

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.750 OF 2001
ALLAHABAD THIS THE 28TH DAY OF MAY,2004

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER-A

Smt. Purnima Tripathi,
W/o Shri Suresh Chandra Tripathi,
R/o 345 Mumfordganj, AllahabadApplicant
(By Advocate Sri Y.K. Saxena)

Versus

1. Union of India,
through Secretary,
Human Resource Development Deptt.
New Delhi.
2. Kendriya Vidyalay Sangthan,
New Delhi through its Commissioner.
3. Assistant Commissioner,
Kendriya Vidyalay Sangthan, Lucknow.
4. Principal, Kendriya Vidyalay,
Old Cantt, Allahabad.
5. Miss Rita Pandey,
daughter of Sri B.B.Pandey,
Kendriya Vidyalaya, Old Cantonment,
Allahabad.
6. Sri R.S. Gautam, Principal,
Kendriya Vidyalaya, Old Cantonment, Allahabad-
7. Sri Bhagirathis, Vice-Principal,
Kendriya Vidyalaya, Old Cantonment, Allahabad.



8. Commissioner, Kendriya Vidyalaya Sangathan,
New Delhi.

9. Deputy Commissioner (Administration),
Kendriya Vidyalaya Sangathan, Head Quarter,
New Delhi.

.....Respondents

(By Advocate D.P. Singh & Shri N.P. Singh
and Shri A. Srivastava)

ORDER

This O.A. has been instituted under section 19 of Administrative Tribunals Act 1985. The applicant who is a Music Teacher in the Kendriya Vidyalay, has filed this O.A. against the orders dated 20.06.2001 and 25.06.2001 transferring her from Old Cantt, Allahabad to R.R.C. Kendriya Vidyalay, Fatehgarh. In this case various applications, affidavits and their replies have been filed by the parties but it is not necessary to deal with them in detail. Suffice it will be to refer to some of only those facts which are no longer disputed by the parties at the bar. They are summarised below:-

On 28.06.2001 Hon'ble Mr. S.K. I. Naqvi, Member-J. M. passed the following order:

"Shri Y.K. Saxena for the applicant. Sri L.M. Singh brief holder to Shri V. Swaroop, counsel for the respondents.

Smt. Purnima Tripathi-Music Teacher Kendriya Vidyalaya Sangathan, Old Cantt, Allahabad has been intimated vide annexure-3 dated 25.6.2001 that she has been relieved with effect from afternoon of that very date i.e. 25.6.2001 and has been transferred to Kendriya Vidyalaya, Fatehgarh. The applicant has sought relief against this order on compassionate ground of her illness on account of Lumber problem. It has been referred with mention in impugned order (Annexure A-3) that no other teacher has been posted or taken or joined to take charge held by the applicant and a working teacher of the Institution namely Smt. Asha Mishra has been directed to take charge of the applicant.

Notice already served on learned standing counsel for the respondents. CA be filed within 2 weeks. R.A., if any, be filed within one week



thereafter. List this case for hearing at admission stage on 02.08.2001.

In the meantime, the impugned order dated 25.6.2001, copy of which has been annexed as Annexure -3 to the O.A., shall remain in abeyance in respect of the applicant and charge of the office held by Smt Purnima Tripathi-Music Teacher, Old Cantt, Teliarganj, Allahabad be restored."

On 29.01.2002 Hon'ble Mr.C.S.Chaddha, Member-(A) passed yet another order in the applicants favour which is quoted below:-

"Sri Y.K. Sharma for the applicant and Shri N.P. Singh for the respondents.

The learned counsel for the respondents has filed C.A. today. The counsel for the applicant seeks and is granted two weeks time to file RA.

The question of stay was heard today and the counsel for the applicant has sought compliance of the order given by this Tribunal on 28.6.01 and followed on 6.8.01. The counsel for the respondents states that the order was obtained by the applicant by suppressing certain information regarding the posting of reliever. I have heard the learned counsel for the parties on this issue and I am not convinced that the applicant had suppressed any information. Moreover, if the order of 28.6.01 was incorrect, the counsel for the respondents should have taken recourse to legal remedy. Similarly on 6.8.01 Shri N.B. Singh, counsel for the respondents was himself present when the court recorded from the counter reply that the respondents are going to comply with the order and, therefore, no further directions are required to be issued on that count. It clearly mentions that the respondents did not oppose the order of 28.6.2001 restoring the charge to Smt. Purnima Tripathi and did not raise the issue being raised today. The problem of the respondents is that they are facing a difficulty regarding drawal of pay of both- the applicant and her reliever from the single post at one place. Obviously the reliever has come from a place where she has already been drawing her salary. Even if there is a chain of transfers and one post is still lying vacant. The salary of the reliever of Smt. Purnima Tripathi be drawn from the vacant post where-from she has come and order dated 28.6.01 should be complied with without any further delay.

