

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**

Hearing through video conferencing

O.A. No. 62/450/2021

This the 15th day of March, 2021

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)
HON'BLE MR. ANAND MATHUR, MEMBER (A)

Rohila Tabasum D/o Ghulam Nabi Shah, R/o Chanapora A/P Sanat Nagar
Srinagar Kashmir, J&K Aged 49 years-190005.

.....Applicant

(Advocate:- Mr. Shuja Ul Haq)

Versus

1. Union Territory of Jammu and Kashmir through Commissioner/Secretary to Government School Education Department, Civil Secretariat, Srinagar/Jammu-180001.
2. Director School Education Kashmir, J&K-190001.
3. Chief Education Officer, Budgam Kashmir, J&K-191111
4. District Institute of Education and Training, Beerwah Budgam, Kashmir, J&K-191111.

.....Respondents

(Advocate: Mr. Sudesh Magotra, Deputy Advocate General)

**ORDER
ORAL**

(Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member-J)

The scope of controversy in the present O.A. lies in a very narrow sphere. The applicant Rohila Tabasum has challenged order dated 17.12.2020 issued by Respondent No. 2 whereby necessary instructions/orders have been sought from Secretary to Government School Education Department, Civil Secretariat, Jammu with regard to decision of the designated committee which has decided to initiate the process of terminating the services of the applicant. The applicant in the present O.A. seeks the following reliefs:-





- I. By issuance of order or direction, the communication dated 17.12.2020 issued by respondent no. 2 whereby necessary instructions/orders have been sought with regard to the decision of the designated committee which has decided to initiate the process of terminating the services of the applicant be set aside.
- II. By issuance of order or direction, the respondents be directed to decide the leave and station permission application of the applicant as well as he joining application filed by the applicant and take decision in the matter as expeditiously as possible.
- III. By issuance of order, or direction, the respondents be directed to allow the applicant to discharge her legitimate duties in the respondent no. 4 institute.
- IV. Any other order or direction as this Hon'ble Tribunal may deem fit and proper under the circumstances of the case may also be granted in favour of the applicant and against the respondents."

2. It is the case of the applicant that she was appointed as Teacher vide order dated 07.12.1996 and initially posted in PS Harena Dreygam and thereafter, the applicant discharged her duties at various postings. Vide Government dated 02.03.2010, the applicant was promoted as Master/ Head Teacher in the pay scale of Rs. 6500-10500 (pre revised). Thereafter, in terms of Government order dated 17.07.2014, placement of Post Graduate Teachers as I/C Lecturers in the discipline of Chemistry was made by the Govt on the basis of seniority/eligibility and the applicant being the senior most Master was placed as In charge Lecturer in the discipline of Chemistry and since 17.07.2014, the applicant has been discharging her duties as Lecturer in the discipline of Kashmir.

3. It is the further case of the applicant that she has been working in the respondents department for the last more than 24 years and her entire service career has remained unblemished and she has worked to the best satisfaction and best of her capability of the respondents department. The husband of the applicant is working in a company in U.S.A. and in the year 2017, the applicant in order to accompany her husband to U.S.A. applied



for grant of leave without pay along with permission to leave station on 09.08.2017 for at least two years before the Principal, Govt. Hr. Sec. School Drang with a copy to Respondent No. 2 and 3. Since in August, 2017, the applicant was posted in Drang, as such leave application was forwarded to the Chief Education Officer, Budgam for necessary action by Principal, Government Higher Secondary School Drang vide endorsement dated 11.08.2017. In August 2017, her leave application was forwarded by Respondent No. 2 to Respondent No. 1 vide communication dated 25.08.2017 in which communication request was made to consider the request of the applicant for grant of leave in her favour. In the said communication/recommendation was also made for sanction of leave in favour of the applicant.

4. It is further averred in the O.A. that applicant's leave application was neither accepted nor rejected but was kept under consideration for considerable period of time, the applicant was compelled to leave the station as she was informed by the concerned authorities that since her leave and station permission application was under active consideration, the applicant left the station for joining her husband in U.S.A. However, in April 2018, the Under Secretary to Government, School Education Department addressed a communication dated 20.02.2018 to Director School Education, Kashmir wherein, the Director was asked to furnish information on the station leave application of the applicant. The Director forwarded the communication to Principal, DIET, Beerwah vide communication dated 04.06.2018 where, the applicant was posted on transfer in September 2017. Vide communication dated 13.08.2018, the Principal DIET furnished the information to Director wherein it was stated that applicant was transferred to DIET vide order dated 06.09.2017 but she did not join the institute as she had applied leave for



