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2023 SCC OnLine SC 155

In the Supreme Court of India

(BEFORE M.R. SHAH AND HIMA KOHLI, JJ.)

National Technical Research Organization and Others ... Appellants;

Versus

Dipti Deodhare ... Respondent.

Civil Appeal No. 413 of 2023

Decided on February 17, 2023

Advocates who appeared in this case :

For Appellant(s) Ms. Aishwarya Bhati, ASG

Mr. Rajat Nair, Adv.

Mr. Ketan Paul, Adv.

Ms. Shivika Mehra, Adv.

Ms. Alka Agrawal, Adv.

Mr. Mukesh Kumar Maroria, AOR

For Respondent(s) Mr. Gopal Sankarnarayanan, Sr. Adv.

Mr. Ankit Anandraj Shah, AOR

Mr. Vivek Beniwal, Adv.

Mr. Kumar Aditya, Adv.

Ms. Aditi Gupta, Adv.

Mr. Saurabh Rajpal, Adv.

The Judgment of the Court was delivered by

M.R. SHAH, J.:— The present appeal has been filed by the National Technical Research Organization and others, feeling aggrieved and dissatisfied with the impugned judgment and order dated 08.10.2021 passed by the High Court of Karnataka at Bengaluru in Writ Petition No. 10867/2021, by which the High Court, while allowing the said writ petition preferred by the respondent herein and setting aside order dated 31.05.2021 passed by the Central Administrative Tribunal, Bengaluru Bench, Bengaluru (hereinafter referred to as the 'Tribunal') dismissing O.A. No. 170/1318/2019, has directed that the order dated 12.02.2019 issued by the appellant(s) shall be read as an order of discharge simpliciter and that she shall be entitled to all consequential benefits including the benefit of past service that she had rendered in DRDO for computing her terminal benefits. The High Court has further made it clear that the respondent - original writ petitioner would be entitled to all such benefits as are permissible to her on the premise that she held the post of Scientist 'H' and the last drawn pay in that

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post would be the criteria for settling all her benefits.

2. The facts leading to the present appeal in a nutshell are as under:

That the respondent herein - original writ petitioner joined the services of Defence Research Development Organization (hereinafter referred to as 'DRDO') on 12.09.1988, as Scientist 'B'. That she got periodical promotions while working with the DRDO. That on 1.7.2013, she was promoted as Scientist 'G' and was heading the Intelligent Systems and Robotics Division in Centre for Artificial Intelligence and Robotics (for short, 'CAIR') of DRDO at Bangalore. That in the month of January, 2018, the NTRO issued a recruitment notification to fill up two posts of Scientist 'H' in Level 15 of the pay matrix. Initially, the notification stated that the recruitment was to be made on deputation including short term contract basis. However, subsequently, a corrigendum was published in the month of January, 2018 to fill up these posts on deputation (including short term)/absorption, failing which, on direct recruitment basis. The original writ petitioner, who was holding the post of Scientist 'G' in Level 14 of the pay matrix at CAIR, DRDO, applied for the post of Scientist 'H' in NTRO through her parent department, i.e., DRDO. Consequent to the approval of the Appointments Committee of Cabinet (ACC) for appointment in NTRO as Scientist 'H" dated 10.05.2018, the original writ petitioner was issued an offer of appointment on the terms and conditions mentioned in the offer of appointment including probation for a period of one year. On being selected and appointed as Scientist 'H' in NTRO on direct recruitment basis, the respondent - original writ petitioner tendered her technical resignation from the post of Scientist 'G' in DRDO, which came to be accepted on 22.6.2018 and DRDO relieved her to take up the new appointment in NTRO.

