

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5392 OF 2017

State of Rajasthan & Ors.

...Appellant(s)

Versus

Dr. Hamir Singh Chouhan (Dead)
by LRs & Ors.

...Respondent(s)

WITH

CIVIL APPEAL NO. 5393 OF 2017

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J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment(s) and order(s) passed by the Division Bench of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Civil Special Appeal (Writs) No. 50 of 2015 and other allied appeals by which the Division Bench of the High Court has dismissed the said division appeals preferred by the appellant herein – State of Rajasthan, which were filed against the common judgment and order passed by the learned Single Judge declaring the respondents herein to be entitled to receive pensionary benefits in essence by treating their lien to be continuing with the State Government upto the date of their permanent absorption with the Rajasthan Co-operative Dairy Federations (hereinafter referred to as “Dairy Federations”), the State of Rajasthan has preferred the present appeals.

2. That the respondents herein were initially appointed in the Animal Husbandry Department either as Animal Husbandry Extension Officer or Veterinary Assistant Surgeon in the year 1971. That all of them were subsequently selected after following the due selection process between 1976 to 1978 in the Dairy Federations.

That as per the relevant G.O. and the relevant Rules, the respondents continued to have the lien with the parent department / State Government. That the names of the respondents appeared in the seniority list of the Dairy Federations and all of them were promoted in the year 1983 or 1989 in the Dairy Federations. All of them retired as employees of the Dairy Federations between 1999 to 2003. All of them received the retirement benefits from the Dairy Federations.

2.1 Thereafter, after a period of approximately six to nine years, from the date of superannuation from the Dairy Federations and after receiving all the retirement benefits from the Dairy Federations, the respective respondents filed the writ petitions before the learned Single Judge of the High Court claiming the pensionary benefits from the State Government treating their lien to be continuing with the State. That the learned Single Judge allowed the writ petitions.

2.2 At this stage, it is required to be noted that the lien of the respective respondents came to be terminated subsequently in the year 1988/1993 w.e.f. the date on which they were absorbed / made permanent in the Dairy Federations.

2.3 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge, the State preferred the present appeals before the Division Bench. By the impugned judgment(s) and order(s), the Division Bench of the High Court has dismissed the said appeals. Hence the present appeals.

3. Dr. Manish Singhvi, learned senior counsel has appeared on behalf of the State and Shri Uday Gupta, learned counsel has appeared on behalf of the respective respondents – original writ petitioners.

4. Dr. Manish Singhvi, learned senior counsel appearing on behalf of the State has vehemently submitted that all the respective respondents were selected after following the selection process between 1976 and 1978 in the Dairy Federations. It is submitted that all of them were absorbed permanently in the Dairy Federations and they continued to work in the Dairy Federations as employees of the Dairy Federations till they attained the age of superannuation and retired.

4.1 It is submitted that as per G.O. dated 30.01.1976, the respective respondents, who joined the Dairy Federations, their lien was kept for a period of two years

or their confirmation in the Corporation / Union, whichever is earlier. It is submitted that therefore, on and after they got confirmed in the Dairy Federations, the respective respondents were not entitled to have any lien elsewhere. It is submitted that therefore the lien could not have been extended beyond a period of two years.

4.2 It is further submitted that therefore, once the respondents became the employees of the Dairy Federations, even as per Rule 18(2) of the Rajasthan Service Rules, 1951, they ceased to have a lien on the post on which they were earlier working with the State Government.

4.3 It is submitted that in the case of **State of Rajasthan and Anr. Vs. S.N. Tiwari and Ors., (2009) 4 SCC 700**, it has been clearly held that when a person with a lien against the post is appointed substantively to another post, then he acquires a lien with the later post. A person cannot be substantively appointed on two substantive posts simultaneously. It is submitted that this is the basis of entire service jurisprudence. It is submitted that keeping in mind the above, Rule 18(2) of the Rajasthan Service Rules, 1951 provides that “a Government servant’s lien to a post stands terminated on

his acquiring a lien on a permanent post, which is outside the cadre post.”

4.4 Making above submissions, it is submitted that the respondents shall not be entitled to any pensionary benefits as Government employees, after they ceased to have the lien in the State Government on the post on which they were working earlier.

5. All these appeals are vehemently opposed by Shri Uday Gupta, learned counsel appearing on behalf of the respective respondents.

5.1 Learned counsel appearing on behalf of the respondents has vehemently submitted that as such the respective respondents were sent on deputation to the Dairy Federations and, therefore, they continued to have the lien in the Government. It is submitted that none of the respondents had lost their lien in the Government before their date of absorption / no absorption with the new employer, i.e., Dairy Federations.

5.2 It is submitted that it is established from the records that in each of the cases they were all initially appointed by the Rajasthan Government and were confirmed as

such in the Government service, they were then relieved to join the posting at respective places in the Dairy Federations.

5.3 It is submitted that the Government of Rajasthan has referred to the Guidelines contained in the letter / G.O. dated 30.01.1976 issued by the Deputy Secretary, Government of Rajasthan, Agriculture Department, Jaipur. It is submitted that the said document is a letter containing guidelines issued by an officer of the Department and these guidelines could not override / supersede the position of the Rules and, therefore, no reliance can be placed upon the same.

