

Reserved on 31.01.2012

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD  
BENCH ALLAHABAD**

(THIS THE 7<sup>th</sup> DAY OF February 2012)

**HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER (J)**  
**HON'BLE MR. D. C. LAKHA, MEMBER (A)**

**Original Application No. 626 OF 2007**

(U/S 19, Administrative Tribunal Act, 1985)

Smt. Bandana Chakraborty, W/o Shri Utpal Kumar Chakraborty, Resident of H. No.192, Pardewanpur, Post Harijinder Nagar, Kanpur Nagar – 208007.

.....Applicant

**V R S U S**

1. Union of India, through the Commissioner, Kendriya Vidyalaya Sangathan, 18 Industrial Area, Shahid Jeet Singh Marg, New Delhi – 110016.
2. The Assistant Commissioner, Kendriya Vidyalaya Sangathan (Kolkata Region), EB Bolck, Sector-1, Salt Lake, Kolkata-700064 (W.B.).
3. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional, Sector-J, Aliganj, U.P. Lucknow – 226020.
4. The Principal, Kendriya Vidyalaya, C.R.P.F. Campus, Durgapur, District Burdwan, (W.B.)- 713214.
5. The Principal, Kendriya Vidyalaya No.2, A.F.S. Chakeri, Kanpur – 208008.

.....Respondents

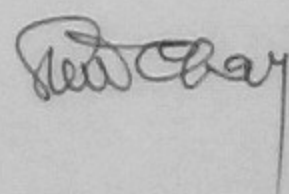
Advocates for the applicants:- Sri A. K. Dave

Advocate for the Respondents: Sri N. P. Singh.

**ORDER**

**DELIVERED BY; HON'BLE MR. JUSTICE S. C. SHARMA, SR. MEMBER-J**

Instant O.A. has been instituted for the following  
reliefs:-





"i) to regularize the service of the petitioner/applicant w.e.f. 01-06-1989 to upto date and make payment of regular scale grade salary par with the other teachers of Kendriya Vidyalaya Sangathan w.e.f. 01-06-1989 till date with all other consequential benefits applicable to her service and pay her regular salary in future without any deduction;

ii). to regularize the leave of the applicant during the period between 20-06-1989 to 09-02-1991;

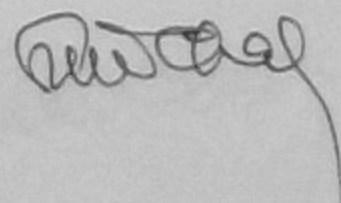
iii). to complete all the service records by verifying her service book from the date of her initial appointment i.e. 01-07-1982 to upto date;

iv). not to transfer the applicant till the respondents settle the cause of the applicant fully and finally.

v). such and further order which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case;"

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

It has been alleged by the applicant that she was appointed as Temporary Teacher on 29<sup>th</sup> June, 1982, after due selection by the committee on *ad-hoc* basis at Kendriya Vidyalaya, C.R.P.F. Campus, Durgpur and joined on 01<sup>st</sup> July, 1982. The applicant was regularized and confirmed on the post on 30<sup>th</sup> April, 1985 and the confirmation was issued by the respondents. That the applicant was married in



