

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: .10.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.VENUGOPAL

REV.APPLN.No.217 OF 2015
CONT.PETN.No.545 of 2014

Rev.Appln.No.217 of 2015:

1.The State of Tamil Nadu,
 represented by the Secretary to Government,
 Animal Husbandry and Fisheries Department,
 Secretariat, Chennai-9.

2.The Secretary to Governor,
 Governor's Secretariat,
 Raj Bhavan,
 Chennai-600 022.

3.The Director of Animal Husbandry,
 Chennai-6.

....

Applicants

-VS-

1.S.Nagaraj
 2.C.Narasimhaiah

...

Respondents

Cont.Pet.No.545 of 2014 :

S.Nagaraj

...

Petitioner

-VS-

Mr.Ramash Chand Meena, I.A.S.,
 Secretary to Governor,
 Governor's Secretariat,
 Raj Bhavan,
 Chennai-22.

...

Respondent

Review Application No.217 of 2015 has been filed, for a review of the order, dated 18.04.2012, passed by a Division Bench of this Court, in W.A.No.224 of 2011.

Contempt Petition No.545 of 2014 has been filed, to punish the respondent for wilful disobedience of the order of this Court made in W.A.No.224 of 2011, dated 18.04.2012.

For applicants in Rev.Application &
respondent in Cont.Petition : Mr.P.H.Arvind Pandian
Addl. Advocate General

For respondent 1 in Rev.Application &
petitioner in Cont.Petition : Mr.L.Chandrakumar

ORDER

(Order of this Court was made by **S.MANIKUMAR, J.**)

Respondent, S.Nagaraj, was initially selected and appointed to the post of Steno-Typist through Employment Exchange in Animal Husbandry Department, Chennai, and he joined the said post on 01.08.1983. His services were regularised in the said post on 25.06.1984. He has completed his probation. While so, Secretary to the Governor, Governor's Secretariat, Chennai, State of Tamil Nadu, in his letter, dated 01.09.1987, addressed to all the Heads of Departments in the City of Madras, notified that two posts of Assistants in the Governor's Secretariat, have to be filled up. In the said letter, the Secretary to the Governor, State of Tamil Nadu, has stated, that the method of appointment is, by recruitment by transfer, from among Junior Assistants and Personal Clerks, eligible for

appointment as Junior Assistant in the Tamil Nadu Ministerial Service. The qualification prescribed for the said post and the method of recruitment for appointment to the two posts of Assistants in the Governor's Secretariat as per the letter, dated 01.09.1987, are as follows :

Recruitment by Transfer :

(1) must hold a B.A., or B.Sc., B.Com.

(2) must have passed the Government Technical Examinations in Typewriting and Shorthand in English and Tamil or English only, by the Higher Grade.

There were other conditions as well. The Secretary to the Governor, State of Tamil Nadu, vide letter, dated 01.09.1987, has requested all the Heads of Departments in the City of Madras, to suggest names of willing candidates, satisfying the qualifications for selection and appointment, as Assistant in the Governor's Secretariat, on transfer. Pursuant to the said request, the respondent has submitted his application for the said post, in the Governor's Secretariat.

2. Material on record discloses that vide letter No.7502/G3/87, dated 14.01.1988, the Secretary to the Governor, has informed the Director of Animal Husbandry, Chennai that the respondent, S.Nagaraj, has been selected for appointment as Assistant in the Governor's Secretariat, Raj Bhavan. Vide letter of the Governor's Secretariat, dated 20.01.1988, the respondent was to be relieved. Accordingly, the Director of Animal Husbandry, Chennai, has issued proceedings in

R.C.No.206848/R2/87, dated 20.01.1988, relieving the respondent from the post of Steno-Typist, Directorate of Animal Husbandry, Chennai, with effect from 20.01.1988 A.N., and that he was directed to join the Governor's Secretariat, in the Forenoon of 21.01.1988. The respondent has been further instructed to hand over the responsibilities of the post of Steno-Typist to the Personal Assistant, Mrs.Elizabeth Annabai, in the office of the Directorate of Animal Husbandry, Chennai. The latter has been directed to take over the responsibilities of the post of Steno-Typist, from the respondent, S.Nagaraj. Both have been directed to report the details of handing over and taking over immediately. Material on record further discloses that vide office proceedings No.752/G3/87, dated 04.02.1988, the Secretary to the Governor, Governor's Secretariat, has issued an order, appointing the respondent, as Assistant with effect from 21.01.1988. Order, dated 04.02.1988, reads as follows:

"GOVERNOR'S SECRETARIAT

OFFICE ORDER No.7502/03/87, DATED : 4.2.1988

Sub : Establishment - Governor's Secretariat - Thiru.
S.Nagaraj, Steno-Typist, Directorate of Animal
Husbandry - Appointed as Assistant in the
Governor's Secretariat on transfer - Ordered.

Ref : 1.Letter No.7502/G3/87, Governor's Secretariat,
dated 1.9.87.
2.Letter No.142209/R2/87, dated 25.9.87 of the
Director of Animal Husbandry, Madras.
3.Letter No.7502/G3/87, Governor's Secretariat,
dated 14.1.1988.
4.Proceedings No.206848/R2/87, dated 20.1.88 of
the Director of Animal Husbandry, Madras.

Under sub-rule 4 (iii) of Rule 4 of the Tamil Nadu Secretariat Service Rules (Section 29), Thiru S.Nagaraj, Acting Steno-Typist, Directorate of Animal Husbandry, Madras, is appointed as Acting Assistant in the Governor's Secretariat on transfer, with effect from 21.1.1988 F.N. His pay is fixed at Rs.780/- in the scale of pay of Rs.610-20-730-25-955-30-1075 with usual allowances admissible under the rules. He is also eligible to draw a special pay of Rs.140/- per month for his shorthand and typewriting qualifications. He is also entitled for special rate of House Rent Allowance in lieu of rent free quarters from 21.1.1988, till he is allotted quarters in Raj Bhavan Campus.

R.SANATHANAM
SECRETARY TO GOVERNOR"

3. Subsequently, after eight years, vide proceedings in No.737/SC/96, dated 25.11.1996, of the Secretary to the Governor, the respondent, who has gained promotion to the post of Assistant Section Officer in the Governor's Secretariat, Chennai, has been relieved of his duties, on the afternoon of 29.11.1996, and that he has been directed to report to the Director of Animal Husbandry, Chennai-6. Being aggrieved by the same, the respondent has filed O.A.No.343 of 1997 before the Tamil Nadu Administrative Tribunal, Chennai, to quash the proceedings No.737/SC/96, dated 25.11.1996, of the Secretary to the Governor, Governor's Secretariat, Chennai, respondent No.2 therein, and sought for a direction to the respondents therein, to retain the respondent in the office

of the Governor's Secretariat, Chennai, with all necessary service benefits, by issuing a writ of certiorarified mandamus, or any other Writ. Secretary to the Governor, Governor's Secretariat, Chennai, respondent No.2 therein, has filed a reply affidavit, stating that the respondent was never permanently absorbed in the Governor's Secretariat, and that he was treated only as a transferee/deputationist. The Secretary to the Governor, Chennai, respondent No.2 therein, has further stated that in the past, several persons appointed on transfer or deputation to the office of the Governor's Secretariat have been reverted back to their parent departments, even after a lapse of several years. It was also contended that the respondent had not in any manner expressed his intention or option to be absorbed permanently in the Governor's Secretariat nor he had intimated to his parent department any time that he would not have any lien of his service in the parent department.

