

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 143 of 2010
And
Contempt Petition No. 32 of 2010 in
Original Application No. 143 of 2010

Tuesday, this the 26th day of October, 2010

CORAM:

Hon'ble Mr. Justice K. Thankappan, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

1. Original Application No. 143 of 2010 -

T.I. Sheela, aged 53 years, W/o Adv. John K. George,
 Assistant Superintendent (Lien provisionally terminated),
 Kendriya Vidyalaya Sangathan, Regional Office, Chennai,
 Residing at : House No. 32/2879-B, Kulathumkal Bawa Road,
 Thammanam, Cochin-682 032,
 Ernakulam District.

Applicant

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. The Commissioner, Kendriya Vidyalaya Sangathan,
 No. 18, Institutional Area, Shaheed Jeet Singh Marg,
 New Delhi – 110 016.

2. The Assistant Commissioner, Kendriya Vidyalaya
 Sangathan, Regional Office, IIT Campus, Chennai-36.

3. Shri S. Vijaya Kumar, Assistant Commissioner,
 Kendriya Vidyalaya Sangathan, Regional Office,
 IIT Campus, Chennai-36.

Respondents

[By Advocate – Mr. Thomas Mathew Nellimoottil (R1&2)]

2. Contempt Petition No. 32 of 2010 -

T.I. Sheela, aged 53 years, W/o Adv. John K. George,
 Assistant Superintendent, Kendriya Vidyalaya Sangathan, Regional Office,
 Chennai, Residing at : House No. 32/2879-D, Kulathumkal Bawa Road,
 Thammanam, Cochin-682 032,
 Ernakulam District.

Petitioner

20

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

Shri S. Vijaya Kumar, Assistant Commissioner,
Kendriya Vidyalaya Sangathan, Regional Office,
IIT Campus, Chennai-36.

Respondent

(By Advocate – Mr. Thomas Mathew Nellimoottil)

This Original Application and the Contempt Petition having been heard on 22.10.2010, the Tribunal on 26.10.2010 delivered the following:

O R D E R

By Hon'ble Mr. Justice K. Thankappan, Judicial Member -

Aggrieved by orders dated 6.1.2010 and 8.2.2010 (Annexures A-9 & A-12 respectively) the applicant filed this Original Application praying that the said orders may be quashed and the proceedings initiated under Article 81(d)(1) of the Education Code of Kendriya Vidyalaya Sangathan (in short KVS) has to be declared as a nullity and further it is prayed that this Tribunal may direct the first respondent, the Commissioner, KVS to reconsider the representation dated 1.12.2009 (Annexure A-5) for granting Child Care Leave (in short CCL) to her and pass appropriate orders thereon.

2. The few facts which are necessary for the decision of this Original Application are as follows:-

2.1 While the applicant was working as Assistant Superintendent at KV No. 1, Cochin, she was transferred to KVS, Chennai and she was relieved on 18.2.2008. Against the said order the applicant filed OA No. 553 of 2008 before this Tribunal and on hearing the parties the said Original Application was dismissed. Consequent to the dismissal of the said Original Application



the applicant filed Writ Petition No. 6682 of 2009. In the said Writ Petition the applicant also prayed for an interim relief to consider her representation for granting her CCL, a copy of which is produced and marked as Annexure A-5, by the first respondent herein, the Commissioner of KVS, New Delhi. Though, the Writ Petition has been dismissed after the filing of the present Original Application before this Tribunal, the Hon'ble High Court has passed an interim order dated 23.12.2009 directing the first respondent to consider the representation (Annexure A-5) and pass appropriate orders within a week from the date of production of the copy of the said order. Subsequent to the said order the applicant filed the present Original Application. In the meanwhile the 2nd/3rd respondent, the Assistant Commissioner, KVS, Regional Office, Chennai passed the impugned orders. Under the above circumstances, the applicant filed this Original Application.

2.2 At the time of filing of this Original Application on hearing the counsel appearing for the applicant Mr. T.C. Govindaswamy and also the counsel appearing for the respondents Mr. Thomas Mathew Nellimoottil, we have issued an interim order of stay of operation of the order dated 8.2.2010 and also directed the respondents to consider the application of the applicant for leave. Subsequently, as the respondents have not complied the interim order passed by this Tribunal and proceeded with the proceedings initiated under Article 81(d)(1) of the Education Code, the applicant filed the Contempt Petition No. 32 of 2010 and this Contempt Petition was also admitted by this Tribunal.



