

Mr. G.V.S. Shastri, and ors. Vs. M.P. State Electronics Development.

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Court : Madhya Pradesh Jabalpur

Decided On : Jun-29-2010

Judge : Rajendra Menon, J.

Appeal No. : Writ Petition No : 3789 of 2000, Writ Petition No : 2389 of 2004.

Appellant : Mr. G.V.S. Shastri, and ors.

Respondent : M.P. State Electronics Development.

Advocate for Def. : Shri R.N. Shukla Shri H.K. Upadhyaya, Advs.

Advocate for Pet/Ap. : Shri Rohit Arya, Adv.

Judgement :

1- As questions involved in these petitions are similar and as the reliefs claimed are also identical, both the writ petitions are being decided by this common order. For the sake of convenience, documents and material available in the paper book filed in Writ Petition No.3789/2000 are referred to in the order.

2- Originally when W.P.No.3789/2000 was filed, there were 125 petitioners. However, during the pendency of the petition most of the petitioners have withdrawn and have stated that they are not interested in the lis. Accordingly, W.P.No.3789/2000 is presently pursued only by the following petitioners - No.1 Shri G.V.S. Shastri; No.27 Mrs. Rani Shrivastava; No.72 Shri Dinesh Kumar Sharma; No.102 Ms. Zafar Nazish Fatma; No.111 Mr. Mudgal Harish Kumar; No.122 Shri Shakti Sharan Shrivastava; and, No.124 Shri Indra Bahadur Singh

Baghel, i.e.. only seven petitioners are indicated hereinabove are pursuing W.P.No.3789/2000 and this order shall be applicable only to these seven petitioners.

3- Similarly, in W.P.No.2389/2004 originally there were 13 petitioners, but now only ten of them namely; petitioner No.1 C.U. Roy; No.2 Sudhir Kumar Jain; No.5 Virendra Khandelwal; No.6 to 12 - Prafulla Joshi, Piyushkant Jain, Rajesh Kumar Bakliwal, Ajay Kumar Sharma, Rajesh Dubey, Sanjeev Kumar Gupta and Brijesh Kumar, are pursuing the petition. Accordingly, this order shall be applicable only in the case of the seventeen petitioners as indicated hereinabove.

4- The M.P. State Electronic Development Corporation Limited (hereinafter referred to as 'MPSEDC') was incorporated in November 1983, it was established for the purpose of promoting electronic industry in the State of Madhya Pradesh. As an initial venture, the Corporation started manufacturing TV Sets, simultaneously it started negotiating with foreign companies for inducting Fibre Optics in telecom network in the company so as to meet the increased demand of high density telecom traffic, which was existing in the year 1986. Accordingly, an Opto Electronic System Project known as OECS, was established as a separate division of MPSEDC. At the instance of certain Financial Institutions it was decided to incorporate a separate subsidiary company in the course of time to take over the OECS Project, which was functioning as a separate division of MPSEDC. Accordingly in furtherance of this policy M/s Optel Telecommunication Limited (hereinafter referred to as 'OTL') was incorporated on 23.12.1988, as a wholly owned subsidiary company of MPSEDC, in accordance to the provisions of the Companies Act. On establishment of OTL, the Government of Madhya Pradesh approved transfer of OECS Project to the newly formed subsidiary company i.e.. OTL on 16.2.90. The petitioners in both these petitions were appointed initially in MPSEDC. As far as petitioners in W.P.No.3789/2000 are concerned, they were appointed in the TV Division of MPSEDC and the petitioners in W.P.No.2389/2004 were appointed in the OECS Project of MPSEDC. As far as the TV Division of MPSEDC is concerned, due to recession in the Television Industry in the year 1990, the work in MPSEDC started reducing and the employees working in the TV Division were becoming surplus and no work was available to be given to these

employees. As a result, it is common ground that vide orders Ex.D/1 to D/14, available from page 96 onwards of the paper book in W.P.No.3789/2000, employees of the TV Division were permanently transferred from MPSEDC to OTL. Similarly, in pursuance to the policy decision as indicated hereinabove, petitioners in W.P.No.2389/2004 were also transferred to OTL vide various orders, similar in nature.

