CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 420 of 2008

Wednesday, this the 3rd day of March, 2010

CORAM:

HON'BLE SRI GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE SRI K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Indira Vinod,
W/o. K.P. Vinod Krishnan,
Vatika, Palapuram P.O.,
Ottappalam : 3, Palakkad District. ... Applicant.

(By Advocate Mrs. Sumathi Dandapani with Mr. Millu Dandapani)

v e r s u s

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg, New Delhi.

2. The Joint Commissioner (Vigilance),
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg, New Delhi.

3. The Educational Officer (Vig.),
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg, New Delhi.

4. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Bangalore.

5. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Chennai.

6. The Principal,
Kendriya Vidyalaya,
Palapuram, Ottapalam, Palakkad.

7. Joint Commissioner & Appellate Authority,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg, New Delhi. ... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

The Original Application having been heard on 15.02.10, this Tribunal on 3-3-2010 delivered the following :

O R D E R

HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

In this O.A., in the second round of litigation, the applicant challenges the order of her removal from service under article 81(d) of Education Code for the Kendriya Vidyalayas and orders rejecting her appeals/revision petition by the competent authorities.

2. To state the facts in brief, the applicant had joined Kendriya Vidyalaya Sangathan (KVS, for short) in 1977. While working as Post Graduate Teacher (English) at KV, Ottappalam, she had applied for 'No Objection Certificate', for obtaining a passport, which was issued to her on 18.04.1999. While applying for it she had intimated the KVS authorities that her husband, an officer in the Cabinet Secretariat, Government of India, was posted at London and that she intended to be abroad for three years. She had requested for extra-ordinary leave for 178 days (from 02.08.1999 to 26.01.2000) to accompany her husband. As her leave was not rejected, she went abroad on 07.08.1999. While at London, she was under medical treatment and practically immobile for some time. She sought extension of leave on medical ground vide Annexure A-7 letter dated 18.01.2000. In the meantime, she was directed by the 6th respondent to report for duty latest by 20.01.2000. The KVS issued a show cause notice under article 81(d) of the Education Code asking her to explain as to why provisional loss of lien should not be confirmed. Thereafter, order confirming the loss of lien dated 31.07.2001 with effect from 01.08.1999 was sent by registered post, but it was returned undelivered. In the meanwhile, she had moved to a new residence in London about which intimation was given to the KVS and the communications from KVS which were sent to her old address were not reaching her. On return to India, the applicant filed an appeal followed by a revision application highlighting that she had not been served with the show cause notice and the order suspending lien. As her attempt to resume duty at Kendriya Vidyalaya, Ottappalam, failed, she had filed OA No. 389/2003 before this Tribunal. The Tribunal set aside the impugned orders and directed

the respondents to reinstate the applicant forthwith. The KVS challenged the said order of this Tribunal before Hon'ble High Court of Kerala in Writ Petition (C) No. 10834 of 2005. The Hon'ble High Court modified the aforesaid order of this Tribunal as under :

> "9. We find it difficult to accept the contention as above, since we are satisfied that the Tribunal had not appropriately comprehended the situation vis-a-vis the contentions that had been raised by the parties. Disciplinary action had been initiated for reasons of absence amounting to abandonment. Learned counsel for the petitioners had adverted to a decision of the Supreme Court of the Supreme Court reported in Canara Bank v. Debasis Das (AIR 2003 SC 2041). If principles of natural justice were found violated, it is not as if the entire action has to be scrapped, but the proceedings should be permitted to be recommenced from the point at which it had suffered by infraction.
>
> 10. Adopting the principle as above, we feel that the Sangathan should get and opportunity to seek the explanation of the teacher. Now, that the documents had been made available by the petitioners to the respondent-teacher, it may be possible for her to make appropriate explanation in response to Ext.P4 and it may be possible for the Sangathan to consider dispassionately her stand. In case of necessity, they will have the right to proceed further in the matter, at their discretion. We make it clear that if the first respondent herein makes a representation in response to Ext.P4 within a period of one month from today, appropriate decision is to be taken by the Sangathan either to proceed with the matter or to drop the proceedings at their discretion taking notice of the totality of the circumstances. Now that the teacher has returned to India, it would be in the interest of all concerned that strong measures are not pursued. In case it is found essential that further proceedings are to be initiated, we direct that within a period of four months from today, such proceedings are to be completed and decision communicated to the respondent.
>
> 11. So as to make it possible for the Sangathan to proceed further in the matter, we direct that directions in Ext.P6 will stand appropriately modified, so as to give them liberty to adopt to this course. The direction for reinstatement is set aside and the further decisions are to depend on the procedure that are adopted by the Management.
>
> The Writ Petition is allowed to the above extent. No costs."