2.3 On receipt of the notices issued by this Tribunal the respondents have filed their reply statement in the Original Application taking the stand that as the applicant was transferred from KVS, Cochin and relieved on 18.2.2008, the applicant has to join at Chennai. However, the applicant filed OA No. 553 of 2008 which was also dismissed by this Tribunal. Thereupon the applicant joined at Chennai office on 7.7.2008. Even after joining the applicant remained on leave for more than 242 days. The details of her leave is mentioned in paragraph 10 of the reply statement. With regard to claim of her leave under the CCL scheme the respondents have taken a definite stand that she is not entitled for that leave and she cannot claim it as a matter of right. In spite of her long leave, the respondents have given her leave for 26 days namely from 12.10.2009 to 6.11.2009. It is further stand taken in the reply statement that as per Annexure R-1 order of the KVS dated 6.10.2009 to grant leave under CCL scheme the applicant should comply certain conditions laid therein and as these conditions were not fulfilled by the applicant her application for leave has not been considered. Justifying the stand taken by the respondents, in the reply statement it is contended that the applicant is not entitled for CCL and the department is right in proceeding under Article 81(d)(1) of the Education Code.

2.4 In the contempt case also an affidavit has been filed on behalf of the respondent therein in which it is stated that the respondent have obeyed the orders passed by this Tribunal and the proceedings initiated against the applicant under Article 81(d)(1) of the Education Code has been deferred. Hence, no contempt has been committed.

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2.5 On receipt of the reply statement and the affidavit filed, the applicant filed a rejoinder and disputed the proceedings initiated under Article 81(d)(1) of the Education Code. The contentions contained in the reply statement were also rebutted.

3. We have heard the learned counsel appearing for the applicant Mr. T.C. Govindaswamy and also Mr. Thomas Mathew Nellimootttil, learned counsel appearing for the respondents. The counsel appearing for the applicant strenuously contended that both the orders dated 6.1.2010 and 8.2.2010, copy of which are produced and marked as Annexures A-9 and A-12 respectively, passed by the 2nd/3rd respondent are without jurisdiction. The counsel further submits that the Hon'ble High Court of Kerala passed an order on 23.12.2009 directing the first respondent, the Commissioner of KVS to consider the representation of the applicant requesting for grant of CCL. That request is also produced in the Original Application as Annexure A-5. By issuing the impugned orders the application for CCL has been rejected by the 2nd/3rd respondent without considering the merit of the application filed by the applicant. Apart from that as per the direction given by the Hon'ble High Court of Kerala the first respondent namely the Commissioner himself has to pass orders on the representation of the applicant and it is not clear from the present impugned orders that whether the 2nd/3rd respondent have got any direction from the first respondent to take a decision in the representation on the basis of the order passed by the Hon'ble High Court. Even if such a direction is given it will not be in compliance of the order passed by the Hon'ble High Court of Kerala. On



that score alone the orders impugned have to be quashed by this Tribunal. Further the counsel submits that as the applicant's son was studying in plus 2 and the mark sheet her son (Annexure A-14) would show that because of the absence of care of the applicant her son has failed in most of the subjects in monthly examinations and it is also contended that as the husband of the applicant is a busy lawyer in the Hon'ble High Court he was not in a position to take care of the education of the children. Hence, on these grounds alone the application of the applicant for CCL ought to have been considered by the respondents. With regards to the proceedings now initiated under Article 81 of the Education Code the counsel for the applicant submits that as the applicant is entitled for CCL the absence of the applicant after filing application for leave cannot be considered as a ground for proceeding against her under Article 81(d) of the Education Code or for rejection of her application for CCL or any other leave.

4. To the above arguments the counsel for the respondents Mr. Thomas Mathew Nellimoottil submits that none of these contentions now raised by the counsel appearing for the applicant is tenable. Though the Hon'ble High Court had directed to consider the application for CCL by the first respondent, the Commissioner has directed by his letter dated 22nd December, 2009 to the 2nd/3rd respondent to pass orders with regard to grant of CCL and accordingly, the 2nd/3rd respondent has passed the impugned orders. Though the Hon'ble High Court passed the order on 23.12.2009, the said order was not brought to the notice of the first respondent. Hence, it is not proper to find fault with the action of the 2nd/3rd respondent in passing



the impugned orders. The counsel further submits that the proceedings now initiated against the applicant under Article 81(d)(1) of the Education Code is also justifiable as she remained absent from service for several days. The counsel also submitted that as the impugned orders are passed by the 2nd respondent at Chennai, the applicant has no locus standi to file the present Original Application before this Tribunal.

