

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

Original Application No. 925 of 2004

Allahabad this the, 25 day of August, 2011

**Hon'ble Mr. Justice S.C. Sharma, Member (J)
Hon'ble Mr. D.C. Lakha, Member (A)**

Dr. Ram Swaroop son of Sri Mool Chandra, resident of Meera nagar, Virbhadra, Rishikesh, Dehradoon.

Applicant

By Advocates: Mr. O.P. Mishra
Mr. Satish Dwivedi.

Vs.

1. Kendriya Vidyalaya Sangathan, through the Commissioner, D Sector, 19 Institutional Area, Saheed Jeet Singh Marg, New Delhi.
2. The Joint Commissioner (Admn.), Kendriya Vidyalaya Sangathan, 18, Institutional Area, Saheed Jeet Singh Marg, New Delhi.
3. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Dehradoon Region, Salawala, HBK, Dehradoon.
4. The Principal, I.D.P.L. Kendriya Vidyalaya, Virbhadra, Rishikesh, District Dehradoon.
5. The Principal, Kendriya Vidyalaya Lans Down, District Pauri Garhwal.
6. Union of India through the Secretary, Ministry of H&R and Development, Government of India, New Delhi.

Respondents

By Advocate: Mr. N.P. Singh

ORDER

By Hon'ble Mr. Justice S.C. Sharma, Member (J)

Under challenge in this O.A. are the order dated 14/15-09-
2000 (annexure A-1), order dated 13.03.2001 (annexure A-2)
passed by respondent No. 3 and order dated 25.03.2004
(annexure A-3) passed by respondent No. 2. Prayer has been

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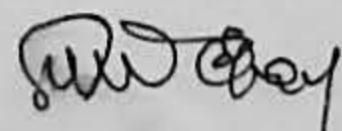
made that these orders be adjudged illegal and quashed accordingly. Further prayer has also been made to direct the respondents to reinstate the applicant in service with all consequential benefit attached to the post. Prayer has also been made for giving direction to the respondents to post the applicant on the post of Art Teacher in Kendriya Vidyalaya, IDPL, Virbhadra, Rishikesh or at his choice place of posting or nearby places in accordance with the order dated 03.02.2000 of Kendriya Vidyalaya Sangathan (for short KVS), New Delhi, and also according to other relevant rules and circulars issued in this regard holding that the order dated 18.04.2000 passed by respondent No. 3 is illegal in law.

2. The pleadings of the parties may be summarized as follows:

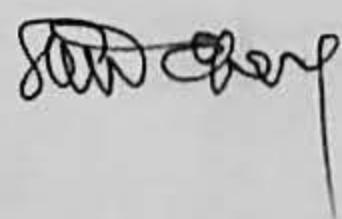
It has been alleged by the applicant that he was appointed as Art Teacher in KVS in substantive vacancy and joined on 02.01.1987 at KV No. 1, Bhatinda, Punjab. Thereafter, he was transferred from Bhatinda to Dehradun, and joined at KV No. 2, Dehradun on 30.01.1992. ^{was} He again transferred from KV No. 2, H.B.K., Dehradun to KV, IDPL, Virbhadra, Rishikesh and joined on 04.09.1995. In the year 1999 the KVS, New Delhi passed a resolution to close the KV, IDPL, Virbhadra, Rishikesh. The order of the respondents was challenged before the Hon'ble High Court in Writ Petition No. 6745 of 2000, and it was decided on 31.03.2000 by making observation that the Kendriya Vidyalaya, IDPL, Virbhadra, Rishikesh should not be closed and the Government should consider for continuing the School. The KVS,