3. The original writ petitioner joined NTRO as Scientist 'H' on 26.2.2018 on direct recruitment basis with a probation period of one year. However, thereafter while she was on probation as Scientist 'H' in NTRO, the ACC *vide* order dated 12.02.2019 granted approval for her premature repatriation from the post of Scientist 'H' (on probation) in NTRO to her parent department cadre - DRDO with immediate effect. Accordingly, the respondent was relieved from NTRO on 12.02.2019 with instructions to report to her parent cadre - DRDO. Pursuant to the same, she reported for duty at CAIR, DRDO on 13.02.2019 and simultaneously she submitted another application requesting the Chairman, DRDO to issue formal orders for her appointment in DRDO, after repatriation from NTRO. She also requested the DRDO to issue formal orders to appoint her on a suitable post in the rank of Scientist 'H' in DRDO. Awaiting formal orders, she requested DRDO for three months leave on 19.2.2019. *Vide* approval dated 10.03.2019, NTRO

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conveyed approval of DRDO Headquarters of her joining at DRDO w.e.f. 13.02.2019 in the parent cadre as Scientist 'G' upon her premature repatriation from NTRO (Scientist 'H' on probation). That thereafter, the original writ petitioner requested NTRO to reinstate her and treat her application dated 19.03.2019 as three months' notice from 13.02.2019, for voluntary retirement.

4. It appears that in the month of April, 2019, the case of the original writ petitioner for promotion from Scientist 'G' to Scientist 'H' in DRDO came to be considered and she was informed to participate in the assessment for promotion. The original writ petitioner submitted her bio-data for such promotion and participated in the assessment. However, she was found 'unfit'. *Vide* communication dated 13.11.2019, the respondent was directed to report to CIAR, DRDO to join duty by 16.12.2019, failing which disciplinary action was to be initiated against her. That thereafter on 25.11.2019, the respondent herein filed OA before the CAT, Bengaluru challenging NTRO order dated 12.02.2019 (repatriating her to DRDO), DRDO order dated 13.11.2019 (by which she was directed to report to CIAR, DRDO to join duty by 16.12.2019) and seeking direction to accept her VRS application dated 19.03.2019. Before the Tribunal, all throughout, her case was that she was wrongly repatriated prematurely and sent to DRDO as Scientist 'G'. It was the specific case on behalf of the respondent - original writ petitioner that her VRS application ought to have been considered as Scientist 'H' in DRDO.

5. The Tribunal on consideration of the matter observed and held that the order dated 12.02.2019, was an order of discharge simpliciter during her probation period and as she had earlier rendered technical resignation from DRDO and/or appointment with DRDO on tendering a technical resignation, she continued to have lien with the DRDO and therefore, she was rightly repatriated to DRDO. The Tribunal also observed and held that once the respondent reported back to her parent organization and thereafter sought promotion to the post of Scientist 'H' and she was found 'not fit' thereafter, it was not open for her to contend that she should be voluntarily retired on the post of Scientist 'H' by DRDO. Consequently, the Tribunal dismissed the OA filed by the respondent herein. The judgment and order passed by the Tribunal was the subject matter before the High Court by way of the present writ petition. By the impugned judgment and order, the High Court has set aside the judgment and order passed by the Tribunal by observing that once the respondent was appointed as Scientist 'H' in NTRO on direct recruitment basis, NTRO could not have repatriated her on a lower post that she originally held in DRDO. The High Court has also observed that the concept of reversion in the case of direct recruitment would not arise and therefore, her repatriation as Scientist

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'G' to DRDO was illegal. However, thereafter the High Court has modified the order passed by the Tribunal and ordered that the order dated 12.02.2019, shall be read as an order of discharge simpliciter and that she shall be entitled to all consequential benefits including the benefit of past service that she had rendered in DRDO for computing her terminal benefits. The High Court has also made it clear that the respondent would be entitled to all such benefits as are permissible to her on the premise that she held the post of Scientist 'H' and the last drawn pay in that post would be the criteria for settling all her benefits. At this stage, it is required to be noted that the learned counsel appearing on behalf of the original writ petitioner did not press for the prayer to accept the VRS application.

6. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the National Technical Research Organization (NTRO) and others have preferred the present appeal.