In accordance with the directions of Hon'ble High Court, the applicant submitted a representation on 10.10.2005 which was rejected by the KVS vide order dated 19.06.2007. Aggrieved by the said order, this OA has been filed by the applicant.

3. The applicant contends that she had intimated the respondents about the change of her address in London. The show cause notice and the impugned order at Annexure A-2 were sent to her old address, therefore, she did not get a chance to make a reply

to the same. On this ground, Annexure A-12 is liable to be set aside. While applying for NOC, the applicant had categorically stated that her husband was posted in Indian Embassy, London, and that she would join him. The medical certificates she had produced were issued by the authorised medical attendant as prescribed by the High Commission of India in London. It was open to the respondents to verify the claim of being sick made by the applicant. The alleged misconduct of unauthorised absence commenced from 2.8.1999, 1.8.1999 being a holiday. At the material time, article 81 (d) of Education Code was not in the statute book, but came to be inserted only on 4.9.2000. Therefore, proceedings against the applicant should be conducted as per CCS (CCA) Rules only. It is highly illegal and arbitrary to give retrospective effect to an executive order to adjudicate the offence which took place prior to issuance of the said order. The applicant went abroad to join her husband after duly intimating the respondents. She had been sending leave letters consecutively alongwith medical certificates, therefore, it cannot be said that the applicant was unauthorisedly absent. There is no question of abandonment of service as she never signified her unwillingness to continue in service. The provisions under article 81(d) of Education Code are highly arbitrary, unconstitutional and illegal because it seeks to remove an employee by a summary procedure.

4. The respondents contested the O.A. The applicant had gone abroad without sanctioned leave. It amounted to gross indiscipline. After the competent authority decided and communicated her absence as unauthorised, the question of communication separately about refusal of leave is redundant. Mere submission of leave letters with medical certificates cannot force the leave sanctioning authority to sanction the leave. Only the order dated 31.07.2001 sent to her was returned undelivered. The show cause notice declaring provisional loss of lien served upon her was not received back. It must have been received by her. To buttress their arguments the respondents relied upon the judgement of Hon'ble Delhi High Court in W.P.(C) No. 7868/2007, **Smt. Sunitha Nair vs. The Commissioner, Kendriya Vidyalaya Sngathan & Ors.**, as well as the judgements of Apex Court in **Mithilesh Singh vs. Union of India and Others**, (2003) 3 SCC 309 and in **State of Punjab vs. P.L. Singla**,

2009 (1) SC 65. As none of the contentions raised by the applicant are tenable, the OA should be dismissed.

5. Arguments were heard and documents perused.

6. This O.A. revolves round the article 81(d) of the Education Code. The relevant extract from the Education Code is reproduced as under :