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New Delhi as per order of the Hon'ble High Court of Allahabad considered the matter and decided for not closing the Vidyalaya, and restarted the same vide order dated 03.07.2000. As a consequence of closure of KV, IDPL, Virbhadra, Rishikesh, 28 employees including teachers and applicants were redeployed/ transferred to different places vide order dated 28.03.2000. The order was effective w.e.f. 01.04.2000. There were clear directions of the KVS administration, New Delhi dated 03.02.2000 that the staff be redeployed to nearby KV or their choice of places depending upon the availability of vacancies. Necessary instructions were issued to the Assistant Commissioners in this connection. The applicant is a S.C. candidate and there is direction of the Ministry of D.O.P & T. ~~in order~~ to accommodate the S.C. candidates at nearby place. After the order of redeployment/transfer dated 28.03.2000, an application was submitted by the applicant on 31.03.2000 to the Principal, KV, IDPL, Virbhadra, Rishikesh for his relieving from the said School and also requested in the same application that in case School is reopened, he may be posted in the KV, IDPL, Virbhadra, Rishikesh. On 04.04.2000, 11.04.2000 and 15.04.2000, representations/applications were submitted by the applicant for change of place of his posting, and to transfer the applicant at his choice place where the vacancies were available. In the representations, problems faced by the applicant were also mentioned. Similar applications were submitted by other staff and most of the employees were adjusted at the nearby station or at the place of their choice but the applicant received a letter on 29/30-08-2000 of the Assistant Commissioner, KVS, Dehradun to



the effect that his request for change of place was rejected, and he was required to join the duty at KV, Lansdown immediately. No other reason was disclosed by the respondents in the order. There were vacancies in the nearby place but the applicant was not given posting in the nearby place or at the place of his choice. Again representation was submitted by the applicant for his transfer at some nearby place or to post him at the place of his choice where the vacancies are available but the respondents did not consider the representation of the applicant, and the representations were rejected. All the facts were stated in the different representations, submitted by the applicant. Vide order dated 29/30-08-2000, the applicant was directed to report for duty at KV, Lansdown immediately otherwise disciplinary action would be taken against him. Again a representation was submitted but no order was passed on the representation of the applicant and hence the applicant had no alternative but to approach the Tribunal by filing the O.A. No. 1075 of 2000. During pendency of the O.A., applications were sent to the respondents for leave on medical ground but the leaves were not sanctioned to the applicant, and consequently a show cause notice was issued on 14/15-09-2000 regarding loss of lien. But the notice was not served on the applicant, and the respondents without providing any opportunity, order was passed on 13.03.2001 in which order ^{of loss} ¹² of confirmation of lien was passed. Thereafter, another O.A. No. 1046 of 2003 was filed in the CAT, Allahabad Bench on 26.03.2003, and during the proceeding of the O.A. applicant came to know about contents of notice and order, earlier he had no knowledge about the order and contents. It is clear from the



notice dated 14/15-09-2000 that the notice was served under clause 1, sub clause (d) of Article 81 of the Education Code regarding provisional loss of lien on the post, and it was also alleged in the notice that as to why the order of provisional loss of lien should not be confirmed, and the applicant be deemed to have been removed from service. The notice was sent on the permanent address of the ~~respondents~~ whereas ~~applicant~~ was residing at the address of IDPL, Virbhadra, Rishikesh, and letter was received back with the endorsement of not residing on the address. The order of confirmation of loss of lien is illegal, and unsustainable in law. There is no case of voluntary abandonment of service by the applicant. Every effort was made by the applicant to get changed the place of transfer on the ground of physical health and family problem. The order of termination was passed on the charge of unauthorized absence, which is misconduct under the law and it is punitive in ^{nature} law. No inquiry was conducted in the matter and without providing any opportunity to the applicant, order of termination was passed on 13.03.2001 and hence it is violative of principle of natural justice. The respondents were competent and entitled to sanction the medical leave but they have not granted the medical leave. The CAT, Allahabad Bench in O.A. No. 1046 of 2003 ordered on 07.01.2004, and directed the applicant to file fresh appeal before the competent authority against the orders within two weeks, and the Appellate Authority was directed to decide the same by a reasoned and speaking order. Thereafter, the appeal was filed by the applicant but the appeal was rejected by the Joint Commissioner (Admn.) vide order dated 25.03.2004. Proper

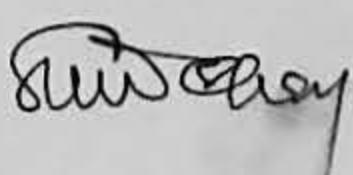
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procedure was not followed by the respondents in deciding the appeal. There was no abandonment of post by the applicant, representations were submitted to the respondents for change of place of posting and also applications were submitted for medical leave on health ground but these were not considered by the respondents, and illegal order was passed hence the O.A.