5- While the employees were so working in OTL, it seems that initially a communication was made to them on 2.12.97 informing them that they were initially employed in MPSEDC, on various posts. Subsequently their services were permanently transferred to OTL, on various dates, they were relieved from the Corporation and it was indicated that now MPSEDC proposes to terminate their lien with the Corporation in view of their permanent transfer. Communications in this regard are filed as Annexure E/1 to E/15. Petitioners represented against the same and pointed out their lien cannot be terminated. However, Annexures F/1 to F/15 were issued to the petitioners informing them that the earlier communications made vide Annexures E/1 to E/15 is withdrawn, it is an incorrect communication made, it was pointed out to the petitioners vide Annexures F/1 to F/15 on 2.5.2000 that even though they were initially employed in MPSEDC, but as they were permanently transferred to OTL, where they were again granted further appointment on selection to higher posts and as all other benefits applicable to employees of OTL were also extended, they have become employees of OTL, there is no question of lien being terminated in MPSEDC, petitioners were permanently transferred to OTL and therefore the earlier communication Annexures E/1 to E/15 was withdrawn. Subsequently, records indicate that the establishment of OTL has gone into liquidation and is being wound up and most of the petitioners originally canvassing their cause have either taken voluntary retirement or have withdrawn from the lis and now the present seventeen petitioners have come out with a case that they are the employees of MPSEDC, they were appointed in the said establishment, their lien cannot be terminated by MPSEDC and now it is stated that their services should be repatriated or taken back by MPSEDC and they be permitted to work in the said Corporation. Accordingly, prayer made in these petitions are to quash the action of the respondents in treating their lien in MPSEDC to have been terminated; treat them

to be employees of the said Corporation; and, to permit them to join duties again in the said Corporation due to liquidation/winding up of OTL.

6- Shri Arya, learned Senior Advocate appearing for the petitioners in both cases, inviting my attention to the facts as have been narrated hereinabove, referred to a deed of transfer-dated 2.12.92, available at page No.865 of the paper book, to argue that when the assets and liabilities of MPSEDC were transferred to OTL, in the agreement under Clause 16 a specific provision was made with regard to absorbing the manpower employed with MPSEDC, by OTL. Contending that till date no orders of absorption have been passed and in the absence of order of absorption being passed, all the petitioners continue to be employees of MPSEDC, where they had their original lien, relief is sought for.

7- Shri Rohit Arya, learned Senior Advocate, emphasized that till date no resolution of the Board of Directors of either company is produced nor any document brought on record to show that services of the petitioners have been absorbed by OTL in pursuance to this agreement. Further, referring to the appointment of petitioner No.1 Shri G.V.S. Shastri, available on record, the terms and conditions of appointment and the communication dated 24.9.99 available at page 1089 made by the Managing Director of OTL to the Principal Secretary, Commerce and Industries Department, the Board of Director's resolution dated 25.5.99, available at pages 1090 and 1091, Shri Arya emphasized that the 147 employees of MPSEDC, who were permanently transferred to OTL were proposed to be transferred back to MPSEDC and, therefore, it was argued that there is no absorption of the petitioners in OTL and the petitioners continue to be employees of MPSEDC, where their lien was maintained. Further referring to the communication dated 20.10.99, made by the Managing Director of OTL to the Managing Director of MPSEDC and the legal position indicated therein, Shri Rohit Arya, learned Senior Advocate, tried to emphasize that the petitioners are employees of MPSEDC, their services were only transferred to OTL and merely because petitioners have been granted some promotion to higher post in OTL, it will not mean that their lien with MPSEDC is terminated or they are no more employees of MPSEDC and, therefore, not entitled to join duties in MPSEDC after liquidation/winding up of OTL. Interalia contending that petitioners were transferred

to OTL without their consent, they continue to have their lien in MPSEDC and they are entitled to join duties in the said establishment, Shri Rohit Arya, learned Senior Advocate, seek interference into the matter. It was argued by learned Senior Advocate that the documents and communication referred to hereinabove clearly indicate that employees, who were transferred like the petitioners, were to be absorbed by OTL. The Board of Directors of both the companies have to agree for such absorption and orders have to be passed. In the absence of any resolution by the Board of Directors and in the absence of any order of absorption, it is emphasized that petitioners continue to be employees of MPSEDC, entitled to come back to the said company due to winding up/liquidation of OTL.

