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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 12.07.2022.

Date of Decision: 27.07.2022.

+ W.P.(C) 12460/2018 & CM APPL 21945/2019(for interim directions)

DR. M. A. SIKANDAR

..... Petitioner

Through: Mr.R.K. Saini with Mr.Sunil Beniwal,
Advs.

versus

UNIVERSITY OF DELHI AND ORS.

..... Respondents

Through: Ms.Aakanksha Kaul with Mr.Manek
Singh & Mr.Aman Sahani, Advs. for
University of Delhi.

Mr.Kamal Kant Jha, Senior Panel
Counsel for Govt. of India with
Mr.Animesh Mani Tripathi, Adv. For
R-3.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J

JUDGMENT

1. The present petition raises a short but important question; as to whether an employee, while holding his lien in the parent organization, can claim that the period when he was working on deputation in other organization, be counted as service in the parent organization, for the purpose of computation of his terminal benefits.



2. The petitioner, who joined the services of Delhi University/respondent no.1 as an Assistant Registrar on 29.08.2001 was, under the provisions of Statute 28-A of the University General Provident Fund-cum-Pension-cum-Gratuity Scheme, admitted to the general provident fund. As, the petitioner had, before joining the Delhi University, between 23.04.1985 and 28.08.2001, served in various Central Government departments and Autonomous Organizations in various capacities, his entire past services of 16 years 4 months was to be counted for the purpose of computation of his terminal benefits. Being a non-teaching staff, in terms of Rule 12 of the 'University Non- Teaching Employees (Terms & Conditions of Service) Rules, 2013 ('the University Rules, 2013'), he was to reach superannuation at the age of 60 years.
3. The petitioner was thereafter promoted as a Deputy Registrar w.e.f., 05.02.2008 and on the said post, he was w.e.f. 21.07.2011, selected and appointed to the post of Director, National Book Trust (NBT) on deputation, for a period of three years on a year-to-year basis, based on the recommendations of a search-cum-selection committee by the Government of India, Ministry of Human Resource Development ("MHRD").
4. On 25.11.2014, Ambedkar University Delhi/respondent no.3 issued an advertisement inviting applications for the post of Registrar, to be filled on a five years tenure basis. Being eligible, the petitioner, while serving as a Director with the NBT, on 18.12.2014 applied for the same through proper channel and sent an advance copy of the said application to the respondent no. 3. In the said application, the



petitioner prayed that in the event of his selection, he be, as per the extant rules of the respondent no.1, relieved from the services of respondent no.1, either on Extra Ordinary Leave (EoL) or on deputation basis, so as to enable him to join the respondent no.3 as a Registrar. In response, the petitioner was informed by the respondent no.1 that only an application for a post through direct recruitment could be forwarded and, since the post of Registrar at respondent no.3 University was on tenure/deputation basis, his request could not be acceded to.

5. In the meanwhile, on the basis of an advance copy of his application dated 18.12.2014, the petitioner was on 15.4.2015, called by the respondent no.3 for an interview for the post of Registrar, which was scheduled to be held on 04.05.2015. Upon receiving this call letter, the petitioner, on 16.04.2015 requested the respondent no. 1 to issue a 'No Objection Certificate' (NOC) to enable him to appear in the said interview and also prayed that if selected, he be relieved for joining the post of Registrar in respondent no.3 by retaining his lien/EOL in respondent no.1, for a period of one year.
6. The petitioner was issued the necessary NOC by respondent no.1, based whereon, he appeared in the interview and was selected for the post of Registrar in respondent no.3, on 13.05.2015.
7. On 18.5.2015, while still serving at NBT on deputation, the petitioner informed the respondent no.1 about his selection to the post of Registrar in respondent no. 3, and therefore, offered his technical resignation from the respondent no.1, with a view to join respondent no.3 as a Registrar with one year lien/EOL, as had been requested by



him earlier. The petitioner's request was accepted and he was asked to join back respondent no.1 from NBT so that his technical resignation could be considered.