3. The respondents contested O.A., filed the Counter Affidavit and denied the allegations made in the O.A. It has further been alleged that the O.A. No. 1046 of 2003 was dismissed by the Tribunal on the preliminary objection of the respondents. That even ~~is~~ the present O.A. is highly belated and it has been filed against the orders dated 13.03.2001 and 09.09.2003 and no application was moved for condonation of delay. Hence, the O.A. is barred by limitation and not maintainable in view of Section 21 of the Administrative Tribunals Act, 1985. Moreover, the Joint Commissioner, KVS is necessary party but the applicant has not impleaded him in the O.A. In pursuance of a direction in the O.A. No. 1046 of 2003, appeal was decided by the respondents, and a detailed and speaking order was passed, and the order dated 13.01.2001 of the Disciplinary Authority was confirmed. Appeal was rejected. It has also been alleged that the recruitment of teaching and non-teaching employee is made centrally, and the teachers are liable to be transferred anywhere in India under Article 49-K of the Education Code. The Board of Governors of Kendriya Vidyalaya Sangathan in its meeting held on 17.07.2000 realized that normal procedures/rules as available under the CCS (CCA) Rules, 1965 were cumbersome, dilatory and not sufficient

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to address the magnitude. Hence, in exercise of powers conferred by Regulation 22 of the Memorandum and rules of the Kendriya Vidyalaya Sangathan, the Board of Governors framed and inserted Article 81 (d) "Voluntary Abandonment of Service-in the Education Code". The KV, IDPL, Virbhadra, Rishikesh was established in the year 1977-78 as per agreement with the sponsoring authority of IDPL project that all recurring and non-recurring expenditures towards running the KV will be borne by the project. Due to closure of the IDPL project at Rishikesh, the sponsoring authorities stopped remitting the funds for running the Vidyalayas as the expenses crossed the limit of Rupees one crore and in the absence of any other source of finance, the Board of Governors of KVS decided to close down the Vidyalaya w.e.f. 01.04.2000, and the entire staff of KV, IDPL, Rishikesh was redeployed to nearby KV where the vacancies were existing. As far as possible, they were accommodated at their place of choice. Later on, KVS agreed to re-open the KV, IDPL, Rishikesh agreed to re-open the KV, IDPL, Rishikesh with reduction in sections and staff w.e.f. 01.06.2000 after receipt of a demand draft for one crore rupees from the project authorities, and further condition was imposed that the project authorities will deposit the balance dues of Rs. 50 lakhs, as soon as the KV is re-opened. But the project authorities failed to deposit the balance amount hence the KV, IDPL could not be reopened. A writ petition was filed before the Hon'ble High Court, Allahabad, and stay was granted from closing KV, IDPL, Rishikesh. Since the project authorities as well as the KVS were not in a position to provide fund for running the KV, IDPL hence in pursuance of directions of the Hon'ble High



Court in Writ Petition No. 6745 of 2000, the ways of making the Vidyalaya self sufficient by means of generating funds itself, were considered, and it was resolved on dated 03.07.2000 that the KV, IDPL may generate the funds by self finance and accordingly KV, IDPL was reopened w.e.f. July 2000 with reduction in Classes, Sections and reduction in staff strength. On closure, on 01.04.2000, all the 28 regular employees, including the applicant-Drawing Teacher was redeployed to nearby Kendriya Vidyalaya, as per their choice place as far as possible subject to availability of vacancy. There was no vacancy of Drawing Teacher at any place of applicant's choice, as per his representation dated 04.04.2000, at KV, Dehra Dun, Haridwar and Sarsawa. Hence, the applicant was transferred to KV, Lansdown. Requests were received from several staff members to accommodate them at the place of their choice, and the requests were considered and as much as could be accommodated, they were accommodated but there was no vacancy at Dehra Dun, Haridwar and Sarsawa hence the order could not be modified, and he was directed to report at KV, Lansdown. When the applicant failed to report for duty at the new place of posting, he was issued a show cause notice by registered post at his last known address i.e. A-2428, IDPL, Rishikesh, as shown in the representation. But the notice was received back un served. Another copy of show cause notice was sent on his permanent address, as per service records, by registered post by the Principal Kendriya Vidyalaya, Lansdown but that notice also received undelivered. An application for medical leave was received without medical certificate by the KV, Lansdown. The applicant filed O.A. No. 1046 of 2003, and the

