

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 186 of 2008

Friday, this the 29th day of August, 2008

CORAM :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE DR. K S SUGATHAN, ADMINISTRATIVE MEMBER**

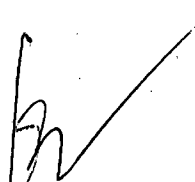
S. Sreeletha,
W/o. M. Sasidharan,
Post Graduate Teacher (Biology),
Kendriya Vidyalaya, Pallipuram,
Trivandrum District,
Residing at : Plot No. 69,
Tilak Nagar Colony, Mananchira Post,
Trivandrum : 695 015.

... Applicant.

(By Advocate Mr. TC Govindaswamy)

v e r s u s

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area, Shahid Jeet Singh Marg,
NEW DELHI : 110 016
2. The Education Officer,
Kendriya Vidyalaya Sangathan,
18, Institutional Area, Shahid Jeet Singh Marg,
NEW DELHI : 110 016
3. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, I.I.T. Campus,
CHENNAI ; 600 006
4. The Principal,
Kendriya Vidyalaya, Pallipuram,
Trivandrum District



5. Smt. K. Maria Parvathy,
Post Graduate Teacher (Biology),
Kendriya Vidyalaya, Pallipuram,
Trivandrum District. ... Respondents.

(By Advocates Mr. Thomas Mathew Nellimoottil for R1-4 and
Mr. S. Anil Kumar for R-5)

The Original Application having been heard on 12.08.08, this Tribunal
on ~~29-08-08~~ delivered the following :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

A post was sanctioned in the previous year, filled up by transfer of respondent No. 5, and within a short period the said post was withdrawn, rendering one surplus and since as per the rule, the senior most would be subjected to transfer on account of surplus, the axe fell upon the applicant who stood transferred. The question is whether such a transfer legally sustainable.

2. Brief facts: The applicant, a Post Graduate Teacher in biology has been functioning since November, 2006, in Kendriya Vidyalaya Pallipuram on her being transferred from KVS Cochin Naval Base 2, vide Annexure A-2 order dated 14-11-2006. The sanctioned staff strength of the said school included one post of PGT (Biology), which has been occupied by the applicant. For the academic year 2007-2008, an additional Division of XI (science) was sanctioned and an additional post of PGT (Biology) was sanctioned, vide Office Order dated 2/4-07-2007 (Annexure A-3). Thus the sanctioned strength

included two PGT (Biology). This post was filled up by transferring fifth respondent from Kendriya Vidyalaya, Hubli, at her own request under the provisions of para 17.1 of the Transfer guidelines. Annexure A-4 order dated 31-08-2007 refers. On 19-12-2007 a revised staff sanction order was published in respect of as many as 21 schools and in so far as Kendriya Vidyalaya Pallipuram is concerned, the sanctioned strength for 2008-09 in respect of PGT (Biology) was reduced from two to one. Annexure A-8 refers. This resulted in one surplus of PGT (Biology). The Principal of KV, Pallipuram took up the matter with the Assistant Commissioner but no modification to the sanction for 2008-09 was considered. As the applicant was identified as the senior most, vide Annexure A-1, and as per the guidelines, since the senior has to be shifted, the applicant moved the Tribunal in OA No. 28 of 2008 challenging the action of the respondents. The Tribunal disposed of the OA by Annexure A-12 order dated 27th February, 2008 holding as under:-

4. Heard the learned counsel for the parties. In the totality of the circumstances brought out by the respondents and considering the rule position relating to transfers and the declaration of surplus in KV Sangathan, I am of the view that the respondents have acted within the ambit of the Rules and any such contention that the power was exercised to favour any person has no force. However, it cannot be denied that the consequent dislocation of the applicant snacks of some amount of injustice as the whole situation has been created on account of creation and cancellation of the additional post within a short spell of time. At the same time, it has to be appreciated that the respondents could not give a go by to the norms prescribed for identification of surplus posts. It is, however, seen that the reduction in the post of PGT (Bio.) as decided by the Commissioner is coming into force from the academic year 2008-09 and for this reason, Annexure A/1 was issued in advance notifying the identification of the surplus staff so



that they could indicate their choice stations. It is seen that Annexure A/11 representation has accordingly been submitted by the applicant to the Commissioner, the first respondent, which according to the aforementioned norms / guidelines has to be sent by the Assistant Commissioner to the Commissioner, KVS, New Delhi, who would then take a decision regarding the transfer of staff to various regions. Since this exercise has already been contemplated in the guidelines, the same has to be done before the current academic session ends. I am of the view that the ends of justice would be met if the first respondent is directed to consider Annexure A/11 representation of the applicant and take a decision before the current academic year ends. Accordingly I do so and direct the first respondent, the Commissioner, KVS, New Delhi, to take a decision on Annexure A/11 representation of the applicant. The decision may be taken before the current academic year ends. Till such time, she may be permitted to continue at KV, CRPF, Pallipuram.

