

**(2008) 07 PAT CK 0015**  
**In the Patna High Court**  
**Case No : CWJC No. 284 of 2006**

|                                         |            |
|-----------------------------------------|------------|
| Kendriya Vidyalaya Sangathan and Others | APPELLANT  |
| Vs                                      |            |
| Shri Krishna Chandra Pandey and Another | RESPONDENT |

**Date of Decision :** 09-07-2008

**Acts Referred:**

**Citation :** (2008) 4 PLJR 219

**Hon'ble Judges :** Sheema Ali Khan, J; Chandramauli Kr. Prasad, J

**Bench :** Division Bench

**Advocate :** Shivajee Pandey, G.K. Agrawal, K. Ravish and A.V.B. Srivastava, for the Appellant; Ravi Ranjan and Ganpati Trivedi, for the Respondent

**Final Decision :** Dismissed

## **Judgement**

Sheema Ali Khan, J.—This writ application has been filed against the judgment of the Central Administrative Tribunal, Patna Bench dated 18th of October, 2005. The petitioners are the Commissioner, Kendriya Vidyalaya Sangathan having its Head Office at New Delhi and the Assistant Commissioner of Kendriya Vidyalaya Sangathan, Patna Region having its office at Kankarbagh in the town of Patna (hereinafter referred to as the Sangathan for the sake of brevity) who were the respondents before the Tribunal.

2. The petitioner before the Tribunal, that is, respondent no. 1 before this Court had challenged the order terminating his lien with effect from 5.5.1994. He had also prayed before the Tribunal to treat him to be in service till the date of retirement and to calculate his pension treating him to be in continuous service.

3. The facts, in brief, are that the respondent was working as Primary Teacher under the Sangathan at Barauni. He was promoted as a trained graduate and worked satisfactorily throughout. The respondent applied for a post of Secondary Teacher in Zambia and thereafter applied for leave for a period of three years which remained pending till the year 1991. He was finally permitted to join his post in Zambia on 6.12.1992. The letter relieving him was issued on 5.12.1992.

It appears from Annexure-3 that approval was granted by petitioner no. 1 vide letter no. 26-5/88-KVS, dated 20.1.1992. It appears that while issuing the letter to the respondent vide Annexure-4, a condition was added that the respondent on expiry of two years should resign from the Sangathan's service or revert to the Sangathan. This order was issued on 23.3.1992.

4. The respondent apprehended that it would take him time to get relieved from Zambia and, thus, before the expiry of two years an application was made by him to the Permanent Secretary, Ministry of Education, Lusaka for arranging his return to India. Respondent No. 1 also filed an application before the concerned authorities in the Sangathan which was duly forwarded by the High Commission of India at Zambia for considering the request of the applicant for extending his lien.

5. While making the application before the Permanent Secretary, Ministry of Education, Lusaka on 16.3.1994 respondent no. 1 had stated that he had not received his salary for fifteen months and was not given any accommodation till 4.2.1994 and he had to walk ten kilometers to reach the school where he was posted. The respondent also made a request to the Ministry of Education, Lusaka that they should make payment of all the dues and also to arrange his return passage so that he could return back to India.

6. Typically the Assistant Commissioner at New Delhi without considering the difficulties that were being faced by the respondent, rejected his application for extension of lien on 31.8.1994. The respondent again wrote to the Commissioner, Kendriya Vidyalaya Sangathan, New Delhi through the Indian High Commission, Lusaka explaining that he had been warned by the Ministry of Education, Zambia that if he leaves the employment before thirty months, his entire entitlement would be forfeited. The Government of Zambia had also intimated the respondent that he would not be paid the air passage.

7. The Second Secretary, High Commission of India also recommended vide letter, dated 25.11.1994 as contained in Annexure-9 that respondent's lien may be extended so that he may complete his contract and may receive his entitlement. The request made by the Second Secretary, High Commission of India was also rejected by the Assistant Commissioner at Patna. The respondent arrived in India after rejection of his application, the last one being rejected on 10.4.1995 and joined his post at Barauni on 30.12.1995. The joining of respondent no. 1 was not accepted and as such he came before the Tribunal challenging the decision of the Commissioner/Assistant Commissioner, Kendriya Vidyalaya Sangathan.

