and stability to government employees, ensuring that their careers are not unduly disrupted by temporary assignments or administrative exigencies. In India, a close analysis of the constitutional scheme eminently warrants the protection of *lien* as a matter of right and not at the discretion of the employer. The doctrine of *lien* is a legacy of the British civil service, where permanent appointment and protection of substantive posts were institutionalised to ensure continuity and impartiality in public administration.<sup>1</sup> British civil service manuals and the UK Civil Service Management Codes treat reinstatement rights during secondment or home leave as enforceable entitlements.<sup>2</sup>

Implementation of *lien* in India is affected by recurring factual and doctrinal complexities, arising from (i) the differential treatment of tenure/substantive appointment and temporary or probationary postings, and (ii) rule-driven complex procedural formalities (suspension/termination/retention of *lien*) that administrators often fail to follow. In certain instances, *lien* is treated merely as an administrative convenience, resulting in arbitrary revocations, confusion in seniority determination, and disputes over career progression. Such practices not only infringe upon employee rights but also undermine the broader principles of predictability, fairness, and efficiency in public administration. The lack of unequivocal acknowledgement of *lien* as a right leads to diverse service conditions, capricious choices, and lessened protection against redundancy, all of which are in opposition to the constitutional spirit of fairness, equality, and justice in the area of labour rights. In several decisions, the Supreme Court has repeatedly declared *lien* to be a statutory incident of substantive appointment that cannot be defeated by procedural lapses. In this context, recognising *lien* as

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<sup>1</sup> Sir Ivor Jennings, *The Law and the Constitution* (5th edn, Stevens & Sons 1963).

<sup>2</sup> UK Cabinet Office, *Civil Service Management Code* (2022) Part B, s 3.3.

a right is essential to maintaining uniformity and fairness in the public sector, ensuring that administrative discretion is used sensibly and in accordance with constitutional principles.

Statutorily, *lien* is defined and described in the Fundamental Rules (FR), especially FR 9(13)<sup>3</sup> and FR 13<sup>4</sup>, which establishes that a confirmed employee holds a *lien* on the post to which they are substantively appointed, and such *lien* cannot be terminated except in accordance with the prescribed rules. The coexistence of multiple regulatory instruments like Fundamental Rules, state civil service rules, institutional regulations, and executive instructions of the DoPT further complicates the questions of applicable rules and legal hierarchy.

**Department of Personnel & Training, Government of India, Office Memorandum No. DOPT-1669266628362, *Technical Resignation and Lien* (24 Nov. 2022), Clauses 3.1–3.5.**

Clauses 3.1 to 3.5 of the Department of Personnel and Training (DoPT) Office Memorandum dated 24 November 2022 (*Technical Resignation and Lien*) consolidate and restate the Central Government's regulatory position on *lien* under the Fundamental Rules, particularly FR 9(13), FR 14 and FR 15. Clause 3.1 reiterates that *lien*, as defined in FR 9(13), signifies the right of a Government servant to hold a regular post, whether permanent or temporary, either immediately or on the termination of a period of absence. The benefit of *lien* is available to employees confirmed in a post/service/cadre or promoted on a regular basis after completion of probation. However, this right is not absolute; rather, it remains subject to the structural discipline of cadre management, including the possibility of reversion of the junior-most officer where the number of *lien* holders exceeds the available posts. Thus, the Government conceptualises *lien* not merely as an individual entitlement but as a regulated incident of substantive appointment within a sanctioned cadre framework. Clause 3.2 elaborates the

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<sup>3</sup> Rule 9(13) of the Fundamental Rules, 1922 reads: "*Lien means the title of a Government servant to hold on regular basis, either immediately or on the termination of a period or periods of absence, a post, including a tenure post, to which he has been appointed on regular basis and on which he is not on probation: Provided that the title to hold a regular post shall be subject to the condition that the junior most person in the grade will be liable to be reverted to the lower grade if the number of persons so entitled is more than the posts available in that grade.*"