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O.A. was decided with a direction to the respondents-Appellate Authority to decide the appeal of the applicant, and thereafter appeal of the applicant was decided on 25.03.2004 after providing him personal hearing, by passing a reasoned and speaking order. The Appellate Authority observed that the applicant voluntarily abandoned the service, and the order in this connection was passed on 13.03.2001. The limitation accrued in favour of the applicant vide show cause notice dated 14/15.09.2000, and final order was passed on 13.03.2001, and this order was challenged before the Tribunal in the earlier O.A., and hence the O.A. is also barred by limitation. It is alleged that O.A. lacks merits and is liable to be dismissed.

4. In response to Counter Affidavit of the respondents, the applicant filed Rejoinder Affidavit, reiterating all the facts which have been alleged in the O.A.

5. We have heard Mr. O.P. Mishra, Advocate for the applicant, and Mr. N.P. Singh, Advocate for the respondents, and perused the entire facts of the case.

6. From perusal of the Counter Affidavit of the respondents, it is evident that the applicant was removed from service as per the provisions of Article 81 (d). It has also been alleged by the respondents that to deal with the teaching and non-teaching staff of the KVS, and in order to protect the KVS from deteriorating academic standard, the Board of Governors of KVS in its meeting held on 17.07.2000, realized that the normal procedures/rules as

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available under the CCS (CCA) Rules, 1965 were cumbersome, dilatory and not sufficient to address the magnitude, and hence they framed and inserted an Article in the Education Code i.e. Article 81 (d) "Voluntary Abandonment of Service" and this provision is self contained. All the remedies for the teaching and non-teaching staff have been provided in this article. Although the applicant has not challenged the validity of Article 81 (d) of the Education Code but even then it will be most material to peruse this provision. It has been provided in Clause 81 (d), as under: -

"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 of 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 employee who has provisionally lost lien on his post in terms of the aforesaid provisions, shall not be entitled to the pay and allowance 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 employee and provisional loss of his lien on the post, shall*

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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 order made under sub clause (3).

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

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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 requirement 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 Vidyalaya Sangathan as also other provisions of the said rules which are not consistent with the provisions of this Article shall stand dispensed 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.*

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

In the amended provision-Article 81 (d), it has been provided that 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 loss his lien on his post unless he returns within fifteen calendar days of the commencement of the absence or satisfied the appointing authority that his absence or his inability to return on the expiry of the leave was justified, and was beyond his control. If the reply is not satisfactory, then it will be presumed that such an employee has voluntarily abandoned his service, and a person who has loss his lien in terms of the provisions of the Act, he will not be entitled to any pay or allowance or any other benefit after loss of lien. A show cause notice will be served to such an employee to show that as to why the order may not be confirmed and it must be explained within a period of 10 days. If the Appointing Authority is not satisfied with the explanation of the employee then an order can be passed to confirm the earlier order of loss of lien, and it shall be deemed that such employee has been removed from service of the KVS w.e.f. the date of his remaining absent. There is also provision for preferring an appeal against the order passed by the Appointing Authority confirming the earlier order and passing an order of removal from service.