4. Material on record further discloses that subsequently, in Animal Husbandry and Fisheries Department, Chennai, vide proceedings No.118351/R2/99/1, dated 12.05.2000, of the Director, Veterinary Services, Chennai, the respondent has been upgraded as Steno-Typist, Grade-II, and, accordingly, his pay has been fixed. Based on the letter of the Deputy Secretary to the Governor, Governor's Secretariat, Chennai, enclosing a copy of the letter of one Mr.K.Seeralan, formerly Steno-Typist of the Directorate of Veterinary Science Services, Chennai, working as Assistant Section Officer in the Governor's

Secretariat, proceedings have been issued in R.O.C.No.30764/R2/2000, dated 24.10.2003, by the Director of Veterinary Science Services, Chennai, terminating the lien of Mr.K.Seeralan, with effect from 02.01.1991, in Animal Husbandry Department, Chennai. In the proceedings, dated 24.10.2003, reference has been made to the option of Mr.K.Seeralan, Assistant Section Officer, Governor's Secretariat, to relinquish his lien/service rights, in the parent department i.e., Animal Husbandry Department, with effect from 02.01.1991, the date on which he had joined the Governor's Secretariat. On transfer, the said Original Application has been renumbered as W.P.No.28103 of 2008, on the file of this Court.

5. Before the Writ Court, the respondent has contended that he was duly appointed, in terms of the statutory rules, for the post of Assistant in Governor's Secretariat, vide proceedings No.7502/G3/87, dated 04.02.1988, by the Secretary to Governor, and was allotted a quarters inside Raj Bhavan, by proceedings, dated 01.10.1989; was sent for in-service training during February,1990, his scale was fixed vide proceedings, dated 16.07.1991, was given appropriate increment; that on 07.10.1994, he was posted to act as Personal Clerk to the Deputy Secretary to the Governor, in the cadre of Assistant Section Officer, and when a Section Officer Mr.P.Thangaraj was reverted to his parent department, the respondent was directed to take over the charge from the said Thangaraj. Thus, when recruitment and appointment to the Governor's Secretariat, have been made, following the statutory rules, for the post of Assistant, in the Governor's

Secretariat, proceedings No.737/SC/96, dated 25.11.1996, of the Secretary to the Governor, Governor's Secretariat, Chennai, respondent No.2 therein, reverting him back to the Directorate of Animal Husbandry Department, Chennai, was wholly illegal. Contentions have also been raised, that when the respondent did not hold any lien in the Directorate of Animal Husbandry Department, Chennai, there was no need for him to exercise his option to terminate. Reference has also been made to the decisions of the Hon'ble Supreme Court in **Ram Lal Khurana v. State of Punjab**, reported in **1989 (4) SCC 99**; **State of Punjab and Others v. Inder Singh and Others**, reported in **1997 (8) SCC 372**, and **State of Rajasthan v. S.N.Tiwari**, reported in **2009 (4) SCC 700**, wherein dictionary meaning of the word "Lien", has also been considered.

6. Having regard to the material on record, submissions and decisions of the Hon'ble Supreme Court, stated supra, a learned single Judge of this Court, vide order made in W.P.No.28103 of 2006, dated 30.09.2009, allowed the Writ Petition and set aside the order, dated 25.11.1996 of the Secretary to the Governor. At this juncture, it is also worthwhile to extract Rule 3-A of the Tamil Nadu Secretariat Service Rules, which applies to the staff of the Governor's Secretariat.

"Category Method of appointment 3(a) Assistants in the
Departments of Secretariat other than the Law Department

and the Governor's Secretariat

i) by recruitment by transfer from the category of Junior Assistants in the Tamil Nadu Ministerial Service or in the Tamil Nadu Judicial Ministerial Service.

ii) by promotion from the category of Personal Clerks or Typists; or

iii) for special reasons, recruitment by transfer from any other service."

At Paragraphs 12 and 13, a learned single Judge has observed as follows:

"12. It is now stated that amendments were issued amending the Special Rules for the Tamil Nadu General Service by G.O.Ms.No.1728 Public (Political.B) Department dated 10.10.1984 with retrospective effect from 13.06.1973. The said amendment deals with the posts relating to :

Under Secretary to the Governor Personal Assistant to the Governor Section Officer, Governor's Secretariat.

13. In Rules 6 and 7, it was stipulated as follows:

6. Tenure of appointment:- (a) Appointment to the posts by recruitment by transfer of a member of any service, other than the Tamil Nadu Secretariat Service, shall be for such a period as the appointing authority considers it necessary.

b) A member of any service, other than the Tamil Nadu Secretariat Service, appointed to the posts by recruitment by transfer shall not, by reasons only of such appointment, cease to be a member of the service from which he has been

appointed nor shall such appointment confer on him any claim to substantive appointment to the post or appointment thereto in any subsequent acting or temporary vacancy.

7.(a) Nothing contained in these rules shall adversely affect any person who was appointed to the post of Personal Assistant to the Governor or Section Officer, Governor's Secretariat before the date of publication of these rules and of the rights and privileges, including probation and right for reappointment or confirmation to which he was entitled under any rules or orders applicable to him before that date."

Decisions considered by the writ court are extracted hereunder :

(1) **Ramlal Khurana v. State of Punjab**, reported in **1989 (4) SCC 99**, the Hon'ble Supreme Court held as follows:-

"8.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."

(2) In **State of Punjab and Others v. Inder Singh and Others**, reported in **1997 (8) SCC 372**, the Hon'ble Supreme Court held as follows:

"18. The concept of "deputation" is well understood in service law and has a recognised meaning. "Deputation" has a different connotation in service law and the dictionary meaning of the word "deputation" is of no help. In simple words "deputation" means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The law on deputation and repatriation is quite settled as we have also seen in various judgments which we have referred to above. There is no escape for the respondents now to go back to their parent departments and working there as Constables or Head Constables as the case may be."

(3) In **State of Rajasthan v. S.N.Tiwari**, reported in **2009 (4) SCC 700**, the Hon'ble Supreme Court held as follows:

"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 **Ramlal Khurana v. State of Punjab**, observed that: (SCC p.102, para 8) "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.

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 and 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 and 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.

21. Be it noted that no objections were raised when the respondent employee gave his option on 8.4.1991 duly informing all the concerned that his lien in the Subordinate Statistical Service had to be maintained for the purposes of promotions to higher posts/protection of financial interests, etc. In such view of the matter the respondent employee always had his lien in his parent department. The State at this stage cannot be allowed to turn round and say that the respondent employee did not retain lien against his post in the parent department."

7. Being aggrieved by the decision in W.P.No.28103 of 2006, dated 30.09.2009, State of Tamil Nadu, represented by the Secretary to the Government, Animal Husbandry and Fisheries Department, Chennai, and two others, have filed W.A.No.224 of 2011. Before the appellate Court, the Secretary to the Government, Animal Husbandry and Fisheries Department, Chennai, and others have contended that the respondent was posted in the Governor's Secretariat on transfer, and vide order, dated 25.11.1996, he was retransferred to the parent department, and that there was no illegality. Contention has also been made that the option exercised by the respondent to work in Governor's Secretariat, by itself, would not confer any right on him, for permanent absorption. It is also contended that the respondent was not permanently absorbed in the Governor's Secretariat and, therefore, he has no right whatsoever

to claim appointment in the Governor's Secretariat Service. Appellants have also contended that consequent to the order, dated 25.11.1996, the respondent has joined the parent department, and was restored his original seniority, and that he has also enjoyed benefits, in the original department. Adverting to the abovesaid contentions and submissions, the Hon'ble Division Bench of this Court, in its judgment, dated 18.04.2012, in W.A.No.224 of 2011, at paragraphs 9 to 11, held as follows :

"9. Once the first respondent was selected and appointed in the Governor's Secretariat, Raj Bhavan, after relieving him from the parent department of Animal Husbandry and instructing him to join the Governor's Secretariat with effect from 21.1.1988 Fore Noon, he cannot be relieved from his duties in the Governor's Secretariat and directed to join in the Animal Husbandry, from which Department he was selected and appointed.

10. Learned single Judge, after going through the materials placed on record and relying on the authorities, set aside the transfer order and allowed the writ petition. Challenging the said order, the appellants filed the present writ appeal on flimsy ground, not based on the legal proposition. Law is very clear that the first respondent should not be relieved from the post which he is holding in the Governor's Secretariat, once he has become permanent member of the Governor's Secretariat, Raj Bhavan.