<sup>4</sup> Rule 13 of the Fundamental Rules, 1922 reads: "*A Government servant who has acquired lien on a post retains the lien 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; (c) during joining time on transfer to another post, unless he is transferred along with his title to a post of lower pay, in which case his lien is transferred to the new post from the date on which he is relieved of his duties in the earlier post; (d) while on leave; and (e) while under suspension.*

*Provided that no lien of a Government servant shall be retained: (i) where a Government servant has proceeded on immediate absorption basis to a post or service outside his service/cadre/post in the Government from the date of absorption; and (ii) on foreign service/deputation beyond the maximum limit admissible under the orders of the Government issued from time to time.*"

continuity and incidents of *lien*. A Government servant who has acquired a *lien* retains it while performing duties of the post, while on foreign service, while officiating or holding a temporary post, during joining time, leave, or suspension. Importantly, acquisition of *lien* on a post entails cessation of any previous *lien*, thereby reaffirming the principle that simultaneous substantive *liens* are impermissible. Clause 3.3 regulates retention of *lien* when a permanent Government servant joins another Central Government Department or a State Government. Ordinarily, such an employee must resign from the parent department unless he reverts within a stipulated period of two or three years; limited extensions are permissible in exceptional cases, subject to undertakings. Failure to revert or resign within the prescribed period may invite termination of *lien* after due opportunity. Temporary employees, however, are not entitled to retain *lien* when selected for outside posts. Clauses 3.4 codify the termination of *lien*. Termination of *lien* is strictly circumscribed, and it cannot be effected, even with the employee's consent, if the result would leave him without *lien* on a permanent post. Nonetheless, *lien* stands terminated upon acquisition of *lien* on another permanent post outside the cadre, or in cases of immediate absorption in another service, or where deputation/foreign service exceeds prescribed limits. Finally, clause 3.5 recognises that *lien* may be transferred to another post within the same cadre in accordance with FR 15, where the employee is not performing duties of the original post.

Together, these provisions highlight how, *lien* functions as a statutorily structured service right that is administratively regulated but protective in nature, guaranteeing continuity of substantive status while avoiding duality of posts and preserving organisational effectiveness. By maintaining the employee's security for a predetermined amount of time and preventing permanent blocking of positions in the parent cadre, these regulations represent a carefully calibrated cooperation between administrative mobility and cadre stability.

### **Constitutional Protection**

The doctrine of *lien*, as applied in Indian public employment, does not exist in isolation from the constitutional framework governing public service. Once a *lien* is conferred on a public servant, the recognition of *lien* as a right becomes more than a technicality, as acceptance of *lien* as a right establishes the constitutional guarantees of equality, fair opportunity and its protection must be evaluated against the constitutional guarantees of livelihood with dignity, continuity of employment, and vindication of vested interest.

## Article 14 - Right to Equality and Protection Against Arbitrariness

Article 14 of the Constitution of India, in the specific context of *lien*, has two significant applications. Firstly, no employer can revoke a *lien* of an employee in an arbitrary manner, without following due procedure. Secondly, treating employees situated/positioned in similar circumstances, differently by allowing some to retain their *lien* while denying it to others without any justified cause, would amount to discrimination under the Constitution. Article 14 does not allow arbitrary State action and requires revocation of *lien* to be reasonable, non-discriminatory, and legally valid. Declaring *lien* to be a privilege, based on administrative discretion, as opposed to a vested right, would be in blatant violation of the constitutional principles of arbitrariness and fairness, enshrined under Article 14 of the Constitution. This is because leaving the question of the grant of *lien* to administrative wisdom would lead to differentiation and discrimination among multiple groups and sections of employees in the absence of any reasonable nexus or intelligible differentia, which is impermissible under Article 14 of the Constitution. Thus, when *lien* is recognised under statutory provisions, it cannot be revoked, unless and until such revocation is reasonable, and is done through a procedure laid down in the law. Any capricious denial of *lien* would contravene the provisions of Articles 14 and 16 of the Constitution, which guarantees equality of opportunity in public employment. The Supreme Court has, at multiple instances, reiterated and reemphasised the fact that administrative action and discretion cannot be used in a manner contrary to the principles of fairness and reasonableness.<sup>5</sup>