5. On considering the contentions raised by the counsel appearing for the parties, the questions to be considered are whether the impugned orders are liable to be quashed or not and whether the applicant is entitled for any relief as claimed in the Original Application. It is admitted before us that while the applicant was working in Cochin she was transferred to Chennai and that transfer was challenged before this Tribunal in OA No. 553 of 2008. The said Original Application was dismissed by this Tribunal. However, the matter has already been seized of by the Hon'ble High Court of Kerala and in the Writ Petition pending, during the relevant time the Hon'ble High Court has passed an order on 23.12.2009 directing the first respondent to consider Annexure A-5 representation of the applicant for CCL and pass appropriate orders thereon within a specified time. If so, firstly we are of the view that the order of the Hon'ble High Court has to be complied with by the first respondent himself and not by any other authority, if not otherwise directed by the Hon'ble High Court or clarified by the Hon'ble High Court to that extent. The impugned orders, though it is stated in Annexure A-9 that the applicant moved the Hon'ble High Court in



Writ Petition No. 6682 of 2009 for a direction to consider the CCL application by the Commissioner, KVS, the Assistant Commissioner i.e. 2nd/3rd respondent passed the impugned orders without noting the fact that the Hon'ble High Court has directed the first respondent to consider her application. Such a direction was passed with a purpose by the Hon'ble High Court after reading the representation of the applicant, a copy of which is produced with this Original Application as Annexure A-5. The applicant had specifically urged in her representation that the Assistant Commissioner, KVS, Chennai is not permitting her to avail CCL and hence her application may be considered by the first respondent. If so, even if the consideration is made by the 2nd respondent it is not in accordance with the directions given by the Hon'ble High Court of Kerala. Hence, we are of the view that the orders impugned with regard to the rejection of the leave application for CCL has to be set aside. In this context we are also considering the reasons stated by the counsel for the applicant for the need of granting CCL to the applicant and the circumstances under which she was pressurized to apply CCL. In these circumstances it is only proper for the first respondent to consider her case appropriately after applying the mind.

5.1 With regard to the question raised by the counsel appearing for the applicant against the proceedings initiated under Article 81(d)(1) of the Education Code of the KVS, we are of the view that since the proceedings further are at present deferred by the 2nd respondent it could be reviewed, if necessary, only after the disposal of the application filed by the applicant



for CCL by the first respondent as directed by the Hon'ble High Court of Kerala. In the above circumstances if the respondents want to proceed against the applicant under Article 81(d)(1) of the Education Code it will be only after the order, if any, passed by the first respondent in the representation of the applicant and as per law.

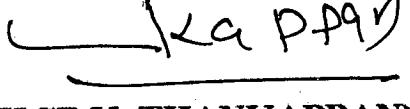
5.2 With regard to the jurisdictional issue raised by the counsel appearing for the respondents, we are of the view that since we have considered the directions issued by the Hon'ble High Court of Kerala and that order is on the basis of an order given by this Tribunal in OA No. 553 of 2008, we are of the view that we have got jurisdiction to consider this matter.

6. In view of the aforesaid, we are closing the contempt proceedings at present and disposing of the Original Application by setting aside that part of the impugned orders rejecting the representation of the applicant for CCL by the 2nd/3rd respondent and directing the first respondent to pass appropriate orders on the representation (Annexure A-5) on affording her a chance of personal hearing, if necessary and pass appropriate orders thereon within 45 days from the date of receipt of a copy of this order. While disposing of the representation of the applicant the first respondent shall consider the GO No. 13018/1/2010-Estt.(Leave) of Ministry of Personnel, Public Grievances & Pensions, dated 7th September, 2010 with regard to grant of CCL. Ordered accordingly. It is also made clear that if the applicant wants to file any additional documents before the first respondent that may

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also be filed to the first respondent within three weeks from today. No order
as to costs.


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER

“SA”

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Respondents

[By Advocate – Mr. Thomas Mathew Nellimoottil (R1&2)]

2. Contempt Petition No. 32 of 2010 -

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 Ernakulam District.

Petitioner

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

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2. The few facts which are necessary for the decision of this Original Application are as follows:-

2.1 While the applicant was working as Assistant Superintendent at KV No. 1, Cochin, she was transferred to KVS, Chennai and she was relieved on 18.2.2008. Against the said order the applicant filed OA No. 553 of 2008 before this Tribunal and on hearing the parties the said Original Application was dismissed. Consequent to the dismissal of the said Original Application

the applicant filed Writ Petition No. 6682 of 2009. In the said Writ Petition the applicant also prayed for an interim relief to consider her representation for granting her CCL, a copy of which is produced and marked as Annexure A-5, by the first respondent herein, the Commissioner of KVS, New Delhi. Though, the Writ Petition has been dismissed after the filing of the present Original Application before this Tribunal, the Hon'ble High Court has passed an interim order dated 23.12.2009 directing the first respondent to consider the representation (Annexure A-5) and pass appropriate orders within a week from the date of production of the copy of the said order. Subsequent to the said order the applicant filed the present Original Application. In the meanwhile the 2nd/3rd respondent, the Assistant Commissioner, KVS, Regional Office, Chennai passed the impugned orders. Under the above circumstances, the applicant filed this Original Application.