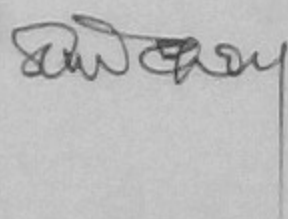


March, 1989 and consequently she applied for transfer of services to Kanpur on 28<sup>th</sup> March, 1989 and the Principal of Kendriya Vidyalaya, C.R.P.F. Durgapur recommended and forwarded the application of transfer of the applicant on 06<sup>th</sup> May, 1989 after closure of the school for summer vacation the applicant left Durgapur for her home at Kanpur with the permission of the Principal of Kendriya Vidyalaya, C.R.P.F. Durgapur with station leave permission. On reopening of the school on 26<sup>th</sup> June, 1989 applicant applied for medical leave and she joined the school in the month of July, 1989 on becoming medically fit. Again on 19<sup>th</sup> February, 1990 applicant submitted an application for transfer to Kanpur from Durgapur and the application was recommended by the Principal and ultimately the applicant was transferred by the respondents vide order dated 28<sup>th</sup> January, 1991. On 13<sup>th</sup> February, 1991 the applicant was relieved by the Principal of Kendriya Vidyalaya Sangathan, Durgapur and instructed the applicant to report to the Principal of Kendriya Vidyalaya, Armapur, Kanpur, but there was no mention of any specific school and therefore on the advice of the Principal of Kendriya Vidyalaya, Armapur, Kanpur applicant reported to the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Lucknow for proper direction and on the direction of the respondents, applicant joined at Kendriya Vidyalaya No.2, A.F.S. Chakeri, Kanpur instead of Kendriya Vidyalaya, Armapur, Kanpur. From 14<sup>th</sup> February, 1991 to 18<sup>th</sup> March, 1991 applicant applied for





Special Leave to the Assistant Commissioner, Kendriya Vidyalaya, Sangathan, Lucknow and the leave was sanctioned by the respondents. On 26<sup>th</sup> October, 1991 applicant received a letter sent by the Principal, Kendriya Vidyalaya, Durgapur that the applicant had not submitted application for leave during the period 1988-89 and 1989-90, as such her leave could not be regularized and for lack of regularization payment could be made of the leave payment salary and service also cannot be completed. Reply was sent by the applicant to the Principal, Kendriya Vidyalaya, Durgapur to the effect that no objection was raised by the Principal regarding not submitting the leave application for the period 1989-91 and the fact is that the applicant has regularly applied for leave during this period and leaves were sanctioned as no objection was raised at Durgapur when the applicant was posted there., but the leave of the applicant was not regularized and service book was also not completed and not sent to Kanpur, hence the applicant had to send a legal notice to the Kendriya Vidyalaya Sangathan, Headquarter, New Delhi for regularization of leave period of 1989-91. Again a letter was sent to the applicant that the leave applications are not available in the service record and again the applicant reiterated the fact that she had already submitted leave applications. On 17<sup>th</sup> December, 1992 Assistant Commissioner, Kendriya Vidyalaya Sangathan, Kolkatta region sent a letter to the Principal, Kendriya Vidyalaya, C.R.P.F., Durgapur that leave of the





applicant can only be sanctioned on submission of the application and the Assistant Commissioner directed the Principal, Durgapur to send service book (Vol.-I) and personal file containing 1-72 pages to Kendriya Vidyalaya, Chakeri, Kanpur where the applicant is presently posted. Several requests were made by the applicant after submission of the personal file of the applicant for regularization of leave and for payment of her regular salary scale grade salary including service benefits, but the respondents had not paid any heed to it and ultimately she had to file writ petition before the Hon'ble High Court in the year 1993 and the writ petition was decided by giving a direction to the respondents to settle the matter of leave of the applicant and except sending letter for submission of the leave application nothing was done, hence again a writ petition No.17378 of 1996 was filed for regularization of the leave period and paying salary including increments, but as numerous letters were written, but of no use and still the applicant is getting the minimum salary in scale whereas, her juniors are getting more salary, hence the leave period is to be regularized.

3. Respondents filed Counter Reply and denied ~~from~~ the contention of the applicant made in the O.A.. It has been admitted by the respondents in the Counter Reply that the applicant was appointed as Primary School Teacher and posted at Kendriya Vidyalaya,