## Article 21

Article 21 provides for the protection of livelihood and professional reputation, protecting employees from arbitrary deprivation of their substantive post. Article 21 safeguards livelihood, dignity, and meaningful involvement in one's vocation, including the employee's interest in continuing a substantive position with *lien*. The Supreme Court has ruled several times that livelihood is an integral part of the right to life under Article 21 of the Constitution; therefore, in case denial or withdrawal of *lien* is done without the proper process, it may also

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<sup>5</sup> In the case of *E P Royappa v State of Tamil Nadu* [1964 SCR (2) 348], the Court noted and observed that any action undertaken in an arbitrary manner, would be directly contravening the protection guaranteed under Article 14. Drawing a corollary, it can be concluded that an employee's *lien*, guaranteed through statute, cannot be taken away without any justified cause, or in contravention to the reasonable restrictions laid down in the constitution.

lead to the violation of the Constitution's right to livelihood and dignity.

### Articles 310 and 311: Doctrine of Pleasure and Protection Against Arbitrary Dismissal

Articles 310 and 311 constitute the classical framework for public employment in India. Article 310 recognises the doctrine of pleasure, granting the executive discretion in employment matters. However, Article 311 imposes procedural safeguards, ensuring that no civil servant is dismissed or removed without an enquiry in cases involving allegations of misconduct, and without giving a reasonable opportunity to respond. Articles 310 and 311 together establish the boundaries of executive discretion, providing administrative flexibility with procedural safeguards at the same time to avert arbitrary denial of service entitlements. *Lien*, being an entitlement under statutory rules, cannot be revoked solely at the discretion of the executive. Administrative action affecting *lien* must respect the procedural safeguards implicit in Article 311, such as notice, an opportunity to be heard, and reasoned decision-making. The confluence of Articles 310 and 311 establishes that while the State may regulate public employment, it cannot do so in a manner that negates substantive entitlements such as *lien*.

### Legitimate Expectation and Constitutional Harmony

An important doctrinal development in Indian administrative law is the principle of legitimate expectation, which protects expectations created by statutory provisions or consistent administrative practice. The Supreme Court has repeatedly held that when the State creates an entitlement through rules or settled practice, employees can legitimately expect the continuation of such benefits.<sup>6</sup> Theoretically, the characterisation of *lien* as a right or privilege also activates the doctrine of legitimate expectation. A confirmed employee can reasonably expect that their *lien* shall persist unless lawfully revoked. The characterisation of *lien* as a mere privilege denies this expectation and leaves the door open to State arbitrariness. In the case of *lien*, confirmed public servants acquire a legitimate expectation that their *lien* on the substantive post will be preserved unless lawfully terminated under the rules. Where statutory provisions give rise to a *lien* and enforce certain procedures for its removal, employees reasonably expect their right to be upheld.

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<sup>6</sup> In the case of *Ram Pravesh Singh and Ors. v. State of Bihar and Ors.* [2006 AIR SCW 5312], the Supreme Court noted: "a person can be said to have a legitimate expectation of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the regular and consistent past practice of the authority gives room for such expectation in the normal course".

## Decided Cases

The Supreme Court of India laid the constitutional foundation for the modern doctrine of *lien* in **Parshotam Lal Dhingra v. Union of India**<sup>7</sup>, as a substantive right to a permanent post within Indian service jurisprudence. The Court clarified that a substantive appointment to a permanent post confers upon a government servant a “*lien*”, defined under the Fundamental Rules as the title to hold substantively a permanent post to which one has been appointed substantively. This *lien* constitutes a vested civil right, entitling the employee to continue in the post without a break of service in the parent cadre. In contrast, probationary, officiating, or purely temporary appointments do not create such a right. By constitutionally embedding procedural safeguards against dismissal, removal, or reduction in rank under Article 311, derived from the earlier statutory protections of Section 240 of the Government of India Act, 1935, the Court effectively transformed the concept of *lien* from a rule-based service condition into a constitutionally protected incident of public employment. Therefore, this judgment marks the jurisprudential commencement of protection of *lien* in Indian constitutional law, establishing that only where a government servant holds a substantive right to a post, constitutional protection comes into play.