8- Accordingly, placing reliance on a judgment of the Supreme Court, in the case of M.P. State Textiles Corporation Limited v. Mahendra and others, AIR 2005 SC 2242, and another judgment of the Supreme Court in the case of Jawaharlal Nehru University v. Dr. K.S. Jawatkar and others, AIR 1989 SC 1577, Shri Rohit Arya, learned Senior Advocate, seeks for interference into the matter. It was emphasized by Shri Rohit Arya that there is no fresh appointment of the petitioners in OTL, there is no resolution of the Board of Directors appointing them in OTL and, therefore, petitioners are deemed to be only on transfer to OTL, the subsidiary company of MPSEDC, and once OTL is closed or wound up, petitioners are entitled to rejoin duties in their substantive post to which they were appointed in MPSEDC. Accordingly, on the aforesaid grounds interference in the matter and relief as prayed for is claimed.

9- Respondents represented by Shri R.N. Shukla, learned Senior Advocate, and Shri H.K. Upadhyaya refuted the aforesaid contention and pointed out that when there was recession in the TV Industry and when OECS Project was transferred to OTL, services of all the petitioners were permanently transferred to OTL and when the transfer exercise took place in the case of all the petitioners, particularly in the case of the petitioners in W.P.No.3789/2000, a Committee was constituted to screen the employees and after such screening the employees were permanently transferred to OTL. When they were permanently transferred they did not object to the same and accepted the transfer made vide Annexures D/1 to D/14, in the year 1990-91. Thereafter, when certain internal advertisements were issued for

appointment to various posts, all the petitioners applied, they participated in the selection process, were interviewed and were appointed on various posts as per their application. Referring to one such advertisement issued on 27.10.94, advertising posts of Assistant Manager (Materials), Material Officer, Assistant Material Officer, Senior Coordinator material, learned counsel for the respondents pointed out that all the petitioners had applied for appointment on the posts so advertized. For example - Shri G.V.S. Shastri applied vide application Annexure R/16 dated 1.11.94. All the petitioners submitted similar applications offering their candidature for appointment in OTL on the basis of internal advertisement issued. They submitted separate applications for appointment as is available at pages 924/925 of the paper book. A Selection Committee was constituted, consisting of various individuals, interviews were held and all the petitioners were appointed on various posts for example, petitioner Shri G.V.S. Shastri, who was working in a lower post, was appointed on the basis of the recommendation of the Committee as Material Officer, in the basic pay of Rs.2000-3500, similarly petitioner Ms. Rani Shrivastava was appointed as Junior Coordinator in the pay scale Rs.1400-2340. Letters of appointment Annexure R/18 dated 15.5.1995 was issued to Shri G.V.S. Shastri appointing him afresh as Material Officer initially on probation for a period of six months, with a condition for confirmation after completion of the probation and thereafter he was confirmed on the post. By referring to the advertisement issued for various posts, the application submitted by each of the applicant, the recommendation of the Screening Committee and the appointment made and the confirmation done on the posts to which they were selected in the case of each of the petitioners, it is emphasized by the respondents that after the permanent transfer of each of the petitioners from MPSEDC to OTL, while they were working in OTL each of the petitioners further applied for appointment to higher post on the basis of internal advertisement, they were selected by the duly constituted Selection Committee, were appointed to the post and thereafter confirmed on the post on successful completion of probation. Accordingly, it is the case of the respondents that it is a case of fresh selection and appointment and thereafter confirmation of each of the employees in OTL. It is not a case where they are temporarily transferred and their lien maintained in MPSEDC. Once the petitioners applied and participated in the selection process and were appointed on different