8. After his joining back the respondent no.1 , the petitioner was, vide order dated 29.07.2015, upon the acceptance of his technical resignation, relieved from respondent no.1, so as to enable him to join as a Registrar in respondent no.3. The petitioner's lien in the respondent no.1/University was, however, retained for a period of one year from the date of his relieving. He was further informed that, after the period of one year, his lien in the services of respondent no.1 would automatically stand terminated with effect from the date of acceptance of his technical resignation.
9. On being relieved by respondent no. 1, the petitioner joined the post of Registrar in respondent no. 3 and was, vide notification dated 30.07.2015, appointed for a period of 5 years. After the petitioner had joined respondent no.3 as a Registrar, he, alongwith other similarly placed employees, was vide order dated 05.10.2015 passed by respondent no.1, re-designated, as a Joint Registrar w.e.f. 20.7.2015.
10. During this one-year period between 29.07.2015 and 28.07.2016, when his lien with the respondent no. 1 was still continuing, the respondent no. 3, where the petitioner was working as a Registrar, based on his last pay certificate, had been duly remitting his monthly contribution towards General Provident Fund, Group Insurance etc., to the respondent no.1/University. The said payments remitted by respondent no.3 vide it's letters dated 20.01.2016 and 29.07.2016, were duly accepted by respondent no. 1 for the period between



30.07.2015 and 28.07.2016. However, the contribution for the subsequent periods of August and September 2016, remitted by respondent no.3 in favour of respondent no.1, vide cheques dated 01.09.2016 and 03.10.2016, was returned by respondent no.1 vide its letter dated 06.10.2016, on the ground that the one-year lien of the petitioner with respondent no.1, already stood terminated from 29.07.2016.

11. At this stage, it may be noted that the petitioner had, vide letters dated 06.04.2016 and 26.07.2016, sought voluntary retirement from respondent no.1. However, vide its communication dated 06.10.2016, the petitioner was informed by respondent no.1 that since his lien stood terminated w.e.f. 29.07.2016, his request for voluntary retirement could not be now accepted. It is, at this stage, that after being informed that his lien with respondent no.1 stood terminated from 29.07.2016, the petitioner approached respondent no.1 for release of his terminal retirement benefits w.e.f. 29.07.2016.

12. Meanwhile, taking into account the fact that the petitioner's one year lien stood terminated by respondent no.1 w.e.f. 29.07.2016, he was, vide order dated 02.12.2016, taken on the rolls of respondent no.3. The petitioner was also informed that he would be allowed to complete the remaining period of his five-year term as a Registrar in respondent no.3 upto 28.7.2020.

13. As the petitioner's terminal dues were not being released by respondent no.1 by counting his service till 28.07.2016, he made repeated representations to respondent no.1. It is then that the petitioner was, vide its office order dated 28.08.2018, informed that



the technical resignation tendered by him while joining respondent no.3 had already been accepted by the Executive Council w.e.f. 29.07.2015. He was therefore, informed that he would be granted his terminal benefits w.e.f. 29.07.2015 and not from 29.07.2016.

14.It is, in these circumstances, that the petitioner has approached this Court seeking a direction to the respondent no.1 to release his pensionary benefits by taking into account his lien period of one year till 28.07.2016.

15.In support of the petition, Mr R. K. Saini, learned counsel for the petitioner, at the outset submits that, once the petitioner had a lien in the services of respondent no.1 for a period of one year, till 28.07.2016, the respondent no.1 cannot now claim that his service in respondent no.1 ended on 29.07.2015 itself, and therefore, is not entitled to claim pensionary benefits for his service between 29.07.2015 to 28.07.2016. He submits that merely because the petitioner was, during this period serving with respondent no. 3, while specifically retaining his lien with the respondent no. 1 for the said period, the respondent no. 1 cannot now urge that this period has to be excluded from the long service of the petitioner moreso, when the respondent no. 1 had, without any demur, accepted the petitioner's contributions towards leave, salary and pension contribution as forwarded by the respondent no. 3 for the period till 28.07.2016. It is only for the period subsequent to 28.07.2016 that the respondent no. 1 had refused to accept the petitioner's contributions and, this itself shows that the respondent no. 1 was always aware that the petitioner



was its employee till 28.07.2016 i.e., for the period during which he had retained his lien in the respondent no.1.

16.Mr. Saini then submits that even otherwise, once the petitioner had, in terms of Fundamental Rules 13(b) and 14(A) retained his lien with the respondent no. 1 during the period between 29.07.2015 to 28.07.2016 while working on a temporary tenure post with respondent no. 3, the petitioner was entitled to receive all benefits, including pensionary benefits, for the period during which his lien continued with the respondent no. 1. He contends that, the post on which the petitioner was serving with respondent no. 3 between 29.07.2015 to 28.07.2016, was a temporary tenure post on which he had no lien during this period as for this period, his lien was continuing with respondent no.1. By relying on the decision of the Apex Court in *State of Rajasthan vs. S.N. Tiwari, (2009) 4 SCC 700*, he submits that if the respondent no. 1's stand that the petitioner's services had come to an end w.e.f. 29.07.2015 were to be accepted, he would be left without a lien on any post for the period between 29.07.2015 to 28.07.2016, which is wholly impermissible.