11. In such view of the matter, we agree with the cogent reasons given by the learned single Judge. The writ appeal fails and the same is dismissed. The appellants are directed to give reposting order to the first respondent in the Governor's

Secretariat, Raj Bhavan, Chennai, and give all consequential benefits on par with his juniors in the Governor's Secretariat within a period of two weeks from the date of the receipt of a copy of this order. Consequently, the connected M.P.is also dismissed. However, there shall be no order as to costs."

8. Material on record further discloses that being aggrieved by the decision in W.A.No.224 of 2011, dated 18.04.2012, the Secretary to the Government, Government of Tamil Nadu, and two others, have filed a Special Leave Petition (Civil) No.21401 of 2012, wherein the Hon'ble Supreme Court, while ordering notice on 30.07.2012, has ordered as follows :

"One of the contentions urged by learned counsel appearing for the petitioner is that the first respondent still holds lien in his parent department i.e., Animal Husbandry Department. In view of the submission, let notice issue."

9. In the meanwhile, vide order, dated 14.12.2012, of the Director of Animal Husbandry Services, Chennai, the respondent has been promoted as Superintendent in Animal Husbandry Department in the Pay Band, P.B.2-Rs.9300-34800+Grade Pay Rs.4800/-. Special Leave Petition (Civil) 21401 of 2012 has been dismissed on 25.10.2013, as hereunder :

"Upon hearing counsel, the Court made the following order :

Special Leave Petition is dismissed"

10. Contending, inter alia, that the Hon'ble Supreme Court has dismissed

the S.L.P., without going into the merits, and, therefore, a Review Petition is maintainable; and that so far, the respondent has not terminated his lien in the parent department, Review Petition has been filed. The further contention in the Review Petition is that subsequent events were not brought to the notice of both the writ court and appellate court and thus, the matter was decided in favour of the respondent.

11. Contempt Petition No.545 of 2014 has been filed by the respondent, praying to punish the Secretary to the Governor, Governor's Secretariat, Chennai, for disobedience of the order of this Court, made in W.A.No.224 of 2011, dated 18.04.2012.

12. Advancing the arguments, heavily harping on the word "Transfer", mentioned in the appointment order, dated 04.02.1988, issued by the Secretary to the Governor, Mr.P.H.Arvind Pandian, learned Additional Advocate General, appearing for the State, submitted that the respondent was appointed as an Assistant in the Governor's Secretariat, by transfer. Referring to the contents of the proceedings, dated 24.10.2003, issued by the Director of Veterinary Services, Chennai, he submitted that one Mr.K.Seeralan, Assistant Section Officer, in the Governor's Secretariat, Chennai had opted to relinquish his lien/service rights in the parent department, viz., Directorate of Animal Husbandry, Chennai, with effect from 02.01.1991, the date on which, he joined the Governor's Secretariat,

Chennai, and, while accepting the option of the said individual, forwarded by the Deputy Secretary to the Governor, in his proceedings No.5675/C3/J2000, dated 17.05.2001, in exercise of the powers conferred in Fundamental Rule 14-b, the Director of Veterinary Services, Chennai, has issued a letter dated 24.10.2003, terminating the lien of Mr.K.Seeralan, with effect from 02.01.1991, in Animal Husbandry Department, Chennai.

13. Learned Additional Advocate General, therefore, submitted that when the respondent has not exercised his option to terminate his lien, in the post of Steno-Typist, in Animal Husbandry Department, he cannot be said to have been permanently absorbed, in the Governor's Secretariat and, as such, there is no illegality in the order, dated 25.11.1996, of the Secretary to the Governor, relieving the respondent back to Animal Husbandry and Fisheries Department, Chennai. He has also submitted that the respondent has gained promotion and other benefits, in the parent department. Likewise, the incumbent Mr.K.Seeralan, in the Governor's Secretariat, has been promoted to higher levels. It is the further contention of the learned Additional Advocate General, that, if for any reason, that this Hon'ble Court is not inclined to accept the ground in challenge made in the Review Petition, and if the directions given in W.A.No.224 of 2011, dated 18.04.2012, have to be implemented, then, the respondent can, at best, be conferred only with the benefits on par with that of his junior, provided, he satisfies the eligibility conditions prescribed for the higher posts, as per the

recruitment rules.

14. Responding to the above contentions and by inviting the attention of this Court to the recruitment rules for the post of Assistant in the Governor's Secretariat, Mr.L.Chandrakumar, learned counsel for the respondent submitted that under the recruitment rules, there are three modes of appointment viz., (1) recruitment by transfer from the category of Junior Assistants in the Tamil Nadu Ministerial Services or in the Tamil Nadu Judiciary; (2) for promotion from the category of Personal Clerks or Typists; and (3) for special reasons, recruitment by transfer from any other service.

15. Taking this Court through the letter, dated 01.09.1987, of the Secretary to the Governor, addressed to all the Heads of Departments in the city of Madras, learned counsel for the respondent further submitted that the Governor's Secretariat chose to recruit and appoint eligible persons, by resorting to the last mode of recruitment; and, such recruitment and appointment made by the Governor's Secretariat cannot be said to be a mere transfer, from the Directorate of Animal Husbandry, Chennai, or deputation and, therefore, it is inappropriate to treat the respondent, as a transferee or deputationist. He also submitted that the respondent has been appointed substantively to the post of Assistant in the Governor's Secretariat, granted increments, and that he has also gained promotion as Assistant Section Officer. According to him, on 07.10.1994,

the respondent has also acted as Personal Clerk to the Deputy Secretary to the Governor, in the cadre of Assistant Section Officer.

16. Learned counsel for the respondent further submitted that the trouble started, when the respondent gave a letter, dated 07.10.1996, to the Secretary to the Governor, Governor's Secretariat, Chennai, to consider him, for the post of Private Secretary to the second respondent, or his post be upgraded as Section Officer; and after a month, vide order, dated 30.11.1996, of the Secretary to the Governor, Governor's Secretariat, he was reverted back to the Animal Husbandry Department, as a Steno-Typist. He further submitted that all the promotions given to the incumbent Mr.K.Seeralan in the Governor's Secretariat, were subject to the result of the writ petition/writ appeal, and, therefore, in the event of the Review Petition, filed by the Secretary to the Government, Animal Husbandry Department, and two others, being dismissed, all the service benefits, which ought to have been given to the respondent should be restored in the Governor's Secretariat, from the date, on par with his junior, which means, that he should be placed above his junior.

17. Refuting the contentions of the learned Additional Advocate General, appearing for the State of Tamil Nadu, Mr.L.Chandrakumar, learned counsel for the respondent further submitted, that, by denying the benefits, which ought to have been given, the Secretary to Government, Animal Husbandry Department,

and others cannot take advantage of their mistake, and impose any fresh conditions, on the ground of suitability.

Heard the learned counsel for the parties and perused the materials available on record.

18. In Halsbury's Law of England [4th edn, Vol 28, p 221, para 502], it is stated: In its primary or legal sense, 'lien' means a right at common law in one man to retain that which is rightfully and continuously in his possession belonging to another until the present and accrued claims are satisfied.

19. In Stroud's Judicial Dictionary, 5th edn, Vol 3, p.1465, 'lien' means without effecting a transference of the property in a thing, the right to retain possession of a thing until a claim be satisfied, and it is either particular or general. So, as regards Scotland, 'lien' is defined as including 'the right of retention', or it 'shall mean and include right of retention'.

20. In Black's Law Dictionary, 6th edn, p.922, the following passage is found: 'The word 'lien' is a generic term and, standing alone, includes liens acquired by contract or by operation of law'.

21. In **Parshotam lal Dhingra v. Union of India** reported in **AIR 1958 SC**

36, the Supreme Court held as follows:

"In the absence of any special contract the substantive appointment to a permanent post gives the servant so appointed a right to hold the post until, under the rules, he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years' service or the post is abolished and his service cannot be terminated except by way Of punishment for misconduct, negligence, inefficiency or any other disqualification found against him on proper enquiry after due notice to him. An appointment to a temporary post for a certain specified period also gives the servant so appointed a right to hold the post for the entire period of his tenure and his tenure cannot be put an end to during that period unless he is, by way of punishment, dismissed or removed from the service. Except in these two cases the appointment to a post, permanent or temporary, on probation or on an officiating basis or a substantive appointment to a temporary post gives to the servant so appointed no right to the Post and his srvice 'may be terminated unless his service had ripened into what is, in the service rules, called a quasi-permanent service."