2.2 At the time of filing of this Original Application on hearing the counsel appearing for the applicant Mr. T.C. Govindaswamy and also the counsel appearing for the respondents Mr. Thomas Mathew Nellimoottil, we have issued an interim order of stay of operation of the order dated 8.2.2010 and also directed the respondents to consider the application of the applicant for leave. Subsequently, as the respondents have not complied the interim order passed by this Tribunal and proceeded with the proceedings initiated under Article 81(d)(1) of the Education Code, the applicant filed the Contempt Petition No. 32 of 2010 and this Contempt Petition was also admitted by this Tribunal.

2.3 On receipt of the notices issued by this Tribunal the respondents have filed their reply statement in the Original Application taking the stand that as the applicant was transferred from KVS, Cochin and relieved on 18.2.2008, the applicant has to join at Chennai. However, the applicant filed OA No. 553 of 2008 which was also dismissed by this Tribunal. Thereupon the applicant joined at Chennai office on 7.7.2008. Even after joining the applicant remained on leave for more than 242 days. The details of her leave is mentioned in paragraph 10 of the reply statement. With regard to claim of her leave under the CCL scheme the respondents have taken a definite stand that she is not entitled for that leave and she cannot claim it as a matter of right. In spite of her long leave, the respondents have given her leave for 26 days namely from 12.10.2009 to 6.11.2009. It is further stand taken in the reply statement that as per Annexure R-1 order of the KVS dated 6.10.2009 to grant leave under CCL scheme the applicant should comply certain conditions laid therein and as these conditions were not fulfilled by the applicant her application for leave has not been considered. Justifying the stand taken by the respondents, in the reply statement it is contended that the applicant is not entitled for CCL and the department is right in proceeding under Article 81(d)(1) of the Education Code.

2.4 In the contempt case also an affidavit has been filed on behalf of the respondent therein in which it is stated that the respondent have obeyed the orders passed by this Tribunal and the proceedings initiated against the applicant under Article 81(d)(1) of the Education Code has been deferred. Hence, no contempt has been committed.

2.5 On receipt of the reply statement and the affidavit filed, the applicant filed a rejoinder and disputed the proceedings initiated under Article 81(d)(1) of the Education Code. The contentions contained in the reply statement were also rebutted.

3. We have heard the learned counsel appearing for the applicant Mr. T.C. Govindaswamy and also Mr. Thomas Mathew Nellimoottil, learned counsel appearing for the respondents. The counsel appearing for the applicant strenuously contended that both the orders dated 6.1.2010 and 8.2.2010, copy of which are produced and marked as Annexures A-9 and A-12 respectively, passed by the 2nd/3rd respondent are without jurisdiction. The counsel further submits that the Hon'ble High Court of Kerala passed an order on 23.12.2009 directing the first respondent, the Commissioner of KVS to consider the representation of the applicant requesting for grant of CCL. That request is also produced in the Original Application as Annexure A-5. By issuing the impugned orders the application for CCL has been rejected by the 2nd/3rd respondent without considering the merit of the application filed by the applicant. Apart from that as per the direction given by the Hon'ble High Court of Kerala the first respondent namely the Commissioner himself has to pass orders on the representation of the applicant and it is not clear from the present impugned orders that whether the 2nd/3rd respondent have got any direction from the first respondent to take a decision in the representation on the basis of the order passed by the Hon'ble High Court. Even if such a direction is given it will not be in compliance of the order passed by the Hon'ble High Court of Kerala. On

that score alone the orders impugned have to be quashed by this Tribunal. Further the counsel submits that as the applicant's son was studying in plus 2 and the mark sheet her son (Annexure A-14) would show that because of the absence of care of the applicant her son has failed in most of the subjects in monthly examinations and it is also contended that as the husband of the applicant is a busy lawyer in the Hon'ble High Court he was not in a position to take care of the education of the children. Hence, on these grounds alone the application of the applicant for CCL ought to have been considered by the respondents. With regards to the proceedings now initiated under Article 81 of the Education Code the counsel for the applicant submits that as the applicant is entitled for CCL the absence of the applicant after filing application for leave cannot be considered as a ground for proceeding against her under Article 81(d) of the Education Code or for rejection of her application for CCL or any other leave.