17.Mr. Saini further contends that, even from a perusal of the letter dated 06.10.2016 issued by respondent no.1, it is evident that the respondent no.1 was itself aware that the petitioner's lien in the services of respondent no.1 was to be terminated only w.e.f. 29.07.2016. Having specifically admitted so, the respondent no. 1 cannot now be permitted to turn around and urge that the petitioner's lien stood terminated w.e.f. 29.07.2015 itself. He therefore, prays that the writ petition be allowed and the respondent no.1 be directed to



forthwith release, with interest, all the terminal benefits of the petitioner, by taking into account his uninterrupted service till 28.07.2016.

18. On the other hand, Ms. Akanksha Kaul, learned counsel for the respondent no. 1 opposes the petition by contending that, while issuing the relieving order dated 29.07.2015 to enable the petitioner to join respondent no. 3, the respondent no. 1 had made it clear that after the period of his lien, his service would automatically stand terminated from the date of acceptance of his technical resignation and therefore, the petitioner was always aware that his service in respondent no. 1 would be counted till 29.07.2015, and not 28.07.2016. Having accepted the relieving order at the time of joining respondent no. 3 as a Registrar, the petitioner was bound by the conditions specified therein, and cannot now be permitted to take a contrary plea that his service with respondent no. 1 was to be counted till 28.07.2016 and not till 29.07.2015, as specifically provided in the relieving order.

19. Ms. Kaul then submits that the petitioner's reliance on the Fundamental Rules is wholly misplaced, as the petitioner is governed by the University Rules, 2013. She contends that Rule 12(3) thereof provides that, the lien of an employee may be retained for a period of two years, but does not, in any manner, envisage that the period during which an employee is holding a lien will be treated as period of his service. She then draws my attention to Rule 4(xii) of the University Rules, 2013 which defines the term 'lien' and therefore, submits that lien only means the right of an employee to hold on a



regular basis, a permanent post, either immediately or on termination of the period of absence. This, she contends, only entitles an employee who has chosen to retain his lien in the respondent no. 1 university during a temporary period of absence to come back and re-join his duty with respondent no. 1 within that lien period, but cannot be read to imply that despite the employee choosing not to come back to respondent no. 1 after the termination of lien period, the said period ought to be counted towards his service.

20. She finally submits that the petitioner having served in the respondent no. 3 organisation between 29.07.2015 to 28.07.2016, he must claim all his service benefits for the said period only from respondent no. 3 and not from respondent no. 1, where he was admittedly not serving for the said period. In support of her plea, she places reliance on the decision of the Madras High Court in ***W.P. (MD) No. 20635 of 2018, V. Sekar vs. Vice Chancellor, Madurai Kamaraj University & Anr.*** She therefore, prays that the writ petition be dismissed.

21. Having considered the submissions of the parties and perused the record, I find that while the parties are *ad idem* that during the period between 29.07.2015 to 28.07.2016, when the petitioner was permitted to retain his lien, he was entitled to return to respondent no. 1 and admittedly no objection could have been raised by respondent no. 1 in case the petitioner wanted to return back to respondent no. 1 anytime till 28.07.2016. Therefore, what emerges is that the right of the petitioner to revert back to respondent no. 1 during this period between 29.07.2015 to 28.07.2016 is undisputed but the question



which needs to be determined is as to the manner in which this period was to be treated by respondent no. 1 as also by respondent no. 3.

22. Before dealing with the rival contentions of the parties on this aspect, it would be appropriate, at the outset, to note the contents of the relieving order dated 29.07.2015, which forms the fulcrum of the submission of parties. The same reads as under-

*UNIVERSITY OF DELHI
Establishment Branch – II
Room No. 203
Administrative Block
Delhi- 110007*

Ref. No. Estab.II(i)/002/2001/528

29th July, 2015

RELIEVING ORDER

1. Consequent upon appointment of Dr. M.A. Sikandar, Deputy Registrar as Registrar in the Ambedkar University Delhi, the technical resignation tendered by him has been accepted and he is hereby relieved from his substantive post with effect from 29.07.2015 (AN) to enable him to report to Ambedkar University Delhi.

