

RESERVED

CENTRAL ADMINISTRATAIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 25 day of Jan. 2008.

Original Application No. 1633 of 2004

Hon'ble Mr. A. K. Gaur, Member (J)
Hon'ble Mr. Shailendra Pandey, Member (A)

Smt. Poonam Srivastava, aged about 45 years, W/o Shri Bhanuji Srivastava, R/o 72 MIG Preetam Nagar, Allahabad.

. . . Applicant

By Adv: Sri Rakesh Verma

V E R S U S

1. Union of India through its Secretary, Ministry of Human Resources & Development, Government of India, New Delhi.
2. The Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Saheed Jeet Singh Marg, New Delhi.
3. The Joint Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Saheed Jeet Singh Marg, New Delhi.
4. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Lucknow Region, Aliganj, Lucknow.
5. The Education Officer, Kendriya Vidyalaya Sangathan, 18, Institutional Area Saheed Jeet Singh Marg, New Delhi.
6. The Principal, Kendriya Vidyalaya (Air Force), Manauri, Allahabad.

. . . Respondents

By Adv: Sri D.P. Singh

O R D E R

By Hon'ble Mr. A. K. Gaur, Member (J)

Vide this O.A., the applicant has sought for quashing the impugned orders dated 19.3.2004, 9.11.2004 passed by the respondent nos. 4 and 3

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respectively and also to quash the show cause dated 19.2.2004 issued by respondent no.4 and to reinstate her in service.

2. The brief facts of the case are that the applicant had joined as PRT in Kendriya Vidyalaya on 20.9.1982 and had been working in Kendriya Vidyalaya, Manauri, Allahabad since 15.12.1989. Further her name figured at sl. No.8 in the list of employees having five years and more stay at Allahabad station. However, the applicant has been transferred to Kendriya Vidyalaya, Aligarh vide transfer order dated 31.3.2003. Being aggrieved, the applicant filed O.A. before this Tribunal. The said O.A. was disposed of by this Tribunal vide order dated 12.9.2003 with the direction to the applicant to file a fresh representation alongwith the medical documents before the competent authority, who will consider and decide the applicant's representation within a period of two months from the date of filing the same alongwith a copy of the order.

3. Pursuant to the aforesaid directions of this Tribunal, the applicant made a representation on 22.9.2003 before the competent authority. It is noticed that before decision on the aforesaid representation of the applicant, the KVS Headquarters, New Delhi sent a letter dated 4.11.2003 to the Assistant Commissioner, Kendriya Vidyalaya Sangathan,

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Lucknow Region in which direction has been given to Assistant Commissioner to call the applicant for appearance before the Regional Medical Board of Kendriya Vidyalaya Sangathan, Lucknow Region. In response to the aforesaid letter of the respondent, the applicant had been called to appear before the Regional Medical Board, Lucknow and the applicant appeared before the Medical Board on 25.11.2003. On considering the medical report of the applicant, the applicant's representation has been disposed by the competent authority by means of the order-dated 2/5.1.2004 with the direction to the applicant to join her duties forthwith. As she did not join, a show cause notice dated 19.2.2004 has been issued to the applicant under Article 81 (d)(3) of Education Code. The applicant submitted her reply to the aforesaid show cause on 7.3.2004. After considering the reply of the applicant, the competent authority vide order dated 19.3.2004 has dismissed the applicant from service. Feeling aggrieved, the applicant filed an appeal before the appellate authority on 9.11.2004, which too was rejected vide order dated 9.11.2004, hence this O.A.

4. The respondents have contested the claim of the applicant by filing a detailed Counter Affidavit and denied the allegations made in the O.A. It is stated that after the disposal of the representation of the applicant by the competent authority, a direction was

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given to the applicant to join her duties forthwith but as the applicant failed to join her duties in spite of repeated requests, the respondents' authority had no other option, but to proceed under Article 81 (D) of the Education Code on account of her unauthorized absence. Thereafter a show cause notice has been issued to the applicant, to which the applicant furnished her reply. After considering the reply of the applicant, the competent authority passed an order removing the applicant from service vide order dated 19.3.2004. Against the order of the disciplinary authority, the applicant preferred an appeal before the appellate authority on 29.4.2004, which too was dismissed vide order of the appellate authority dated 9.11.2004. In view of the aforesaid, the respondents have prayed for that the orders impugned are perfectly legal and valid and as such no interference is called for and the O.A. is liable to be dismissed.

5. In response to the Counter affidavit, the applicant has filed Rejoinder affidavit and reiterating the averments made in the O.A.