22. In **Pranabandhu Pradhan v. Collector, Cuttack** reported in **1977 (2) SLR 522**, the petitioner therein was a Grade II Assistant in the Bureau of Statistics and Economics. Before he came to this post, he got his original appointment as a temporary lower division clerk in the Collectorate on 18.06.1955. Thereafter, he got his promotion in the Collectorate and came to the appointed as Head Clerk in the Sadar Tahsil Office, Cuttack, on 01.08.1964. On his own application, he was

recruited as Grade II Assistant under the State Transport Authority. When he got this new appointment he was relieved from the post of Head Clerk from the Tahsil Office on 27.09.1965. He joined his new appointment on 28.09.1965 and was subsequently transferred to the Directorate of Bureau of Statistics and Economics. He became the Head Clerk-cum-Accountant in the District Statistical Office on 01.07.1967. Ultimately he rose to the post of Grade II Assistant in the Bureau of Statistics and Economics and was confirmed against that post with effect from 10.09.1967. This post against which he was confirmed had also been declared to be a permanent post. When disciplinary action was taken by the Collector, on the premise that the petitioner continued his lien on the original post, Head Clerk, the same was set aside by the Hon'ble Division Bench of the Orissa High Court, holding that the moment the petitioner therein was confirmed in the new post, to which, he was recruited his lien in the post of Head Clerk is terminated and therefore, the Collector has no authority to take action against him.

23. In **S.A.Kacker v. All India Institute of Medical Sciences** reported in **1996 (10) SCC 734**, the Hon'ble Supreme Court held that a Government servant cannot have lien simultaneously on two posts. Appointment to a permanent post entails termination of lien in the previous post.

24. In **Suraj Prakash Gupta v. State of Jammu & Kashmir** reported in **2000 (7) SCC 561**, the Hon'ble Apex Court has held that the date of first

appointment would mean the date of first substantive appointment, meaning thereby the date of permanent appointment or the date of first appointment, on probation on a clear vacancy. It was also held that rule of seniority has to be determined by the date of first appointment to such service, class or grade. The said decision was followed in **R.K.Mobisana Singh v. K.H.Temba Singh and Others**, reported in **2008 (1) SCC 747**.

25. In **R.Shobana v. B.Subramaniam [W.P.No.12567 of 2009, dated 15 October, 2009]**, this Court, after extracting the definition of the words, “Lien”, “Permanent Post” and “Tenure Post”, from the Fundament Rules, held as follows:

“Fundamental Rule 9(13) defines the term "lien" as follows:

"(13) 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. (emphasis supplied)"

What is permanent post is defined in Fundamental Rule 9(22) as follows:

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

The term "tenure post" has been defined under Fundamental Rule 9(30-A) as follows:

"(30-A) Tenure post means a permanent post which an individual Government servant may not hold for more than a limited period."

.....

16. A conjoint reading of the above provisions would make it manifestly clear that a Government servant can acquire lien in a particular post, if only the said post is permanent or tenure. If it is a purely temporary post, the Government servant who is holding the said post, either on a temporary post or permanent post cannot acquire any lien in the said post.

30.From the subsequent events, as I have already narrated, it could be seen that the 5th respondent was again recruited on transfer in the Backward Classes Commission. Since the post against which he was so recruited in the Secretariat in the Backward Classes Commission, is a permanent post and since the petitioner was also appointed permanently, the lien which he had in the post which he was holding in the Exserviemen Department get snapped. As I have already stated, since there was no lien in the post of Personal Assistant (court work) at the office of the 2nd respondent, there is no question of claiming of lien by the 5th respondent as against the said post.

31. The present position is that the Bakcward Classes Commission has relieved him from the post with a direction to go and join the 2nd respondent. But the 5th respondent has not joined the post because the 2nd respondent has not allowed him to join. In my considered opinion, the 2nd respondent was right in declining to allow the 5th respondent to join duty. It is for the Backward Classes Department to take him forthwith and to allow him to join duty."

26. Let us now consider some of the provisions in the Fundamental Rules of the Tamil Nadu Government. As per Ruling 13 to Fundamental Rule 6, "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.”

27. Fundamental Rule 12 states that, (a) Two or more Government servants cannot be appointed substantively to the same permanent post, at the same time. (b) A Government servant cannot be appointed substantively to two or more permanent posts, at the same time. (c) A Government servant cannot be appointed substantively to a post on which another Government servant holds a lien.

28. Fundamental Rule 12-A states that unless in any case it be otherwise provided in these rules, a Government servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post.

29. Fundamental Rule 13 states that unless his lien is suspended under Rule 14 or transferred under Rule 14-B, a Government servant holding substantively a permanent post retains a 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 or transfer to another post; unless he is transferred substantively to a post on 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 old post;

(d) while on leave other than refused leave granted after the date of retirement under Rule 86 or corresponding other rules; and

(e) while under suspension.

30. As per Fundamental Rule 14, (a) the Government shall suspend the lien of a Government servant on a permanent post which he hold substantively if he is appointed in a substantive capacity—

(1) to a tenure post, or

(2) *Deleted*.

(3) Provisionally, to a post on which another Government servant would hold a lien had his lien not been suspended under this rule.

(b) Government may, at its option, suspend the lien of a Government servant on a permanent post which he holds substantively if he is deputed out of India or transferred to foreign service, or, in circumstances not covered by clause (a) of this rule, is transferred, to a post in another cadre, and if in any of these cases there is reason to believe that he will remain absent from the post on which he holds a lien for a period of not less than three years.

(c) Notwithstanding anything contained in clause (a) or (b) of this rule, a Government servant's lien on a tenure post may, in no circumstances be suspended. If he is appointed substantively to

another permanent post, his lien on the tenure post must be terminated.

(d) If a Government servant's lien on a post is suspended under clause (a) or (b) of this rule, the post may be filled substantively and the Government servant appointed to hold it substantively, shall acquire a lien on it; provided that the arrangements shall be reversed as soon as the suspended lien revives.

Note.— (1) This clause shall also apply to a post in a selection grade of a cadre.

(2) When a post is filled substantively under this clause, the Government servant appointed will hold a provisional lien on the post and that lien will be liable to suspension under clause (a) but not under clause (b) of this rule.

(e) A Government servant's lien which has been suspended under clause (a) of this rule shall revive as soon as he ceases to hold a lien on a post of the nature specified in sub-clause (1) or (3) of that clause.

(f) A Government servant's lien which has been suspended under clause (b) of this rule shall revive as soon as he ceases to be on deputation out of India or on foreign service or to hold a post in another cadre, provided that a suspended lien shall not revive because the Government servant takes leave, if there is reason to believe that he will, on return from leave, continue to be on deputation out of India or on foreign service or to hold a post in another cadre and the total period of absence on duty will not fall short of three years or that he will hold substantively a post of the nature specified in sub-clause (1) or (3) of clause (a).

Delegation under Rule 14 (b).

(1) A Head of Department is empowered to suspend a lien in

respect of any post to which it or an authority subordinate to it can appoint.

(2) The Curator, Tamil Nadu Archives, is empowered to suspend the lien of the members of the staff of his office working in other offices.

Instruction under Rule 14 (b).

The lien of an officer cannot be suspended while he is on probation in another post. If the officer completes the period of probation satisfactorily, suspension of lien may be made with retrospective effect from the date on which the officer was transferred to other duty, provided that the conditions in Rule 14 (b) are otherwise satisfied.

RULINGS.

Provisionally Substantive Appointments.