5.4 It is submitted that so far as the position of the Rules is concerned, the question of lien has to be decided with reference to Rules 15 and 18 of the Rajasthan Service Rules, 1951. It is submitted that the lien acquired by a Government servant cannot be terminated even with his consent if he is left without lien. It is submitted that in the facts of the present case, the lien acquired by each of the respondents under the Government could not have come to an end by their posting and continuance in the respective Milk Unions until they were absorbed therein. It is submitted that till the date they were absorbed they

continued to be the Government servant and, therefore, were entitled to the pension according to the Rules. It is submitted that Rule 158 governs the cases of pension of those who are working under the Local Bodies and paid by the Local Funds administered by the Government of Rajasthan, but so far as the respondents are concerned, they were continuing as confirmed Government servants without confirmation in their respective unions and therefore the guideline dated 30.01.1976 could not override the operation of the Rules relating to the lien. It is submitted that the legal position is that the lien could not be terminated even with the consent of the Government servant, if he is left without lien.

5.5 Making above submissions, it is prayed to dismiss the present appeals.

6. Heard the learned counsel for the respective parties at length.

7. At the outset, it is required to be noted and it cannot be disputed that all the respondents were initially appointed in the year 1971 on the post of Animal Husbandry Extension Officer or Veterinary Assistant Surgeon in the Animal Husbandry Department of the

State of Rajasthan. However, thereafter, all of them applied for appointment in the Rajasthan State Dairy Development Corporation Ltd. by making applications and after they were interviewed, they were appointed in the respective Milk Unions under the Dairy Federations between 1976 to 1978. After their applications and interviews, the respondents were informed with the terms and conditions on which they are absorbed / appointed in the Rajasthan State Dairy Development Corporation Ltd., which read as under:-

“With reference to your application and interview for the post of Assistant Officer you are informed that before the appointment can be made your acceptance to the following terms and conditions is necessary.

1. You will be appointed in the grade of 375-850 and your pay will be fixed suitably protecting your existing pay.
2. Other allowances like Dearness Allowances House Rent allowance and Travelling Allowance etc., shall be at par with these admissible in State Government service.
3. Though the recruitment is being done by the Corporation your ultimate employer may be the Union of Cooperative

Societies established at the District level.

4. Regarding your previous service the matter will have to be settled between you and the State Government. So far as the Corporation is concerned this will be a fresh appointment.

If the terms are acceptable, please send the acceptance in the acknowledgement, given below latest by 16th August 1975, failing which it shall be assumed that you are not interested in the job.”

7.1 Thus, all of them were specifically informed that regarding their previous service, the matter will have to be settled between them and the State Government and so far as the Corporation is concerned, the appointment will be a fresh appointment. That thereafter, all of them were appointed in the concerned Dairy Federations/Unions under the Rajasthan State Dairy Development Corporation Ltd. on the basis of the recommendations made by the selection committee of the Rajasthan State Dairy Development Corporation Ltd. initially on a probation for a period of one year. At the time when number of officers of the Rajasthan Animal Husbandry Services came to be selected on certain posts in the

Rajasthan Dairy Development Corporation and the various Milk Producers Cooperative Unions, some of these officers workings in the Rajasthan Animal Husbandry services represented to the Government that before making up their mind about accepting of their offers, they would like to know what benefits in respect of their service in the Government will be available to them. To that, the respective employees were informed vide communication / G.O. dated 30.01.1976 that their lien will be kept for a period of two years or until their confirmation, whichever is earlier. That therefore, right from very beginning, the respective respondents were told that their lien will be kept for a period of two years or until their confirmation in the Corporation / Union, whichever is earlier. With an open eye, the respective respondents accepted their appointments in the Dairy Development Corporation / Milk Federation Unions. All of them thereafter continued to work in their respective milk unions under the Dairy Development Corporation. All of them got the promotions while working in different milk unions under the Dairy Development Corporation. All of them retired as employees of the Dairy Development Corporation / Milk Federation Unions. All of them were

paid the retirement benefits when they retired on attaining the age of superannuation.

That thereafter after a period of six to nine years of their retirement from the Dairy Development Corporation / Milk Federation Unions, they filed the writ petitions before the High Court claiming pensionary benefits from the State Government contending *inter alia* that their lien as a Government servant in the Rajasthan Government service have been continued. Once the respondents were absorbed on selection and after selection process in the Dairy Development Corporation / Milk Federation Unions, they worked as such and even got the promotion, thereafter, the respective respondents ceased to have the lien in the Government service. The letter dated 30.01.1976 is very clear. Even as per Rule 18 of the Rajasthan Service Rules, 1951, which provides for termination of lien, “a Government servant’s lien on a post stands terminated on his acquiring a lien on a permanent post outside the cadre on which he is borne”. Therefore, once the respective respondents were appointed after selection and interview in the Rajasthan Dairy Development Corporation / Milk Federation Unions, they ceased to have the lien in the Government.

7.2 As rightly submitted on behalf of the State, there cannot be two liens on two substantive posts. The submission on behalf of the respondents that it was not a case of permanent appointment in the Dairy Development Corporation / Milk Federation Unions, cannot be accepted. Their appointment orders on record are very clear. They were appointed after due selection, interview and even after following the due selection process and even earlier when they had doubts, it was made explicitly clear in the communication dated 30.01.1976. Therefore, once the respondents were permanently absorbed and became an employee of the Dairy Development Corporation / Milk Federation Unions, they ceased to have the lien with the State Government and therefore, they shall not be entitled to the pensionary benefits as State Government employees and that too after having received the retirement benefits from the Dairy Development Corporation / Milk Federation Unions.

8. In view of the above and for the reasons stated above, the judgment and order passed by the learned Single Judge as well as the Division Bench are unsustainable and the same deserve to be quashed and set aside and are accordingly quashed and set aside. It is

observed and held that the respective respondents shall not be entitled to the pensionary benefits from the State Government as directed by the learned Single Judge and the Division Bench.

Present appeals are accordingly allowed. No costs.

Pending application, if any, also stands disposed of.

.....J.
[M.R. SHAH]

NEW DELHI;
APRIL 28, 2023.

.....J.
[C.T. RAVIKUMAR]