In **T.R. Sharma v. Prithvi Singh & Anr.**<sup>8</sup>, the Supreme Court examined whether a government servant’s *lien* on his parent post stood terminated upon substantive appointment to a permanent post outside his cadre. The appellant, substantively appointed and confirmed as an Agricultural Inspector, was later substantively appointed as Block Development and Panchayat Officer, a permanent post outside his parent Agricultural cadre. The Supreme Court held that the suspension of *lien* is automatic in effect and mandatory in character, and that a government servant cannot be prejudiced by the administrative failure of the competent authority to formally suspend the *lien*. Therefore, when the appellant was not confirmed in the new post, his *lien* on the original appointment revived.

In **Ramlal Khurana (Dead) by LRs v. State of Punjab & Ors.**<sup>9</sup> the Supreme Court deliberated upon the automatic extinction of *lien* upon substantive appointment in another cadre. The appellant, originally a clerk in the Police Department, was selected and appointed as Excise Sub-Inspector in the Excise Department. Upon his subsequent compulsory retirement

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<sup>7</sup> 1958 SCR 828

<sup>8</sup> 1976 SCR (2) 716

<sup>9</sup> 1989 (4) SCC 99

from the post of the Excise Commissioner, he contended that his *lien* in the parent Police Department had never ceased and was therefore entitled to continue therein. Rejecting this contention, the Court held that once the appellant acquired a substantive right in the ex-cadre post and resisted repatriation, the *lien* in the parent department stood extinguished. The Court clarified the conceptual meaning of *lien* in service law by noting: “*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.*”

In the case of **Triveni Shankar Saxena v. State of U.P. and Ors.**<sup>10</sup>, while dealing with the question of acquisition of *lien*, Supreme Court noted 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. Temporary or officiating service does not create *lien*. The appellant, initially appointed as a Lekhpal on a temporary basis, was subsequently selected as a Consolidator in the Consolidation Department and later promoted as Assistant Consolidation Officer. The appellant’s order of appointment as Lekhpal expressly described it as temporary, and there was no proof of confirmation. Upon termination of his services in 1971, he contended that he had been working in the Consolidation Department on deputation and retained *lien* over his substantive post of Lekhpal. The Court rejected this claim after examining both the nature of his original appointment and held that in the absence of substantive status in either post, the termination of his services as a temporary employee by a simpliciter order did not infringe any *lien*-based right. Since he never held the post of Lekhpal substantively, no *lien* could arise, and consequently, the protective provisions service regulation concerning termination or suspension of *lien* were inapplicable. From the perspective of *lien* jurisprudence, the decision established a fundamental principle i.e., confirmation to a permanent post is the *sine qua non* for acquisition of *lien*, and in the absence of such substantive status, neither reversion rights nor protection against termination can be claimed on the basis of *lien*.

In **Dr. S.K. Kacker v. All India Institute of Medical Sciences**<sup>11</sup>, the Supreme Court firmly

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<sup>10</sup> 1992 Supp (1) SCC 524

<sup>11</sup> (1996) 10 SCC 734

clarified the effect of substantive appointment to a tenure post on pre-existing *lien* under the Fundamental Rules. The Supreme Court decisively rejected the appellant's claim of continuing *lien* over his former post of Professor and Head of the ENT Department after completion of his five-year tenure as Director of AIIMS. The core issue was whether, upon expiry of his tenure as Director, a post described as a tenure post, he was entitled to revert to his earlier professorial position until superannuation. The Court held that the post of Director, though limited by tenure, was nonetheless a permanent post within the meaning of the Fundamental Rules and that he acquired *lien* on that permanent tenure post. In terms of FR 14-A(d), a government servant's *lien* on a post stands terminated upon acquisition of *lien* on a permanent post outside the cadre on which he is borne. The Court thus affirmed that upon substantive appointment as Director, the appellant lost his *lien* as Professor and Head of the ENT Department, and on expiry of tenure, he had no right of reversion. From the standpoint of *lien* jurisprudence, the judgment firmly establishes that acquisition of a substantive permanent tenure post outside the cadre results in automatic termination of prior *lien*, and that tenure character does not dilute the permanent nature of the post for purposes of *lien*.