8. In the present writ petition the contention raised on behalf of the petitioners is that in view of letters, dated 8.6.1972 and 23.12.1974 the respondent was not entitled to the extension of lien and as such the delay in joining his service would be treated as if he had resigned from service and severed all connection with the employer. The Central Administrative Tribunal has partially allowed the prayer of

respondent no. 1 inasmuch it has held that the respondent would be entitled to his pension and other retiral benefits as he worked for more than the period required to make him eligible for pension and other retiral benefits. However, the Tribunal rejected the contention of respondent no. 1 that he should be treated to be in continuous service and be paid his wages from the date of his joining till he retired. The reasons for coming to this conclusion have been discussed at some length by the Members of the Tribunal in the judgment.

9. The Tribunal's first reason is that the Code which is the guidelines provided for administration etc. of the Kendriya Vidyalaya does not provide for of an automatic termination of lien and does not conceive of the concept of deemed retirement. Having held that there can be no automatic termination the Tribunal found that it was illegal to terminate the services of the respondent without giving him a reasonable opportunity to explain the reasons of his absence. The Tribunal has also distinguished between a situation where an employee overstayed his leave or remained on unauthorized leave and a situation where there is a loss of lien and the conditions/consequences under which lien is terminated, and, has concluded that in all such situations, there cannot be an automatic termination of service, and, has thus held without following the process of natural justice, a lien or service cannot be automatically terminated.

10. In this background the submission of the counsel appearing on behalf of the Kendriya Vidyalaya is that the letter by which Sri Pandey was granted permission to take up a job at Zambia clearly indicates that Sri Pandey was being granted lien for two years and his lien would be subject to the condition laid down in letters no. 71 dated 8.6.1972 and 23.12.1974. Therefore, I shall now examine the contents of the letters which are the focal point on which the petitioners based their case, which is Annexure-2 to the writ application. The relevant portion of Letter dated 8.6.1972 is quoted below:-

Subject:-Retention of lien of permanent employees of Kendriya Vidyalaya Sangathan on the eve of their selection to Public Sector Undertakings, Autonomous bodies, Semi-Govt. Organisations etc.

The question whether the lien of permanent employees of Kendriya Vidyalaya Sangathan who are selected for appointment in Govt. or State Govt. institutions, Public Sector Undertakings, Autonomous bodies/Semi-Govt. Organisations etc. should be retained for some specified period or not, has been under the consideration of this Sangathan for sometime past. It has now been decided that the permanent employees of the Sangathan, who are selected for appointment in Govt. or State Govt. institutions, Public Sector Undertakings/Autonomous Bodies/Semi-Govt. Organisations etc. on the basis of their applications duly forwarded by the Sangathan, should be allowed to retain lien on their permanent post in the Sangathan with the prior approval of the Commissioner for a period of 2 years or till they are permanently absorbed in the Undertakings, etc., whichever is earlier subject to the following conditions:-

(i) .....

(ii) .....

(iii) .....

(iv) If the Sangathan's employee is not permanently absorbed within a period of 2 years from the date of his appointment in the Public Sector Undertakings/ Autonomous Bodies/Semi-Govt. Organisations in the manner indicated at (iii) above, he should immediately on the expiry of the said period of 2 years, either resign from Sangathan's service or revert to the Sangathan. If the employee concerned does not revert to the Sangathan within a period of two years, he will be deemed to have resigned from the Sangathan and sever all connections with it.

(v) The Assignment under International Cooperation Program for which the Sangathan sponsors candidates only from amongst permanent employees will be governed by the relevant orders issued by the Government, but the employees so sponsored will have to give an undertaking that if they leave, salary, pension contribution is not paid to the Sangathan under the terms of sponsorship by the foreign Government, or the employees himself, the period of such deputation will not be treated as qualifying service.