List on 22.2.2002.

Copy of this order be given to the parties counsel within two days"

2. These two orders were challenged on behalf of respondents authorities i.e.

1. (i) The Assistant Commissioner, Kandriya Vidyalaya Sangathan, Lucknow.



and (ii) Principal, Kendriya Vidyalaya, Old Cantt, Allahabad in Civil Misc. Writ Petition No.5683/02 before Hon'ble High Court At Allahabad wherein the following interim order was passed on 6.2.2002.:-

"Heard the counsel for the petitioners, Sri Y.K. Saxena, counsel for second respondent has been served with a copy of the writ petition in the court today. He prays for and is granted two weeks time to file counter affidavit.

List the case on 25th February 2002.

Upon consideration the facts and circumstances of the case, we direct that the operation of the orders dated 28th June,2001 and 29th January 2002 passed by the Hon'ble Tribunal in O.A. No.750/01 shall remain stayed till further orders.

Sd. S.R.Singh
sd. R.K. Dash.
6.2.2002."

3. On 16.2.2002, the applicant reported for duty in compliance of the court's order before the Principal, Kendriya Vidyalaya, R.R.C. Fatehgarh and she was permitted to join as a Music Teacher the very same day. On 4.3.2002 the aforesaid writ petition filed by the respondents fizzled out and the interim order granted in it stood vacated. On these facts the respondents moved M.A. No.3250/02 on 14.8.2002 seeking the dismissal of the O.A. as having become infructuous on the grounds stated therein.

4. On the other hand, the applicant has moved an application no.405/03 on 30.01.2003 for direction to pay her salary for the period from 28.6.01 to 15.02.02 which has remained un-paid to her so far. On 24.3.2003 the respondents were granted time to file reply to M.A. No.405/03.

5. The applicant has also moved an application dated 30.01.2003 seeking prayer for some typographical corrections in describing the dates mentioned in the order dated 03.01.2003. The respondents have not filed any objection



to M.A. No.405/03. The application is allowed. The counsel for the respondents had filed an application No.442/03 on 03.02.2003 praying that the order dated 03.01.2003 be recalled after ~~scrutiny~~ of record.

6. It is not mentioned that the orders quoted in the aforesaid order dated 03.01.2002 was lacking in anyway. The order dated 03.01.2003 is well discussed order based on material on record and as such does not call for any interference whatsoever.

7. The record reveals that the counsel for the respondents on earlier occasion on 30.04.2004 had already informed the Tribunal that the applicant on her transfer from Kendriya Vidyalaya Fatehgarh has already joined her duties at Kendriya Vidyalaya Manauri and as such the main relief prayed against her transfer from Allahabad cannot be granted. As regards the reliefs in respect of applicant's aforesaid transfer order from Allahabad even the counsel for the applicant submits that he does not propose to press the main relief against the transfer. This request of the applicant is, therefore, accepted.

8. The counsel for the respondents had moved an application on 29.01.2002 for the dismissal of the O.A. No.750/01. The counsel for the respondents filed another application no.1343/02 filed on 14.03.2002 praying for the dismissal of O.A. No.750/01. This application is supported with affidavit of Shri R.S. Gautam on behalf of opposite party no.1,2, 3 and 4 and it mentions:-

- (a) Interim order of High Court dated 06.02.2003 passed in writ petition no.56839/02.
- (b) Purnima Tripathi had joined her place of posting on 16.02.2002 at R.R.C. Kendriya Vidyalaya Fatehgarh.

But in this application and affidavit, there is no mention of the dismissal of the writ petition on 04.03.2002 and vacation of the Hon'ble courts interim order. In para 4 of the aforesaid affidavit of Shri R.S. Gautam it is stated "that after the exchange of CA and RA the case was listed on 29.01.2002 and after hearing both the parties the Hon'ble court has confirmed the stay order and rejected the stay vacation application filed by the respondents and directed the respondents to draw the salary of Miss Rita Pandey from Kendriya Vidyalaya Fatehgarh and the applicant's salary may be drawn from Kendriya Vidyalaya, Old Cantt, Allahabad." The applicant has been transferred inspite of interim orders of the Tribunal only on account of intervening period of the orders being eclipsed on account of order of Hon'ble High Court dated 06.02.2002 ~~xxxxxxxxxx~~
~~xxxxxxxxxxxxxx~~ the interim orders of the Tribunal become effective and as such the cause of action has not finished. It has come on record as noted ^{on 06.08.2001} in order of the Tribunal earlier /that the respondents in "Supply" their CA filed after grant of interim order ~~have~~ specifically averred "However we shall honour the directions of the Hon'ble CAT Allahabad Bench, Allahabad, as soon as the guidance is received from Commissioner, Kendriya Vidyalaya Sangathan New Delhi." The respondents however, adopted dilatory tactics in compliance of the orders of the Tribunal dated 28.6.2001 and 29.01.2002. However, by filing the writ petition in the Hon'ble High Court and even after the ^{the respondents} the dismissal of the writ petition/ ~~have~~ been harping only one tune of the prayer for the dismissal of the Q.A. petition. In a Government of law not ~~men~~ ^{great} responsibility lies on the Executive to uphold and obey the courts order. The

