

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2704/2000 &
CP 14/2001

New Delhi, this the 1st day of September, 2006

HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

Smt. Pramod Saxena,
Principal,
Kendriya idyalaya,
Bharatpur.
Resident of : Housing Board Colony,
Krishna Nagar,
Bharatpur (Rajasthan)

... Applicant.

(By Advocate Shri Anil Gautam)

VERSUS

1. Union of India
(Through - The Secretary to the Government of India,
Ministry of Human Resource Development,
New Delhi.
2. The Commissioner,
Kendriya Vidyalaya Sangathan,
10, Institution Area,
Shaheed Jeet Singh Marg,
New Delhi - 110016.

... Respondents.

(By Advocate Shri S. Rajappa)

ORDER

By Mr. Mukesh Kumar Gupta, Member (J):-

Initially aforesaid OA & CP were dismissed vide order dated 02.2.2001 holding that applicant had "tried to mislead the court, thereby misusing the process of law while obtaining the ad-interim order dated 29.12.2000. It is well settled that who has come to the Court with unclean hands shall not be entitled to any relief." Aforesaid order had been carried before the Hon'ble Delhi High Court vide Writ Petition No.6789/2001 by the applicant herein. Vide judgment dated 01.12.2005, Tribunal's order dated 02.2.2001 was quashed and set aside. The matter was remitted to this Tribunal "for consideration of all issues on merit." On the findings recorded about suppression of material facts and approaching this Tribunal with unclean hands, the Hon'ble Court observed as follows:-

"11. In view of the conflicting stand taken by the parties hereto, we have scrutinized the records very carefully including the affidavit filed by R.P. Sharma, of which clarifications were also obtained from him as he was personally present during the course of hearing before us. On going through the records, we find that in the acknowledgement dated 23rd December, 2000 what the petitioner admits to have received is letter dated 19th December, 2000, which is the order reverting the petitioner to the post of PGT (Chemistry). So far the other letter, which is dated 23rd December, 2000, by which she was asked to hand over the charge of the school to the senior most PGT of the school, is concerned, the same according to him was never handed over to her. Although mention of the said letter is also there in the acknowledgment dated 23rd December, 2000 but the same appears to be an addition made subsequently and could be by a different hand. There is clear interpolation which is clear on a bare perusal of the said acknowledgement. The said subsequent interpolation in letter dated 23rd December, 2000 in the acknowledgement of the letter dated 23rd December, 2000 also is without any description of the said letter.

12. In view of the aforesaid conflicting position in the records placed before us, we are of the considered opinion that it is not possible to come to a definite finding as to whether the said letter, directing the petitioner to hand over charge of the school, was received by her on 23rd December, 2000 and that even despite receipt of the said letter she did not inform the correct position to the Tribunal that she had handed over charge to the senior most PGT. In case there would have been any handing over and taking over of the charge, there would have been receipt on record which is not placed by the respondent on our records for our perusal. Therefore, it is not conclusively proved and established that the petitioner was given the letter dated 23rd December, 2000 directing her to hand over charge of the school to the senior most PGT of the school and that pursuant thereto she had handed over charge to the senior most PGT in presence of R.P. Sharma, Education Officer, who was specifically deputed to release her from her post. Therefore, in view of the aforesaid findings and conclusions arrived at by us, we are not in a position to agree with the conclusions and findings arrived at by the tribunal that the petitioner has suppressed material facts and that the petitioner had not come to the tribunal with clean hands. The tribunal has passed an interim order in her favour pursuant to which she was working in the said school and in violation of the said order charge was taken over."

(emphasis supplied)

2. We heard learned counsel for parties pursuant to aforesaid directions of Hon'ble High Court. In OA applicant has assailed order dated 19.12.2000 whereby she was reverted from the post of Principal on deputation to her substantive post of PGT (Chemistry) with immediate effect. Shri Anil Gautam, learned counsel for applicant vehemently contended that aforesaid reversion order is punitive in nature and, therefore, the same cannot be sustained in law.

