

Am A.F.R.
By C. Lalabhai

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.383 OF 2000

ALLAHABAD THIS THE 6th DAY OF MAY 2009

HON'BLE MR. JUSTICE A. K. YOG, MEMBER-J
HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A

Vijay Shanker Mishra,
S/o Ram Murat Mishra,
R/o C/o Shiv Maharaj Ahraura Katara,
Post Ahraura, District-Mirzapur.

.....Applicant

By Advocate : Shri Avnish Tripathi

Versus

1. Union of India, through Secretary,
Ministry of Human Resources,
New Delhi.
2. Commissioner Kendriy Vidyalaya Sangthan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.
3. Assistant Commisisoner,
Kendriya Vidyalaya Sangthan, Sector-J
Aliganj, Lucknow.
4. Principal,
Kendriya Vidyalaya, Azamgarh.

..... Respondents

By Advocate : Shri V. K. Singh
Shri N.P. Singh

ORDER

HON'BLE MR. JUSTICE A. K. YOG, MEMBER-J

1. Heard Shri Avnish Tripathi, Advocate on behalf of the
applicant and Shri N.P. Singh, Advocate, representing the
respondents. Perused the pleadings and the documents on
record.

2. Vijay Shanker Mishra, the applicant in the present OA was appointed in the year 1999 'part-time' Yoga Teacher in Kendriya Vidyalaya, Azamgarh owned and controlled by KVS (Kendriya Vidyalaya Sangthan) after post was advertised. A dispute arose between the Applicant and the Respondents in July 1996 with reference to an alleged incident of November/December 1995 reported in July'1996. According to the respondents, an 'Enquiry Officer' was appointed in pursuance to an order dated 29.03.1998 said to have been passed by Assistant Commissioner, Kendriya Vidyalaya Sangthan, Azamgarh; enquiry officer, Ms. K. Rajdan, Principal SG. PGI, Kendriya Vidyalaya School, Lucknow/Annexure CA-1 held enquiry on 22.4.1996; the applicant also appears to have submitted his grievance on 24.4.1996 to Assistant Commissioner, Kendriya Vidyalaya Sangthan Lucknow/Annexure A-4 to the OA showing 'Malice' on the part of the Principal of the School; the respondents later claim/s to have abolished post of 'Yoga-Teacher' vide 'Commissioner', KVS, New Delhi order dated 26.03.1998/Annexure CA-5; consequent thereupon the applicant was relieved vide order dated 28.04.1998/Annexure A-7 to the OA; feeling aggrieved, the applicant filed writ petition no.16916/98 wherein Learned Single Judge passed an interim order dated 19.05.1998 to the effect -'*in case full time Yoga Teacher is to be appointed by respondent no.4 (Management Committee) the petitioner shall be permitted to function till a regularly selected candidate is appointed/Annexure A-8 to the OA*'; the respondents passed another order dated



22.6.1998/Annexure A-9 to the OA informing the applicant that post of Yoga Teacher has been withdrawn by KVS vide letter dated 26/27.3.1998 of H.Q., New Delhi and that he cannot be permitted to continue on the post of Yoga Teacher; it is not clear (from the pleadings on record) as to what action, if any, taken by the applicant against said order dated 22.6.1998; the respondents, however, did not rest there and proceeded to pass order of termination dated 7.4.1999/Annexure A-1 to the OA purporting to dispense with 'enquiry' and holding the applicant guilty of moral turpitude feeling aggrieved the applicant filed writ petition no.40823/99 before Allahabad High Court but the Single Judge dismissed said petition on the ground that applicant should have approached Central Administrative Tribunal/Annexure A-10 to the OA and, consequently, the present OA to challenge said order of termination dated 7.4.1999/Annexure A-1 to the OA.