5. We have heard the parties' counsel at length and perused the materials available on record.

6. Having gone through the pleadings of the case, it is noticed that the applicant did not comply with the

transfer order and remained absent from duty without sanction of leave for more than 10 months. It is also noticed that in spite of several requests/reminder being made by the respondents to the applicant to join her duties, she failed to do so. It is well settled law that in absence of any stay of transfer order, the employee has no other option but to join the transferred place and if the employee is avoiding the transfer order merely on the ground of moving representation or on the ground of his/her personal difficulty in moving from one place to another, then he has to face the consequential effect. It is also noted that when the applicant did not comply with the order of the competent authority, a show cause notice has been issued to the applicant for detailing the reasons for her unauthorized absence for more than 10 months. In the reply, the applicant has given the reasons for her unauthorized absence, but the competent authority did not find favour the applicant. Against the order of the disciplinary authority, the applicant has also preferred an appeal, which was dismissed by a reasoned and speaking order affirming the decision so taken by the authority.

7. It has been argued by the learned counsel for the respondents that there is no legal flaw in the decision of the appointing authority and the appellate authority, that the applicant has courted himself to this situation of being removed from service under the

provisions of clause 81 (d) of the Education Code.

The counsel for the respondents has relied upon the decision of the Hon'ble High Court of Delhi in the case of **Prem Juneja Vs Union of India**, wherein the legal issue involved in Clause 81 (d) of the Education code was discussed and further the Court has commented about the absenteeism and its consequences. Thus, according to the respondents' counsel the impugned order are not liable to be interfered with.

8. Now, a look at Clause 81 (d) of the Education Code:-

"Article 81(d) - Voluntary Abandonment of Service:

1. If an employee has been absent/remaining absent without sanctioned leave or beyond the period of leave originally granted or subsequently extended, he shall provisionally lose his lien on his post unless:

a. He returns within fifteen calendar days of the commencement of the absence or the expiry of the leave originally granted or subsequently extended, as the case may be; and

b. satisfies the appointing authority that his absence or his inability to return or the expiry of the leave as the case may be was for reasons beyond his control. The employees not reporting for duty within fifteen calendar days and satisfactorily explaining the reason for such absence as aforesaid shall be deemed to have voluntarily abandoned his service and would thereby provisionally lose lien on his post.

2. An employees who has provisionally lost lien on his post in terms of the aforesaid provisions, shall not be entitled to the pay and allowances or any other benefit after he has provisionally lost lien on his post.

Provided that payment of such pay and allowances will be regulated by such directions as the appointing authority may issue while ordering reinstatement of the employee in terms of sub clause (6) of this Article.

3. In cases falling under sub clause (1) of this Article, an order recording the factum of voluntary abandonment of service by the employees and provisional loss of his lien on the post, shall be made and communicated to the employee concerned at

the address recorded in his service book and / or his last known address, to show cause why the provisional order above mentioned may not be confirmed.

4. The employee may make a written representation to the appointing authority, within ten days of receipt of the order made under sub clause (3)

5. The appointing authority may on receipt of the representation, if any, any perusal of materials available on record as also those submitted by the employee, grant, at his discretion, an oral hearing to the employees concerned to represent his case.

6. If the appointing authority is satisfied after such hearing that the employee concerned has voluntarily abandoned his service in terms of the provisions of sub clause (1) of this Article, he shall pass an order confirming the loss of employee's lien on his post, and. In that event, the employee concerned shall be deemed to have been removed from the service of the Kendriya Vidyalaya Sangathan with effect from the date of his remaining absent. In case the appointing authority is satisfied that the provisions of sub clause (1) of clause (d) of this Article are not attracted in the facts and circumstances of the case, he may order reinstatement of employee to the post held by him, subject to such directions as he may give regarding the pay and allowances for the period of absence.

7. APPELLATE AUTHORITY: An employee aggrieved by an order passed under sub clause (6) of this Article may prefer an appeal to the appellate authority as notified by the Kendriya Vidyalaya Sangathan from time to time.

8. PERIOD OF LIMITATION FOR APPEALS: No appeal preferred under this Article shall be entertained unless it is preferred within a period of 45 days from the date on which a copy of the order appealed against is served on the appellant;

Provided that the Appellate Authority may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant was prevented by sufficient cause from not preferring the appeal in time.

9. FROM AND CONTENTS OF APPEAL: From the contents of appeal shall mutates mutandis be the same as prescribed under the CCS (CCA) Rules, 1965.

10. CONSIDERATION OF APPEAL: The appellate authority shall consider:

Whether the requirements laid down under sub clause (1), (3), (5) and (6) of this Article have been complied with and, if not, whether such non compliance has resulted in failure of justice; and whether the order confirming loss of employee's lien on his post and his consequent removal from service is warranted on record; and pass order confirming modifying or setting aside the order passed under sub clause (6) of this Article.

11. IMPLEMENTATION OF ORDER OF APPEAL: The appointing authority shall give effect to the order passed by the Appellate Authority.

12. **FINALITY OF ORDER PASSED IN APPEAL:** The order of the Appellate Authority made this Article shall be final and shall not be called in question by way of any further application/petition on revision, review etc.

