

V.S.R.K. Parma Hansa v. Indian Oil Corporation and others  
(G. R. Majithia, J.)

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(7) In view of what has been observed above, this petition is allowed and it is directed that the benefit of promotion against the quota reserved for Scheduled Caste candidates, to which the petitioner belongs, be also given to him. There will be no order as to costs.

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R.N.R.

Before V. Ramaswami, CJ and G. R. Majithia, J.

V.S.R.K. PARMA HANSA,—Appellant.

versus

INDIAN OIL CORPORATION AND OTHERS,—Respondents.

Letters Patent Appeal No. 830 of 1985.

January 12, 1989.

*Letters Patent, 1919—Cl. 10—Petitioner a regular Clerk selected as typist by another organisation—Relieving order providing that he continue to hold lien for two years—New employer wanting the lien to be terminated with previous employer—Previous employer not terminating lien due to pendency of disciplinary proceedings against the petitioner—Termination of petitioner by new-employer—Validity of such order.*

*Held, that the action of respondent No. 1 to compel the appellant to get his lien terminated before the expiry of the above period is wholly unjustified. Respondent No. 1 could not terminate the services of the appellant merely on the ground that he had failed to get his lien terminated, which was retained by his previous employer more particularly when it had acquiesced with it when they allowed the appellant to join service. On the facts of the instant case we find that respondent No. 1 has treated the appellant unfairly.*

(Para 8).

*Held, that it is only as assumption that respondent No. 3 did not terminate the lien of the appellant on the ground that some disciplinary proceedings were initiated against him or were in-offing.*

(Para 6).

*Letters Patent Appeal under Clause 10 of the Letters Patent, against the Judgment, dated 15th March, 1985, passed by Hon'ble Mr. Justice J. M. Tandon, dismissing the C.W.P. No. 312 of 1984.*

J. L. Gupta, Senior Advocate, Jaswant Singh, Advocate with him,  
for the appellant.

H. S. Brar, Senior Standing Counsel, for Central Government,  
for U.O.I.

### JUDGMENT

*G. R. Majithia, J.*

(1) This appeal under Clause 10 of the Letters Patent is directed against the order of learned Single Judge whereby he dismissed the writ petition filed by the appellant holding that no exception could be taken to the order passed by respondent No. 1 relieving him from the services of the Corporation with effect from January 2, 1984 (afternoon).

(2) The facts first :—

The appellant joined as a Clerk Grade II in All India Radio, Hyderabad on August 21, 1970 and was confirmed on April 21, 1975. He was promoted as Clerk Grade I on *ad hoc* at Hyderabad Upgrah Door Darshan Kendra, Hyderabad on March 27, 1981. The All India Radio and the Upgrah Door Darshan Kendra, Hyderabad are two units of the same department under the over-all control of the same authority. The appointment of the appellant as Clerk Grade I was regularised on September 2, 1982. The respondent No. 1 advertised inviting applications for the post of typist reserved for a physically handicapped person. The appellant being physically handicapped applied for the post and was selected. He was relieved by Upgrah Door Darshan Kendra Hyderabad on October 1, 1982 and in the relieving order it was provided that since the appellant holds substantive post of Clerk Grade II in All India Radio at Vijayawara he would continue to hold his lien on the post for a period of two years ending September 30, 1984. The appellant joined respondent No. 1 at Chandigarh on October 5, 1982 as typist-clerk on probation for one year. On December 1, 1983 respondent

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No. 1 intimated the appellant that he had not got his lien terminated with his previous employer viz. Director Upgrah Door Darshan Kendra, Hyderabad/All India Radio, Vijayawara and a warning was issued that if he did not get his lien terminated with his previous employer by December 15, 1983, he would not be allowed to continue in service. The appellant made request to the Director, Upgrah Door Darshan Kendra, Hyderabad for terminating his lien and also intimated respondent No. 1 that he had requested his previous employer for terminating his lien forthwith. On December 16, 1983 respondent No. 1 again wrote to the appellant that he had not so far got his lien terminated with his previous employer and a final warning was given to him that if he did not get his lien terminated and gave a proof of the same to it by December 31, 1983, it would not be possible for them to continue the appellant in service. The appellant did not succeed in getting the lien cancelled. Resultently on January 2, 1984 respondent No. 1 passed the following order:—

“Since it has not been possible for you to get your lien discontinued from your previous employer, you are hereby relieved from the service of the Corporation with effect from the 2nd January, 1984 (A.N.)”.

It is this order which has been challenged in the writ petition.

(3) Respondent No. 1 justified the order on the ground that it had information that the previous employer of the appellant was unwilling to terminate the lien as some disciplinary proceedings were pending against him on charge of misappropriation of Government fund. It was pleaded that the appellant's appointment was specifically on the condition that he would receive from his original department the relieving letter and resign from the previous service.