post and subsequently confirmed, it is the case of the respondents that petitioners cannot seek the relief of repatriation or going back and joining in MPSEDC, when they, by their own conduct and action, have indicated that they have no lien in the parent organization, where they were initially appointed before their permanent appointment by way of selection in OTL. Referring to certain orders passed by this Court under similar circumstances in case of certain other employees, it is argued that in these cases it has been held by Benches of this Court that appointment under similar circumstances is a fresh appointment and employees do not have any lien or right to seek repatriation to MPSEDC. The judgments in this regard relied upon are, V.K. Kaul v. State of MP and others, 2004(1) MPLJ 104; Mohammed Ashraf v. M.P. State Electronics Development Corporation Limited and others, Writ Petition No.6364/2001 decided by a Bench of this Court on 6.2.2006, and certain orders passed by the Division Bench in an LPA filed against the order passed by the learned Single Judge in the case of V.K. Kaul (supra). Further inviting my attention to certain principles laid down by the Supreme Court in the case of MD, M/s T. Nadu Magnesite Limited v. S. Manickam and others, 2010 AIR SCW 3311, Shri R.N. Shukla and Shri H.K. Upadhyaya argued that no case is made out for interference into the matter. Petitioners were appointed on regular basis after due selection in OTL and, therefore, they are not entitled to seek repatriation or direction for joining in MPSEDC. Accordingly, respondents contend that petitioners have no case and the petition is liable to be dismissed. 10- Having heard learned counsel for the parties and on consideration of the facts that have come on record, it is clear that in both these cases petitioners were initially appointed in MPSEDC, in various posts. It is not in dispute that due to recession in the TV Industry, the TV Division of MPSEDC was proposed to be transferred to the newly formed subsidiary company OTL. It is also an admitted position and it is clear from the records that the Project which was initially being implemented by MPSEDC i.e.. the OECS Project, was also transferred with all its assets and liability and the entire running Project and business of MPSEDC was transferred to OTL with effect from 16.2.1990. Employees in both these petitions were either working in the TV Division of MPSEDC or in the OECS Project and when they were transferred to OTL, the transfer orders Annexure D/1 to D/14 clearly indicates that the transfer was made on permanent basis and there is nothing in

the transfer order to indicate that the transfer is temporary or is made in a manner protecting the rights of the petitioners to seek repatriation to their parent organization i.e MPSEDC. In unequivocal terms, the transfer orders Annexure D/1 to D/14 indicate that it is a permanent transfer made from one Company to its subsidiary company and when the said transfer was affected in the year 1990, thereafter none of the petitioners protested or raised any grievance in the matter. It is, therefore, to be construed by implication, that each of the petitioners accepted his transfer affected on permanent basis, with effect from the dates indicated in the order, from MPSEDC to OTL. This transfer had the effect of changing the employer of the petitioners and even though under normal circumstances such a transfer from one Company to another could be only with the consent of the petitioners, but in the present case when the transfer orders were affected in the year 1990 and subsequently, all the petitioners accepted the same and joined their respective places of posting in the subsidiary company without any objection, therefore, it has to be held that they had consented to the transfer.

11- That apart, the records available in W.P.No.3789/2000 indicates that when the proposal was initiated for transferring the employees belonging to the TV Division of MPSEDC to the subsidiary company, a Screening Committee was constituted to adjudge the suitability of the employees and it was only after the employees were found eligible and suitable on the basis of recommendation of the Screening Committee that the transfers in question were affected. 12- Apart from the fact that the petitioners accepted the transfer on permanent basis without any objection, the orders of appointment of the petitioners available on record, for example in the case of petitioner Shri G.V.S. Shastri, i.e.. the order of appointment issued by MPSEDC vide Annexure R/6 dated 3.7.1987 in Clause (vi) clearly contemplates transfer of the petitioner from the service of MPSEDC to any other establishment or office or work in India. It is, therefore, a case where transfer on permanent basis was affected in the case of each of the employee and the employees accepted the transfer and gave a declaration as is evident from Annexure R/7 onwards, agreeing to accept the transfer on the same terms and condition. In the declaration form, filed by the respondents as Annexure R/7, petitioners have agreed to work on shifts and accept their transfer anywhere in the country, including the subsidiary company. It is, therefore, a case where the transfer is from one

company to another subsidiary company on permanent basis and the petitioners have accepted the same without any objection.

13- Even though in the orders of transfer and documents available, there is nothing to indicate that lien of the petitioners in MPSEDC was protected, the petitioners contend that from the agreement available on record i.e.. at page 865 Annexure R/1, it has to be inferred that the transfer was only temporary and the agreement contemplated a provision for absorption of the employees of MPSEDC by OTL. 14- As far as this agreement is concerned, this agreement only pertains to transfer of the employees, who are working in OECS Project and does not relate to the employees working in the TV Division. This agreement is with regard to transferring the assets and liability of the OECS Project from MPSEDC to OTL. Even though there is a provision in Clause 16 of this agreement, that employees of OECS Project shall be absorbed by OTL and as contended by Shri Rohit Arya, learned Senior Advocate, there is no order or document showing absorption. This question has to be considered in the light of the conduct of the parties and other circumstances. It shall be referred to subsequently after considering other factors.