4. To the above arguments the counsel for the respondents Mr. Thomas Mathew Nellimoottil submits that none of these contentions now raised by the counsel appearing for the applicant is tenable. Though the Hon'ble High Court had directed to consider the application for CCL by the first respondent, the Commissioner has directed by his letter dated 22nd December, 2009 to the 2nd/3rd respondent to pass orders with regard to grant of CCL and accordingly, the 2nd/3rd respondent has passed the impugned orders. Though the Hon'ble High Court passed the order on 23.12.2009, the said order was not brought to the notice of the first respondent. Hence, it is not proper to find fault with the action of the 2nd/3rd respondent in passing

the impugned orders. The counsel further submits that the proceedings now initiated against the applicant under Article 81(d)(1) of the Education Code is also justifiable as she remained absent from service for several days. The counsel also submitted that as the impugned orders are passed by the 2nd respondent at Chennai, the applicant has no locus standi to file the present Original Application before this Tribunal.

5. On considering the contentions raised by the counsel appearing for the parties, the questions to be considered are whether the impugned orders are liable to be quashed or not and whether the applicant is entitled for any relief as claimed in the Original Application. It is admitted before us that while the applicant was working in Cochin she was transferred to Chennai and that transfer was challenged before this Tribunal in OA No. 553 of 2008. The said Original Application was dismissed by this Tribunal. However, the matter has already been seized of by the Hon'ble High Court of Kerala and in the Writ Petition pending, during the relevant time the Hon'ble High Court has passed an order on 23.12.2009 directing the first respondent to consider Annexure A-5 representation of the applicant for CCL and pass appropriate orders thereon within a specified time. If so, firstly we are of the view that the order of the Hon'ble High Court has to be complied with by the first respondent himself and not by any other authority, if not otherwise directed by the Hon'ble High Court or clarified by the Hon'ble High Court to that extent. The impugned orders, though it is stated in Annexure A-9 that the applicant moved the Hon'ble High Court in

Writ Petition No. 6682 of 2009 for a direction to consider the CCL application by the Commissioner, KVS, the Assistant Commissioner i.e. 2nd/3rd respondent passed the impugned orders without noting the fact that the Hon'ble High Court has directed the first respondent to consider her application. Such a direction was passed with a purpose by the Hon'ble High Court after reading the representation of the applicant, a copy of which is produced with this Original Application as Annexure A-5. The applicant had specifically urged in her representation that the Assistant Commissioner, KVS, Chennai is not permitting her to avail CCL and hence her application may be considered by the first respondent. If so, even if the consideration is made by the 2nd respondent it is not in accordance with the directions given by the Hon'ble High Court of Kerala. Hence, we are of the view that the orders impugned with regard to the rejection of the leave application for CCL has to be set aside. In this context we are also considering the reasons stated by the counsel for the applicant for the need of granting CCL to the applicant and the circumstances under which she was pressurized to apply CCL. In these circumstances it is only proper for the first respondent to consider her case appropriately after applying the mind.

5.1 With regard to the question raised by the counsel appearing for the applicant against the proceedings initiated under Article 81(d)(1) of the Education Code of the KVS, we are of the view that since the proceedings further are at present deferred by the 2nd respondent it could be reviewed, if necessary, only after the disposal of the application filed by the applicant



for CCL by the first respondent as directed by the Hon'ble High Court of Kerala. In the above circumstances if the respondents want to proceed against the applicant under Article 81(d)(1) of the Education Code it will be only after the order, if any, passed by the first respondent in the representation of the applicant and as per law.

5.2 With regard to the jurisdictional issue raised by the counsel appearing for the respondents, we are of the view that since we have considered the directions issued by the Hon'ble High Court of Kerala and that order is on the basis of an order given by this Tribunal in OA No. 553 of 2008, we are of the view that we have got jurisdiction to consider this matter.

6. In view of the aforesaid, we are closing the contempt proceedings at present and disposing of the Original Application by setting aside that part of the impugned orders rejecting the representation of the applicant for CCL by the 2nd/3rd respondent and directing the first respondent to pass appropriate orders on the representation (Annexure A-5) on affording her a chance of personal hearing, if necessary and pass appropriate orders thereon within 45 days from the date of receipt of a copy of this order. While disposing of the representation of the applicant the first respondent shall consider the GO No. 13018/1/2010-Estt.(Leave) of Ministry of Personnel, Public Grievances & Pensions, dated 7th September, 2010 with regard to grant of CCL. Ordered accordingly. It is also made clear that if the applicant wants to file any additional documents before the first respondent that may

also be filed to the first respondent within three weeks from today. No order as to costs.

**(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER**

**(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER**

“SA”