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Learned counsel for the respondents argued that the validity of this provision has been adjudged by the Central Administrative Tribunal, Principal Bench, New Delhi in the Judgment dated 03.05.2002 in O.A. No. 2351 of 2001 Mrs. Prem Juneja vs. UOI and others. Learned counsel for the respondents argued that the order passed by the Principal Bench was challenged before the Hon'ble High Court, Delhi, and the Hon'ble High Court also affirmed the Judgment. Mr. N.P. Singh, Advocate for the respondents produced the copy of Judgment dated 03.05.2002 in O.A. No. 2351 of 2001. It has been held in this Judgment by the CAT, Principal Bench as under: -

"Since this provision of Article 81 (d) are somewhat similar to the provisions of Aligarh Muslim University Leave Rules, 1969 which also have a similar provision where the University can treat to have an employee vacated his post even without notice from the date of absence. So, we find that the validity of such like rules have already been held and the applicant cannot challenge the validity of these rules particularly so when in the rule adopted by the KVS there is a provision for issuing of show cause notice then an opportunity of representation and hearing is also given and if the authority is not satisfied then the right of appeal has also been given to the employee so we find that this Article 81 (d) of the Education Code said to be violative of Article 14 & 16 of the Constitution of India."

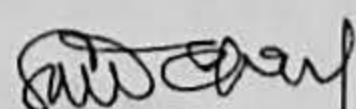
Hence, in this Judgment, the CAT, Principal Bench upheld the validity of provisions of Article 81 (d) of KVS Education Code. Moreover there is one more Judgment cited by learned counsel for the respondents in this connection of the Hon'ble High Court of Allahabad delivered in Civil Misc. Writ Petition No. 9822 of 2008 Smt. Poonam Srivastava vs. Union of India and others, decided on

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03.07.2008. The Hon'ble High Court of Allahabad observed as under: -

"We are in respectful agreement with the view taken by the Delhi High Court in Mrs. Prem Juneja Vs. Union of India (Civil Misc. Writ Petition No. 4485 of 2002) decided on November 1st, 2002 in which in similar circumstances following the decision of the Supreme Court in Aligarh Muslim University & Ors., 2000 (60) Scale 125 it was held that where an employee fails to resume duties after expiry of the leave granted to him, she would be deemed to have vacated his post. The rule does not violate the principle of natural justice as these rules like Art. 81 (d) of the Education Code remedies the malady of absenteeism. The employee is given an opportunity to furnish explanation with regard to provision view taken by the competent authority by loosing his lien in which the employee has been given an opportunity to furnish explanation with regard to provision view taken by the competent authority by loosing his lien in which the employee has been given an opportunity of personal hearing as well. The loss of provisional lien does not sever the relationship of employer and employee. It is only when the order is confirmed after giving her opportunity of hearing to the employee that the relationship is severed. An appeal is also provided, which takes care of the situation, where the employee may have a grievance against the order confirming the provisional loss of lien."

Hence in view of the Judgment delivered by the CAT, Principal Bench in O.A. No. 2351 of 2001 (supra), affirmed by the Hon'ble High Court of Delhi, and followed by the Hon'ble High Court of Allahabad, we are of the opinion that the provisions of Article 81 (d) of the Education Code is perfectly in accordance with law and it is not violative of Article 14 and 16 of the Constitution of India. It is the main contention of the respondents that as the applicant remained absent, hence after providing sufficient opportunity and serving a show cause notice, he



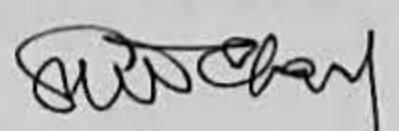
deemed to have abandoned the service, and he was removed under Article 81 (d) of the Education Code.

7. It will be most material in the circumstances to consider that whether there were established circumstances from which it can be said that the respondents were justified in presuming that due to continuous absence of the applicant, it was presumed that the applicant abandoned the service and accordingly the order was passed for loss of lien, and a show cause notice was served ^{as to} ~~as~~ that why it may not be made ~~as~~ absolute and as no reply was submitted by the applicant under the mandatory provisions, then the Appointing Authority passed an order that the applicant has abandoned the service, and hence he was removed. It is also a fact that the respondents in pursuance of the directions issued in O.A. No. 1046 of 2003 decided the appeal of the applicant, as provided in Article 81 (d). In the present case, certain facts are established, and not disputed by either of the parties. It is an admitted fact that the applicant was posted at KV, IDPL, Veerbhadra Rishikesh. However, it is also relevant to mention that how this KV, IDPL, Rishikesh came into existence. It was established in 1977-78, as per the agreement with the sponsoring authority of IDPL Project that all recurring and non-recurring expenditures towards running the KVs will be borne by the project. It is also an established fact that the IDPL Project, Rishikesh was closed and hence the sponsoring authority stopped remitting the funds for running the KV, IDPL, Rishikesh, and the dues crossed the limit more than one crore rupees. There was no other source of finance with the KVS to run the KV, IDPL,

