

12

CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

O.A.NOS. 1087 TO 1090, 1106 TO 1109, AND 1276 OF 2004
AND O.A.NOS. 3 AND 29 OF 2005

Cuttack, this the 25th day of July, 2006

CORAM:

HON'BLE SHRI JUSTICE R.K.BATTA, VICE-CHAIRMAN
AND
HON'BLE SHRI B.B.MISHRA, MEMBER (ADMN.)

In OA 1087/2004

Surendra Singh Rawat, aged about 43 years, s/o Shri M.S.Rawat, a permanent resident of 38 Dangwal Road, Derahadun, Uttaranchal, working as Principal, Kendriya Vidyalaya, Cuttack, Orissa.

In OA 1088/2004

Sarat Kumar Behera, aged about 47 years, son of late Satyabadi Behura, At: Madhusudan Niwas, Nobil Lane, Puri, working as Principal, K.V.No.1, Bhubaneswar

In OA 1089/2004

P.Paramasivam, aged about 51 years, son of V.Periannagounder, a permanent resident of 3/777-A, Manthoppu, Near Rly. Station, Komarasamypet (PO), Dharamapuri, Tamilnadu, working as Principal Kendriya Vidyalaya, Berhampur.

In OA 1090/2004

N.Balan, aged about 52 years, s/o late K.Narayanan, Kushiyaathu Kizhakkathil (House Thamaralulam, P.O Dist. Alleppey, Kerala, working as Principal, K.V.No.2, CRPF, Bhubaneswar.

In OA 1106/2004

Smt.Vijaya Lakshmi Das, aged about 58 years, w/o Pitambar Das, a permanent resident of 21-24/1, Viman Nagar, Visakhapatnam, working as Principal, Kendriya Vidyalaya, Sunabeda

In OA 1107/2004

Sri Chandrama Singh, aged about 55 years, son of late Sakal Dew Singh, a permanent resident of village Shubhata, Post-Gabhirar, Dist. Siwan (Bihar), At present working as Principal, Kendriya Vidyalaya, ARC Charbatia, Cuttack

In OA 1108/2004

Sri Sanjib Sinha, aged about 38 years, s/o Sri Subodh Kumar Sinha, permanent resident of At: Durga Bhawan Vibekananda Park, Post: Bamunnara, Dist.

R

Durgapur (West Bengal), 713212, at present working as Principal, Kendriya Vidyalaya, At/PO Paradeep, Dist.Jagatsinghpur 754142 (Orissa)

In OA 1109/2004

Sri Rakesh Kumar Sharma, aged about 45 years, son of Sri Kunwarpal Sharma, resident of 230/20A, Street No.15, Railway Colony, Mandawali, Delhi 92, at present working as Principal, Kendriya Vidyalaya, Balasore, I.G.Marg, Proof Colony, Balasore (Orissa)

In OA 1276/2004

Smt. Shantha Kaleeswaran, aged 60 years, w/o Mr.Kaleeswaran, at present working as Principal, Kendriya Vidyalaya, Gopalpur Military Station, At-Gopalpur on Sea, P.O. Golabandh, Dist.Ganjam, Orissa

In OA 03/2005

Bibhuti Bhusan Mishra, aged about 49 years, son of late Lakshman Mishra, a permanent resident of A/1, 2nd Floor, Shanti Apartment, Ramachandisahi, Puri 752001, Principal, K.V.Baripada, now under orders of transfer on reversion as PGT (Math), KV No.2 Binnaguri Cantt., W.B.

In OA 29/2005

Chandra Mohan Kurup, aged about 56 years, son of late Ramnpully, Vill/PO Adoor, Dist. Pathanamthitta, Kerala, India, working as Principal, Kendriya Vidyalaya, Koraput, under order of reversion to the post of PGT (English)

.....Applicants

Vrs.

In OA Nos. 1087 TO 1090, 1106 TO 1109, AND 1276 OF 2004

1. Union of India, represented through its Secretary, Government of India, Ministry of Human Resources Development Department, Sastri Bhawan, New Delhi 110001.
2. Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Saheed Jeet Singh Marg, New Delhi 110 016
3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Pragati Vihar, Mancheswar, Bhubaneswar, Dist. Khurda.

In OA Nos. 3 of 2005

1. Union of India, represented through its Secretary, Government of India, Ministry of Human Resources Development Department, Sastri Bhawan, New Delhi 110001.

2. Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Saheed Jeet Singh Marg, New Delhi 110 016
3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Pragati Vihar, Mancheswar, Bhubaneswar, Dist. Khurda.
4. Principal, K.V.No.2, Binaguri Cantt., Kolkota, West Bengal.