7. Ms. Aishwarya Bhati, learned ASG appearing on behalf of the NTRO has vehemently submitted that in the facts and circumstances of the case, the High Court has committed a very serious error in directing to treat the order dated 12.02.2019 as an order of discharge simpliciter.

8. It is vehemently submitted by Ms. Bhati that once the respondent was repatriated to the original parent department, i.e., DRDO and in fact she resumed the duty with the DRDO, the respondent ceased to be the employee of the NTRO. It is submitted that therefore, the High Court has committed a serious error in directing to treat the order dated 12.02.2019 as an order of discharge simpliciter and further directing that she shall be entitled to all consequential benefits including the benefit of past services that she had rendered in DRDO for computing her terminal benefits. It is submitted that the impugned judgment and order passed by the High Court is contrary to the relevant Office Memorandum issued by the DOPT - FR-9(13).

9. It is submitted that DOPT O.M. dated 21.07.2014 (Probation & Confirmation) stipulates that during the probation period, the Appointing Authority may revert him/her to the post held substantively by him/her immediately preceding his/her new appointment, provided he/she holds a lien thereon or in other cases may discharge or terminate him/her from service. It is submitted that as per para 14 of the said O.M., a probationer reverted or discharged from service during or at the end of the period of probation shall not be entitled to any compensation.

10. It is submitted that in the present case, when the respondent was appointed as a direct recruit in NTRO, she was appointed on probation period and that she tendered the technical resignation from DRDO, however, her lien continued with the DRDO. It is submitted that

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therefore, during the probation period, when her work was not found satisfactory, a conscious decision was taken by the ACC to revert her back to the parent department, i.e., DRDO where she continued to have a lien. It is submitted that therefore, repatriating the respondent to her original parent department - DRDO, which was during the probation period when she was working with the NTRO, was absolutely in consonance with the DOPT O.M. dated 21.07.2014.

11. It is submitted that as such, as per FR-9(13) the word '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/she has been appointed on regular basis and on which he/she is not on probation. It is submitted that DOPT O.M. dated 17.08.2016 (Technical Resignation & Lien) stipulates that on technical resignation, seniority in the post held by the Government servant on substantive basis continues to be protected. It is submitted that therefore, on technical resignation, the seniority of the respondent continued to be protected as Scientist-G in DRDO.

12. Ms. Bhati, learned ASG has taken us to the relevant paras of the DOPT O.M. dated 17.08.2016, more particularly, paras 2.6, 3.1, 3.2(b), and 3.4.1. It is submitted that therefore a permanent Government servant appointed in another Central Government department/office/State Government has to resign from his/her parent department unless he/she reverts to that department within a period of 2 years or 3 years in exceptional circumstances, if not confirmed in the department where he/she has joined. It is submitted that in no circumstances, lien on a post held substantively can be terminated even with his/her consent, if the result will be to leave him/her without a lien upon a permanent post. It is submitted that in the present case, the respondent being a permanent Government servant and having a lien in the post of Scientist-G in DRDO, cannot avail of qualifying service for pensionary benefits as Scientist-H (on probation) under CCS (Pension) Rules, 1972, as she was on temporary service while on probation against the post of Scientist - H in NTRO.

13. It is further submitted that as per Rule 13 of the CCS (Pension) Rules, 1972, subject to provision of these Rules, qualifying service of a Government Servant shall commence from the date he/she takes charge of the post to which he/she is first appointed either substantively or in an officiating or temporary capacity……provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another services or post.

14. It is submitted that therefore, the High Court has materially erred in directing that the respondent is entitled to all consequential benefits including the benefit of past service that she had rendered in

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DRDO for computing her terminal benefits and to treat her discharge as discharge simpliciter from the service with NTRO.

15. Shri Gopal Sankaranarayanan, learned senior counsel while opposing the present appeal has vehemently submitted that in the facts and circumstances of the case, no error has been committed by the High Court in directing to treat the communication dated 12.02.2019 as discharge simpliciter and thereafter to consider and/or grant terminal benefits as Scientist 'H' from NTRO while considering her past service rendered in DRDO.