(1) The period of three years prescribed in this rule applies to the probable duration of the absence of any particular officer from his own substantive appointment and not to the permanency of the post to which he is transferred. In the case of posts sanctioned for a shorter period and subsequently extended to three years, suspension of lien is permissible from the date of creation of the temporary post but whether provisionally substantive arrangement is permissible from this date or from any subsequent date is a matter which is entirely at the discretion of the head of the office or of the Government. (*G.I.F.D. No. 172, C.S.R., dated 10th March 1913.*)

(2) The term “Cadre” used in rule 14(b) will apply to all the posts in a service sanctioned as a separate unit. The expression “separate unit” is meant to cover all posts in a service, appointments to which are made by the same authority and is

intended to apply to posts in different offices or establishments and not to those in the same office or establishments.

(3) The suspension of lien of a Government servant under rule 14(b) is permissible only in the case of transfer to another service.

In other words, it is not permissible when a Government servant in the subordinate service is promoted to the corresponding State Service or when a Government servant holding a lien on a permanent post is promoted to another post in the same service or department.

(4) Under the existing provision of Fundamental Rule 14, it is possible for more than one person to be appointed in a provisionally substantive capacity against a single post. In as much as the pay of a Government servant in his provisionally substantive post is being treated “as substantive pay” for purposes of fixation of pay on his appointment to another post, the present rule confers unintended benefits on all the individuals so appointed. The Government have, therefore, decided that the operation of Fundamental Rule 14 should be restricted so as to permit only one provisionally substantive appointment against one post. Accordingly, the lien acquired by a Government servant on his appointment in a provisionally substantive capacity under clause (d) of the rule should not, in future, be suspended if he is deputed out of India or is transferred to a post of the nature specified in clause (b) of the rule.

31. Fundamental Rule 14-A states that, (a) Except as provided in clauses (c) and (d) of this rule a Government servant’s lien on a post may, 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.

(b) *Deleted.*

(c) Notwithstanding the provisions of Rule 14 (a), the lien of a Government servant holding substantively a permanent post shall be terminated while on refused leave granted after the date of retirement under Rule 86 or corresponding other rules. *Vide* G.O. 829, Personnel and Administrative Reforms Department, dated 26-8-1985.

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

RULING.

“The provision of Fundamental Rule 14-A apply only so long as a Government servant remains in Government service. In cases where permanent Government servants are permitted to be permanently absorbed in non-Government service in the public interest it should be incumbent on the foreign employer to consult the parent employer before issuing orders absorbing the Government servant permanently in his service. The lien of the Government servant in the permanent post under Government stands automatically terminated with the cessation of Government service, that is, from the date of permanent absorption. The Government servants absorbed permanently under the autonomous Corporations or Undertakings owned by State or Central Government need not be asked to tender a formal resignation of their post under the State Government as the issue of orders of absorption and acceptance of the same by the Government servant would be construed as surrender of their rights as Government servants. From the date of such absorption; payment of pension and leave salary contribution shall be stopped, as he will cease to be a Government servant. Such termination of lien in the Government

service will be without prejudice to his entitlement to retirement benefits admissible under G.O. Ms. No.569, Finance, dated the 28th April 1961 as amended subsequently.”. [*G.O. Ms. No. 907, Finance (F.R.I), Finance, dated 13th August 1976.*]

32. Fundamental Rule 14-B, states that subject to the provisions of rule 15, Government may transfer to another permanent post in the same cadre the lien of a Government servant who is not performing the duties of the post to which the lien relates, even if that lien has been suspended.

Delegation under Rule 14-B.

A head of a department is empowered to transfer a lien provided that it or an authority subordinate to it is authorized to make appointments to both the posts concerned.

33. As per Fundamental Rule 13, a government servant holding substantively a permanent post retains a lien on that post, while performing the duties of that post; while on foreign service, or holding a temporary post or officiating in another post; during joining time or transfer to another post; unless he is transferred substantively to a post on 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 old post; while on leave other than refused leave granted after the date of retirement under Rule 86 or corresponding other rules; and while under suspension and as per Fundamental Rule 12-A, unless in any case it be otherwise provided in these rules, a Government servant on substantive appointment to any

permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post and as per Fundamental Rule 12(a), two or more Government servants cannot be appointed substantively to the same permanent post at the same time.

34. Fundamental Rule 14(b) speaks only about suspension of lien on a tenure post, while on deputation out of India or transferred to foreign service, or, in circumstances not covered by clause (a) of this rule, is transferred, to a post in another cadre, and if in any of these cases, there is reason to believe that he will remain absent from the post on which he holds a lien for a period of not less than three years. Fundamental Rule 14(c), speaks about the termination of the lien in the temporary post, if he is appointed substantively to another permanent post, his lien on the tenure post must be terminated.

35. As per the Ruling (2) to Fundamental Rule 14, the term “Cadre” used in rule 14(b) will apply to all the posts in a service sanctioned as a separate unit. The expression “separate unit” is meant to cover all posts in a service, appointments to which are made by the same authority and is intended to apply to posts in different offices or establishments and not to those in the same office or establishments.

36. As per sub-Rule (c) to Fundamental Rule 14-A, notwithstanding the provisions of Rule 14 (a), the lien of a Government servant holding substantively a permanent post shall be terminated while on refused leave granted after the date

of retirement under Rule 86 or corresponding other rules. Sub-Rule (d) of Fundamental Rule 14-A, states that a Government servant's lien on a post shall stand terminated on his acquiring a lien on a permanent post (whether under the Government or the Central Government or any other State Governments) outside the cadre on which he is borne.

37. As per Fundamental Rule 15, (a) Government may transfer a Government servant from one post to another provided that, except—

(1) on account of inefficiency or misbehaviour; or

(2) on his written request a Government servant shall not be transferred substantively to or appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds a lien or would hold a lien had his lien not been suspended under Rule 14.

(b) Nothing contained in clause (a) of this rule or in clause (13) of Rule 9 shall operate to prevent the re-transfer of a Government servant to the post on which he would hold a lien, had it not been suspended in accordance with the provisions of clause (a) of Rule 14.

38. As stated supra, in the year 1987, there were two posts of Assistants in the Governor's Secretariat. The Secretary to the Governor has issued a letter, dated 01.09.1987, to all the Heads of Departments in the city of Madras, stating

that the above said posts have to be filled up, in the Governor's Secretariat, by one of the modes of appointment i.e., recruitment by transfer from among the Junior Assistants and Personal Clerks, eligible for appointment as Junior Assistant in the Tamil Nadu Ministerial Services. Therefore, he has requested all the Heads of Departments, Chennai, to suggest the names of willing candidates, with the qualifications prescribed for the post, for selection and appointment in the Governor's Secretariat, on transfer.

39. In the foregoing paragraphs, we have already stated that the respondent has been selected and recruited to the post of Assistant, and by order, dated 20.01.1988, of the Director of Animal Husbandry, Chennai, the respondent has been relieved from the Department of Animal Husbandry, with instructions to hand over the charge to Smt. Elizabeth Annabai, and that the said individuals have been directed to report to the authorities concerned.

40. Though Mr.P.H.Arvind Pandian, learned Additional Advocate General, laid stress on the word "transfer", when the respondent was appointed in the Governor's Secretariat, and contended that the lien continued in Animal Husbandry Department, on the facts and circumstances of the case and the materials on record, we cannot subscribe to the said contentions, in the light of the expression "recruitment by transfer", which is one of the modes prescribed under Rule 3-A of the Tamil Nadu State Secretariat Service Rules, which also

applies to the staff of the Governor's Secretariat.

41. Indisputably, Governor's Secretariat is a separate service. The respondent was working in the Directorate of Animal Husbandry as a Steno-Typist, a service, different from the Governor's Secretariat. The post of Junior Assistant falls in category 14 of the Tamil Nadu Ministerial Service, which includes, Typists and others. The post of Steno-Typist falls in category 17 of the Ministerial Service. Therefore, from the reading of the recruitment rules, extracted supra, it is clear, that the recruitment of the respondent in the Governor's Secretariat is not by resorting to the first mode, i.e., by recruitment by transfer, from the category of Junior Assistant in the Tamil Nadu Ministerial Service or in the Tamil Nadu Judicial Ministerial Service. Recruitment is also not through the second mode i.e., by promotion from the category of Personal Clerks or Typists.