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Durgapur and joined on 07<sup>th</sup> October, 1982 as regular incumbent and, thereafter, confirmed on the post of Primary Teacher w.e.f. 30<sup>th</sup> April, 1985 vide letter dated 04<sup>th</sup> March, 1992. That the applicant was married in 1989 and her spouse was a permanent resident of Kanpur and hence she applied for her transfer on 12<sup>th</sup> February, 1990 at Kanpur vide letter dated 28<sup>th</sup> January, 1991 and was relieved from Kendriya Vidyalaya, Durgapur and joined Kendriya Vidyalaya No.2 Chakeri, Kanpur on 19<sup>th</sup> March, 1991. That during her posting at Kendriya Vidyalaya, Durgapur, the applicant remained absent in various spells, as per details given in the Counter Reply from 26<sup>th</sup> June, 1989 to 13<sup>th</sup> February, 1991. The applicant did not care for submitting application for leave and remained absent frequently, but she did not submit application as required till date. That the applicant submitted application for permission to leave the station and after joining her husband at Kanpur went on sending application requesting sanction of leave, but without mentioning the kind of leave applied for. That the applicant was relieved on 13<sup>th</sup> February, 1991 from Kendriya Vidyalaya, Durgapur on her transfer to Kendriya Vidyalaya, Armapur, Kanpur. The applicant reported to A.C., Lucknow on 18<sup>th</sup> March, 1991 and as per direction she joined at Kendriya Vidyalaya No.2, Chakeri, Kanpur on 19<sup>th</sup> March, 1991. A letter was sent by the Principal Kendriya Vidyalaya, Durgapur to the applicant informing her regarding non-submission of application for leave

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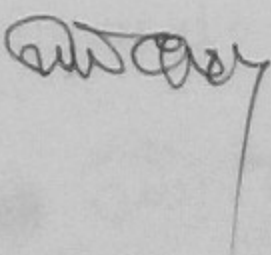
during 1988-89 and 1989-90, and instead of submitting an application as required applicant responded that she had already submitted the applications and her leave stand sanctioned. Applicant also filed writ petition before the Hon'ble High Court in the year 1992 and the direction was given by the Hon'ble High Court to redress the grievance of the applicant and again in the year 1996 a writ petition was filed by the applicant against the Commissioner K.V.S. and Ors. regarding regularization of her leave period, thereafter, Principal, Kendriya Vidyalaya<sup>was</sup> directed to send service book and LPC of the applicant to respondents No.3, Kendriya Vidyalaya, Chakeri, Kanpur vide letter dated 16<sup>th</sup> June, 1993. Moreover, the office of the Principal, Kendriya Vidyalaya was locked and sealed by CBI and as reported by them, her original service book may be lying in the sealed room of the then Principal, Kendriya Vidyalaya, Durgapur. Afterwards prolonged correspondences were made by the respondents to the applicant for submitting leave application for the above mentioned period, but the applicant insisted that she had already submitted those applications. For the un-regularized period of absence during her service period from 26<sup>th</sup> June, 1989 to 11<sup>th</sup> January, 1991, her pay could not be fixed as per recommendation of the V<sup>th</sup> C.P.C., however, her pay was fixed in the revised scale of pay Rs.4500-125-7000/- at the minimum of the scale in order to settle the matter. Preliminary objections were raised by the respondents and it has been

*[Signature]*



alleged that the O.A. is highly belated as it has been filed after expiry of 10 years time and is liable to be dismissed. Numerous letters were written to the applicant for submission of the leave application, but leave applications were not submitted. Moreover, as the applicant had already filed writ petition before the Hon'ble High Court, hence the O.A. is also barred by the Principle of constructive *res-judicata*. In view of article 6 (VI) of Education Code for Kendriya Vidyalaya Sangathan the Joint Commissioner (Administration) shall be considered the Principal Executive of the Sangathan and the Sangathan may sue or may be sued in the name of Joint Commissioner, but the Commissioner has been sued hence the O.A. is also barred by the Principle of non-joinder of necessary parties. That the O.A. lacks merits and liable to be dismissed.

4. In response to the Counter Reply filed on behalf of respondents on behalf of applicant Rejoinder Affidavit has also been filed and in the Rejoinder Affidavit applicant reiterated the facts which have been alleged in the O.A. Moreover, on behalf of the respondents Supplementary Counter Affidavit and on behalf of the applicant Supplementary Rejoinder Affidavit have also been filed which shall be discussed at the appropriate place.