> ***"81(d) : Voluntary Abandonment of Service -***
>
> The KVS vide letter F.No. 11-12-/2000-KVS(Vig.) dated 4.9.2002 has conveyed the following decision on :
>
> (1) If an employee has been absent/remains absent without sanctioned leave or beyond the period of leave originally granted or subsequently extended, he shall provisionally lost his lien on his post unless :
>
> (a) he returns within fifteen calendar days of the commencement of the absence or the expiry of leave originally granted or subsequently extended, as the case may be, and
>
> (b) satisfies the appointing authority that his absence or his inability to return on the expiry of the leave as the case may be was for reasons beyond his control. Their employee not reporting for duty within fifteen calendar days and satisfactorily explaining the reasons for such absence as aforesaid shall be deemed to have voluntarily abandoned his service and would thereby provisionally lose lien on his post.
>
> xxxxxxxxx xxxxxxxxx xxxxxxxxxx
>
> Note : The following supplementary instructions have been issued for giving effect of the above provisions:
>
> 1. When an employee applied for leave, medical or otherwise, the competent authority to sanction such a leave should invariably provide in writing when such a leave is refused or not sanctioned adducing the grounds of refusal.
>
> 2. Employees seeking leave on prolonged medical grounds may be referred to the Medical Board at the Regional Office nearest to the residence of the employee so that they do not get any succor on plea of inability on health grounds.
>
> 3. The disciplinary authority while examining the representation on show-cause notice should preferably give a personal hearing to the employee before issue of the final order of loss of lien on the post, thereby terminating the service that employee.
>
> xxxxxx xxxxxxx xxxxxxxx xxxxxxxx
>
> 6. The personal file alongwith service book and the case file of the appellant maintained at the Regional Office may be invariably

provided alongwith the comments on the points of appeal. The Disciplinary Authority should also specifically mention the grounds or consideration on which the leave was refused to the employee."

7. Para 2 of Annexure A-17 order of this Tribunal in OA No. 389/2003 gives the background of insertion of the article 81(d). The same is reproduced as under :

"2. The 5th respondents has filed a detailed reply statement on his behalf and on behalf of all the respondents contending that the Kendriya Vidyalaya Sangathan is an autonomous body registered under the Department of Higher and Secondary Education, Ministry of Human Resource Development, Government of India. The Sangathan has its own regulation off affairs of Kendriya Vidyalaya Sangathan employees as per the terms of appointment. Chapter VIII deals with disciplinary matters of staff. Annexure R-1 is a copy of the provisions of the Education Code. Article 81(d) of the code was inserted by the Board of Governors at its meeting held on 17.07.2000, as per the powers conferred by Resolution 22 of the Memorandum and Rules of Kendriya Vidyalaya Sangathan. Insertion of the provision in the Education Code was duly communicated to all concerned, to all Regional Offices and the Principals with a request to circulate among teachers and staff. The increasing tendency on the part of teachers, particularly ladies to be absent from duties on the slightest pretext which was causing indiscipline and deterioration in academic standards and normal disciplinary proceedings under CCS (CCA) Rules, 1965 were found to be insufficient. CCS (CCA) Rules were dilatory and inadequate to address the magnitude of the problems of unauthorised absence of the staff. In order to give uninterrupted education to the children and thereby sustaining the public confidence in the Institution it was deemed essential to incorporate the said Article in the Rule. The rules regarding the terms and conditions of appointment is invariably added to the offer of appointment, thereby the employees enters into a valid contract with the Sangathan. An employee cannot later make a unilateral disclaimer. The removal of the applicant from service was not caused by disciplinary proceedings under CCS (CCA) Rules but as per the sub clause (6) of Article 81 (d) of Education Code for Kendriya Vidyalayas which was adopted in public interest and administrative exigencies."

This article is meant to tackle absenteeism of wayward teachers and thereby to prevent interruption in teaching.

8. As regards constitutionality of Section 81(d), the Tribunal had held in OA No. 389/2003, in the first round of litigation, as under :

"10. There cannot be any quarrel to the contention of the respondents that Kendriya Vidyalaya Sangathan is an autonomous body registered under the Department of Higher and Secondary Education, Ministry of Human Resource Development, Government of India. The Sangathan has power to make its own rules and

> regulations and therefore, the Education Code R-1 with special reference to Article 81(d) of the Code cannot be said to be unconstitutional. Every Institutions to maintain the institutional interest have the right to incorporate enacting rules for their proper maintenance of the discipline of academic standards especially when it happens to a Institution of Education. On perusal of the said code, we find that the provisions of the code is not repugnant or override the provisions of CCS (CCA) Rules nor Fundamental Rules....."

Article 81(d) of the Code is not unconstitutional. It came into force on 4.9.2000 only. Therefore, at the time the alleged absence of the applicant commenced, the CCS (CCA) Rules are applicable. From 04.09.2000 onwards, the Article 81(d) was applicable.