42. Averments made in the Original Application No.343 of 1997, renumbered as W.P.No.28103 of 2006, makes it clear that after the appointment of the respondent is made in the year 1988, as Assistant in the Governor's Secretariat on 04.02.1988, the Secretary to the Governor, Governor's Secretariat, has issued an order No.7502/G3/87, dated 04.02.1988, under Sub-rule (iii) of Rule 4 of the Tamil Nadu Secretariat Rules (Section 29), appointing the respondent as Assistant. Thereafter, the respondent has officiated as Assistant Section Officer, by an order, dated 27.03.1989, passed by the Secretary to Governor, Governor's

Secretariat. The respondent had undergone inservice training for Section Officers and Assistant Section Officers as well as foundation training in Personnel and Administrative Reforms Department, at the Secretariat Training Institute, for sixty working days from 25.05.1988 to 26.06.1988 and again from 05.02.1990 to 16.02.1990. Thereafter, his pay scale has been revised. Consequent to G.O.Ms.No.666, dated.22.10.1988, the respondent has also been promoted as Assistant Section Officer, in the Governor's Secretariat, and when one Mr.P.Thangaraj working as Section Officer was reverted back to his parent department, namely, Animal Husbandry Department, on his request, and upon relieving the said individual, the respondent has been directed to take over the charge, as Section Officer. According to respondent in the promotional post of Assistant Section Officer, he was discharging the duties as Personal Assistant to the Secretary to the Governor from 24.07.1983 to 07.10.1994, and then he has given a representation, dated 07.10.1996, to the Secretary to the Governor, requesting him to promote the respondent to the post of Private Secretary to the Governor, in the rank of Section Officer. From the above facts, it could be deduced, that after the recruitment of the respondent to the post of Assistant, in the Governor's Secretariat in the year 1988, he has been promoted to the post of Assistant Section Officer, in the Governor's Secretariat Service, and after serving for eight years, the Secretary to the Governor has relieved the respondent to the Directorate of Animal Husbandry, Chennai.

43. Substantive appointment to a permanent post in public service confers substantive rights to the post and the person appointed to the post is entitled to hold a lien in the post. It is a settled proposition of law that a deputationist would continue to hold the lien in the post held in parent department, till he is absorbed in the post, in the subsequent department or service, to which, he is deputed. Appointment to a post could be by direct recruitment or by promotion or by recruitment by transfer from one service to another. If a person is appointed by any of the three modes, permissible under the rules, then it should be treated as a fresh appointment to the post, to which, recruitment is made.

44. Substantive appointment means, an appointment, not being an adhoc appointment, in a post in the cadre of services, made after selection in accordance with Service Rules, relating to that service. It is well settled that when a person with a lien in a post is appointed substantively to another post, then, he acquires lien in the latter post. Then, the lien against the previous post terminates. Lien connotes the right of a Government servant to hold the post substantively to which he is appointed. Once the Government servant is appointed to another permanent post, then, the lien of the Government servant stands terminated against the previous post and shifts to the new permanent post. In such circumstances, there may not be any requirement for a formal termination of lien over the previous permanent post. A person can be said to have acquired

lien to a particular post, when appointed in a substantive capacity, whether he has been made permanent or has been confirmed to the said post.

45. The respondent has started discharging in the permanent post of Assistant on 04.02.1988, in the Governor's Secretariat. As per Rule 2(7) of the Tamil Nadu State and Subordinate Service Rules, a person is said to be “on duty” as a member of a service:-

(a) When he is performing the duties of a post borne on the cadre of such service or is undergoing the probation, instruction or training prescribed for such service;

(b) When he is on joining time; or

(c) When he is absent from duty during vacation or on authorised holidays or on casual leave take in accordance with the instructions regulating such leave issued by the State Government having been on duty immediately before and immediately after such absence;

(d) when he has compulsorily to wait for orders of posting on return from leave.

When a person has started discharging his duties, attached to the post, to which, he is recruited, outside the cadre in some other service, whether it is open to him to contend that he still retains a lien in the earlier post. The answer is a clear No. If that be the case, whether it would be open to the Department, in which he was serving earlier, prior to the recruitment to a post, in the some other service, to

contend that he still continues to hold a lien in the post, in the earlier department? In both the cases, neither the person recruited to another service nor the department, in which he was working earlier, can contend that the lien continues in the original post, in the department.

46. As per Rule 2(2) of the Tamil Nadu State and Subordinate Service Rules, an “approved candidate” means, a candidate whose name appears in an authoritative list of candidates approved for appointment to any service, class or category. In the light of the above rule, it cannot be contended that the respondent is not an approved candidate for the post of Assistant, in Governor's Secretary. When recruitment is made to another service, he loses his lien automatically in the post, held by him and that should be the effect of recruitment and appointment to a permanent post, in some other service. In **Prafulla Kumar Swain v. Prakash Chandra Misra** reported in **1993 SCC Supl.(3) 181**, the Hon'ble Supreme Court has explained the meaning and effect of the words "recruitment" and "appointment". The term "recruitment" connotes and clearly signifies enlistment, acceptance, selection or approval for appointment. Certainly, this is not actual appointment or posting in service. In contra distinction the word "appointment" means an actual act of posting a person to a particular office. Recruitment is just an initial process. That may lead to eventual appointment in the service. In the case on hand, the respondent has been appointed to the post of Assistant in the Governor's Secretariat on 04.02.1988,

by the Secretary to the Governor.

47. As per Rule 2(1) of the Tamil Nadu State and Subordinate Service Rules, "Appointed to a service" means, "a person is said to be "appointed to a service" when in accordance with these rules or in accordance with the rules applicable at the time, as the case may be, he discharges, for the first time the duties of a post borne on the cadre of such service or commences the probation, instruction or training prescribed for members thereof." Explanation to the said definition states that the appointment of a person holding a post borne on the cadre of one service to hold additional charge of a higher post in the same service or a post borne on the cadre of another service or to discharge the current duties thereof does not amount to appointment to the latter service.

48. If a person is recruited and appointed to a permanent post, by any of the modes, permissible under the recruitment rules, then, by virtue of the order of appointment of the competent authority, he has a lien in the said post. When a Government servant is appointed and continues in the permanent post, gains his regular promotion, on the principle that it is substantive appointment in public service, then it confers a right to the Government servant to contend that he holds a lien in the post to which he is recruited and appointed.

49. The moment a person is recruited to a permanent post and appointed

in another service, outside the cadre, then he becomes a member of that service, on his own motion, acquires a lien in the recruited post and consequently, loses his lien in the post held in the previous service, as he cannot hold lien in both posts. As per Rule 2(10) of the Tamil Nadu State and Subordinate Service Rules, a person, who has been appointed to that service and who has not retired or resigned, been removed or dismissed, been substantively transferred or reduced to another service or been discharged otherwise than for want of a vacancy. He may be a probationer, an approved probationer or a full member of that service.

50. Merely because, the respondent was appointed under the one of the modes, ie., recruitment by transfer, it cannot be termed as mere transfer, from the Directorate of Animal Husbandry to the Governor's Secretariat or as deputation, to contend that he still retains a lien in the original post, in which, he was working. Order of the Secretary to the Governor, dated 04.02.1988, makes it clear that the respondent has been recruited. The word "recruitment" should be given its due significance. By accepting the contention of the review petitioner, recruitment of the respondent to the post of Assistant, cannot be erased.

51. A substantive appointment to a permanent post need not necessarily mean a permanent appointment to a permanent post. Appointment of a person as a probationer can be said to be a substantive appointment to a permanent post, but it cannot be contended to be a permanent appointment to a permanent post, as the services of such person can be terminated, during the period of probation.

In the case on hand, the respondent has been appointed to a permanent post in 1988, by way of recruitment. It is not a case of transfer or deputation or on foreign service. He has been provided with foundational training. As per the definition of the word, “duty” in the General Rules, he has commenced discharging his duties in the post of Assistant, earned his increment on 07.10.1994. Thereafter, promoted as regular Assistant Section Officer, which fact has not been disputed. Thereafter, he has officiated as Section Officer. Considering the sequence of events, in the Governor's Secretariat, from 1988, till he was relieved, it is manifestly clear that he has become a full member of service in the Governor's secretariat service and in such circumstances, it cannot be contended that he still remains to be a member of the service, in the Directorate of Animal Husbandry and retains a lien in the post of Steno-typist.