15- The petitioners have further relied upon certain communications available on record and the Board resolution available at page 1091 to contend that the petitioners were on temporary assignment/transfer to OTL and they have not been absorbed or regularized in the services of OTL. It was argued by Shri Rohit Arya, learned Senior Advocate that mere promotion of the petitioners in OTL cannot be a ground to treat the petitioners to be employees of OTL in the absence of any order absorbing the petitioners or decision of the Board of Directors in this regard.

16- Records indicate that after the petitioners were transferred on permanent basis from MPSEDC to OTL vide orders Annexure D/1 to D/14 and other similar orders, the petitioners were holding posts in a lower cadre. Infact they were transferred in the same capacity in which they were working in MPSEDC, for example petitioner No.1 Shri G.V.S. Shastri was working as Senior Coordinator in MPSEDC and when he was transferred vide Annexure D/1 dated 25/7/89, he was transferred in the same capacity as Senior Coordinator. However, after joining OTL in the same capacity i.e.. as Senior Coordinator, when an open advertisement was issued on

27.10.94 i.e.. after more than four years of his transfer, he applied for appointment to the higher post of Material Officer. Available on record at the backside of page 923 and from page 924 onwards are the advertisement issued by OTL for appointment on the post of Material Officer/Assistant Material Officer and the candidature submitted by Shri G.V.S. Shastri for appointment to the said post. The application submitted by him dated 1.11.94 and the application for employment in the printed proforma available from page 924 onwards, indicates that Shri Shastri had submitted his candidature for appointment to a higher post. Similarly, petitioner Ms. Rani Shrivastava, who was working in a lower cadre, also submitted her candidature for appointment on the higher post of Senior Coordinator (Materials) in pursuance to the internal advertisement issued on 27.10.1994. In the case of all other employees, similar applications were submitted seeking appointment on different posts, which were higher than the post held by them in the initial stage of their transfer from MPSEDC to OTL. Their applications were scrutinized, they were interviewed and a selection process was conducted by a duly constituted Selection Committee. From page 922 onwards upto page 1041 are various documents evidencing submission of applications for appointment in pursuance to the internal advertisement issued, selection process initiated and appointment of each of the petitioners on a next higher post on probation. For example on the basis of application submitted by him, petitioner Shri G.V.S. Shastri, who was working as a Coordinator in MPSEDC, was considered for appointment on the post of Material Officer and on the basis of recommendation of the Selection Committee, he was called for an interview on 10.12.95, as is evident from Annexure R/18 dated 15.5.85. Thereafter, he was appointed on probation vide Annexure R/18 on 15.5.95 on the post of Material Officer, in the pay scale 2000-3500, on the basic pay of Rs.2750/-. He was kept on probation for a period of six months and finally after completion of the probation, he has been confirmed in service. It is, therefore, clear that Shri G.V.S. Shastri, who was initially holding a lower post in MPSEDC on his permanent transfer to OTL, in pursuance to an advertisement issued for appointment on the post of Material Officer, submitted his candidature, he was interviewed and after being successful in the selection process, initially he was appointed on probation vide order-dated 15.5.95 Annexure R/18, and thereafter on conclusion of the period of probation he has

been confirmed on the post of Material Officer. In this entire exercise of appointment of Shri G.V.S. Shastri as Material Officer by OTL, there is nothing to indicate that consent or concurrence of MPSEDC was taken and this appointment on a higher post is with the concurrence or approval of MPSEDC. Infact an independent process of appointment to the post of Material Officer was initiated by issuance of an internal advertisement by the management of OTL and Shri G.V.S. Shastri was appointed to this post initially on probation and subsequently confirmed on the said post. It is, therefore, a case where even though if the initial transfer of Shri G.V.S. Shastri in the year 1990 is termed to be temporary for the sake of argument, the status of Shri G.V.S. Shastri changed once he was appointed as a Material Officer and confirmed on the post after the period of probation by OTL.

17- Similar is the position in the case of each and every petitioner, except that the post held by them while working in MPSEDC was different, in each and every case, after their permanent transfer from MPSEDC to OTL, they applied to participate in a selection process for appointment to a different post, their case were considered by a Selection Committee, they underwent the process of selection and after being found eligible they were appointed on selection to a higher post, different from the one held by them in MPSEDC. The appointment granted to the higher post by OTL was initially on probation and after confirmation of the probation their services were continued by OTL. 18- It is in the backdrop of these factual aspects that the rival contentions warrant consideration.