9. We now proceed to adjudicate whether the absence of the applicant from 02.08.1999 to 31.07.2002 for which she had applied for leave on 29.06.1998, amounted to absence without sanctioned leave and voluntary abandonment of service in the context of CCS (CCA) Rules and Article 81(d) of Education Code, in the totality of the facts and circumstances of the case.

10. The applicant joined as Primary Teacher in Kendriya Vidyalaya in 1977. She was promoted as Trained Graduate Teacher in 1988 and again promoted as Post Graduate Teacher (Eng.) in 1991. She had 22 years of unblemished and satisfactory service to her credit. She must have taken her teaching career quite seriously. She was not of the type frequently absenting herself from duty on the slightest pretext causing indiscipline and deterioration in academic standard. Respondents have not stated anything to the contrary. Her husband was a Central Government officer who was sent on a posting in Indian High Commission at London. She had applied for NOC for obtaining an official passport on 09.02.1999 expressing her intention to be abroad for three years. Initially she applied for 178 days extra ordinary leave with effect from 02.08.1999. If there were a KVS School at London, her request for a transfer to London on spouse ground should have elicited sympathetic consideration. At the time she applied for leave, she was governed by CCS (Leave) Rules, 1972. Section 7 of the said Rule is extracted as under :

"7. Right to leave:

(1)Leave cannot be claimed as of right.

(2)When the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant it, but it shall not be open to that authority to alter the kind of leave due and applied for except at the written request of the Government servant.

GOVERNMENT OF INDIA DECISION

(1) Government servants to be encouraged to take leave regularly.- The Government have had under consideration the recommendation made by the Second Pay Commission that the Heads of Departments, Offices, etc. should plan their work in such a way as to permit Government servants to take a certain amount of leave annually and a longer period after some years or according to many special necessity.

Leave cannot be claimed as of right When the exigencies of the public service so require, discretion to refuse or revoke leave of any description is reserved to the authority empowered to grant it. These provisions have been made in the rules because it is not always possible to let all who want leave at a particular time to have it at that time and there is a limit beyond which depletion of staff cannot be permitted without dislocating the working of an establishment. These provisions are not intended to be used as in effect to abridge the leave entitlement of the staff. Indeed it is desirable in the interest of efficiency of the public service that Government servants take leave at suitable intervals and return to work keen and refreshed.

The leave sanctioning authority may, therefore, encourage Government servants to take leave regularly, preferably annually. In cases where all application for leave cannot, in the interest of public service, be granted at the same time, the leave sanctioning authority should draw up phased programmed for the grant of leave to the applicants by turns with due regard to the principles enunciated.

[G.I., M.H.A., O.M.No.6/51/60-Ests.(A), dated the 25th January, 1961 and reiterated, vide G.I.,Dept. Of Per.& Trg., O.M. No. 14028/3/2000-Estt.(L), dated the 22/27th March, 2001.] "

11. It is amply clear that the leave cannot be claimed as a matter of right because it is not always possible to let all who want leave at a particular time to have it at that time, therefore, in exigencies of public service , the leave sanctioning authority can refuse the leave of any kind. But this power to refuse leave should not be used to abridge the leave entitlement of the staff. The power to refuse is not unlimited, it cannot be exercised arbitrarily. This being the position, the applicant who had left for London to join her husband on 07.08.1999 as the leave sought was not rejected, had no reason to believe that her request for leave will not be entertained. She had apprised the authorities about her intention to proceed on leave as early as 09.02.1999. She had a

valid reason to take leave as she wanted to join her spouse who was serving Government of India and was posted at London. The authorities had ample time of six months to make alternate arrangement in her absence so that students appearing for Board Examination were not adversely affected. However, the respondents did not respond to the leave application. They had no valid reason to reject her application for leave. They had also no reason to doubt her intention to return from leave. Once the applicant applied for leave, the ball is in the court of the respondents. They should either sanction it or reject it. They can reject it in the exigencies of public service. There were no exigencies of public service that the respondents could communicate to the applicant under the CCS (Leave) Rules. The inaction on the part of the respondents in dealing with the application for leave from the applicant is unjustifiable as it goes against the spirit of CCS (Leave) Rules, 1972.