5. We have heard Mr. A. K. Dave, Advocate for the applicant and Mr. N. P. Singh, Advocate for the respondent and perused the entire facts of the case.

6. From perusal of the pleadings of the parties and in view of the admitted facts of the parties in our opinion the controversy involved in this case for adjudication is very narrow. Admittedly, the applicant joined as Primary School Teacher on 01<sup>st</sup> July, 1982, earlier applicant was appointed on temporary post on *ad-hoc* basis and later on applicant was regularized on 07<sup>th</sup> October, 1982 the appointment of the applicant was on probation for a period of 2 years and after completion of probationary period applicant was confirmed on the post on 30<sup>th</sup> April, 1985 and the confirmation was issued by the respondents vide letter dated 04<sup>th</sup> March, 1992. It is also undisputed fact that afterwards applicant was married in March, 1989 at Kanpur and, thereafter, she applied for transfer of services to Kanpur on 28<sup>th</sup> March, 1989. That after closure of the school for summer vacation the applicant left Durgapur for her home at Kanpur with permission of the Principal, Kendriya Vidyalaya, C.R.P.F. Durgapur with station leave permission. On reopening of the school on 26<sup>th</sup> June, 1989 the applicant applied for medical leave and she joined the school in the month of July, 1989 on becoming medically fit. Thereafter, on 19<sup>th</sup> February, 1990 applicant submitted a fresh application for her transfer

*Subhash*



to Kanpur from Durgapur and the application was recommended by the Principal and ultimately the applicant was transferred by the respondents vide order dated 28<sup>th</sup> January, 1991 and the applicant was relieved by the Principal, Kendriya Vidyalaya Sangathan, Durgapur to report to the Principal of Kendriya Vidyalaya, Armapur, Kanpur, but there were some technical defects in relieving order hence as per order of the Assistant Commissioner, Kendriya Vidyalaya, Lucknow, applicant joined at Kendriya Vidyalaya No.2, A.F.S. Chakeri, Kanpur instead of Kendriya Vidyalaya, Armapur, Kanpur and since then applicant is continued as P.R.T. at Kendriya Vidyalaya No.2 A.F.S.. Dispute here for adjudication is regarding sanction of leave w.e.f. 26<sup>th</sup> June, 1989 to 13<sup>th</sup> February, 1991 on the date on which applicant was relieved from, Kendriya Vidyalaya, Durgapur in order to join at Kendriya Vidyalaya, Armapur, Kanpur and there is no dispute after 13<sup>th</sup> February, 1991 and the dispute is only for the period from 26<sup>th</sup> June, 1989 to 13<sup>th</sup> February, 1991.

7. It has been alleged by respondents in the Counter Reply that during applicant's tenure at Kendriya Vidyalaya, Durgapur, applicant remained absent in various spells and details have been given which are as under:-

S. Nos.	Date of Application	Period of Leave/absence	Reasons/Grounds applied for	Kind of leave applied for
1.		26-6-89 to 23-7-89	No application	N.A.

*Signature*



		17-8-89 to 21.10.89 18-10-89 to 17.12.89		
2.	30.4.90	30.10.89 to 11.11.89	Medical Certificate	Not
3.	20.5.90	08.01.90 to 20.4.90	In continuation of leave upto 20.04.1990 MC Encls.	Not mentioned
4.	20.5.90	08.1.90 to 20.4.90	Anti Natal care	Special abortion (Maternity) leave.
5.	24-9-90	25-6.90 to 23-9.90 (i.e. in continuation of summer vacation)	Maternity Leave MC Encl. + summer vacation upto 25.06.1990	Maternity Leave.
6.	15.10.90	3-10.90 to 13.10.90	Joining Report Daughter illness MC Encl.	Not mentioned
7.	16-10-90	Nil	HQR Leave Permission to leave hometown for Deepawali Celebration	Not mentioned
8.	Nil	22-10.1990 to 11- 91	Illness of infant daughter (Diarrhea)	Not mentioned
9.	25-1-91	NIL	Station Leave to visit Kanpur	Not mentioned
10.	NIL	28-1-91 to 2-2-91 & 04.2.91 to 8.2.91	Viral fever with MC joined on 11- 2-91	Casual Leave