52. Fundamental Rule 13 envisages certain situations, where a Government servant acquires and retains a lien in a post, while performing the duties of the post on foreign service, joining another post on transfer, during joining time, while on leave and suspension. An exception to the above rule is that no lien of the Government servant has to be retained, when the Government servant has proceeded on immediate absorption to a post or service, outside the cadre of his service, by any of the modes of recruitment and appointment, prescribed in the latter service.

53. Rule 2(15) defines “Recruited by transfer” as “A candidate is said to be “recruited by transfer” to a service:-

(a) If, at the time of his first appointment thereto, he is either a full member or an approved probationer in the Madras High Court Service or in any other service, the rules for which prescribe a period of probation for member thereof; or

(b) in case, at the time of his first appointment thereto, he is the holder of a post which has been included in another service but for which no probation has been prescribed, if he has put in that post satisfactory service for a total period of two years on duty within a continuous period of three years.

Explanation. - Where the special rules for a service provide for recruitment to that service or to any class or category thereof by transfer from any specified service, class or category, a candidate need not, for the purposes of such recruitment, be a full member or an approved probationer in the service, class or category so specified, provided he is a full member or an approved probationer in any other service class or category.

54. "Transfer", as per Section 2(15-B) of the Tamil Nadu State and Subordinate Service Rules, means, "a member of a service is said to be appointed by transfer when the appointment is made from one category to another category in the same service carrying identical scale of pay." As per sub-Section (18) of Section 2, “Service” means, "a group of persons classified by the State Government as a Subordinate or a State Service, as the case may be. Explanation to the said Section, states that where the context so requires, “Service” means

the period during which a person holds a post or a lien on a post or is a member of a service as above defined.

55. Thus, reading of the rules makes a clear distinction between a recruitment by transfer and a mere transfer. In the light of the Fundment and General Rules, the contention of the learned Additional Advocate General that the respondent was only transferred and appointed in the Governor's Secretariat, cannot be accepted. The further contention that he was not absorbed in the Governor's Secretariat, cannot be accepted, as the respondent was not on deputation or transfer. He has been recruited. Needless to state that absorption arises only in a case of deputationist or lent on foreign service or on transfer and not in the case of a regular recruitment.

56. In the foregoing paragraphs, we have observed that the lien in the post means that 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. Admittedly, the respondent has been recruited to the post of Assistant in the Governor's Secretariat, through, may be, by the method of recruitment by transfer. He has been appointed substantively to a permanent post, by a valid order of the appointing authority, viz., the Secretary to the Governor, State of Tamil Nadu.

57. Having regard to the nature of appointment of the respondent in Governor's Secretariat in a substantive capacity to the post of Assistant, by recruitment from one service to another service, the respondent, having gained promotion, as Assistant Section Officer in the Governor's Secretariat on regular basis, in the time scale of pay of P.B.2-Rs.9300-34800+Grade Pay Rs.4800/-, in the year 2012, and in the light of the definitions and decisions considered by the writ court and accordingly, dealt with by the Hon'ble Division Bench, the contention of the learned Additional Advocate General, that the appointment of the respondent was only by way of transfer and, therefore, he should be treated as a transferee and still retains his lien in the post of Steno-Typist in the original department, namely, Animal Husbandry Department, cannot be accepted. Needless to state that when the respondent has been recruited and appointed in the Governor's Secretariat, in a substantive capacity, he cannot be said to hold lien in the post previous post, namely Animal Husbandry Department, simultaneously. No man can hold lien in two posts simultaneously. The respondent should be deemed to be holding a lien in the post of Assistant Section Officer, in the Governor's Secretariat.

58. Yet another factor, to be considered is, that during his tenure in the Governor's Secretariat, somebody would have been appointed in the resultant vacant post of Steno-Typist in the Directorate of Animal Husbandry, and the said individual would have acquired lien in the said post. Thus, reading of the provisions makes it clear that as per the provisions, if recruitment is made outside

the regular line, in a cadre of that service, and if the individual is appointed substantively to the recruited post, his lien in the original post stands terminated automatically. In the case of K.Seeralan, he has been appointed to the Governor's Secretariat on 02.01.1991 and by assuming that his lien continued in the Directorate of Animal Husbandry, he seemed to have exercised his option to suspend his lien in the Directorate, which request has been forwarded by the Deputy Secretary to the Governor, vide proceedings, dated 17.05.2001, and, thereafter, in exercise of powers under FR 14 (b), the Director of Veterinary Services, Chennai, has suspended the animated lien, vide order, dated 24.10.2003. The said proceedings, passed in the case of Mr.K.Seeralan, cannot be applied to the facts of this case. It is not known, as to why Mr.K.Seeralan, who has gained promotion in the Governor's Secretariat, of course, subject to the outcome of the writ appeal proceedings, opted to exercise his option to suspend the lien in Animal Husbandry Department. In the light of the above discussions, the said proceedings would be inappropriate to the case of the respondent. From the proceedings of the Secretary to the Governor, dated 17.05.2001 and the Directorate of Animal Husbandry, Chennai, dated 24.10.2003, pending writ petition, request has been made by the said Mr.K.Seeralan, to suspend his lien, in the Animal Husbandry Department.

59. As regards the contention of Mr.P.H.Arvind Pandian, learned Additional Advocate General, that the respondent had gained subsequent

promotion and benefits in the Directorate of Animal Husbandry, and that, therefore, it would be inappropriate to claim service and other benefits, on par with that of his junior, in the Governor's Secretariat, subject to suitability to higher posts, the contrary contention of the learned counsel for the respondent and that all the promotions gained by Mr.K.Seeralan in the Governor's Secretariat and his junior were subject to the outcome of the entire proceedings is not refuted. The respondent has been recruited in the year 1988, whereas, Mr.K.Seeralan has joined the Governor's Secretariat in the year 1991. Therefore, if any person, junior to the respondent had been considered for promotion to higher posts, as per the recruitment rules applicable to Governor's Secretariat, then, he has to give way to the respondent, who is, admittedly, a senior. In terms of the order made in W.A.No.224 of 2011, dated 18.04.2012, whatever is lost by the respondent has to be redressed, as if, he had continued in the Governor's Secretariat. Because of the order, dated 25.11.1996, of the Secretary to the Governor, the respondent has to litigate for nearly 19 years, till-date. The Hon'ble Apex Court has dismissed the Special Leave Petition (Civil) No.21401 of 2012 on 30.07.2012. Harping on the same grounds, the Secretary to the Government, Government of Tamil Nadu, Animal Husbandry Department, and two others have, once again, attempted to reagitate the same matter, by filing this Review Application.

60. Another factor to be considered is that the post of Assistant is a

promotional post to the post of Junior Assistants or Typies and other equivalent posts. "Transfer" means, a member of a service is said to be appointed by transfer, when the appointment is made from one category to another category in the same service, carrying identical pay. "Service" means, "a group of persons classified by the State Government as a Subordinate or a State Service, as the case may be. Explanation to the said Section, states that where the context so requires, "Service" means the period during which a person holds a post or a lien on a post or is a member of a service as above defined. When the respondent has been recruited to another service, by one of the modes of recruitment, to a higher post, in the light of the definition to the word, "Transfer", as per Rule 15-B of the Tamil Nadu State and Subordinate Service Rules, it cannot be contended that the respondent has been merely transferred to Governor's Secretariat. Also, it can never be contended that he is promoted and deputed to another service.

61. The Supreme Court, in **Umapati Choudhary v. State of Bihar and another** reported in **1999 (4) SCC 659**, the word 'deputation' has been defined in the following terms:

"8. Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public

interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not."

62. In **Prasar Bharti & Others v. Amarjeet Singh & Others** reported in **JT 2007 (3) SC 89**, the Supreme Court observed as under:

"13. There exists a distinction between "transfer" and "deputation". "Deputation" connotes service outside the cadre or outside the parent department in which an employee is serving. "Transfer", however, is limited to equivalent post in the same cadre and in the same department. Whereas deputation would be a temporary phenomenon, transfer being antithesis must exhibit the opposite indications."