12. The Article 81(d) of the Education Code was introduced on 04.09.2000. The respondents could terminate the services of an employee for remaining absent without sanctioned leave. The respondents treated the absence of the applicant as voluntary abandonment of service attracting provisional loss of lien on her post without taking any action on her request for leave. The supplementary instruction No. 1 to 81(d) of the Education Code enjoins upon the respondents to provide grounds of refusal in writing when a leave is refused or not sanctioned. The leave sanctioning authorities have only two courses of action, which is legally tenable.

(i) to sanction the leave; or

(ii)to refuse the leave giving in writing the grounds of refusal.

The respondents did not take either course of action. Instead, they simply ignored the leave application. They have ignored the leave application at their own peril. Respondents treated the applicant's absence as absence without sanctioned leave amounting to voluntary abandonment of service inspite of her leave application before them. It is illegal on the part of the respondents not to sanction leave which was sought on valid grounds when they did not have any ground to refuse it. It is doubly illegal for the respondents to treat her absence as absence without sanctioned leave amounting to voluntary abandonment of service. This is not done in an organization meant to promote

excellence in education. After applying for leave the applicant is not expected to do anything further to get it sanctioned. It is for the respondents to sanction it or to refuse it. If they refuse the leave, they have to give reasons for the same. Without fulfilling this mandatory requirement, the respondents are not empowered to treat the applicant's absence as if it is without sanctioned leave amounting to voluntary abandonment of service and proceed to terminate her service. KVS is engaged in the pursuit of excellence in education. KVS is envisaged as a pace setting institution to provide quality education. It ill behoves a vibrant organization, like the KVS striving for excellence in education to treat its teachers as chattel to be oppressed and exploited. Excellence flourishes where head is held high and mind is free, not where self respect and dignity of employees are trampled upon by insensitive authority. The purpose of inserting article 81(d) in the Education Code is not to show the door to any teacher who dares to seek leave for valid reasons. Its purpose was to discipline habitually absenting teachers who are not serious about teaching. The respondents have violated the spirit of 81(d) of Education Code by wilful and callous inaction on the leave application to make applicant's absence technically 'absent without sanctioned leave' . While they stress on the fact that the applicant is absent without sanctioned leave, they conveniently forget that it is they who have to sanction the leave or refuse it giving valid reasons. For giving effect to the provisions under 81(d) the leave sanctioning authority "should invariably provide in writing when such a leave is refused or not sanctioned adducing the grounds of refusal." Without fulfilling the mandatory requirement of refusal of leave applied for, specifically mentioning the grounds for refusal, the respondents have no moral or legal right to proceed further in the matter in a manner injurious to the applicant. The contention that as the competent authority had decided and communicated to the applicant that her absence was unauthorised, the question of communicating separately about refusal of leave is redundant, is not acceptable because the KVS is flouting the instructions under 81(d).

13. While at London, the applicant had sought extension of leave with medical certificates. As the respondents are aware of the applicant's intention to be away for three years, they doubt the veracity of her medical certificates. They think that she must

have produced the medical certificates *"which normally any Government official takes refuge under said circumstances"*. They are unable to see the possibility of applicant's falling ill irrespective of her intention to stay abroad with her spouse for three years. The leave sanctioning authority is not the competent authority to decide the genuineness of the medical reason for leave. The competent authority for that purpose is the medical officer. It was open to the KVS authorities to secure second medical opinion by requesting the Indian High Commission for the same. But, they did not choose to do so. They have a right to question the second medical report also but they are not competent, not being medically qualified, to judge the medical condition of the applicant at the relevant time. In not giving any weightage to the medical certificates produced by the applicant without the benefit of opinion of a Medical Board, they disobeyed the instructions under article 81(d).