3. Factual matrix of case is follows:-



Based on recommendations of Selection Committee, applicant was selected & offered an appointment as Principal in Kendriya Vidyalaya Sangathan (hereinafter referred as KVS) on deputation basis in pay scale of Rs.10,000-15,200/- initially for a period of one year, extendable to maximum period of five years, depending upon her conduct & performance and administrative exigencies. Said offer was made vide communication dated 19.5.2000. She assumed the charge of said post on 06.6.2000. She initially joined KVS w.e.f. 10.8.1979. On 18/19.09.2000, Education Officer visited the School and submitted report dated 19.9.2000 stating therein that said school needs improvement; more attention towards discipline should be paid; there had been irregularities in purchase and other accounts work during last many years which needs to be looked into. Under column "For long term planning/decision at Hqrs. level", it was opined that: "present Principal is trying her best to improve the situation however the efforts may be made to improve the functioning of results." The grievance of the applicant is that there had been no adverse report ever communicated to her since 06.6.2000, when she assumed charge of the post till 19.12.2000 when all of a sudden, unilaterally respondents reverted her to her substantive post of PGT (Chemistry). Basis of reversion has been reflected under para-2 of impugned order, which reads as follows:-

"02. Whereas on going through the reports of Asstt-Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Jaipur on the functioning of Smt. Pramod Saxena as Principal of KV, Bharatpur it is observed by the competent authority that she has failed to run school smoothly, efficiently and in systematic manner in the interest of the children as well as academic and administrative points of view."

4. Learned counsel contended that a perusal of above would show that impugned order ex facie is punitive in nature as it casts stigma. No notice was ever issued to her calling upon any comments on report submitted by Education Officer; no memorandum was ever issued pointing any deficiency in her functioning and, therefore, principles of natural justice were violated. It appears that aforesaid report dated 19.9.2000, had been improved & substituted by another report of Education Officer dated 27.09.2000 in total contradiction to his

earlier report. Learned counsel further stated that subsequent observation report submitted by Shri R.P. Sharma, Education Officer was at complete variance. Vide report dated 27.9.2000, it was stated that: "the role of the Principal as an Executive head is very little. If the Principal is indifferent towards his duty, then the state of the Vidyalaya can be imaged, very correctly." It would be expedient to notice both reports submitted by same Education Officer which read thus:-

Inspection Report dated 19.9.2000

"(A) General remarks on the academic supervision on Primary / Secondary and Senior Secondary classes.

The general tone and tenor of the School needs improvement. The room for H/M be shifted for Primary classes for which a cabin may be arranged.

*(B) Suggestions/observations to be followed up:-
(i) At Vidyalaya level.*

- (1) All the teachers should be fixed responsibilities for up keep of class rooms and complete building.*
- (2) More attention towards discipline may be paid.*
- (3) Cleanliness is must. The sweeper may be taken to task.*

(ii) At Regional Officer level.

- (1) The vacant post of teachers and other employees may be filled by R.O. Jaipur.*
- (2) Irregularities in purchases and other accounts work during last many years may be looked into the responsibilities may be fixed for irregularities.*

(iii) For long term planning/decision at Hqrs. level.

- (1) The Vidyalaya building may be repaired, colour washed and white washed.*
- (2) The electrical appliances fixtures need repair and up keep must be adhered to*
- (3) Road inside the school needs repair*
- (4) Handing over of staff quarters be completed*
- (5) The present Principal is trying her best to improve the situation however the efforts may be made to improve the functioning of results. (emphasis supplied)*

Text of Inspection Report dated 27.9.2000 read thus:-

"Inspection Report of K.V. BHARATPUR

The undersigned visited K.V. Bharatpur on Sept., 18th & 19th and found the school in a very very poor State. In fact it did not give the look of a school. It seems that the school has been unattended for the last many years. Few of the areas which need immediate attention are as under:-

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1) A very shabby state of school building and class rooms. Toilets were stinking. Most of the fans not in working condition. Broken switch boards and hanging electrical wires which may cause any eventuality. Some class rooms had tube-lights but one leg detached from roof.