16. It is vehemently submitted by Shri Gopal Sankaranarayanan, learned senior counsel that vide communication dated 12.02.2019, the NTRO abruptly repatriated the respondent to DRDO as Scientist-G. It is submitted that when the respondent was appointed as direct recruit as Scientist - H with the NTRO and was on probation for a period of 2 years, thereafter, she could not have been repatriated to DRDO and that too on a lower post, i.e., Scientist-G.

17. It is submitted that after 12.02.2019, right from very beginning the respondent insisted for appointment/posting even with DRDO as Scientist - H, which will be evident from various communications. It is submitted that when the respondent was repatriated to a lower post namely Scientist-G at CAIR, DRDO and when no decision was taken to appoint her on the post of Scientist-H at CAIR, DRDO, the respondent proceeded on three months' leave. It is submitted that thereafter all throughout she continued to be on leave and never worked as Scientist - G in CAIR, DRDO.

18. It is submitted that even giving the bio-data to DRDO for promotion/appointment to the post of Scientist - H shall not come in the way of the respondent as in fact she was compelled to submit her bio data.

19. It is submitted that even the appellant passed on some instructions to the respondent, received on 24.04.2019, asking her to apply for leave through Director CAIR, DRDO and the respondent applied for 3 months' leave from 13.02.2019 to 28.06.2019. It is submitted that in fact the respondent had clarified that she had sought Earned Leave from 13.02.2019 to 28.06.2019.

20. It is submitted that the respondent chose to attend the Promotion Board as she was directed to do so and she had no choice in the matter. She attended without preparation at an extremely short notice of one day; as failure to do so could have invited disciplinary action. It is submitted that until resolution of her grievance against the NTRO order dated 12.09.2019, which she had formally conveyed to her superiors orally and in writing, the respondent was bound to obey every Government order issued to her.

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21. It is submitted that in her bio-data submitted to the Promotion Board, she specifically stated that she was attending the Board while on leave. It is submitted that in the said bio-data it was stated by her that she received a letter from CAIR on 29.03.2019, stating that she has been appointed to the post of Scientist G at CAIR, DRDO. This was only a statement of fact and the same cannot be said to be construed as the respondent's acceptance of DRDO's invalid order appointing her as Scientist-G.

22. It is further submitted that having worked as Scientist-H with the NTRO, which was a direct recruitment, she could not have reverted/repatriated as Scientist-G to her parent department - DRDO.

23. Now, so far as the submission on behalf of the appellant on her lien having continued with the DRDO is concerned, it is submitted that the said provision is in favour of the respondent and it is the respondent/employee, who had the discretion to continue the lien. It is submitted that there cannot be any automatic lien, that too, at the instance of the employer and/or subsequent employer. It is submitted that the lien is a right of a Government employee and the same is at the option of respondent and respondent cannot be forced to exercise her lien.

24. Relying upon the decisions of this Court in the case of *State of Rajasthan* v. *S.N. Tiwari*, (2009) 4 SCC 700 (paras 17 and 19) and *Ramlal Khurana (Dead) By LRs.* v. *State of Punjab*, (1989) 4 SCC 99 (para 8), it is vehemently submitted that as observed and held by this Court, a lien is entirely at the discretion of the employee. It is submitted that therefore, an employer cannot thrust a lien upon an employee, as it will have a detrimental impact on the employee's position and prospects.

25. It is further submitted by the learned senior counsel appearing on behalf of the respondent that even otherwise, the respondent is entitled to pension on the last pay drawn as Scientist-H. It is submitted that though the conditions of the NTRO appointment refers to the respondent's service being terminable under CCS (Temporary Service) Rules, 1965, the said rules nowhere states that the respondent is not entitled for pension on the basis of the last pay drawn. It is submitted that CCS (Temporary Service) Rules, 1965 shall be applicable to those employees who “do not hold a lien or a suspended lien on any post under the Government of India or any State Government”.