14. If the applicant had no intention to return to her job, there was no need to post the KVS with her address abroad and change of her address. The fact that she had all along kept the authorities concerned well informed about her intention to take leave, the purpose for which she is going and the extent of leave that is required etc. invariably show her intention to return the school to teach her students. There is no element of abandonment of service in any of her actions. Article 81(d) came into effect on 4.9.2000 only, one year after the applicant went on leave. It cannot be given retrospective effect as it is not expressly provided for. The selective retrospective application of 81(d) to the applicant's absence disregarding the mandatory instructions under the same article which are binding of the KVS is an illegal act. The supplementary instructions for giving effect to the provisions of article 81(d) would demand that article 81(d) could be applied only after the KVS followed the instructions under it scrupulously. The inaction of the KVS authorities on the leave application disabled them from giving effect to the provisions of article 81(d). To enable them to give effect to the provisions of the said article, they have to first deal with the leave application. Therefore, the onus for making the absence of applicant without sanctioned leave is squarely on the respondents, not with the applicant. The applicant is more sinned against than sinned.

15. Article 81(d) of the Education Code does not cover an employee leaving the country without prior permission. Therefore, the said article does not empower the respondents to proceed against the applicant for leaving the country without prior permission. For, nothing prevents an employee on sanctioned leave from leaving the country without prior permission from competent authority. Article 81(d) deals with unauthorised absence, not unauthorised trip abroad, which should be dealt with under the relevant Rules. In the orders dated 29.11.2002 at Annenxure A-14 and dated 19.06.2007 at Annexure A-20, the appellate authorities while rejecting the appeal preferred by the applicant against the termination order dated 31.07.2001 have considered that the applicant left the country without taking prior permission of the competent authority. It is only unauthorised absence amounting to the voluntary abandonment of service that is falling under article 81(d) which is a stand alone and self contained article. Article 81(d) (13) makes it absolutely clear that *"in matters falling under this article and in those matters alone, the procedure prescribed for holding inquiry in accordance with the CCS (Classification, Appeal) Rules 1965 as applicable to the employees of the Kendriya Vidyalaya Sangathan as also other provisions of the said rules which are not consistent with the provisions of this Article shall stand dispensed with"*. It becomes quite clear that the respondents used the power under article 81(d) illegally in dealing with the matter of leaving the country without prior permission.

16. The respondent authorities could have effectively communicated with the applicant through the Indian High Commission at London. They should have sought the assistance of the High Commission to serve the show cause notice on the applicant in a second attempt, instead of assuming that it had reached her in the first attempt. Rushing to terminate her service without making a second attempt as described above, was an act of highhandedness on the part of the respondents. Resorting to inaction on the leave letter and doing the barest minimum on their part in taking a major decision like termination of service show a mindset that is too narrow for achieving excellence or giving justice. The respondent authorities woefully lack promptness in response and

effectiveness in communication. Considering the failures of the respondents and the openness of the applicant, we are inclined to take the view that the applicant is right in stating that she did not get a chance to reply to the show cause notice and Annexure A-12 order dated 31.07.2001 terminating her service. When she was enabled to make a reply on the intervention of the Hon'ble High Court, the respondents failed miserably to deal with it in the right perspective. They missed the wood for trees.

17. The respondents were extremely myopic in failing to observe that the applicant as a spouse of a serving officer of the Government of India who was posted abroad was travelling with him on an official passport at the cost of public ex-chequer while allegedly leaving the country without prior permission and sanctioned leave. They are unable to see the aspects of the applicant as the spouse of a Government servant, as a mother and as a teacher together. It was open to the respondents to advise her to seek permission to go abroad separately. It would have been a win-win situation for both the respondents and the applicant if the former had encouraged her to take study leave for acquiring further academic qualification while being abroad for a period of three years so that when she came back she would have been better equipped to achieve excellence in teaching. The respondent authorities could have shown a little grace to a teacher with 22 years of service seeking leave to join her husband who was posted abroad by the Central Government under which the KVS operates.