19- As far as the petitioners are concerned, apart from placing reliance on the agreement entered into for transfer of assets and liabilities of MPSEDC to OTL, petitioners are relying upon certain communications made by the Managing Director of OTL to MPSEDC with regard to petitioners' lien being maintained in MPSEDC and an earlier letter issued by the respondents in this regard. As far as the agreement is concerned, the agreement only pertains to transfer of assets from MPSEDC to OTL after the OECS Project was transferred. Even though it speaks about absorbing the manpower employed by MPSEDC for this project, the averments made in the agreement has to be considered and evaluated in the backdrop of the factual scenario that has come on record, as indicated

hereinabove. The same alongwith the communications available at page 1088 and the resolution at page 1091 and 1092 are to be taken note of. The communication made by the Managing Director of OTL is only with regard to disciplinary action to be taken against certain employees, who were earlier working with MPSEDC. In the documents filed by the petitioners even though initially it is indicated by the respondents that their lien is maintained in MPSEDC, but in the subsequent communication made this position is clarified and it is indicated that the earlier letter is incorrect and has been issued under misapprehension. In this regard the communications made by the respondents vide documents filed as Annexure E/16 to E/25 and the letters of the respondents filed as Annexure F/16 to F/25 has to be taken note of. In the earlier letters issued vide Annexure E/16 to E/25, MPSEDC proposed to formally terminate the lien of the petitioners, but when they were informed of the correct position, the clarification was made and the earlier letters withdrawn vide Annexure F/16 to F/25.

20- Merely because some communications are made or some decisions in the Board resolution is taken for absorbing the petitioners or in the matter of protecting their lien or terminating it, that by itself cannot be read as a legal provision binding on the respondents. If a mistake was committed by the respondents in dealing with the actual position contrary to settled legal principles with regard to status of the petitioners, respondents have a right to correct the same and the action of the respondents in holding that petitioners were appointed afresh in different cadres, after due selection, has to be considered in the light of the settled legal principles.

21- It is common ground that appointment to a post or cadre can be made by different means. Appointment by transfer or appointment by promotion from one post to another is permissible. In the present case, the terms and conditions of appointment of the petitioners initially with MPSEDC did permit their transfer to the subsidiary company OTL. When the petitioners were transferred they accepted the transfer, joined in the subsidiary company and started working. As already indicated hereinabove in the original parent company i.e MPSEDC, they were holding post in a lower cadre or a different pay scale, they were transferred permanently to the subsidiary company OTL, in the same cadre. After working in this cadre for some time when an advertisement was issued by OTL, that is when

the subsequent employer invited application from willing candidates for appointment to higher posts or in different posts carrying different pay scales. Each of the petitioners submitted their applications. If the applications available on record and referred to in the case of petitioner No.1 Shri G.V.S. Shastri is taken note of, it would be seen that the application in the prescribed proforma is an "Application for Employment", and the petitioners submitted the application seeking employment in a particular post, in the establishment of OTL. It is, therefore, clear that the petitioners in pursuance to the internal advertisement issued had submitted their applications seeking fresh appointment in different post in OTL. Their applications were scrutinized, they were interviewed and after due selection they were appointed in a totally different post and cadre, in a different scale from the one originally held by them in MPSEDC. The appointments of the petitioners for example on the post of Material Officer in the case of petitioner No.1 Shri G.V.S. Shastri, was a fresh appointment in a different cadre and post and in this appointment, the employer who conducted the process of appointment was the subsidiary company OTL and not the parent organization MPSEDC. Initially petitioners were kept on probation and after successful completion of the probation they were confirmed on the post to which they were appointed by OTL. If that is the factual scenario, then it is a case where petitioners were appointed on different posts and cadres than the one held by them in MPSEDC. Merely because in the order of appointment while the petitioners were on probation it is indicated that if their services are found unsatisfactory they would revert to the original post, that by itself would not mean that they are not appointed on a higher or different post. Appointment on probation on a higher or different post and subsequent confirmation on the appointed post is a separate process of appointment and once an employee is appointed to a different post in this manner, he loses his lien in the earlier post held by him prior to his appointment. He becomes an employee on the newly appointed post and cadre and, therefore, he cannot claim any right which would have accrued to him in the earlier cadre, except for treating the period as continuous for certain benefit i.e.. pension and not otherwise. Once the petitioners were confirmed on the post to which they were appointed after due selection by OTL, they stood absorbed or appointed to a fresh post and by operation of law their right or lien in the previous post held by them stood terminated. If that be the