26. It is submitted that as per Rule 2 of CCS (Pension) Rules, 1972, there is no distinction between temporary and permanent employees in the application of Pension Rules. It is submitted that as per Rule 13 of the Pension Rules, qualifying service of a Government servant commences from the date he takes charge of the post to which he is first appointed substantively. It is submitted that in the present case,

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the respondent was first appointed substantively on 12.09.1988. She joined DRDO in the entry grade of Scientist 'B' on this date and after two years, her probation was confirmed. It is submitted that therefore, the respondent's qualifying service starts from 12.09.1988, i.e., the date on which she took charge of the post on which she was first appointed substantively.

27. Making above submissions, it is prayed to dismiss the present appeal.

28. We have heard learned counsel appearing on behalf of the respective parties at length.

29. By the impugned judgment and order, the High Court has allowed the writ petition preferred by the respondent herein and has quashed and set aside the judgment and order passed by the Central Administrative Tribunal dismissing the O.A. and has modified the order dated 12.02.2019 issued by the NTRO and has directed that the same be held and treated as an order of discharge simpliciter. By the impugned judgment and order, the High Court has also directed that under the order dated 12.02.2019, the services of the original writ petitioner - respondent herein shall stand discharged and that she shall be entitled to all consequential benefits including the benefit of past services that she had rendered in DRDO for computing her terminal benefits. The High Court has further clarified that the respondent herein - original writ petitioner would be entitled to all such benefits as permissible to her on the premise that she had held the post of Scientist - H and the last pay drawn in that post would be the criteria for settling all her benefits.

30. While considering the challenge to the aforesaid directions at the instance of the NTRO, few glaring dates and events are required to be noted, which are as under:—

(i) That the respondent herein - original writ petitioner was serving as Scientist - G in DRDO. Applications were invited by the NTRO for the post of Scientist - H for appointment as direct recruit. The respondent - original writ petitioner applied for the said post and was appointed in NTRO as Scientist - H on the approval of the ACC dated 10.05.2018. The original writ petitioner was served with the offer of appointment dated 11.05.2018 stipulating the terms and conditions, including the probation for a period of one year.

(ii) As the respondent - original writ petitioner was appointed in another Government organization, she was required to tender the technical resignation, which she tendered by submitting a technical resignation from the post of Scientist - G in DRDO, which came to be accepted on 22.06.2018 and the DRDO relieved her to take up the new appointment in NTRO. However, on

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submitting the technical resignation, the lien of the respondent on the post of Scientist - G in DRDO continued as per the relevant O.M.

(iii) At this stage, it is required to be noted that tendering a technical resignation from the post he/she was working on his/her appointment in another organization of the Centre/State on probation and to continue the lien till the probation period in the new organization is satisfactorily completed and/or he/she is permanently appointed in the new establishment, can be said to be in the interest of the employee and to the benefit of the concerned employee so that in case she is not made permanent and/or relieved during the probation period, she may not have to lose the job and she can go back and join the duty in the earlier establishment. Under the circumstances, on submitting the technical resignation from the post of Scientist - G in DRDO on her appointment on probation as Scientist - H in NTRO, she continued to have the lien on the post of Scientist - G in DRDO.

(iv) That during the probation period, it appears that her work was not found satisfactory and a conscious decision was taken by the ACC not to continue her in NTRO and to relieve her as Scientist - H in NTRO and to repatriate her to her parent department - DRDO on the post of Scientist - G as her lien on the post of Scientist - G came to be continued as observed hereinabove. The respondent - original writ petitioner came to be relieved from NTRO on 12.02.2019 on the approval of the ACC received for her pre-mature repatriation from the post of Scientist - H (probation) in NTRO to her parent cadre - DRDO. In fact, thereafter, the respondent reported for duty at CAIR, DRDO on 13.02.2019 itself. However, simultaneously, she requested that she may be appointed in a suitable post in DRDO. No orders were passed and she continued to be the employee of the DRDO on and after 13.02.2019. Thereafter, she proceeded on three months' leave as Scientist-G in DRDO. Therefore, once she reported for duty at CAIR, DRDO and she proceeded on leave for three months as Scientist - G at CAIR, DRDO on the post earlier held by her, i.e., Scientist - G, on which her lien in DRDO continued on her submitting the technical resignation earlier, she ceased to be the employee of NTRO and, that too, as Scientist - H in NTRO.