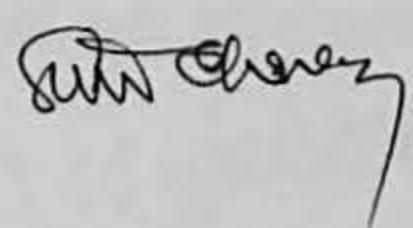
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Rishikesh hence the Board of Governors, KVS decided to close down the Vidyalaya w.e.f. 01.04.2000, and the entire staff of KV, IDPL, Rishikesh was redeployed to nearby KV where the vacancies were existing, and as far as possible at the place of their choice. It is also a fact that in pursuance of direction of the Hon'ble High Court, Allahabad in W.P. No. 6745 of 2000, the KV, IDPL, Rishikesh was reopened w.e.f. July 2000, and it was decided that the KVS will run the institution by self financing by realizing the fees from the students.

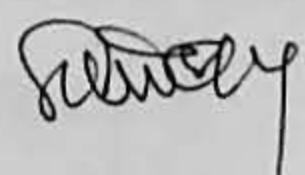
8. The applicant in the O.A. specifically admitted that in the year 1999, the KVS, New Delhi passed a resolution to close the KV, IDPL, Rishikesh but the closure of Vidyalaya was challenged before the Hon'ble High court, and on 23.03.2000 the Hon'ble High Court made an observation that the KV, IDPL, Rishikesh should not be closed, and the Government should consider for continuing the said Vidyalaya. As per the direction of the Hon'ble High Court, the KVS decided for not closing the Vidyalaya, and restarted the same w.e.f. 03.07.2000. But the respondents have alleged that it is a fact that the KVS decided to run the institution and reopened the same w.e.f. July 2000 but with certain conditions. Firstly, it was decided that the Institution shall be run by self financing by realizing fees from students, and secondly, it was decided that the Classes, Sections and strength of the staff shall be reduced. It has also been alleged by the respondents that in pursuance of direction of the Hon'ble High Court dated 31.03.2000 it was not possible to reopen the Vidyalaya w.e.f. 01.04.2000. It was decided on 03.07.2000 to reopen the



Institution w.e.f. 01.07.2000. It is also a fact that when the Institution was closed w.e.f. 01.04.2000, all the 28 regular employees working in the Institution including the applicant, were redeployed to nearby KVs as per their choice as far as possible, subject to availability of vacancies. The applicant made a representation alleging that he may be accommodated either at Dehra Dun, Haridwar and Sarsawan. Annexure A-6 is the order dated 25.03.2000 redeployment of the teaching and non-teaching staff of the KV, IDPL, Rishikesh at different places, and vide this order the applicant was redeployed at Lansdown. It was represented by the applicant that he may be accommodated at any nearby places either at Dehra Dun, Haridwar or Sarsawan but applicant could not be accommodate at the place of his choice as there were no vacancy of the Drawing Teacher. Representations were made by the applicant for accommodating him at the place of his choice but the orders were passed on the representations of the applicant showing inability to accommodate at the place of his choice. As the applicant failed to resume duty at KV, Lansdown hence a show cause notice was served to him by the registered post at the address given by him in his representation. when the show cause notice was received back undelivered , then the show cause notice was sent on his permanent address as per service record, and the show cause notice was again sent on 14/15-09-2000. It was sent by the Principal, KV, Lansdown. This show cause notice also received back with the endorsement that the addressee is not staying at the said address. Hence, no reply of the show cause notice was received.