2) It seems that no white-wash, paint & other repair & maintenance steps have been taken for the last many years. Most of the walls of the class rooms and corridors bore dirty spots of spit of pan, pan-parag & gutka etc.

3) Road from entrance gate to the main building having deep pitches, broken bricks & stones lying here & there. It gave look of a village unattended road.

4) Campus filed was full of bushes and unwanted growth of shrubs pose danger to the life of students playing near it.

5) Unhygienic condition of drinking water facility.

6) No care has been taken for infrastructural condition of the school.

7) Discipline, decorum and standard of morning assembly was very poor. It was on the sweet will of the students & staff to attend the morning assembly even on the day of inspection which speaks volumes of its state on other days. The teachers did not pay attention to the students of their respective classes. No sense of belongingness was noticed in staff & Principal.

8) There is no check on late comers be it students or staff including the Principal.

9) The role of music teacher in morning assembly was nil.

10) The meeting of Executive Committee has not been held since its inception. No steps have been taken by the Principal to hold the meeting and allocate the budget from VVN for the development purpose. No school planning / Vidyalaya calendar has been prepared. It seems that everyone is passing time aimlessly without any direction.

11) The role of the Principal as an Executive head is very little. If the Principal is indifferent towards his duty, then the State of the Vidyalaya can be image, very correctly.

Submitted to the Assistant Commissioner for his kind perusal & necessary action."

5. Learned counsel further contended that impugned action has been taken against her based on manufactured report of Education Officer dated 27.9.2000, which was forwarded by the KVS, Regional Office, Jaipur to the then Commissioner, KVS on 17.11.2000. The purport of said communication dated 17.11.2000 had been that the Chairman, VMC KV Bharatpur & Collector and

District Magistrate, Bharatpur informed it that applicant left headquarters without prior permission after joining at Bharatpur & applied for transfer to Gwalior. Strong reliance was placed on (2000) 3 SCC 239 [V.P. Ahuja vs. State of Punjab & Ors.] wherein it has been held that a probationer like a temporary servant is also entitled to certain protection and his services cannot be terminated arbitrarily or punitively without complying with the principles of natural justice. Affidavits filed by the parties before the Hon'ble High Court indicated the background in which the order, terminating the services of the appellant came to be passed. Such order which, on the face of it is stigmatic, could not have been passed without holding a regular enquiry and giving an opportunity of being heard. Further reliance was placed on 98 (2002) DLT 510 (DB) [Union of India vs. J.P. Verma & Anr.] upholding the decision of this Tribunal dated 16.11.2000 in OA No.1459/2000 wherein respondent therein had been repatriated to his parent cadre illegally. Respondent, a member of Indian Police Force allotted the cadre of State of Orissa was appointed on deputation basis as Additional Director General, CRPF. Said official was sponsored for the post of DG (Investigation), National Human Rights Commission. Secretary General, NHRC informed the Government that said official was only keen to find out about perquisites attached to the office and when matter was brought to the notice of the Chairperson, NHRC, he directed that matter be brought to the notice of the Home Ministry highlighting the lopsided priorities of these very senior officers, who were waiting to serve the nation in the rank of Director General of Police. Respondents' contention that Tribunal committed a serious error in quashing the repatriation order in so far as it failed to take into consideration that the deputationist cannot be said to have any legal right to continue & remain on deputation, was rejected by the Hon'ble High Court. Further contention raised that order of repatriation had already been passed on 03.8.2000 and the OA was filed on the same date, which intentionally, deliberately suppressed the said fact, was also rejected, holding that though order was passed on 03.8.2000, it was dispatched on 04.8.2000 and, therefore, it was unlikely that the respondent therein at the time of

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filing of OA was communicated the said order, although he might have come to know thereabouts. Vide para-13, it was held that valid and cogent reasons were required to be assigned for the repatriation. Hon'ble High Court noticed and relied upon various judgments including V.P. Ahuja (supra).