In **S. Narayana v. Md. Ahmedulla Khan**<sup>12</sup>, the Supreme Court described the doctrinal precondition for the existence and termination of *lien* in service law. The appellant, originally appointed and later regularised as Senior Assistant, had been temporarily appointed as Extension Officer under the State and Subordinate Services Rules. His appointment as Extension Officer was expressly "purely temporary" and conferred no right of probation or preferential claim. Subsequently, the District Collector terminated his *lien* in the parent cadre of Senior Assistant on the ground that he had acquired *lien* in the permanent post of Extension Officer under Fundamental Rule 14-A(d). The controversy before the Court was whether the appellant had in fact acquired a *lien* in the post of Extension Officer so as to justify the termination of *lien* in the parent cadre. The Supreme Court held that the High Court had erred in equating regularisation with confirmation and in assuming that the appellant had acquired *lien* in the post of Extension Officer. Drawing upon established precedents, the Court reiterated that a *lien* arises only when an employee is confirmed and made permanent on a post. Since the appellant had never been confirmed in the post of Extension Officer, he could not be said to have acquired *lien* therein. Consequently, there was no legal basis for invoking Fundamental Rule 14-A(d) to terminate his *lien* in the parent cadre.

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<sup>12</sup> 2006 (10) SCC 84

In the case of **State of Rajasthan and Another v. S.N. Tiwari and Ors.**<sup>13</sup>, a permanent employee was sent on temporary posting as a Homoeopathic Doctor under the ESI Scheme and continued in that capacity until superannuation without ever being substantively confirmed in the new post. The State contended that his long continuance disentitled him from claiming promotional and pensionary benefits in the parent department. Rejecting this argument, the Court held that *lien* cannot be terminated unless the employee acquires a *lien* on another permanent post outside the cadre. The Court reaffirmed that *lien* signifies the right of a government servant to hold a post substantively and that such right is extinguished only upon acquisition of a substantive appointment elsewhere; mere temporary or ad hoc service, however prolonged, does not divest the employee of *lien*. While interpreting the word '*lien*' against the post appointed substantively with respect to another post, the Court noted: "*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.*" The appeals were accordingly dismissed, and the respondent's entitlement to service and promotional benefits in the parent cadre was upheld.

In the case of **State of Madhya Pradesh and Others v. Sandhya Tomar and Another**<sup>14</sup>, the Supreme Court again examined the doctrinal nexus between lawful substantive appointment and acquisition of *lien* and clarified that temporary or irregular appointees cannot claim *lien*-based protection. The respondent had been appointed as Project Director in a Child Labour Elimination Society on a temporary basis without a public advertisement or adherence to the constitutional requirements under Articles 14 and 16. The Court held that the respondent had no *lien* over the post of Project Director right of *lien* presupposes a lawful appointment in accordance with statutory procedure, followed by confirmation or permanence. A temporary engagement in a project, particularly one not governed by statutory rules and made without adherence to constitutional norms of recruitment, does not generate *lien*. Since the respondent lacked substantive status in the original post and had not been appointed on a regular basis, she could not claim a right of reversion or continuity. The Court aptly remarked: "*Lien connotes*

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<sup>13</sup> (2009) 4 SCC 700

<sup>14</sup> (2013) 11 SCC 357

*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."*

In **Arun Kumar Agrawal v. Union of India**<sup>15</sup>, the Supreme Court incidentally clarified the legal position on *lien* of a deputationist pending absorption while adjudicating a public interest challenge to the appointment of the Chairman of SEBI. The Court affirmed a settled principle of service jurisprudence, i.e., a deputationist continues to hold *lien* on his substantive post in the parent cadre until he is permanently absorbed elsewhere. From the perspective of *lien*, the judgment reinforced two important propositions. First, *lien* is a statutory incident of substantive appointment and survives deputation, even where the officer is drawing different emoluments in the borrowing organisation. Secondly, the legal status of the officer for purposes of declarations, retirement benefits, and service records must be determined with reference to the post on which he holds *lien*, not the post on which he is temporarily serving.