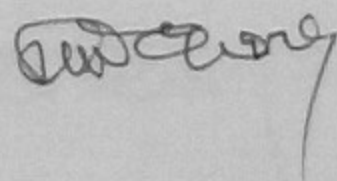
8. It has also been alleged by the respondents that the applicant did not care for submitting an application regarding sanction of leave and remained absent frequently and inspite of righting several letters applications have not been submitted by the applicant. Respondents have also admitted that *"she submitted application for permission to leave the station and after joining her husband at Kanpur went on sending application*

*Sanjay*



*requesting sanction of leave, but without mentioning the kind of leave applied for."*

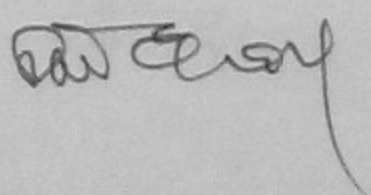
Whereas, it has been alleged by applicant that she continued to send application for leave as well as mentioning the nature of leave applied for and this contention of the respondents is wrong that in the application for leave it was not mentioned by the applicant that which kind of leave is to be sanctioned to the applicant. We perused the above chart shown in the Counter Reply and perusal of the chart shows that in most of the columns the nature of leave applied for was mentioned. When a medical certificate is submitted by the applicant then it is immaterial to mention that which type of leave is applied for and it is only a lame excuse on behalf of the respondents that applicant had not mentioned the nature of leave applied for. And the above chart itself shows that the contention of the respondents is not justified. Moreover, along-with Counter Reply certain applications have also been filed regarding sanction of leave. Annexure-2 of the Counter Affidavit is an order regarding sanction of leave on the application of the applicant dated 13<sup>th</sup> April, 1990 to sanction leave of 45 days from 08<sup>th</sup> January, 1990 to 21<sup>st</sup> February, 1990 in connection of the abortion leave and from 22<sup>nd</sup> February, 1990 to 24<sup>th</sup> April, 1990 67 days as Earned Leave/Extra Ordinary Leave in such circumstances on medical ground. Hence this order itself shows that applicant submitted applications for leave specifically mentioning the leave applied for and the same were granted firstly for 45 days as abortion





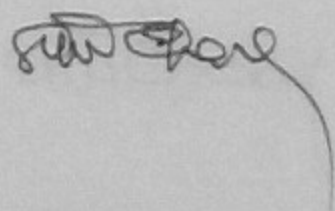
leave and for 67 days as Earned Leave/Extra Ordinary leave on the ground of illness, hence this contention of the respondents is wrong that the applicant had not mentioned in her leave application the nature of leave applied for. Moreover, there is also an order dated 27<sup>th</sup> March, 2008 and vide this order respondents granted the leave to the applicant in pursuance of the application for leave dated 17<sup>th</sup> June, 1990 in continuation of the Summer Vacation w.e.f. 25<sup>th</sup> June, 1990 to 22<sup>nd</sup> September, 1990 total 90 days as maternity leave under article 140(A). These orders itself shows that the applicant submitted the application for leave specifically mentioning the nature of leave.