a period of two years w.e.f., 01.08.2017 with permission to leave station due to private affairs. It is also averred in the O.A. that from 09.08.2017 till January, 2019 no action was taken on the leave application of the applicant and in the meanwhile applicant came back to Kashmir and on 14.06.2019, the applicant filed an application before Respondent No. 4 on 14.06.2019 and who in turn directed the establishment section to take necessary instructions from the Director School Education before allowing the applicant to join her duties. Since no action was taken on the leave application or joining of the applicant, she filed an application in the first week of December before Director, School Education Kashmir seeking permission to join her duties on 17.12.2020. A communication was addressed by Director, School Education Kashmir to Respondent No. 1 wherein it was stated that a decision was taken by the designated Committee wherein it was decided to initiate the process of termination of services of the applicant. The applicant has challenged the said order dated 17.12.2020 on the ground that it is arbitrary and unreasonable and deserves to be set aside on the ground that respondents failed to take a decision on the leave application as well as station leaving permission of the applicant for more than two years as well as on the joining report of the applicant and on the other hand, respondents have initiated the process for terminating the services of the applicant and sanction of the respondents is per se, illegal unjust and arbitrary. Pending the disposal of her applications, instead of allowing her to join or initiating full fledged departmental inquiry against the applicant, the respondents have decided to terminate the services of the applicant without issuing any show cause notice.

5. It is the further case of the applicant that the respondents had full knowledge that the applicant had gone outside the country and her application for grant of leave and



subsequent application for joining the duties was pending consideration before them that is why the subject of the impugned communication has been reflected as “Grant of leave/permission case of Rohila Tabsum, I/C Lecturer Chemistry HS Drang Budgam Kashmir”. It seems that the respondent no. 2 while issuing the impugned communication dated 17.12.2020 has not scanned the entire service file of the applicant, which would reveal that the applicant was transferred from HS Drang and was subsequently posted as DIET Budgam where she had filed her joining report and was requesting for allowing her to join her legitimate duties. The respondents were supposed to send a notice to the applicant, however, that was never done and the requirements of a valid notice in terms of law have not been complied with and such procedural requirements being the backbone of any civil action against an employee, the impugned communication thus deserves to be set-aside as being unconstitutional and illegal under law. It is also the case of the applicant that no procedure for termination of service of applicant has been followed, rather the impugned order has been taken summarily and mechanically and violates the fundamental rights of the applicant available to him under the Constitution of India. Hence, the present O.A. and also prayer for interim relief to stay the implementation of impugned order dated 17.12.2020.

6. We have heard and considered the arguments of learned counsels for the parties and gone through material available on record.

7. It would be pertinent to note the gist of the impugned order dated 17.12.2020 which reads as under:-

“Kindly refer your communication No. Edu/V/24/2018 dated 22/11/2018. In this regard, it is to submit that the case was enquired by a Committee which in turn

furnished the report and the same was placed before the Committee constituted for the purpose, in light of the instructions of the Administrative Department conveyed vide communication No. Edu-I/793/2018 dated 30/08/2019.

The decision of the designated committee is reproduced as “Initiate the process of termination of services of the lecturer”.

It is pertinent to mention here that the I/C Lecturer has availed number of leaves on one pretext or another during her 22 year service as already conveyed vide this office communication No. DSEK/Estt-I/1557 Dated: 15/09/2018 (Copy enclosed). In light of the decision passed by the designated committee, it is therefore, requested to kindly convey necessary instructions/orders in the matter.”



8. During the course of the arguments, learned counsel for the applicant submitted that the impugned order is arbitrary, unreasoned and displaces the fundamental rights available to the applicant to have access to regular departmental inquiry. On the other hand, learned D.A.G. submitted that the present O.A. has been filed prematurely. The impugned order is internal correspondence between different departments of the Government and visits the applicant with no evil consequences. It is further submitted by the learned A.A.G. that it is only when the process is initiated for the termination of service of the applicant, the applicant would be at liberty to file appropriate proceedings challenging the action of the respondents against here, if there is no conformity with law. It has been further submitted by learned A.A.G. that the application being premature deserves to be dismissed in limini.

9. The impugned order refers to the decision of the designated Committee for initiation of the process of termination of the services of the applicant and seeks instructions/orders in this regard. There is nothing to show that action has been initiated against the applicant for committing violation of any service law. The impugned communication except for seeking directions/orders in case of initiation of proceedings



against the applicant does not pass any order visiting the applicant with adverse consequence. It is only when an exercise in pursuance of said impugned communication, is undertaken and any order adverse to the interest of the applicant is passed, that he may have a cause of action to approach this Tribunal. It is clear that the respondents shall put the effected employee on notice, if orders adverse to his interests are proposed to be passed.

10. As of now, this OA is premature, if not without any cause of action. We, therefore, dismiss the same, leaving it open to the applicant to approach this Tribunal, in case the respondents pass any order which visits him with adverse consequence contrary to law.

(ANAND MATHUR)
MEMBER (A)
Arun

(RAKESH SAGAR JAIN)
MEMBER (J)