6. Shri Anil Gautam, learned counsel further contended that as applicant was appointed after following the due procedure and similarly situated persons, ninety in number were later on absorbed vide order dated 29.5.2001, she also deserves the same treatment. In fairness, it was pointed out that in 2004, all those who were appointed as Principal along with applicant were issued notice for termination, which has been quashed and set aside by the Hon'ble Calcutta High Court in W.P.C.T. No.63/2005 decided on 11.8.2005 [*Ram Singh & Ors. vs. Union of India & Ors.*] as well as W.P.C.T. No.147 of 2005 [*Narender Prakash Saxena & Ors. vs. Union of India & Ors.*] dated 30.8.2005 wherein earlier judgment in Ram Singh (supra) has been reiterated & followed. Our attention was also drawn to para-4.4 of the OA, which had quoted the Education Officer report dated 19.9.2000 as well as reply filed by respondents, which did not dispute the quote from the said concerned report.

7. In its reply respondents categorically stated that applicant, failed to run the School smoothly and inefficiency had crept in the School administration thereby adversely affecting atmosphere of the School. In the circumstances, urgent steps had to be taken to preserve the sanctity of the School atmosphere. Accordingly, competent authority namely the Commissioner before whom records / report related to school were placed, took a decision in accordance with law as well as in terms of para-4 of offer of appointment, which clearly stipulated that appointment on deputation will not confer on her any claim for permanent absorption / regular appointment and she cannot claim for extension of deputation as a matter of right. She was not found fit for the post of Principal and was reverted to her substantive post of PGT (Chemistry). Vide reply para-10, it was also disclosed that aforesaid decision was based on materials which were

placed before the then Commissioner, who took into consideration all relevant records and other material." She had no vested right to continue in the said post particularly when her performance was not found satisfactory.

8. Shri S. Rajappa, learned counsel further contended that since applicant's appointment was only for a period of one year from 06.6.2000, which period has already expired, present OA has become academic in nature and in these circumstances, no order is called for.

9. We heard learned counsel for parties and perused the pleadings carefully.

10. On bestowing our careful consideration to facts noticed hereinabove as well as rival contentions raised by parties, we are of the firm view that impugned order dated 19.12.2000 is based on specific allegation that she failed to "run school smoothly, efficiently and in systematic manner in the interest of the children as well as academic and administrative points of view", as reflected vide para-2 of impugned order. Short reply as well as detailed reply filed by respondents also reiterated the stand, as noticed hereinabove that applicant's performance was not found satisfactory by competent authority. It is an admitted fact that at no stage applicant was informed about anything of her performance or field in which she was lacking. As noticed from Education Officer report dated 19.9.2000, applicant had been "trying her best to improve situation", which finding / observation had taken a somersault. As per subsequent report dated 27.9.2000, the Education Officer, who had visited the School, took "U" turn for an extraneous consideration & without any justification. As noticed hereinabove, how & what circumstances two apposite inspection reports were prepared, maintained & communicated, has not been explained at all. Similarly though a submission was made that competent authority i.e. the then Commissioner took into consideration all relevant records & "other materials and reverted her", no material or record has been placed & produced before us to clarify as to what is that 'other material', which had influenced the Commissioner to take such a punitive action. In these circumstances, we have no hesitation to conclude that

impugned order is not only punitive but also based on a material, which has been fabricated. It appears that the Collector & District Magistrate, Bharatpur informed the Chairman, VMC that applicant was leaving headquarters without prior permission and had applied for transfer, which basically could be the reasons why Education Officer prepared another inspection report dated 27.9.2000. Said inspection report is at complete variance virtually on all aspects from his earlier report dated 19.9.2000. There is no plausible explanation offered as to why there was necessity to write second inspection report. It appears that because of certain communication emanating from Collector & District Magistrate, Bharatpur, authorities took complete "U" turn on applicant's conduct, behaviour & performance, which is impermissible in the given facts and circumstances.. How the same Education Officer took two contrary and quite opposite views, is the issue, which had disturbed us and no steps were taken either to explain it by way of reply affidavit already filed or during the course of hearing.