In OA Nos. 29 of 2005

1. Union of India, represented through its Secretary, Government of India, Ministry of Human Resources Development Department, Sastri Bhawan, New Delhi 110001.
2. Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Saheed Jeet Singh Marg, New Delhi 110 016
3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Pragati Vihar, Mancheswar, Bhubaneswar, Dist. Khurda.
4. Mr.S.L.Murty, Post Graduate Teacher, now in charge of Principal, Kendriya Vidyalaya, Koraput, Dist. Koraput

.....Respondents

In OA Nos. 1087 to 1090, 1106 and 1107 and 1276 of 2004 and OA Nos. 3 and 29 of 2005

Advocates for applicants - M/s S.B.Jena, S.Behera & S.S.Mohapatra

In OA Nos. 1108 and 1109 of 2004

Advocates for applicants - M/s P.K.Padhi & G.L.Mohanty

In all the O.As.

Advocates for the Respondents – M/s A.K.Mohanty, S.P.Nayak & M.K.Rout

ORDER

JUSTICE R.K.BATTA, V.C.

In all these Applications, the applicants have common grievance based upon same facts and same relief is sought. Accordingly, all these matters were heard together and are proposed to be disposed of by common order.

D

15 4

2. In all these Applications, the applicants are challenging the orders dated 18.11.2004, issued by the Kendriya Vidyalaya Sangathan (hereinafter referred to as 'KVS'), cancelling their appointments as Principals of Kendriya Vidyalayas. As a specimen of the order of cancellation of appointment, we shall record the said order, dated 18.11.2004, annexed as Anenxure A/4 to OA No.1276 of 2004:

"KENDRIYA VIDYALAYA SANGATHAN

HEADQUARTERS
18, INSTITUTIONAL AREA
SAHEED JEET SINGH MARG
NEW DELHI 110 016

No.f.7-7/2002/KVS (Estt.I)

November 18, 2004

OFFICE ORDER

Whereas Shri/Ms. Shantha Kaleeswaran presently working as the Principal at Kendriya Vidyalaya, Gopalpur Cantt. was initially appointed as Principal on deputation basis vide letter No. F.7-4/2000-KVS (Estt-II) dated 17.5.2000.

WHEREAS the said Shri /Ms. Shantha Kaleeswaran was appointed as Principal on regular basis while working as Principal on deputation basis by the then Commissioner, KVS, vide Office Order No.F.7-4/2000-KVS(Estt.II) dated 29.5.2001.

WHEREAS the Chairman, KVS after examining all the materials on record and Recruitment Rules of KVS for the post of Principal has found that the then Commissioner had acted beyond the Recruitment Rules and constitutional provisions in appointing the said Shri/Ms Shantha Kaleeswaran as Principal on regular basis while working as Principal on deputation basis and has observed that his/her appointment on regular basis as Principal is void ab initio and non est in law and is liable to be cancelled.

WHEREAS the undersigned has been directed by the Chairman, KVS to cancel the Appointment Order issued vide Office Order No.F.7-4/2000-KVS (Estt.II) dated 29.5.2001 to Shri/Ms Shantha Kaleeswaran appointing him/her as Principal on regular basis.

Pursuant to the above direction, I hereby cancel the appointment order issued vide Office Order No.F.7-4/2000-KVS(Estt.II) dated 29.5.2001 to Shri/Ms Shantha Kaleeswaran appointing him/her as Principal on regular basis with immediate effect. It is clarified that since the Appointment Order for the post of Principal on regular basis is void ab initio, the cancellation of

2

the same without issuing Show Cause Notice is justified in law. Shri/Ms Shantha Kaleeswaran is directed to hand over the charge of Principal to Vice-Principal/Senior Most PGT immediately and report to Principal Incharge in the same Kendriya Vidyalaya as PGT (Maths), i.e., the post held by him/her prior to his/her appointment as Principal and discharge his/her duties as may be assigned to him/her."

3. The applicants have challenged the said orders on various grounds and the Respondents have filed counters.
4. The applicants contend that the appointment orders were issued by the competent authority, though on deputation initially, yet the same are to be treated as regular appointments; that the applicants had legitimate expectation that their services would be confirmed as Principals; that no notice was given to the applicants before cancellation of the appointments; that the Respondents are estopped on the principles of promissory estoppel to cancel the appointments of the applicants and that the cancellation orders are required to be quashed.
5. The Respondents in their counters have stated that the appointments of the applicants were beyond rules and void ab initio in the eyes of law; that the Recruitment Rules do not provide for filling up of the post on deputation; that the cancellation of the appointments was done to rectify the illegality; that the appointments were clearly on deputation basis and the applicants were informed that it would not confer any right or claim for permanent absorption/regular appointment as Principals in Kendriya Vidyalayas; the applicants have no right to be regularized in the post of Principal since their appointments are de hors the Recruitment Rules; and that the selection process was only with a view to determine whether the person was

R.