assurances given to the courts as in the present case have got to be respected and complied with by the respondents authorities. The contention of the respondents in their pleadings is that the applicant had not mentioned in her O.A. about the joining of Km. Rita Pandey on 28.06.2001 in place of the applicant and as such succeeded in obtaining the interim order. The counsel for the applicant had shown it from the affidavit on record that in fact Km. Rita Pandey had obtained charge from Smt Asha Mishra on 30.06.2001 to whom the applicant had handed over the charge of Music Teacher at the time of her transfer. Smt. Asha Mishra was always available in the Vidyalaya on all relevant dates. Km. Rita Pandey inspite of being impleaded as opposite party in the O.A. has not placed her any version in the proceedings. This point of alleged suppression of facts by the applicant has been considered earlier by the Tribunal and in that response the order of Hon'ble Mr. C.S. Chadha, A.M. referred to above clearly records the findings in favour of the applicant. The filing of the writ petition by the respondents authorities against the interim order passed by the Tribunal and later on the failure of the writ petition and vacation of the interim order of the Hon'ble High Court itself puts a binding final seal on this matter.

9. The learned counsel for the applicant has strongly pressed the most material aspect of the matter that the applicant herself met the Principal of Kendriya Vidyalaya Old Cantt on 28.06.2001 with a copy of the interim order dated 28.06.2001 for being given an opportunity to resume her duties as a Music Teacher in the Vidyalaya, but the applicant was not taken back on duty by the respondents

authority. The applicant continued to approach the Vidyalaya authorities for being taken back on duty for quite long time extending into weeks and months but the authorities did not comply with the interim order dated 28.06.2001. The interim orders of the Tribunal referred to above were unsuccessfully challenged in the Hon'ble High Court and later on they became final. These orders are binding on the applicant as well as on the respondents. The applicant's counsel has further pointed out that the applicant could not have joined her duties at Kendriya Vidyalaya, R.R.C. Fatehgarh during the continuance of this interim orders. However, as a disciplined member of the teaching fraternity she did join the duty at Kendriya Vidyalaya Fatehgarh. On 16.02.2002 when the operation of the interim order of the Tribunal dated 28.06.2001 and 29.01.2002 were temporarily eclipsed due to supervening order of the stay granted by the Hon'ble High Court on 06.02.2002, ^{Shri R.S. Gautam (Principal)} The respondent/ on oath has stated that their stay vacation application was rejected and interim orders dated 28.06.2001 and 29.01.2002 were confirmed.

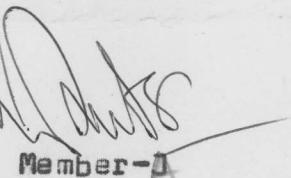
10. The applicant is thus, entitled to her salary for the intervening period during which the respondents wrongfully denied to take her back on duty by dis-regarding the interim order of the Tribunal on some or the other pretext.

11. After giving careful thought to the entire situation, I am of the opinion that the continuance of the applicant's employment as a teacher of Kendriya Vidyalaya Allahabad remains unbroken and it could not be effected by the failure of the respondents to comply with the directions of this Tribunal. The respondents cannot be allowed to

take advantage of their own wrong acts particularly when the applicant presented herself ~~for~~ ^{to} being taken on duty with the interim order of this Tribunal on occasions more than one. She always offered to perform duty as a teacher. The respondents cannot deny her charges for the period in question. When they refused to take her back on duty they did so on their own peril.

12. I, therefore, direct the respondents authorities to pay the entire salary to the applicant for the period ^{admissible} from 28.06.2001 to 15.02.2002 with all ~~the~~ allowances and her services for this period shall be treated to be continuous and without any break. I also provide that in case the period, if any, remains uncovered by this order the same shall be regularised by granting the leave admissible to the applicant. In this view of the matter no further orders need be passed in the O.A. and the same is disposed of finally accordingly.

13. There shall be no order as to costs.



Member-A

/Neelam/