11. We may note Hon'ble Supreme Court in 1983 (3) SCC 311, **Dr. Sumati P. Shere v. Union of India & Ors.**, held that :

"5. The defendants-respondents contested the suit and pleaded that the plaintiff was absent from duty from October 31, 1971 without any leave at a critical time when India was at war with Pakistan. The Commandant, 92 Bn. BSF by notice dated December 15, 1971 intimated him that his retention in service was undesirable because of his absence from a long period and as such it was proposed to dismiss him from service. He was given opportunity to urge anything in his defence but he did not avail of it by sending any reply. He was therefore, dismissed from service by the Commandant by order dated January 5, 1972 in accordance with the provisions of Border Security Force Act, 1968 and the Rules framed thereunder."

Vide para-8, it was observed that if the appellant was to be discontinued "it is proper and necessary that she should be told in advance that her work and performance are not upto the mark". The aforesaid judgment aptly applies in the facts & circumstances of the present case.

12. On perusal of judgments cited particularly of V.P. Ahuja & J.P. Verma (supra), we are of the considered view that in view of law noticed therein, we

have no hesitation to conclude that impugned order has been passed arbitrarily & punitively without complying the principles of natural justice. Order on the face of it, is stigmatic and invocation of para-4 of 'offer of appointment' in the given circumstances, cannot be upheld. We do not find justification in contention raised by respondents that since one-year period, for which applicant had been appointed on 06.6.2000, has already expired, matter has become academic in nature. As said impugned order has been held to be illegal, arbitrary, unjust & violative of principles of natural justice besides being punitive, we are of the view that applicant has to be re-instated forthwith and she be allowed to serve for remaining tenure. If her performance is found to be satisfactory, her continuation etc. would have to be regulated in terms of directions issued by Hon'ble Calcutta High Court in Ram Singh & Narender Prakash Saxena (supra).

13. In view of the discussion made hereinabove, OA is allowed & order dated 19.12.2000 is quashed & set aside. Applicant should be re-instated forthwith. No costs.

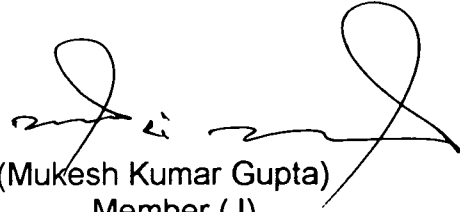
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14. Willful disobedience of order dated 29.12.2000 is alleged in present contempt petition. Vide aforesaid order, respondents were directed "not to relieve her from the post of Principal." According to applicant, she submitted joining on 30.12.2000 and reported for assumption of duties to Chairman, District Collector, Vidhyalaya Management Committee, Bharatpur enclosing copy of order passed by the Tribunal. Copy of the same was also submitted to concerned school for information. Contention raised is that she had not been relieved though reversion order was passed on 19.12.2000, which was served upon her on 23.12.2000. It was pointed out that letter dated 26.12.2000 of District Collector, Bharatpur asking her to handover charge to Shri Ratan Singh, PGT, KV, Bharatpur was served upon her on 29.12.2000 at 3.45 PM after passing of restrain order dated 29.12.2000. She was compelled to handover

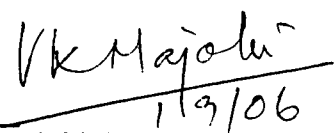
charge on 03.1.2001 (Annexure CP-10 & 11). Therefore respondents' willfully violated the directions of this Tribunal.

15. We have perused contempt petition vis-à-vis orders passed by Hon'ble High Court dated 01.12.2005. Hon'ble High Court has specifically recorded that order dated 23.12.2000 asking her to handover charge was never handed over to her although mention of said letter was acknowledged but "the same appears to be an addition made subsequently and could be by a different hand." Hon'ble Court further observed that: "there is a clear interpolation which is clear on a bare perusal of the said acknowledgement." In view of above, we find that there appears to be some justification in applicant's contention.

16 Since we have already quashed impugned reversion order and allowed the OA, at this distant point of time, no useful purpose would be served to initiate such contempt proceedings. Accordingly CP is disposed of.


(Mukesh Kumar Gupta)
Member (J)

/gkk/


1/9/06
(V.K. Majotra)
Vice-Chairman (A)