3. In compliance with the afore said order of this Tribunal, respondents had passed Annexure A-15 order dated 31-03-2008, whereby justifying the action taken and meeting the representation of the applicant, the respondents have redeployed the applicant at KV No. 1, Hubli. Aggrieved by the decision of the respondents the applicant has filed this OA challenging the aforesaid Annexure A-1, A-3, A-4, A-8 and A-15 on various grounds, alleging arbitrariness, malice, extreme favouritism and discrimination.

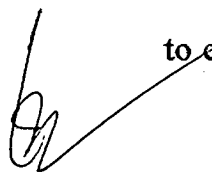
4. At the time of admission hearing, on a prima facie case having been made by the applicant, Annexure A-15 order was directed to be kept in abeyance and the respondents confirmed the same at a later date. For adjudication of the case, as the noting leading to the sanction of a post of PGT (Biology) for the academic year 2007-08 and its withdrawal in quick succession



was required to be gone through, respondents were directed to furnish the same, which has been accordingly made available.

5. Respondents (official as well as private) have filed their respective counter. Official respondents have narrated the sequence of events leading to the sanctioning of additional post and withdrawal of the same in para 8 of the counter. Similarly, as to how respondent No. 5 could be posted to KV Pallipuram has been explained in para 7. Respondent No. 5 has stated that in so far as Annexure A-1, A3, A4 and A8 are concerned, they have already been challenged in OA 28 of 2008 and order passed. Thus, the applicant cannot agitate against the same issue in this OA. Again, it has been stated that the applicant had all along been in Kerala save for a short period of 3 years and the answering respondent had spent more than 7 years outside Kerala.

6. Rejoinder to the reply filed on by the official respondents has been filed by the applicant in which in respect of para 7 of the reply, the applicant came up with sweeping allegation, "The respondents probably think that the whole world is blind or that it is not possible to see the illegal exercise of power. The respondents do not answer the question as to how and why was the post created – the fact is that it is only to enable the fifth respondent to apply in violation of the transfer guidelines and to be posted there. The transfer guidelines are only to camouflage. The exercise of power is not only a fraud on the applicant but



also on the public at large and on the other priority.” In respect of para 8 the statistics as to the number of pupils passed, the strength in various classes have all been indicated by the applicant, contending as incorrect the details furnished by the respondents.

7. Respondents have also file their reply to rejoinder justifying their stand and stating that the statistics furnished by the Principal is authentic.

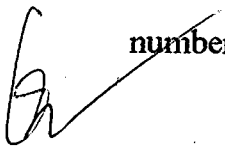
8. Counsel for the applicant has argued that the entire action has been accentuated with malafide and favouritism. Additional post is created in July, 2007, fifth respondent, at her request, positioned in that post in end August, 2007, the post sanctioned is withdrawn in December, 2007 and on the ground that the guidelines provide for the senior most to be shifted, the applicant stands transferred. All these would go to show, argues the counsel that the entire action is stage managed to bring in respondent No. 5 and to dislodge the applicant who is nearing 57 years at the fag end of her career. There is a categorical finding, vide order at Annexure A-12, that the dislocation of the applicant smacks of some amount of injustice as the whole situation has been created on account of creation and cancellation of additional post within a short spell of time.



9. Counsel for the respondent submitted that there is absolutely no malice nor any favouritism. Sanction or withdrawal of the post is based on actual requirement. It was felt in 2007 that there would be more students who would opt for Biology faculty and accordingly one extra division was sanctioned with one additional post of PGT (Biology). As at that time, there was a request for transfer from respondent No. 5, she was posted to occupy the newly sanctioned post. However on assessment, it was later found that there was no need to have the extra division continued for the academic session 2008-2009 and accordingly, it was withdrawn, along with withdrawal of one post of PGT (Biology). And, since the applicant has been identified as the senior most, further action of counselling etc., was thought of in accordance with the guidelines. The Tribunal has, in its order at Annexure A-12, clearly held, "the respondents have acted within the ambit of the Rules and any such contention that the power was exercised to favour any person has no force."

10. Counsel for private respondents has justified the transfer order of respondent No. 5.

11. Arguments were heard and documents perused. Written arguments by counsel for the applicant has also been filed, which contained a communication with regard to request for 2nd post of PGT(Bio), request for 2nd Division, exact number of students admitted in Biology stream in Class XI during the year



2007-2008 etc.. In his written arguments the counsel has stated that there is no transfer order in its full form. True, in quick succession, there was a post sanctioned and withdrawn and in between, respondent No. 5 had been positioned against the sanctioned post and on withdrawal of the post, the axe fell on the applicant. The question is, whether there is any act of malice or favouritism in the above situation? Respondents contend that their action is within the provisions of powers and without any favouritism, while the applicant allege fraud and colourable exercise of power and favouritism. It is appropriate to extract the observation of the Apex Court in regard to bonafide exercise of power, made in its judgment in the case of *State of Punjab v. Gurdial Singh*, (1980) 2 SCC 471, at page 475 :

"9. The question, then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power — sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions — is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated: "I repeat . . . that all power is a trust — that we are accountable for its exercise — that, from the people, and for the people, all springs, and all must exist". Fraud on power voids the order if it is not exercised bona fide for the end designed.

Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power vitiates the acquisition or other official act."

12. One has to now test the act of the respondents as to whether their act comes within the mischief indicated in the above observation. Thus, with a view to ascertaining the reason for sanctioning of additional post of PGT (Biology) and withdrawal of the same within a short period, the noting has been perused. The details given reflect as under:-

- (i) The 2nd post of PGT (Bio) was sanctioned in KV Pallipuram during 2007-2008 due to consequential effect of sanction of 2nd section of XI (Sc). The 2nd post of PGT (Bio) was sanctioned before the admission process of XI (Sc) keeping in view the sufficient students opt for Biology in class XI(Sc).
- (ii) The 2nd post of PGT (Bio) was withdrawn during 2008 – 09 as per the staff sanction proposal received from the Principal/AC where it has been shown that only 38 students opt for Biology in XI (Sc). As such, there is no requirement of 2nd post of PGT (Bio).

13. The further details of students in XI (Sc) etc., as provided by the School in the tabulation form to the Administration and those as contained in para 8 of the counter tally and as such, the respondents cannot be said to have acted wrongly when they had reduced the staff strength by withdrawing one post of PGT (Bio).



14. Thus, when the respondents felt the need to have one extra division in Class XI (Sc) the same was sanctioned and correspondingly one additional post of PGT (Bio) was sanctioned. It was correspondingly at that time that the fifth respondent had made the request and since it is a newly sanctioned post and was vacant the request of the said respondents being within the provisions of Para 17(i) of the guidelines, the official respondents have transferred the said respondent. This additional post and additional staff did not create any threat to the applicant at that time. Thus, in so far as the action in posting the respondent No. 5 at the time when post was sanctioned, there was no grievance whatsoever, of the applicant. **It is to be pointed out here that the applicant was transferred on the basis of her mutual transfer request, vide Annexure A-2 order.** Thus, when her request was considered and acceded to respondents are duty bound to consider the request of respondent No. 5 and accordingly they have acted. No favouritism is therefore, seen from the act of the respondent in posting the respondent No. 5 to KV Pallipuram.

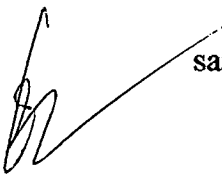
15. Assessment of future requirement of staff is an aspect considered by the respondents for the next academic session, which has to be considered well in advance. Of course, there would be some element of estimate in arriving at the total number of students in each faculty. Accordingly, not only in respect of KV Pallipuram, in regard to as many as 21 institutions, coming within the Region of Chennai, the strength had been modified. In so far as KV Pallipuram is



concerned, 2nd post of PGT (Bio) was considered not required as per actual work load. This decision has not been proved false with the present position in the school. Thus, the withdrawal of one post of PGT (Bio) was on the basis of actual requirement. Sanctioning of additional post is generally on need basis. If the Vidyalaya has not asked for sanction of 2nd post of PGT(Bio) but have requested for an additional Division, it is for the Headquarters to provide requisite additional post and accordingly the same was done. Likewise, when there was a reduction in the sanctioned strength, there would automatically be a reduction by one Division on the basis of the number of registration. This has also been done.

16. The applicant has alleged mala fide as if all the above are pre-planned, to bring in respondent No. 5 and to dislodge the applicant. We do not find any such mala fide intention. The respondents would have in all expectation acted similarly, had the position of the applicant and respondent No. 5 been interchanged!

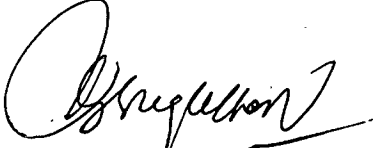
17. The applicant is to superannuate in November, 2011. She may come within the category of LTR from November, 2008. As such, she would be getting priority for reposting once she comes within the priority category. She may then apply for the same in which event, the respondent would consider the same in accordance with the guidelines.

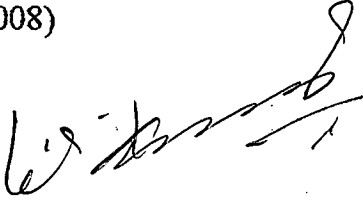


18. The OA is dismissed. Interim order vacated. It is for the respondents to pass formal orders on transfer reflecting therein the entitlement or otherwise of TA/DA etc., as per the practice in vogue. However, sufficient time (not less than 3 weeks) shall be given to the applicant for her preparation to move from Pallipuram to Hubli. Again, in the event of the applicant, on coming within the LTR category, applying for transfer, the same shall be considered in accordance with the guidelines.

19. Under the circumstances, there shall be no orders as to costs.

(Dated, the 29th August, 2008)


(Dr. K S SUGATHAN)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER

CVT.