(v) At this stage, it is required to be noted that even thereafter, the respondent requested NTRO to reinstate her and to treat her application dated 19.03.2019, as three months' notice for VRS. Therefore, her request for reinstatement in NTRO itself would suggest that the respondent - original writ petitioner was relieved from NTRO as then and then only would the question of

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reinstatement arise.

(vi) That thereafter, the respondent-original writ petitioner insisted for appointment/posting as Scientist - H. Her case for promotion to the post of Scientist - H came to be considered by the Recruitment Assessment Centre. She submitted the application to the Director, Recruitment Assessment Centre for promotion to the post of Scientist - H. She sent her bio-data. She reported for the performance assessment at Hyderabad. Thereafter, she was found "not fit" for the promotion to the post of Scientist - H in DRDO. In the bio-data, she specifically stated that she is working as Scientist - G. The case set up on behalf of the respondent that she was compelled to submit the bio-data and/or compelled to appear for assessment of appraisal for promotion to the post of Scientist - H, cannot be accepted. No such grievance was made at the time when she appeared for interview for promotion to the post of Scientist - H in DRDO. She applied for the leave/earned leave from 13.02.2019 to 28.06.2019 as Scientist - G and even thereafter, she applied for forty days leave extension.

31. Considering the aforesaid facts and circumstances, it can be seen that on and from 13.02.2019, the respondent can be said to be the employee of DRDO and in any case, she cannot be said to have been continued in NTRO and/or on and from 13.02.2019, she cannot be treated to be an employee of the NTRO. In that view of the matter, the High Court has committed a very serious error in issuing the directions as above, more particularly, of treating the communication dated 12.02.2019, as an order of discharge simpliciter. The High Court has also committed a very serious error in ordering that under the order dated 12.02.2019, the services of the original writ petitioner - respondent herein shall stand discharged and she shall be entitled to all consequential benefits including the benefit of the past services that she had rendered in DRDO for computing her terminal benefits. We fail to appreciate under which provision, has the High Court issued such a direction that she shall be entitled to all consequential benefits including the benefit of past services that she had rendered in DRDO for computing her terminal benefits directed to be paid by NTRO. The directions issued by the High Court are self-contradictory.

32. Even otherwise, the High Court has committed a serious error in observing that the original writ petitioner - respondent herein would be entitled to all such benefits as are permissible to her on the premise that she held the post of Scientist - H and the last pay drawn in that post would be the criteria for settling all her benefits. Once, she was relieved from NTRO and she had reported for duty as Scientist - G in DRDO as observed hereinabove, thereafter she cannot be permitted to claim that she had continued working as Scientist - H in NTRO.

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33. Even otherwise, it is required to be noted that the respondent was appointed as Scientist - H in NTRO as a direct recruit, on probation and her probation period was not completed. Before her probation period was completed/over, she was relieved. Therefore, even as per the CCS (Pension) Rules, 1972, she could not have been given the pensionary benefits/terminal benefits as Scientist - H in NTRO.

34. In view of the above and for the reasons stated above, the impugned judgment and order passed by the High Court is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside and the judgment and order passed by the CAT is restored. However, to do complete justice, we direct that if the original writ petitioner - respondent herein so wishes, she may press the prayer to accept her VRS application, which may be considered by the DRDO. If she presses her VRS application to voluntary retire her, the same may be considered positively. However, the same shall be done by the DRDO on the post of Scientist - G so that the respondent can get all other benefits, which may be available to her on accepting her voluntary retirement application, as otherwise also, she continued to have a lien on the post of Scientist - G in DRDO, as has been observed hereinabove.

35. With this, the present appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

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