9. It has been alleged by the respondents that the applicant was required to show cause the notice for provisional loss of lien but no reply was submitted of the show cause notice, hence, vide order dated 13.03.2001 order was made absolute and confirmed and it was presumed that the applicant voluntarily abandoned the service from the date of his unauthorized absence. No Appeal was filed against this order of dated 13.03.2001, and instead of filing an Appeal, the applicant filed O.A. No. 1046 of 2003 before this Tribunal, and the O.A. was disposed of by giving a direction to the respondents to decide the appeal of the applicant, and the appeal was rejected on 25th March 2004. Under these circumstances, as the applicant ~~he~~ continued to remain ~~he~~ absent after 01.04.2000, and even he did not respond to other orders passed by the respondents as well as the show cause notice issued to the applicant hence the applicant was removed on the presumption that he has abandoned the service. It has been argued by learned counsel for the applicant that the order passed by the respondents is dictatorial, arbitrary, and no attempt was made by the respondents to accommodate the applicant at the place of his choice whereas numerous other persons were accommodated at the place of their choice, and moreover even after reopening of KVS, IDPL, Rishikesh the applicant was not accommodated in the Institution. It has been argued by learned counsel for the respondents in this connection that an attempt was made by the respondents to accommodate the applicant at nearby place or at the choice of the applicant but due to ~~nonavailability~~ unavailability of vacancy at the place of his choice, he could not be accommodated, and he was directed to assume duty at KV,



Lansdown. It is a fact that the applicant in spite of several orders and directions issued by the respondents, did not resume duty at KV, Lansdown, and he continued to harp the same tune that he may be accommodated at the place of his choice, and the other staff has been accommodated at the place of their choice. In this connection, learned counsel for the applicant cited a Judgment of the Hon'ble Supreme Court reported in 1966 (12) F.L.R. S.C. 191 *Mafatlal Narandas Barot vs. J.D. Rathod, Divisional Controller State Transport, Mehsana and another* but this Judgment of the Hon'ble Supreme Court is of no help to the applicant. Before the Hon'ble Supreme Court, in the cited case, service of an employee was terminated without providing him the copy of charges as well as the statement of allegations against him. But this is not a fact in the present case, as we have stated above, that in the KV Education Code new article has been inserted as Article 81 (d), and this article has been added to ²curve the tendency of habitual absence in the academic Institution, in order to maintain the discipline and to safeguard the interest of the students. The show cause notice was served to the applicant that as to why he may not be ordered to loose his lien due to continuous absence and why this order may not be made absolute. He was required to submit the reply within the specified period but the applicant failed to submit the reply and hence the appointing/disciplinary authority passed an order of removal under Article 81 (d). As per direction of the Tribunal, the appeal was decided by the respondents in accordance with Article 81 (d). The KVS has got a separate enactment hence the general rule will not be applicable in the present case. Where there is a specific provision in the

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Institution or Organisation, then the general rule will not be applicable rather the special provision will be applicable, and the validity of the provision has been adjudged in the above mentioned Judgments of Mrs. Prem Juneja and Smt. Poonam Srivastava (supra)-by the Hon'ble High Court. Learned counsel for the applicant also cited a Judgment of the Hon'ble Apex Court reported in *AIR 1998 Supreme Court 2722 Union of India and others Vs. Dinanath Shantaram Karekar and others*. In this Judgment, according to facts of the case, the charge sheet was sent to the delinquent official but the charge sheet was returned with the endorsement 'not found'. Learned counsel for the applicant argued that in the present case also the show cause notice was received back with the endorsement that the addressee is not living at the address furnished. But the facts and circumstances of the case are different. The show cause notice was sent firstly on the address furnished by the applicant on his representation, and secondly when the show cause notice was received back with the endorsement of not met on the address of IDPL, Veerbhadr, Rishikesh, then an attempt was made by the respondents to serve the notice on the applicant at the permanent address given in his service book, and that show cause notice was also received back with the endorsement "addressee is not staying at the address". Under these circumstances, it cannot be said that no attempt was made by the respondents to serve the show cause notice to the applicant but the applicant was adamant not to resume the duty at KV, Lansdown, and he was not cooperating with the respondents and, it appears, that he was instrumental in getting return the show cause notices. If one is