9. It has not been alleged on behalf of the respondents that no leave was admissible to the applicant during this period and only objection has been raised on behalf of the respondents that proper applications were not submitted by the applicant for leave specifying nature of leave applied for, but when the respondents are admitting that the applicant has submitted application for leave, hence respondents were not justified in not granting the leave to the applicant, and moreover, for the above mentioned period leaves were granted to the applicant as is evident from perusal of the orders filed along-with Counter Reply, then as to why salary has not been paid to her for that period? The dispute is regarding leave w.e.f. 26<sup>th</sup> June, 1989 to 13<sup>th</sup> February, 1991 and it is evident that leave applications



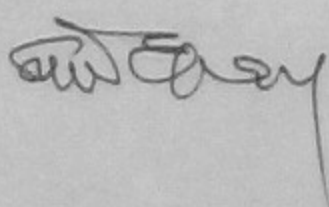


were submitted by the applicant. The applicant filed several letters sent by the respondents in order to show that applicant has not submitted the application for leave and it was required from the applicant that she may submit the application, but in view of the admitted fact by the respondents in Counter Reply that the applicant submitted the application for leave and it cannot be believed that the nature of leave applied for has not been mentioned in the application, it will be of no use and this correspondence took place in between the applicant and the respondents, but from perusal of this correspondence it is evident that the respondents continued to harp the same tune that the applicant has not submitted the proper leave application. It is an admitted fact that as the leaves were not sanctioned to the applicant hence no salary was granted to the applicant according to her entitlement, then applicant had to file writ petition before the Hon'ble High Court. Annexure-13 is the copy of the order of the Hon'ble High Court passed in writ petition on dated 15<sup>th</sup> September, 1993, the Hon'ble High Court disposed of the writ petition with the observation that the applicant must bring her grievances again to the notice of the Commissioner, Central School Organization and the Commissioner shall take necessary action in the matter and get the matter settled. Learned counsel for the applicant argued that when nothing was done by the respondents again a writ petition was filed by the applicant before the Hon'ble High Court,





Allahabad. Annexure-14 is the copy of the order passed by the Hon'ble High Court in writ petition No.17378 of 1996 and the writ petition was decided by the Hon'ble High Court on 17<sup>th</sup> May, 1996 and certain directions were given to the respondents and it has been decided that *"In view of the contention made above, respondent 1 and 2 are directed to immediately remit the service book and L.P.C. of petitioner to the respondent No.3 within one month from the date a certified copy of this order is filed by the petitioner before the respondent 1 and 2. Petitioner will not be required to go to Durgapur. It is however, provided that release of service book and L.P.C. by respondent 1 and 2 will not dis-entitle them from taking away punitive action which may be permissible under the service Rules."* Learned counsel also argued that the in pursuance of the order of the Hon'ble High Court the Assistant Commissioner, Kolkatta region passed an order on 14<sup>th</sup> October, 1997 and it has been required from the applicant in this letter that the leave application for the period of absence w.e.f. 01<sup>st</sup> June, 1989 to 13<sup>th</sup> February, 1991 indicating the nature of leave to be sanctioned and the ground for which the leave has been asked for, so that the matter relating to the sanction of leave, as per rules, can be considered by the competent authority. It has also been mentioned in the letter that Principal Kendriya Vidyalaya, C.R.P.F., Durgapur informed that no application appears to have been received in the office and that service book, Personal file and LPC have already been sent to the Principal, Kendriya Vidyalaya No.2, AFS, Chakeri, Kanpur.





Vide this letter applicant was required to submit application in that he will have to specify that what type of leaves were required and sanctioned and reply was submitted by the applicant to this correspondence and it is specifically alleged that leave applications have already been submitted specifying the nature of leave applied for.

10. Moreover, from perusal of the above chart it is evident that applications for leave were available in the service record of the applicant and in some of the applicants medical certificates were filed and it has also been alleged that what type of leaves were required by the applicant in para No. 7(ii) it has been alleged that *"She submitted application for permission to leave the station and after joining her husband at Kanpur went on sending application requesting sanction of leave, but without mentioning the kind of leave applied for."* If it has been alleged by the respondents that the applicant remained absent from duty without giving application and submitted application even months after joining the duties, but again without mentioning the kind of leave. But we have stated above that regarding some of the period leaves were sanctioned of the applicant and some of the leaves have not been sanctioned, but it is a fact that applications were submitted by the applicant and respondents have not considered it fit to enquire from the applicant the nature of leave applied for has not been mentioned, so that this defect be removed and the respondents also remained