63. In the case on hand, it is not the case of either of the parties that a decision was taken by the employer, Directorate of Animal Husbandry, Chennai, to depute the respondent from Animal Husbandry Department to an equivalent post in the Governor's Secretariat, and the latter accepted such deputation and that the respondent has also given his consent for deputation; when recruitment to a permanent post was made, outside the cadre, as per the statutory rules, applicable to the latter service, it cannot be contended that the respondent was only a deputationist, and required to be absorbed in the latter service, to which he was recruited. If the contentions of the review applicants have to be accepted,

then every recruitment made, outside the cadre in the original service, should be construed as, deputation or transfer, which in our considered view is wholly untenable.

64. In **Ashok Kumar Ratilal Patel v. Union of India and another** reported in **2012 (7) SCC 757**, the Supreme Court, at Paragraph 11, held as follows:

“11. Ordinarily transfers on deputations are made as against equivalent post from one cadre to another, one department to another, one organisation to another, or one Government to another; in such case a deputationist has no legal right in the post. Such deputationist has no right to be absorbed in the post to which he is deputed. In such case, deputation does not result into recruitment, as no recruitment in its true import and significance takes place as the person is continued to be a member of the parent service.”

65. Present case is not a case of simple transfer. It is not a case where one can contend that it is a transfer on deputation, against an equivalent post from one cadre to another or from one service to another. Recruitment rules of the Governor's Secretariat do not speak of appointment by deputation. The respondent has undergone the process of selection, duly recruited and appointed in a higher permanent post, as Assistant in the Governor's Secretariat. Nowhere in the appointment order, it is mentioned as deputation. Letter of the Secretary to

the Governor, dated 01.09.1987, requesting all the Heads of the Departments to send the names of willing and eligible candidates does not even whisper about appointment by deputation.

66. While that be the case, we are unable to accept the contention of the learned Additional Advocate General that the respondent was a transferee or deputationist; he was not absorbed in the Governor's Secretariat and hence, his lien continued in the Department of Animal Husbandry. The Secretary to the Governor, who has issued the letter, dated 01.09.1987 and the appointment order, dated 04.02.1988, is bound by the orders. The appellants cannot later on turn around and contend that the appointment of the respondent was a mere transfer or deputation. The contentions of the review applicants are wholly misconceived and contrary to the recruitment rules.

67. Review can be made only if there is any mistake or apparent on the face of the record or there is any clerical error in the order sought to be reviewed. Useful reference can be made to a few decisions on the point of review.

(i) The Hon'ble Supreme Court in **Lily Thomas v. Union of India**, reported in **2000 (6) SCC 224**, while considering the scope of review and the

limitations imposed on its exercise under Article 137 of the Constitution of India, held as follows:

“52. The dictionary meaning of the word "review" is the act of looking, offer, something again with a view to correction or improvement. It cannot be denied that the review is the creation of a statute. This Court in **Patel Narshi Thakershi & Ors. Vs. Pradyunmarsinghji Arjunsinghji [AIR (1970) SC 1273]**, held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error. This Court in **S.Nagaraj & Ors.etc. Vs. State of Karnataka & Anr.etc. [1993 Supp. (4) SCC 595]** held:

"19. Review literally and even judicially means re- examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse

of process or miscarriage of justice. In **Raja Prithwi Chand Law Choudhury v. Sukhraj Rai [AIR 1941 FC 1]** the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in **Rajunder Narain Rae v. Bijai Govind Singh (1836) 1 Moo PC 117** that an order made by the Court was final and could not be altered:

'...nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common Law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in.... The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies."

Basis for exercise of the power was stated in the same decision as under:

'It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.'

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not

for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order XLVII Rule 1 of the Civil Procedure Code. The expression, for any other sufficient reason in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice."

The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of the same strength.

53. This Court in **M/s.Northern India Caterers (India) Ltd. Vs. Lt.Governor of Delhi [AIR 1980 SC 674]** considered the powers of this Court under Article 137 of the Constitution read with Order 47 Rule 1 CPC and Order 40 Rule 1 of the Supreme Court Rules and held:

"It is well settled that a party is not entitled to seek a review of

a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so. **Sajjan Singh v. State of Rajasthan, (1965) 1 SCR 933 at p.948.** For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing. **G.L. Gupta v. D.N. Mehta, (1971) 3 SCR 748 at p.760.** The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice. **O.N.Mohindroo v. Dist. Judge, Delhi, (1971) 2 SCR 11 at p.27.** Power to review its judgments has been conferred on the Supreme Court by Art.137 of the Constitution, and that power is subject to the provisions of any law made by Parliament or the rules made under Art.145. In a civil proceeding, an application for review is entertained only on a ground mentioned in O. XLVII, Rule 1 of the Code of Civil Procedure and in a criminal proceeding on the ground of an error apparent on the face of the record. (Order XL, R.1, Supreme Court Rules, 1966). But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. **Chandra Kanta v. Sheikh Habib (1975) 3 SCR 935."**

54. Article 137 empowers this Court to review its judgments subject to the provisions of any law made by Parliament or any rules made under Article 145 of the Constitution. The Supreme Court Rules made in exercise of the powers under Article 145 of the Constitution

prescribe that in civil cases, review lies on any of the ground specified in Order 47 Rule 1 of the Code of Civil Procedure which provides:

"Application for review of judgment -(1) Any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed, but from which, no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."

Under Order 40 Rule 1 of the Supreme Court Rules no review lies except on the ground of error apparent on the face of the record in criminal cases."

(ii) In **Aribam Tuleshwar Sharma v. Aibam Pishak Sharma** , reported in **AIR 1979 SC 1047**, the Supreme Court has held that,

"there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors

committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

(iii) In yet another decision in **RAJINDERSINGH Vs. Lt. GOVERNOR**, reported in **2005 (13) SCC 289**, at paragraph Nos.15 and 16, the Hon'ble Supreme Court held that law is well settled that the power of judicial review of its own order by the High Court inheres in every Court of plenary jurisdiction to prevent miscarriage of justice. Power of judicial review extends to correct all errors to prevent miscarriage of justice. It was further held that Courts should not hesitate to review their own earlier order, when there exists an error on the face of record and the interest of justice so demands in appropriate cases.

(iv) In **Union of India v. Kamal Sengupta** reported in **2008 (8) SCC 612**, the Hon'ble Supreme Court, at Paragraphs 14 and 15, has held that,

"14. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review *ex debito justitiae*. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court earlier.

15. The term 'mistake or error apparent' by its very connotation signifies an error which is evident *per se* from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of fact or law. In any case, while exercising the power of review, the concerned Court/Tribunal cannot sit in appeal over its judgment/decision."

68. Going through the entire material on record, we are of the view that the review petitioners have not made out any valid grounds for review of the order made in W.A.No.224 of 2011, dated 18.04.2012. Therefore, Review Application No.217 of 2015 is dismissed.

69. What remains to be considered is, whether the Court should proceed with Contempt Petition No.545 of 2014, filed by the respondent, for the alleged disobedience of the order, passed by the Hon'ble Division Bench in the Writ Appeal. Now that we have dismissed the Review Application, we sincerely hope, that the Secretary to the Governor, Governor's Secretariat, and two others, would implement the order of this Court, passed in W.A.No.224 of 2011, dated 18.04.2012, wherein, directions have been issued to give reposting to the respondent in the Governor's Secretariat, Chennai and give all the benefits on par with his junior, in the light of what is discussed and observed by us, in the foregoing paragraphs. Time for implementation is 15 days from today.

Index : Yes/No
Internet : Yes/No

(S.M.K.,J.) (M.V.,J.)
.10.2015

Note to Office:

Registry is directed to de-link
Contempt Petition No.545 of 2014
and post the same after two weeks.

Issue Order Copy today itself.

dixit/skm

S.MANIKUMAR, J.
AND
M.VENUGOPAL, J.

dixit

.10.2015