18. Hon'ble High Court had observed that the KVS might take "appropriate decision taking notice of the totality of the circumstances" and advised, "now that the teacher has returned to India, it would be in the interest of all concerned that strong measures are not pursued". Hon'ble High Court expressed the hope that "it may be possible for the Sangathan to consider dispassionately her stand". In our considered view, the KVS failed to consider the applicant's case in its totality and dispassionately and proceeded to take the strongest measure possible against the applicant disregarding the mandatory requirements under 81(d) of the Education Code. The said code was introduced to deal with the problem of unauthorised absence of the staff on the slightest pretext causing indiscipline, deterioration in academic standard, interruption in giving education

to the children and loss of public confidence. The intention of the said article is not to refuse genuine request for leave. The applicant was not habitual leave taker. She had a valid reason to seek leave. She had intimated in advance about her intention to go on leave so that appropriate action to give uninterrupted education to the students and thereby to sustain public confidence could be taken by the respondents. There was no reason to refuse her leave. It should have been sanctioned. If there was any reason to refuse they should have communicated the refusal with reason to the applicant. If the respondents expected the applicant to wait indefinitely for the sanction of leave, it is unreasonable. They had not indicated to the applicant what more is she supposed to do to get her leave sanctioned. The inaction on the part of the respondents on the leave application is clearly illegal, arbitrary and unjust. The power under a stringent measure like article 81 (d) should be exercised with great circumspection and caution. The respondents have wielded the power under article 81(d) unjustly in not sanctioning applicant's leave without giving any reason to make it unsanctioned leave amounting to voluntary abandonment of service. The respondent authorities failed to empathize with their employee; they could not appreciate her need to take leave; they failed to exercise power judiciously. It is tyranny of the petty minded, when laws are implemented bereft of human compassion.

19. On the other hand, the applicant is to be faulted for not setting a personal example for others to follow in the matter. She should never have allowed her reputation to be sullied by the stigma of going abroad without approval on leave applied for. She should have insisted on getting the leave sanctioned. If she was not in a position to delay her departure she could have taken up the matter of getting the leave sanctioned with higher authorities from abroad. She also should have specifically sought sanction for going abroad. Unwittingly she made technical transgressions and became a victim of highhandedness. For her technical mistakes, she has suffered quite disproportionately in being kept out of job for many years and the attendant anguish. Now that she has only one more year left for retirement, it is advisable that all disciplinary action pertaining to leave from 02.08.1999 to 01.08.2002 and going abroad without permission and connected litigation are brought to an end.

20. We have gone through the judgement of Hon'ble High Court of Delhi in W.P.(C) No. 7868/2007 as well as the Apex Court judgements in (2003) 3 SCC 309 and 2009 (1) SC 65 cited by the counsel for the respondents. The facts and circumstances of the applicants therein are quite different from those of the applicant herein. As such the decisions in the cited cases are of no assistance to respondents in the O.A.

21. Before parting, we would like to make the following observation, for consideration of the KVS authorities. It is not enough to make stringent a law to meet a grave situation. That law has to be applied judiciously by men with positive mentality. Otherwise, the remedy would prove to be worse than the disease. Therefore, it is essential that those who implement harsh laws are subjected to attitudinal reorientation and are trained to take a judicious view of men and matters while implementing them.

22. In the conspectus of the facts and circumstances of this O.A. and the legal issues involved, in our considered view, the applicant had been unjustly treated by the respondents by not sanctioning her leave. They violated the mandatory instructions under article 81(d). Therefore, the absence of the applicant whose application for leave is neither rejected nor sanctioned does not amount to absence without sanctioned leave and voluntary abandonment of service. The order terminating her service and the orders rejecting appeals/revision application are unjust, illegal and arbitrary. In the interest of justice, the applicant should be reinstated in service with immediate effect.

23. In the result, the Original Application succeeds. Accordingly, it is ordered as under :

Annexure A-12 order dated 31.07.2001 confirming provisional loss of lien of the applicant, Annexure A-14 order dated 29.11.2002, Annexure A-16 order dated 25.03.2003 and Annexure A-20 order dated 19.06.2007 rejecting the appeals/revision petition against the loss of lien are hereby quashed and set aside. The respondents are directed to reinstate the applicant in service with immediate

effect at Ottappalam or at the nearest place where vacancy is available and regularise her leave from 1.8.1999 to 1.8.2002 without pay, within a month of receipt of a copy of this order. The period from 2.8.2002 till the applicant reports for duty upon reinstatement also should be regularized as leave without pay. No costs.

(Dated, the 3rd March, 2010)

(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

(GEORGE PARACKEN)
JUDICIAL MEMBER

cvr.