(4) The learned Single judge declined to interfere in the matter on the ground that it is difficult to issue a *manda mus* to the Director, Upgrah Door Darshan Kendra, Hyderabad to terminate the lien of the appellant since it is open to the competent authority to start disciplinary proceedings against him. At this juncture it will be useful to reproduce the observations of the learned Single Judge in

this behalf which are as under:—

“The learned counsel for the petitioner has laid great stress on the order of Director-General dated April 25, 1984 directing that disciplinary proceedings against four persons also named in the report of the Central Vigilance Commission, other than the petitioner, shall be taken in common proceedings. The argument proceeds that it should be inferred from P. 16 that the competent authority had decided not to initiate departmental proceedings against the petitioner. The contention is without merit. No such inference favourable for the petitioner can be raised from the order P. 16. Assuming that the disciplinary proceedings have not been initiated against the petitioner so far because of his appointment in the Indian Oil Corporation, it is still open for the competent authority to start such proceedings against him. Under these circumstances, it is difficult to issue a *mandamus* against respondent No. 3 to terminate the lien of the petitioner.

(5) The petitioner continues to hold his lien in the All India Radio at Hyderabad who have not agreed to terminate it on account of the disciplinary proceedings against him. In this background, the petitioner cannot justifiably assail the communication P. 12 terminating his services by the Indian Oil Corporation authorities.”

(6) The entire approach of the learned Single Judge is erroneous and unjust. It is only an assumption that respondent No. 3 did not terminate the lien of the appellant on the ground that some disciplinary proceedings were initiated against him or were in-offing. Respondent No. 1 relieved the appellant from service on January 2, 1984. More than four years have passed. Respondent No. 3 did not bring any material to the notice of this Court indicating that the lien was not terminated because of the pendency of the disciplinary proceedings against the appellant. Even otherwise, we find that respondent No. 1 was wholly unjustified to relieve the petitioner from the service with effect from January 2, 1984 (A.N). The appellant was relieved by respondent No. 3 on October 1, 1982 and the relevant order as under:—

“With reference to his application dated 27th September, 1982, Shri V. S. R. K. Parama Hansa, Clerk Grade-I is informed that his request to relieve him of his duties with effect

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from 30th September, 1982 (A.N.) consequent on his appointment in Indian Oil Corporation has been acceded to and accordingly he is relieved of his duties on the afternoon of 30th September, 1982.

(7) Since, Shri V. S. R. K. Paramahansa, Clerk Grade-I, holds to substantive post of Clerk Grade-II in All India Radio at Vijayawada, he will continue to hold his lien on the post for a period of two years ending 30th September, 1984."

(8) In this order it is specifically stipulated that the lien has been retained against the substantive post of Clerk Grade-II for a period of two years ending September 30, 1984. He was relieved of his duties as Clerk Grade-I by respondent No. 3 with effect from October 1, 1982. On the strength of this order the appellant joined the service of respondent No. 1, respondent No. 3 has specifically retained his lien till September 30, 1984 and it may not be willing to terminate the lien prior thereto. Respondent No. 1 was wholly unjustified to relieve the petitioner from service on January 2, 1984 only on the ground that he had failed to get his lien terminated with his previous employer. The appellant has done all what was within his power and repeatedly requested his previous employer to terminate his lien, but it was not done. The appellant could not be penalised by respondent No. 1 for not getting his lien terminated. The impugned order of relieving him from service by respondent No. 1 is wholly illegal and unjust. We have gone through the entire written statement filed by respondent No. 1. No provision of the statute has been mentioned under which respondent No. 1 was competent to terminate the services of the appellant merely on the ground that he had failed to get his lien terminated with his previous employer. The appellant joined the service of respondent No. 1 after he was relieved from service by respondent No. 3 on September 30, 1982. In the relieving order it was provided that his lien was retained till September 30, 1984. This order must have been submitted to respondent No. 1 when the appellant joined service with it. Respondent No. 1 permitted him to join the service fully conscious of the fact that respondent No. 3 had retained the lien till September 30, 1984. The action of respondent No. 1 to compel the appellant to get his lien terminated before the expiry of the above period is wholly unjustified. Respondent No. 1 could not terminate the services of the appellant merely on the ground that he had failed to get his lien terminated, which was retained by his

previous employer more particularly when it had acquiesced with it when they allowed the appellant to join service. On the facts of the instant case we find that respondent No. 1 has treated the appellant unfairly. The order of the learned Single Judge is set aside.

(9) Consequently we allow the appeal and quash the order dated January 2, 1984 passed by respondent No. 1 relieving the appellant from the services of the Corporation with effect from January 2, 1984. Respondent No. 1 is directed to re-instate the appellant within one month from the date of receipt of this order with all back wages and consequential benefits. No Costs.

S.C.K.

*Before J. V. Gupta, J.*

MURTI SHRI RADHA KRISHAN PARNAMI MANDIR,—*Petitioner.*

*versus*

DES RAJ,—*Respondent.*

*Civil Revision No. 3363 of 1987*

*January 23, 1989.*

*Transfer of Property Act (IV of 1882)—S. 108(h)—Tenant constructing tin sheet roof—Eviction of tenant ordered—No direction in such order regarding constructions made by tenant—Landlord taking possession of premises in execution—Tenant claiming return of tin sheets—Validity of such claim—Tenant has no right after delivery of possession.*

*Held.* that once the tenant was dispossessed from the demised premises, he was not entitled to the things which were attached to the earth as contemplated under Section 108(h) of the Transfer of Property Act, 1882. Moreover, there was no such direction in the eviction order, nor at the time of the delivery, these goods were handed over to the superdar.

(Para 4).

*Petition under Section 115 C.P.C. for revision of the order of the court of Shri S. S. Lamba, HCS, Additional Senior Sub Judge, Ambala dated 31st August, 1987 ordering the D.H to restore the*