legal position then the petitioners cannot say that their lien, which was initially with MPSEDC in a lower post or a different post, carrying a totally different pay structure continued even after their promotion in a next higher post or selection to a new post, after due selection by OTL. It is a case where after their permanent transfer from MPSEDC to OTL petitioners on their own sought fresh appointment to a next higher cadre or separate and different post in OTL and it is the management of OTL, which appointed the petitioners on this new post, after due selection. The Management of MPSEDC has nothing to do with this selection or recruitment process, which took place in OTL and in which the petitioners participated of their own free will. Once the petitioners were appointed by OTL in a higher and different post, they cannot claim any benefit of continuing their lien or service in a post which they relinquished after their appointment to a higher post.

22- It is well settled principle of law that normally appointment to a post is initially made on probation and a probationer is entitled to be confirmed upon successful completion of probation. On such confirmation on the post, the incumbent is construed to be substantively appointed and secures a right to the post on which he was initially appointed on probation. Infact by confirmation he is deemed to have been absorbed in the service on a post to which he was initially appointed on probation.

23- In the present case, if the said principle is applied then the sine qua non of confirmation would be that petitioners obtained a substantive status in the post to which they were appointed by OTL, after their confirmation and if that be so petitioners cannot say that they have their lien protected in the lower cadre in which they were working in MPSEDC. Once the petitioners participated in the process of selection in OTL on the basis of advertisement issued and they were appointed and confirmed on the post, they become substantive holders of the post on which they were appointed by OTL and they cannot have any right to seek any benefit with regard to the earlier working or posting in the lower post or otherwise except for the limited purpose of seeking continuation in service for the benefit of pension and other service benefits attached to such continuation. As far as the relationship of employer and employee is concerned, once the petitioners are appointed substantively to a different post than the one held by them in MPSEDC, after due selection by OTL, the relationship of employer and employee different

from the one earlier held by the petitioners comes into existence and on the appointed post, for which selection was done by OTL, the petitioners become employees of OTL and as MPSEDC has nothing to do with this selection and appointment, petitioners cannot say that even on such appointment they continue to be employees of MPSEDC. It is in view of this principle that under similar circumstances this Court in the case of V.K. Kaul (supra) and Mohammed Ashraf (supra) rejected similar prayers made by employees identically situated. In this regard, the observations made by the Bench in the case of V.K. Kaul (supra), in paragraph 5 which reads as under, clarifies the entire position and it is only the above principle which is reiterated by this Court:

"5. The learned counsel for both the sides have been heard. A perusal of the appointment letter dated 2.11.1995 (Annexure R-1) shows that the petitioner was given a fresh appointment as an Executive in the pay scale of Rs.2375- 4125. There was an application of the petitioner for this post and his interview was also taken. Thus the petitioner got a new post and he must be deemed to have abandoned his claim to his inferior position in the M.P. State Electronics Development Corporation. Thus there was no question of retention of his lien in this Company. There was no order to this effect."

(Emphasis supplied)

24- As far as the judgments in the case of M.P. State Textiles Corporation Limited (supra) and Jawaharlal Nehru University (supra) relied upon by learned counsel for the petitioners are concerned, the judgments are entirely different. In the case of M.P. State Textiles Corporation Limited (supra), it was a case of simple transfer from one employer to another and it was not a case where fresh appointment to a different cadre or post took place after transfer. That being so, the case is distinguishable on facts. As far as the case of Jawaharlal Nehru University (supra) is concerned, the matter pertained to transfer of the employee in the employment of one employer to another with his consent. In the present case, even though petitioners may be right in contending that their initial transfer from MPSEDC to OTL was without their consent, but once in pursuance to the order of transfer made petitioners assumed charge in OTL and thereafter worked in OTL for more

than 3 years and then again participated in a process of selection for appointment to a different cadre post, petitioners cannot now turn around and say that their transfer initially from MPSEDC to OTL is illegal because their consent is not obtained. Petitioners having consented by implication and by their conduct cannot now take such a plea.