13. **APPLICABILITY OF THE CCS(CCA) RULES:** If matter falling under this Article and in those matters alone, the procedure prescribed for holding inquiry in accordance with the CCS (Classification, Control & Appeal) Rules, 1965, as applicable to the employees of the Kendriya Vidyalays Sangathan as also other provisions of the said rules which are not consistent with the provisions of this Article shall stand dispenses with.

14. **REMOVAL OF DIFFICULTIES:** Notwithstanding anything contained in any rule or order of the time being in force in KVS, the Commissioner, KVS may, with the approval of the Vice-Chairman, KVS issue such instructions as he may deem fit to remove difficulties in the implementation of these provisions.

15. **POWER TO ISSUE INSTRUCTIONS:** Without prejudice to the forgoing provisions, the Commissioner, Kendriya Vidyalay Sangathan may, with the approval of the Vice Chairman, Kendriya Vidyalay Sangathan, issue, from time to time (whether by way relaxation of the aforesaid provisions or otherwise) general or special orders as to the guidelines, principles or procedures to be followed in giving effect to the provisions of this Article."

9. It could be seen from the above, that the entire subject matter relates to abandonment of service by the employee. The term used is not the disciplinary authority, but appointing authority. As per the said clause, vide Article 81 (d) (1) continued unauthorized absence of an employee would result in provisional loss of lien unless the individual resumes duty within 15 days of such unauthorized absence or explains to the satisfaction of the appointing authority of his absence. Once provisional loss of lien taken place, the employee is not entitled to the pay and allowances unless otherwise ordered so by the appointing authority [Art. 81(d)(2)]. Once the stage of provisional loss of the lien has occasioned, the

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appointing authority shall record the factum of voluntary abandonment of service by the employee and provisional loss of his lien to the post of communicated to the employee concerned and affording an opportunity to show cause why the provisional loss of the lien be not made confirmed. [Art. 81(d) (3) refers]. Within 10 days time, the employee concerned may make a written submission vide Art. 81(d) (4). Discretion is available with the appointing authority vide Art. 81(d) (5) to give a personal hearing. And, if the appointing authority is satisfied that the employee concerned has voluntarily abandoned his service, he shall pass an order confirming the loss of lien and also declaring the deemed removal from service of the employee concerned (vide Art. 81(d) (6) of the Education Code). In case of reinstatement on being satisfied of the grounds of absence, the appointing authority would pass such an order together with directions regarding pay and allowances for the period of absence. Appeal against the order passed under Art. 81(d) (6) is available and time limit for the same is 45 days [Art. 81(d) (7) and (8) refers]. ^{form} ~~From~~ and contents of the appeal are mutatis mutandis the same as of appeal under the CCS (CC&A) rules, 1965. The appellate authority shall consider whether the requirement under Art. 81 (d) (1), (3) and (5) are satisfied and, if ~~not~~ ^{not} non compliance has resulted in failure of justice and whether the order confirming loss of lien and the consequent removal from service

is warranted on record and the appellate authority shall pass order confirming, modifying or setting aside the order passed under Art 81(d)(6). Clause (13) states that in matters falling under this Article, the procedure prescribed for holding inquiry in accordance with the CCS (CC&A) Rules, 1965 as applicable to the employees of the K.V.S. shall stand dispensed with.

10. The above rule position clearly shows that notwithstanding the facts that the provisos under Art. 81(d) are not in strict sense ~~not~~ disciplinary proceedings, action taken under this clause does fall under the category of 'quasi judicial nature'. As such, it is to be seen whether the appointing authority and Appellate authority have acted within their powers and jurisdiction and in accordance with the provisions of Art. 81(d) of the Education Code.

11. Sri Rakesh Verma learned counsel for the applicant has placed reliance on the decision of Hon'ble Supreme Court in **Scooter India Limited Vs. Mohd. Yaqub 2001. SCC (L&S) 148 and 2002 SCC (L&S) 851** **National Aluminium Co. Ltd Vs. Deepak Kumar Panda & Others.** According to Sri Verma automatic termination under Clause 31 of the standing orders on the ground of unauthorized absence without sanctioned leave has been held to be illegal by Hon'ble Supreme Court without enquiry. Learned counsel for the applicant

would further contend that the standing order could not be used to effect automatic termination of service. The basic idea behind his argument is that the principles of natural justice must have been followed by holding departmental enquiry in the matter. We have considered the written argument submitted by Sri Verma. We are of the considered view that the cases referred by Sri Verma are not at all applicable to the facts of the present case.

12. Having given our anxious thought and considering the facts and the legal issues as discussed above, it is clear that the applicant has not been able to make out a case for judicial intervention in the decision taken by the respondents. The OA is accordingly dismissed. Parties to bear their own cost.



MEMBER-A



MEMBER-J

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