The amended rule which is contained in letter of the Sangathan No. F-1-4/74, dated 12.9.1974 deals with the procedure for forwarding the application of employees of the Sangathan. It would be relevant to quote clauses 2(b) and 2(d) of the letter, dated 12.9.1974 which are as under:-

As all temporary employees will have to resign from their posts at the time of release from the Sangathan, if selected for the post applied for, an undertaking to the effect that they will resign from the Sangathan in the event of their selection to the post applied for should be taken from them at the time of forwarding their applications, as in Annexure-1.

2(c).....

2(d) All applications for posts/assignments abroad should also be in response to advertisements in newspapers or circulars from Govt. of India offices. Such applications should be forwarded through this office. No applications should be forwarded direct by the Assistant Commissioners/Principals. In the event of the time limit for receipt of applications through proper channels; a copy of the application may be sent direct, but the original application must be sent through this office.

11. On interpretation of the letter so relied upon by the petitioners, it appears that clause 4 of letter 71/KVS(SS) dated 8.6.1972 does not apply in the case of the respondent. So far as persons on assignment to foreign country, the relevant clause is clause 5. It states that the assignments will be governed by the relevant orders issued by the Government. It further lays down certain conditions

for qualifying service. Clause 4 deals mainly with the question of forwarding of applications to the Sangathan seeking deputation in relation to Public Sector Undertakings, Autonomous body/Semi-Government Organisations but not of persons seeking lien on foreign assignment, which as already stated, will be governed by the relevant orders as contemplated under clause 5 of letter, dated 8.6.1972.

12. Therefore, the submission on behalf of the petitioners stating that the respondent would retain lien for only a period of two years and immediately after expiry of two years they would have been treated to have resigned from the Sangathan and severed all connection with it is misconceived. In fact the Government order granting the respondent lien vide letter no. 26-5/88-KVS(EII), dated 20.1.1992 does not speak of any conditions as indicated in the letter of the Assistant Commissioner. In any event the conditions are misconceived in view of the facts aforesaid.

13. There is yet another aspect to the whole matter. It is true that the Government has the power to grant lien for a particular period to the person seeking lien to (sic) foreign country. Coupled with the power to grant lien for a particular period is also the power to extend the lien on reasonable grounds.

14. In the present case the respondent had expressed his difficulties in returning to India after two years in no uncertain terms. The difficulties were such that that could not ordinarily be for-seen by the respondent. The fact that the respondent had not received his salary for fifteen months after joining at Zambia, the fact that his passport was seized and further that his entire entitlement was to be forfeited and was also refused fare for his return journey to India are relevant conditions for consideration of extension of lien. Moreso was also in view of the fact that our own High Commission had recommended to the Government that the respondent's lien should be extended.

15. In the light of the discussions made above, I find that the grounds on which the respondent was seeking the extension of his lien were reasonable and refusal to extend the lien of the respondent in the facts mentioned aforesaid in this order as well as which have been stated in the writ petition are sufficient grounds to hold that the refusal to extend the lien was unreasonable and this is a valid ground for dismissing the writ petition of the petitioners.

16. Learned Counsel for the petitioner referred to the case of Aligarh Muslim University and Others Vs. Mansoor Ali Khan, . This case interpreted Rule 5(8) i.e. the Aligarh Muslim University Revised Leave Rules, 1969 and Rule 10(C)(1) Aligarh Muslim University Non-Teaching Employees (Terms and Conditions of Service) Rules, 1972. At least two vital differences between the aforesaid case and the situation which has arisen in this case. First, the rules under consideration by the S.C. was statutory and secondly the provisions under consideration by the Supreme Court were completely different from the present case.

17. Rule 5(8)i envisaged the right of an employee to give explanation for his absence which has to be considered by the Vice-Chancellor/Executive Council on merit.

18. Similarly Rule 10(c)(i) and (ii) of the 1972 Rules contemplate the power of Executive Council to consider and accept the explanation of an employee.

19. The facts of the Supreme Court judgment aforesaid are not applicable to the facts of the case under consideration. For the reasons mentioned above the application is dismissed but without costs.

Chandramauli Kr. Prasad, J.

I agree.