2. His lien will be retained in the University for a period of one year from the date of his relieving. After the said period his lien will automatically stand terminated with effect from the date of acceptance of his technical resignation.

3. This issues with the approval of the competent authority.

Joint Registrar-Estab. (NT)

23. I may now refer to the letter dated 06.10.2016, vide which the respondent no.1 had returned the contributions received from respondent no.3 towards the petitioner's contribution after 29.07.2016. The relevant extracts thereof read as under-



*“Dear Sir,
Please refer to your letters dated 02.09.2016 and 03.10.2016 forwarding therein three cheques dated 01.09.2016 and 03.10.2016 towards GPF/GIS contribution for the month of August and September, 2016 respectively in respect of Dr. M.A. Sikandar who is presently working as Registrar in ADD.*

2. In this connection I am directed to returned herewith the above mentioned cheques as the lien granted to Dr. Sikandar from the University of Delhi for a period of one year w.e.f. 29.07.2015 stands terminated w.e.f. 29.07.2016 in view of the letter No. No.Estab.ll(i)/002/2001/528/24082-91 dated 29th July, 2015.

*Yours faithfully,
Sd/-
Deputy Registrar_Estab.(NT)”*

24. A reference to the contents of the office order dated 02.12.2016 issued by respondent no. 3 would also be necessary to appreciate the petitioner’s plea that he was not taken on the rolls of respondent no.3 as a Registrar, until 29.07.2016 as his lien continued with respondent no.1. The same reads as under-

OFFICE ORDER NO. 199/2016

Consequent upon the expiry of one year lien period on the post of Joint Registrar, University of Delhi as communicated by the Deputy Registrar-Estab (NT), University of Delhi vide letter No. Estab.ll(i)002/2001/528/22027 dated 06.10.2016, DrM. A. Sikandar has been taken on the roll of the Ambedkar University Delhi as Registrar w.e.f. 29.07.2016. He will continue as Registrar for the remaining part of his five years tenure upto 28.07.2020 and his pay, allowances and



service conditions in AUD shall be regulated in terms of his offer of appointment dated 13.05.2015 and notification F. No. AUD/1-7(1)/2015/19330 dated 30.07.2015.

*(Dr Prasad T.S.V.K.)
Deputy Registrar (HR) ”*

25.A bare perusal of the relieving order dated 29.07.2015 issued by respondent no.1 shows that, while accepting his technical resignation, and relieving the petitioner from his substantive post w.e.f. 29.07.2015, so as to enable him to report to respondent no. 3, the respondent no. 1 had, in no uncertain terms, informed him that his lien would be retained for a period of one year from the date of his relieving. The order further stated that, after the said period, his lien would automatically stand terminated with effect from the date of acceptance of his technical resignation. Learned counsel for the respondent has placed heavy reliance on this latter clause in the relieving order to urge that the petitioner was informed on 29.07.2015 itself that his service with respondent no.1 would be treated as having been terminated with effect from the date of acceptance of his technical resignation, which she contends was 29.07.2015. Having carefully considered this submission, I am unable to agree with the respondent no.1 that the petitioner's service with respondent no.1 came to an end on 29.07.2015 itself. The respondent no.1's plea that since the petitioner's technical resignation was accepted on 29.07.2015, his service came to an end on the said date itself overlooks the specific condition in the very same order which clearly



provided that the petitioner's lien in respondent no.1 will be retained for a period of one year. In my considered view, this clearly implied that the petitioner's relationship with respondent no.1 would be severed only after the expiry of the said lien period of one year unless he chose to return during this period; it, therefore, could not imply that this period during which he had a lien with respondent no.1 was to be completely washed away from his service with respondent no.1.

26.The petitioner is justified in urging that, on account of his lien with respondent no. 1 till 28.07.2016, he could be and was therefore taken on the rolls of respondent no. 3 as an employee only with effect from 29.07.2016. It is thus the petitioner's plea that the period between 29.07.2015 to 28.07.2016, during which the petitioner could not be treated as an employee of respondent no.3, has to be, on account of the lien, be treated as service with respondent no.1. The respondent no. 1 having chosen to retain the lien of the petitioner in respondent no. 1 till 29.07.2015, as a consequence whereof, the petitioner's regular service in respondent no. 3 began only with effect from 29.07.2016, as is also evident from the communication dated 02.12.2016 issued by respondent no. 3, cannot now be allowed to contend that the petitioner's service beyond 29.07.2015 will not be counted. This period between 29.07.2015 to 28.07.2016 can certainly not be discounted by respondent no.1 from the petitioner's service for the purpose of granting him terminal benefits.