*Butchore*



sleeping over the matter for a long period and the matter allowed to be delayed. Under these circumstances this was such a matter which can be sorted <sup>out</sup> by the official of the respondents, but no concrete steps have been taken by the respondents and the matter was continued to drag on for such period. It has not been alleged by the respondents that the leaves applied for were not admissible to the applicant or that no leave applications were submitted. The leaves were applied on medical ground, maternity abortion leave and leave due to illness etc. If the respondents might have <sup>been</sup> serious in resolving the matter then there was no reason for its dragging for such a long period.

11. It has been alleged by the applicant that the matter continued to be dragged for such a long period that applicant joined as PRT, Kendriya Vidyalaya, Durgapur on 01<sup>st</sup> July, 1982 and dispute is only of the leave for the period from 26<sup>th</sup> June, 1989 to 13<sup>th</sup> February, 1991 earlier to that she was given increment, but thereafter, respondents are giving the salary to the applicant at the minimum of the scale without saying that applicant earned increments or not. It has also been alleged by the applicant that her L.P.C. has also not been sent by the Kendriya Vidyalaya, Durgapur to Kendriya Vidyalaya No.2 AFS, Chakeri, Kanpur and due to this her salary was fixed at the lowest grade. Respondents have admitted that applicant joined on 01<sup>st</sup> July, 1982 and she served at Kendriya Vidyalaya, Durgapur upto 1989, till

*Aut. Gen*



she was married at Kanpur, but the salary has also not been given to her which she was drawing at Kendriya Vidyalaya, Durgapur in the year 1989. Respondents themselves admitted that the office of the respondents has issued orders to pay her minimum scale of Rs.4500-125-7000/- vide order dated 27<sup>th</sup> March, 2008, hence admittedly, applicant is getting minimum of the scale of PRT. Under these circumstances as the respondents have not disputed the admissibility of the leave, hence the applicant deserves to get her leave regularized and the leaves may be regularized after perusal of the leave application, either on Medical Ground or as Earned Leave which is admissible to her and if no leave is admissible upto the date of applying of leave then the leaves earned by the applicant till date may be adjusted, but it is essential that the leaves may be regularized, so that applicant be benefited of the scale etc. and she remained continue in service.

12. Some preliminary objections have been raised on behalf of respondents regarding maintainability of the O.A. It has been alleged that the O.A. is barred by limitation as the cause of action arose in favour of the applicant either on 13<sup>th</sup> February, 1991 or after the order of the Hon'ble High Court and no application has been moved for condonation of delay. It is a fact that cause of action arose in favour of the applicant for filing of the O.A. in the year 1991 or after the

*Antony*

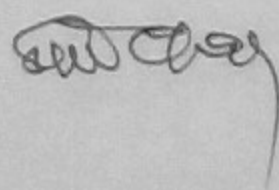


order of the Hon'ble High Court in the year 1996, but it is also a fact that respondents at no stage had declined the entitlement of the applicant for leave and the respondents in their correspondence admitted that leave is to be regularized after submission of the application after disclosing the nature of leave applied for. The application for leave or for entitlement of the applicant or her claim was never rejected and the matter remain pending with the respondents till filing of the O.A. in the year 2007 and there are numerous correspondence to show that respondents directed the applicant to submit application for leave mentioning the nature of leave and if the respondents might have declined to sanction the leave or have alleged that the applicant is not entitled for the leave then it could have been said that the cause of action arose in favour of the applicant from that date, but there is no order on record and it has not been alleged by the respondents that the applicant was not entitled for the leave otherwise in their correspondence respondents admitted and directed the applicant to submit application for leave mentioning the nature of leave, under these circumstances it cannot be said that the O.A. is barred by limitation. Moreover, it has also been said that the O.A. is barred by Principal of constructive *res-judicata* and it has been argued that the matter was agitated by the applicant in the writ petition No.17378 of 1996. We have perused the judgment of the Hon'ble High Court, although, certain directions were given by the