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adamant not to receive the show cause notices then the respondents can adopt alternate mode of service and they have adopted alternative mode of service. Moreover, it is also a fact that after the order of removal of the applicant under article 81 (d), the applicant instead of filing an appeal before the respondents, opted to file the O.A. before this Tribunal. The O.A. was disposed of by the Tribunal on dated 07.01.2004 with the direction to decide the appeal of the applicant as per rules, and accordingly appeal of the applicant was decided by the Appellate Authority. It was not adjudging in that O.A. that he was not provided the opportunity for show cause, it was only alleged that no opportunity has been provided to the applicant for filing an Appeal, and this liberty was given to the applicant to file the appeal by the Tribunal, and then the respondents were directed to decide the appeal, and the order of the Appellate Authority has also been challenged.

10. All these circumstances show that the applicant voluntarily abandoned the service. There is no explanation that as to how and why the applicant did not resume duty after 01.04.2000 when his representation was rejected. When the representation of the applicant was rejected, and he was required to join the duty at KV, Lansdown, the applicant ought to have resumed the duty at KV, Lansdown, and thereafter he was at liberty to make representation to consider his genuine problems. But the applicant has not considered this aspect of the matter, and he continued to made representation after representation. It was most unjustified on the part of the applicant not to comply ^{with} the

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order passed by the respondents, and even after rejection of the representation, the applicant continued to make fresh representations. The respondents also alleged that w.e.f. 01.07.2000, KV, IDPL, Veerbhadr, Rishikesh was reopened but they have shown the position of existing staff in the Institution, and it was alleged that there was only 01 post of Art and Drawing Teacher in the KV, IDPL, Rishikesh prior to closure, and this post was abolished after reopening, and hence the applicant could not be accommodated w.e.f. in the KV, IDPL, Rishikesh, and it has been alleged by the respondents that at other choice places of the applicant there were also no vacancy of Art and Drawing Teacher hence he could not be accommodated. Sincere efforts were made by the respondents to accommodate the applicant at the place of his choice but due to non-availability of the vacancy, he could not be accommodated. Under these circumstances, it was the duty of the applicant to resume duty at KV, Lansdown but not for a single day he resumed duty at KV, Lansdown, and there is no genuine explanation of this fact. Under these circumstances, applicant continued to ~~remain~~ ^{remain} absent w.e.f. 01.04.2000 up to the date when the final order was passed by the Disciplinary Authority of his removal for voluntary abandonment of service. No believable explanation has been adduced by learned counsel for the applicant that why the applicant remained absent for such a long period hence we are of the opinion that the respondents were within their power to serve a show cause notice, for loss of lien, on the applicant and thereafter as no reply was submitted by the applicant of the show cause notice hence absolute order was passed confirming the order for loss of lien, and he was removed

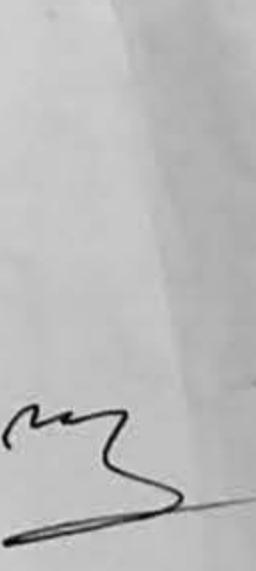
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from service accordingly. There is no legal flaw in the orders passed by the respondents.

11. For the reasons mentioned above, we have arrived at the conclusion that the applicant has been removed from service under Article 81 (d) of the Education Code of KVS on the presumption that due to continuous absence, applicant has voluntarily abandoned the service. There is no reasonable explanation that as to why the applicant failed to resume the duty w.e.f. 01.04.2000 up to the date of serving the show cause notice, and passing an absolute order on 13.03.2001. The validity of Article 81 (d) has not been challenged, and moreover validity of the Article 81 (d) has been upheld by the Hon'ble High Courts of Allahabad and Delhi in the afore mentioned Judgments. As the applicant remained absent beyond 15 days illegally hence the respondents rightly inferred that the applicant voluntarily abandoned the service, and he was rightly removed from service. O.A. lacks merit and is liable to be dismissed.

12. O.A. is dismissed. No order as to cost.


(Member - A)


(Member - J)

/M.M/