17

6

suitable to be taken on deputation. The Respondents contend that the orders of regularization were beyond the powers vested in the competent authority and are without jurisdiction and that there was no need to hear the applicants before cancelling the said orders. The Respondents also contend that the then Commissioner travelled beyond the powers conferred on him and the appointments were unauthorizedly made without jurisdiction and were contrary to rules, as a result of which the said appointments were cancelled. The principles of promissory estoppel and legitimate expectation cannot be imported in as much as the applicants were fully aware that the appointments were only on deputation basis and not on regular basis.

6. The learned counsel for the parties, in fact, placed before us a number of judgments of the Tribunal on the same subject and have submitted that the matter is squarely covered by the judgment of the Principal Bench in the case of *Mr.S.K.Sharma and others v. Kendriya Vidyalaya Sanghathan and another, OA No.299 of 2005 and connected O.As., decided on 28.10.2005*. The matter was examined threadbare by the Division Bench judgment of the Principal Bench in the case of *Mr.S.K.Sharma (supra)* wherein the controversy was identical relating to order dated 18.11.2004. The Division Bench held that the appointments of the applicants were on direct recruitment basis and their services cannot be dispensed with other than in accordance with laid down procedure under the rules with a valid proceedings. The applicants therein were entitled for continuity of service and the O.As. were allowed and the impugned orders were set aside.

2

7. The Patna Bench of the Tribunal in *Aditya Kishore Pandey and others v. Union of India and others*, OA No.806 of 2004 and connected O.As., decided on 6th July 2005, in an identical matter, where the appointments of the Principals were cancelled, held that the terminations were bad in law, specially when the principles of natural justice have been violated and no show cause notice had been given.

8. The Madras Bench of the Tribunal in *Mrs. Thresiamma J.Thomas v. The Commissioner, Kendriya Vidyalaya Sangathan and others*, OA No.1076 of 2004 and connected O.As. decided on 18.4.2005, while dealing with identical orders dated 18.11.2004, has held that considering all the above facts and also the judgment of the Principal Bench of the Tribunal giving liberty to the Respondents to act in accordance with the procedure, the impugned orders deserved to be quashed. It was further held that the Respondents could take up the exercise afresh to act in accordance with the rules and procedure and subject to the powers and functions as delegated by the Board of Governors in the bye-laws and the Memorandum of Association of the Sangathan. The impugned orders were accordingly quashed.

9. The Jabalpur Bench of the Tribunal had also quashed the orders of cancellation dated 18.11.2004 reserving liberty to the Sangathan to take action in accordance with law, which order was subject-matter of challenge before the Hon'ble High Court of Madhya Pradesh in *D.S.Sastry and others v. Kendriya Vidyalaya Sangathan and others*, W.P. No.3983 of 2005 and connected W.Ps., decided on 8.9.2005. Before the Hon'ble High Court it was contended that there

62

could not be any deputation from KVS to KVS; that the Principals had already acquired three years experience; that they had been selected as Principals after undergoing a regular selection process; and several of them had become entitled for regular promotion to the post of Principal and therefore, they should be considered for the post of Principal. The Hon'ble High Court was also informed by the petitioners therein that KVS was taking a fresh look into the entire matter. In the circumstances, the Hon'ble High Court did not interfere with the decision of the Jabalpur Bench of the Tribunal.

10. In our opinion, the issue is squarely covered by the aforesaid orders passed by different Benches of the Tribunal. In this connection, we would like to point out that once orders are delivered by a Bench of the Tribunal, the parties cannot be allowed to re-agitate the same matter before different Benches of the Tribunal on the same grounds and the remedy for the Respondents is to challenge the orders of the Tribunal in case the Respondents feel aggrieved by such orders. In this view of the matter, we are of the opinion that the present O.As. can be disposed of with direction similar to the one issued by the Principal Bench in the case of *Mr.S.K.Sharma (supra)*. The appointments of the applicants are held to be on direct recruitment basis and their services cannot be dispensed with other than in accordance with laid down procedure under the rules with a valid proceedings. The orders dated 18.11.2004 had been stayed by this Bench and the applicants were allowed to continue as Principals. The

R.

20

-9-

interim orders are accordingly confirmed. The applicants are entitled to continue in service as Principals. The impugned orders dated 18.11.2004 are hereby set aside and the O.As. are accordingly allowed in the aforesaid terms. No costs.

B.B.Mishra
(B.B.MISHRA)

ME

Sd/- B.B.MISHRA
MEMBER (A)

R

Sd/- R.K.BATTA
VICE-CHAIRMAN

PPS