27.I cannot also lose sight of the fact that, insofar as respondent no. 3 is concerned, its action in remitting the contributions towards leave salary and pension on behalf of the petitioner to respondent no. 1 for



the period between 29.07.2015 and 28.07.2016, was a clear indicator that the petitioner continued to be an employee of respondent no. 1 till 28.07.2016. There is no denial to the fact that this amount remitted by respondent no. 3 was accepted by respondent no. 1 without any objection whatsoever. This action of respondent no.1 clearly demonstrates that, not only the respondent no. 3, but even respondent no. 1 was fully aware of the position that the said respondent was solely responsible for granting all service benefits to the petitioner for the said period, till 28.07.2016. It is only because the petitioner was serving with the respondent no. 3 during this period that the respondent no. 3 was, but naturally paying salary to the petitioner during this period. However, the said respondent, being aware that the petitioner had a lien with respondent no. 1 during the said period was, therefore, remitting the necessary contributions including those for pension to respondent no. 1.

28. It also emerges that on 06.10.2016, the respondent no. 1 being aware that the petitioner's lien was valid till 28.07.2016 had, while returning the cheques towards the contributions for the months of August and September, 2016 informed respondent no. 3 that the petitioner's lien stood terminated w.e.f. 29.07.2016, as he was now working as a Registrar in respondent no. 3. This also signifies that respondent no.1 was well aware that its responsibility towards the petitioner ended w.e.f. 29.07.2016, from which date, he became an employee of respondent no. 3. It is only later that the respondent no. 1 has tried to change its stand by taking a plea in its communication dated 28.08.2018 that the petitioner's service stood terminated in



respondent no. 1 w.e.f. 29.07.2015 itself. At this stage, it may also be useful to refer to Clause 12(3)(i) of the University Rules which deals with retention of lien by an employee of respondent no. 1. The same reads as under:

*“(3) Retention of Lien i) The lien of a permanent employee who applies through proper channel for a post in response to advertisements in other organisation (UPSC/Government of India Departments/State Governments /Autonomous Bodies/ Central /State Universities/Colleges of Delhi University) may be retained in the University/College for a maximum period of two years or date of confirmation in the new post, whichever is earlier. **Such employees should either revert back to the University/College within that period or resign from the post at the end of that period.** An undertaking to abide by these conditions may be taken from them at the time of forwarding the applications to other Department/Offices. (Note: The period of the lien shall be treated as Extra Ordinary Leave)”*
(emphasis supplied)

29. Though the respondent no. 1, by relying on the relieving order dated 29.07.2015, has vehemently urged that the petitioner's service with respondent no. 1 came to an end with effect from 29.07.2015 itself, the aforesaid clause of the respondent no. 1's own rules does not support this plea. On the other hand, the aforesaid clause clearly provides that during the period of lien, a permanent employee of respondent no.1 should either revert back to respondent no. 1 or resign from the post at the end of the said period. Thus, if the employee who retained the lien in respondent no.1 has an obligation either to return during the period of lien, or is to be treated as having resigned at the end of the said period, this would clearly indicate that



the service of an employee of respondent no. 1 during the period when he/she holds a lien with respondent no. 1, is to be treated in his service period with respondent no. 1.

30.I have also considered the decision of the Madras High Court in *V.Sekar* (supra) and find that the same, while making a passing reference to the specific question raised in the present petition, does not really decide the said issue. The same therefore does not in any manner forward the case of the respondent.

31.Thus, looked at from any angle, I have no hesitation in holding that that the petitioner is justified in claiming his terminal benefits from respondent no. 1 by counting his service till 28.07.2016. In the light of my aforesaid conclusion, I do not deem it necessary to deal with the petitioner's plea that Fundamental Rules 13 & 14 are applicable to the employees of respondent no. 1 or with the decision *State of Rajasthan vs. S.N. Tiwari*, (2009) 4 SCC 700, relied upon by the learned counsel for the petitioner.

32.For the aforesaid reasons, the writ petition is allowed. The communication dated 28.08.2018, issued by respondent no. 1 is, accordingly quashed and the respondent no. 1 is directed to release within 8 weeks, all the terminal benefits of the petitioner by counting his service till 28.07.2016. In case the benefits are not released within the aforesaid period, the petitioner will also be entitled to claim interest @8% per annum.

(REKHA PALLI)
JUDGE

JULY 27, 2022/acm