*Sanjay*



Hon'ble High Court regarding sanction of leave etc., but it is wrong to allege that the matter was decided by the Hon'ble High Court as there is no finding recorded by the Hon'ble High Court against the applicant in order to disentitle her from the leave, hence we disagree with this argument of the learned counsel for the respondents that the O.A. is barred by Principal of constructive *res-judicata*. It has also been argued by the learned counsel for the respondents that the O.A. is bad due to multifariousness as so many reliefs have been claimed by the applicant, but we disagree with this argument of the learned counsel for respondents, although numerous reliefs claimed by the applicant, but all the reliefs are correlated and the prayers depend on regularization of the period of absence, hence we disagree with this argument of the learned counsel for respondents. Learned counsel for the respondents argued that the O.A. is bad for non-joinder of necessary party of Joint Commissioner that in the O.A. Joint Commissioner ought to have been impleaded as a party rather the Assistant Commissioner has been impleaded as party, but in our opinion by not impleading the Joint Commissioner the O.A. is not going to be dismissed and effective orders can be passed if the respondents continued to be arrayed as respondents and the case may be allowed to be proceed accordingly. Union of India has been sued through Commissioner, Kendriya Vidyalaya Sangathan, New Delhi and effective orders can be passed against respondent No.1 also. The

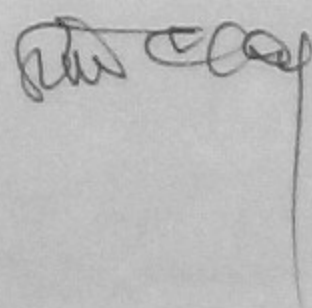




disputes is only regarding sanction and regularization of leave period or absence period and it may be done by respondent Nos. 02 to 05 also hence we disagree with this argument also of the learned counsel for respondents that the O.A. is bad due to non-joinder of necessary party of Joint Commissioner.

13. For the reasons mentioned above we are of the opinion that the applicant is entitled for the relief claimed as it has not been disputed by the respondents that the applicant is not entitled for the leave applied for by her. O.A. deserves to be allowed.

14. O.A. is allowed, respondents are directed to regularize the service of the applicant w.e.f 01<sup>st</sup> June, 1989 upto date and make payment of regular scale/grade salary at par with the Teachers of the Kendriya Vidyalaya Sangathan w.e.f. 01<sup>st</sup> June, 1989 till date, with all consequential benefits. Respondents are also directed to regularize leave of the applicant during the period 26<sup>th</sup> June, 1989 to 09<sup>th</sup> February, 1991 and complete all service records of the applicant by verifying her service book from the date of her initial appointment. The respondents shall sanction the leave to the applicant w.e.f. 26<sup>th</sup> June, 1989 to 13<sup>th</sup> February, 1991 adjusting the leave admissible to her. The leave which <sup>was</sup> ~~were~~ earned after 13<sup>th</sup> February, 1991 shall be adjusted in the leave period and the continuity in service of the

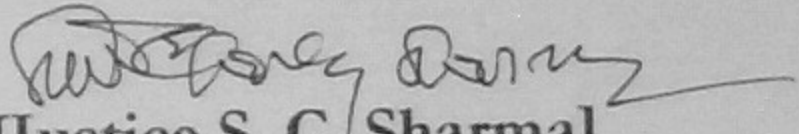




applicant shall be maintained and all consequential benefits be paid to her at par with other Teachers. Respondents are directed to comply with this order within a period of three months from the date when the copy of this order is produced before them. Applicant shall produce copy of this order before the respondents at the earliest. No order as to costs.

  
[D. C. Lakha]  
Member-A

/Dev/

  
[Justice S. C. Sharma]  
Sr. Member-J