25- As far as the grounds raised by Shri Rohit Arya, learned Senior Advocate, with regard to the resolution of the Board relating to absorption and the agreement between MPSEDC and OTL is concerned, these questions have to be taken note of in the backdrop of the factual scenario, the conduct of the parties and the legal principle that emerges on such consideration. Once the petitioners have been appointed substantively to a different cadre post by OTL, there is no question of absorbing the petitioners by OTL or taking any further action in pursuance to the Board Resolution for their absorption. The question of absorption would only arise if petitioners had continued in the post which was held by them in MPSEDC and on which post they were transferred to OTL. But, once after their transfer they were appointed to a different post by a process of selection conducted by OTL, then the question of their further absorption does not come. Petitioners became appointees to the new post after due selection, initially on probation and on confirmation they stand absorbed substantively to a different post in OTL by virtue of their selection and appointment. That being so, even if some resolution or agreements are entered into in the matter of absorption of employees, the same will not be of any consequence as far as the present petitioners are concerned, in the light of the factual and legal aspect of the matter as is evident from the record.

26- During the course of hearing, it was tried to be emphasized that in the order appointing petitioners on probation in the higher cadre post by OTL, it was stated that if their services are found to be unsatisfactory they shall be reverted to their original post. In this regard this Clause in the order appointing the petitioners on probation has to be read alongwith the entire order, the subsequent order of confirmation and the facts and circumstances of the case. Once the probation was declared to have been successfully completed and the petitioners confirmed on the post, the probation would come to an end and appointment substantively on the next higher or different post would take effect and, therefore, mere mentioning of the fact about reversion of the petitioners in case of unsatisfactory service

cannot be construed to mean that the petitioners hold lien in the lower post. Similar question is considered by the Supreme Court, in the case of Ram Prakash Makkar v. State of Haryana and others, (1992) 4 SCC 72. In the said case also, appointment by transfer and thereafter appointment on probation and confirmation on a higher post by an employee of the Haryana State Services was taken note of and it is held by the Supreme Court that after satisfactory completion of probation the condition for reversion during the period of probation in case of unsatisfactory service comes to an end, the employee is permanently absorbed in the substantive post on which he is confirmed. If the aforesaid principle is applied in the present case, the arguments advanced by Shri Rohit Arya cannot be accepted, as on completion of the probation, each of the petitioners is confirmed on the appointed post.

27- During the course of hearing it was also tried to be emphasized by Shri Rohit Arya, learned Senior Advocate, that petitioners' lien in the post held by them in MPSEDC was never terminated and, therefore, they have a right to go back to the said post. This argument of Shri Rohit Arya is wholly misconceived. Once an employee is appointed substantively to another post outside the cadre post held by him previously, he automatically loses his lien in the later post. In this regard the principle laid down by the Supreme Court, in the case of Ramlal Khurana (Dead) by LRs v. State of Punjab and others, (1989) 4 SCC 99, may be taken note of. It has been held by the Supreme Court in the aforesaid case that lien is not a word of art. It is the right of an employee to hold a post substantively to which he is appointed. It is held that when the person with a lien against a particular post is substantively appointed to another post, he acquires a lien in the 20

subsequent post to which he is appointed and in such circumstances the lien against the previous post automatically disappears. It is further held by the Supreme Court in the aforesaid case that no government servant can have lien simultaneously on two posts, in different cadres. This according to the Supreme Court is a well accepted principle of service jurisprudence. The aforesaid principle is laid down in paragraph 8 of the judgment in the case of Ramlal Khurana (supra). Keeping in view the aforesaid legal principle, it has to be held that once petitioners were appointed on a higher post after due selection in OTL and after the period of

probation when they were confirmed in the said post by the management of OTL, the substantive appointment of the petitioners to the new post to which they were selected in OTL, has a result of automatic loss of lien held by them in any post with MPSEDC. 28- In the totality of the facts and circumstances, this Court is of the considered view that it is a case where the petitioners willingly and of their own took appointment on a post advertised by OTL and having been appointed to the said post by OTL, cannot now seek the benefit of repatriation or going back to MPSEDC on the ground that their lien is protected. Once petitioners were substantively appointed to a different post by OTL, due to their selection, their lien if any held in a different post with MPSEDC, previously, automatically comes to an end after their appointment and confirmation to a different post, substantive in nature with OTL.

29- Accordingly, finding no case for interference on the grounds raised in these petitions, both the petitions are dismissed without any order so as to costs.

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