In **Sitikanatha Mishra v. Union of India**<sup>16</sup>, the Supreme Court examined the subsistence of *lien* following retrospective regularisation and contractual elevation within the framework of the amended Fundamental Rules. The appellant was appointed as Professor in the Indian Institute of Tourism and Travel Management (IITTM) in 1997 through a regular selection process, though initially described as contractual due to pending formal sanction of posts. Subsequently, his post of Professor was regularised retrospectively from the date of initial appointment. Meanwhile, in 2006, the appellant was appointed as Director of the same Institute on a contractual tenure basis. In this case, the Court distinguished earlier decisions and noted that the appellant's status as a regularised Professor *prima facie* entitled him to claim *lien*. Since he had neither resigned nor been permanently absorbed elsewhere, and since there was no express stipulation extinguishing his *lien* upon appointment as Director, the competent

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<sup>15</sup> 2014 (2) SCC 609

<sup>16</sup> [2015] 1 S.C.R. 16

authority was directed to reconsider the claim in light of the Court's findings.

In **L.R. Patil v. Gulbarga University, Gulbarga**<sup>17</sup>, an employee, who was substantively appointed and confirmed as Office Superintendent, was selected through direct recruitment as Assistant Registrar and was relieved under State Rules to take up the new post on probation but never confirmed due to pending litigation. His appointment to the new post was subsequently quashed by the High Court, and he was restored to his original post. The Supreme Court ruled that where a government servant has been confirmed in the original post and subsequently joins a new post on probation, the *lien* on the former post continues to subsist until permanent absorption or substantive confirmation in the new cadre. Since the appellant remained a probationer and was never substantively appointed or permanently absorbed as Assistant Registrar, his *lien* over the original post of Office Superintendent remained protected in law. Reaffirming earlier jurisprudence that *lien* ceases only upon substantive appointment to another permanent post, the Court rejected the University's argument that failure to expressly claim continuation of *lien* resulted in its extinction. The Supreme Court of India not only held that an employee's *lien* is a right, but also further went on to note that "*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*". *Lien*, being a statutory incident of substantive appointment, operates by rule and not by representation. Consequently, the Court restored his seniority in the parent cadre and granted notional promotional and pensionary benefits at par with his juniors, holding that the extinguishment of *lien* requires substantive confirmation elsewhere and cannot be inferred from a probationary or invalid appointment. This gives strength to the contention of the author that the legislative, administrative, as well as judicial intent lies in protecting and ensuring *lien* to an employee as a matter of right.

### **Administrative Intricacies**

#### **I. *Substance v. form: when does a post become 'substantive' so as to create/terminate lien?***

The settled legal position evolving from the judicial dictum of the Supreme Court is that *lien* attaches only when appointment to a post is regular and confirmed (not while merely officiating, on probation or temporary). This principle has been repeatedly attested in the case of *Ramlal Khurana*, *S.N. Tiwari*, *Sandhya Tomar*, and *Sitikanatha Mishra*. But

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<sup>17</sup> 2023 INSC 796

problems arise when appointments are ambiguous (tenure posts, composite appointments, confirmed-after-probation orders). The factual closeness of many appointments to the “substantive” threshold makes outcomes sensitive to small differences in wording or formality. In such circumstances, courts are then compelled to cautiously examine the appointment order, recruitment rules and any confirming resolutions to decide whether *lien* shifted or continued.

## II. *Tenure posts create a jurisprudential cross-current (protection of tenure vs lien transfer).*

A tenure appointment can be both (i) protected from premature termination (so the incumbent enjoys security of tenure), and (ii) a *permanent* post for *lien* purposes so that acquiring it substantively will extinguish the old *lien*. This tension was exemplified by *L.P. Agarwal* (tenure protection) and *S.K. Kacker* (acquisition of a substantive tenure post terminates previous *lien*). Administrators and courts must therefore distinguish (a) whether the question before them is premature retirement/curtailment of tenure or (b) whether a substantive appointment outside the cadre has shifted *lien*. Failure to separate the questions causes apparent contradictions in case law.

