

10
ORIGINAL APPLICATION NO. 426 OF 2008
Cuttack this the 23rd day of April, 2010

Rashmi Rekha Mohapatra...Applicant

-VERSUS-

Union of India & Ors. Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to C.A.T., Principal Bench or not ?


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(B.V. RAO)
JUDICIAL MEMBER

1 11

ORIGINAL APPLICATION NO. 426 OF 2008
Cuttack this the 23rd day of April, 2010

CORAM:

HON'BLE SHRI B.V.RAO, JUDICIAL MEMBER
AND
HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER
...

Rashmi Rekha Mohapatra, aged about 53 years, W/o. Sudhakar Mohapatra, At-Nurupur Road, PO-Motiganj, PS-Town, Dist-Balasore – at present working as Primary Teacher in Kendriya Vidyalaya, Angul

...Applicant

By the Advocates: M/s.K.K.Rath & G.K.Lenka

-VERSUS-

1. Union of India represented through Commissioner, Kendriya Vidyalaya Sangathan, HeadquarterS, New Delhi, Sahibji Singh Marg, New Delhi-110 016
2. Joing Commissioner, Kendriya Vidyalaya Sangathan (Administration), Kendriya Vidyalaya Sangathan, Headquarters, New Delhi, Sahibji Singh Marg, New Delhi-110016
3. Assistatant Commissioner and Adhoc Disciplinary Authority for Kendriya Vidyalaya Sangathan for Bhubaneswar Region, At-Picket, Secunderbad, Andhra Pradesh-500009
4. The Principal, Kendriya Vidyalaya,Angul, At/PO/Dist-Angul

...Respondents

By the Advocates:M/s.S.K.Pattnaik & H.Tripathy

ORDER

HON'BLE SHRI B.V.RAO, JUDICIAL MEMBER:

1. In this Original Application, the applicant has prayed for the following relief:
 - “(a) To quash the removal order.
 - (b) To quash the rejection order of appeal dated 12.8.2008.
 - (c) To prohibit the respondents not to take any coercive action of removal without initiation of any proceeding.
 - (d) To give opportunity of being heard personally as per the letter dated 29.7.2008 and 29.8.2008
 - (e) To allow the applicant to continue to work in Kendriya Vidyalaya at Bhubaneswar/Balasore
 - (f) To grant salary and consequential benefit.
 - (g) In alternatively the applicant may be allowed to take voluntary retirement.
2. The facts in brief, according to applicant, are that while working as Primary Teacher, Kendriya Vidyalaya, Angul, she fell ill and proceeded to Balasore for treatment from

7.5.2007 and accordingly, sent her leave application along with Medical Certificate to the Principal, Kendriya Vidyalaya, Angul narrating that she was suffering from various ailments and was under the treatment of Physician at Balasore. According to applicant, when she did not recover she applied for extension of leave from time to time and even sent a letter to the Respondents for considering her voluntary retirement from service. While the matter stood thus, she was issued with Memorandum dated 6.11.2007 by the Assistant Commissioner and Adhoc Disciplinary Authority, Andhra Pradesh to show cause as to why necessary action should not be taken against her and she should not be removed from service. Pursuant to this Memorandum, the applicant submitted show cause and preferred an appeal before the Joint Commissioner, Kendriya Vidyalaya Sangathan as well as Commissioner, Kendriya Vidyalaya Sangathan. According to her, again she was communicated with Memorandum dated 22.7.2008 by the Education Officer, Vigilance asking her to appear before the Joint Commissioner (Admn.), Kendriya Vidyalaya Sangathan for personal hearing scheduled to be held on 4.8.2008. Since the applicant was not in a good condition, she sent a letter dated 29.7.2008 to the Joint Commissioner(Admn.)KVS seeking two months time. Applicant again received an order dated 12.8.2008 by the Joint Commissioner(Admn.) wherein it was stated that she was intentionally taking time and was not representing herself before the Appellate Authority and as such the earlier order dated 12.8.2008 removing her from service upheld. The applicant, against the order of rejection of appeal again preferred an appeal before the Respondent Nos. 1 and 2 for consideration and to give her an opportunity of being heard personally. This having not been acted upon by the Respondents, the applicant has moved this Tribunal with the prayers referred to above.

3. The Respondent-Department have filed their counter opposing the prayer of the applicant. They have stated that the applicant, while working as PRT, K.V., Angul remained absent from duties w.e.f. 06.05.2007 unauthorisedly. The applicant was in the meantime

transferred from K.V., Angul to K.V. No.3, Mancheswar, Bhubaneswar at her own request vide order dated 26.7.2007, but she did not join at Bhubaneswar. The Principal, K.V., Angul vide letter dated 17.9.2007 directed the applicant to appear before the Vidyalaya Level Medical Board at C.D.M.O. office, Angul on 1.10.2007, but the applicant refused to receive the said letter. According to Respondents, since the applicant deliberately avoided either to join in the new place of posting or appear before the Medical Board, she was issued with Memorandum to show cause as to why she should not be removed from service. Despite adequate opportunities, since the applicant did not turn up, the Adhoc Disciplinary Authority, in consideration of the facts and circumstances of the case, in application of Article 81(D)(6) of Education Code vide order dated 9.1.2008 removed the applicant from service w.e.f. 6.5.2007. On these grounds the Respondents have submitted that the Original Application being devoid of merit is liable to be dismissed.

4. We have heard the learned counsel for the parties and perused the materials on record. At the outset, it is worthwhile to quote hereunder as to what Article – 81(D)(6) envisages.

“81(D) - Voluntary Abandonment of Service.

- (6) - If the Appointing Authority is satisfied after such hearing that the employee concerned has voluntarily abandoned his service in terms of the provision 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 service of the KVS w.e.f. the date his remaining absent ...”

5. In the instant case, admittedly, the applicant has not been heard before the punishment of removal from service could be passed by the Appointing Authority by resorting to Article-81(D)(6) of the Education Code as she was ill and not in a position to move, the circumstance being beyond her control. Apart from the above, the fact that the

applicant's prayer for voluntary retirement from service before the punishment could be passed is pending consideration cannot be brushed aside. In the circumstances, we feel that the ends of justice would be met if the applicant is given an opportunity of being heard by the Appointing Authority. In view of this, we quash the impugned order of removal from service passed by the Adhoc Disciplinary Authority as well as the order passed by the Appellate Authority rejecting the appeal preferred by the applicant against the said order of removal and remit the matter back to the Appointing Authority/Adhoc Disciplinary Authority with direction to give an opportunity to the applicant of being heard and pass orders as deemed fit and proper in accordance with law. At the same time, we would also direct the Respondent-Department to consider the applicant's prayer for voluntary retirement from service.

6. The above exercise shall be completed within a period of 90 days from the date of receipt of this order.

With the above observation and direction, this Original Application is disposed of. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(B.V. RAO)
JUDICIAL MEMBER