3. One of the very significant features and strong circumstance, which raises doubt and makes Respondent's theory suspicious, is as noted hereunder. According to the respondents 'incident in question' took place somewhere November/December 1995 during Half-yearly examination in the School. According to the statements given by the mother (Geeta Singh) and brother of the girl-student, in question (copies filed as Annexure CA-2 and 3); complaint was made to the Principal of the school as late as on 8.2.1996, i.e. after about two to three months of the incident; there is no explanation for 'non action' till July 1996 on the part of the Principal of the school. There is



no explanation on record, if any, furnished by the Principal of the School. We are not ready to accept that once a serious matter like the present is once reported to the Head of the Institution, it can be forgotten or lost sight thereof or awaiting for written complaint to be made again.

3. Having heard learned counsel for the parties the only surviving question to be decided in the OA is whether respondents has authority in law to pass impugned order of 'termination' dated 7.4.1999 when, according to the respondents themselves the applicant stood relieved under order dated 22.6.1998/Annexure A-9 to the OA? Learned counsel for the respondents is unable to show us any Rule or precedent that once an employee is relieved, still employer has jurisdiction to pass the termination order.

4. The applicant, having been relieved, is no more in service and question of 'termination of service' is beyond comprehension. Reference is made to the following decisions:-

1. *State of Assam and Others, Vs. Padma Ram Borah reported in AIR 1965 SC 473 (V 52 C 76). Para 7 of which reads:-*

"7).....If the State Government wished to continue the service of the respondent for a further period, the State Government should have issued a notification before March 31, 1961. In *R.T. Rangachari V. Secretary of State* 64 Ind App 40: (AIR 1937 PC 27) their Lordships of the Privy Council were dealing with a case in which a Sub-Inspector of Police was charged with certain irregular and improper conduct in the execution of his duties. After the Sub-inspector had retired on invalid pension and his pension had been paid for three months, the matter was re-opened and an order was made removing the Sub-Inspector from service as from the date on which he was invalidated, Lord Roche speaking for the Board said:

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"It seems to require no demonstration that an order purporting to remove that appellant from the service at a time when, as their Lordships hold, he had for some months duly and properly ceased to be in the service, was a mere nullity and cannot be sustained."

The position is the same here. The respondent had ceased to be in service on March 31, 1961 by the very order of the State Government. An order of retention in service passed more than a month thereafter, was a mere nullity and cannot be sustained.....".

2. *The State of West Bengal and another, Vs. Nripendra Nath Bagchi reported in AIR 1966 SC 447 (V 53 C 94). Para 6 of which reads:-*

"Mr. Justice P.B. Mukherji pointed out very appositely the contrast between R. 56(a) and (d) of the Fundamental Rules. Rule 56 (a) corresponds to R. 75 (a) but R. 56 (d) opens with the words 'notwithstanding anything contained in Cl. (a).....' (of R. 56). This shows that they cover different situations and the matters in Rule 56 (d) do not cover matters in R. 56(a). In dealing with the application of the rules the learned Judge observed.

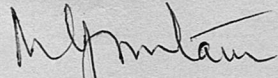
"No consent of the petitioner for retaining his service was called for or obtained. The two expressions in the above order (1) "Retention in Service" and (2) "in the interest of public service" do not on the facts of this case mean what they say. Here "retention in service" means suspension from service because from the date when he was "retained" in service he was suspended from service. The other expression "the interest of the public service" does not mean actual service to the public but meant only departmental enquiry against him. His service was extended from time to time with a view to enable the Government to start and conclude the departmental enquiry against him during which the petitioner was allowed to live on a bare subsistence allowance."

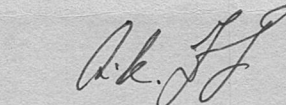
We find it sufficient to say that we agree that the retention of Bagchi in service under R.75 (a) for the purpose of enquiry was not proper and the extension of the service was illegal."

5. In the totality of the circumstances, we quash the impugned order dated 7.4.1999/Annexure A-1 to the OA. This order will not effect or interfere with the order dated 22.6.1998 whereby applicant has been relieved without 'stigma' of any kind

for any purpose in future as a consequence of being relieved from the services.

6. OA stands allowed to the extent indicated above. No Costs.


Member-A


~~Member-J~~

/ns/