## III. *Rule-driven protections that administrators fail to implement (suspend/retain/terminate lien).*

The Fundamental Rules prescribe a standard procedure that every competent authority shall suspend *lien* when a substantive ex-cadre appointment is made and may not terminate a suspended *lien* except on the employee’s written request. However, in practice, competent authorities sometimes omit the formal suspension, mis-record entries in service books, or fail to obtain/scrutinise written requests, leading to service disputes where courts are asked to remedy administrative omission (*T.R. Sharma* is an example of the Court protecting an employee because the authority did not suspend *lien* as mandated). In some cases, employees are automatically perceived to retain their *lien* on the substantive post during their deputation or foreign service, while in other cases, they have to obtain permission to keep it. The discretionary nature of the situation leads to arbitrariness and defeats the constitutional guarantees of equality and fairness. Absent precise entries, financial wings and audit offices may refuse benefits even when courts declare *lien* subsisting, creating further litigation and delay.

For example, (i) administrators act arbitrarily and permits some employees to exercise this right whereas reject others’ applications in a biased manner or (ii) sometimes the

administrators compel the outgoing employee to resign from the post instead of entertaining any application for being relieved in due exercise of *lien* or (ii) refuse to entertain the *lien* applications upon the ground that notice period requirement of termination of service has not been complied with. All of these practices are absolutely against the well established service jurisprudence relating to *lien*.

#### **IV. Interplay among multiple rule-sets: Conflict & Choice of law.**

Different instruments (Fundamental Rules, State Government Service Rules, and Institutional Regulations) may phrase *lien* provisions differently. This leads to divergent outcomes depending on which instrument is chosen as governing the appointment. In such circumstances, Courts must decide which rule to be applied and how it needs to be harmonised with the well-established principles of service jurisprudence and principal guidelines laid down in Fundamental Rules.

#### **V. Equality and cadre management: blocked vacancies and competing claims.**

Administration of *lien* also engages broader structural tensions between individual tenure security and cadre management. Where *lien* is suspended but not terminated, posts in the parent cadre may remain blocked, creating administrative strain and resentment among juniors. The conflict between individual protection and organisational efficiency is a persistent policy problem.

### **Conclusion and Suggestion**

The doctrine of *lien*, which has been examined here, emerges as a vital instrument for protecting Indian public servants' rights, professional interests, and dignity. It is evident from a careful examination of the statutes, service regulations, constitutional principles and case law that *lien* is not an administratively granted discretionary prerogative. Rather, it is an intrinsic legal privilege associated with the substantive position that a permanent/regular employee occupies. These statutory rules are further supplemented by judicial decisions, which repeatedly affirm that administrative discretion cannot supersede settled rights without following protective safeguards. However, a structured approach would reconcile the protective function of *lien* with the institutional demands of public administration and promote greater consistency across benches.

A first and foundational reform would be the development of a clear and authoritative statutory

glossary within the framework of the Fundamental Rules, read together with consolidated executive instructions issued by the Department of Personnel and Training (DoPT). Such clarification would reduce litigation stemming from semantic or procedural confusion. Secondly, there is a pressing need to institutionalise mandatory and standardised service-book entries in cases involving technical resignation, deputation, or inter-cadre movement. A substantial portion of *lien*-related litigation emerges not from substantive disagreement but from administrative omission i.e., failure to record suspension of *lien*, absence of written undertakings, or unclear endorsement of pensionary continuity. Finally, judicial practice would also benefit from the articulation of a structured remedial matrix governing *lien* disputes. Courts should adopt a principled approach based on objective factors such as: (i) whether the employee was substantively confirmed in the new post; (ii) the duration of service rendered under the disputed appointment; (iii) demonstrable prejudice suffered; and (iv) considerations of public interest and administrative feasibility. By calibrating remedies to these factors, courts would enhance predictability and doctrinal coherence while preserving flexibility to do complete justice in individual cases.