

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Common order in O.A.Nos. 258/03 & 320/03

Thursday this the ^{12th} day of January 2006.

CORAM:

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HO'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER**

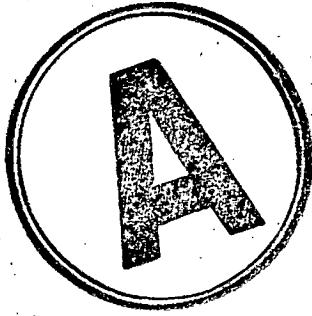
O.A.258/03:

1. M.R.Rajendran, S/o (Late Raghavan Nair N., General Secretary, All India Kendriya Vidhyalaya Teachers Association, Chennai Region, Residing at TC/2/2414, Lalitha Bhavan, Pattom, Trivandrum. (Primary Teacher, K.V.Pattom).
2. Mrs. Ambily James, W/o Shaji Thomas, Post Graduate Teacher, (English), Kendriya Vidhyalaya, Pangode, Trivandrum, residing at Manjankal, House No.57, Kakkanad Lane. Kesavadasapuram, Pattom (P.O.).
3. N.Sarathchandran Nair, S/o N.Narayana Kurup, Trained Graduate Teacher, (English) Kendriya Vidhyalaya, Pangode, Trivandrum, residing at 'Rakendu' TC 18/2039 (I) Annoor Thirumala, Trivandrum. Applicants

(By Advocate Shri P.V.Mohanan)

Vs.

1. Union of India, represented by Secretary, Ministry of Human Resources and Development, North Block, New Delhi.
2. The Commissioner, Kendriya Vidhyalaya Sangathan, 18 Institutional Area, Shaheed ^{gat} Singh Margh, New Delhi – 16.
3. The Deputy Commissioner, (Academic) Kendriya Vidhyalaya Sangathan, 18 Institutional Area, Shaheed ^{gat} Singh Margh,



New Delhi – 16.

4. The Assistant Commissioner,
Kendriya Vidhyalaya Sangathan,
Regional Office, IIT Campus, Chennai -36. Respondents

(By Advocate Shri TPM Ibrahim SCGSC (R-1)
(By Advocate M/s Iyer & Iyer)

O.A.320/03 :

S.Mini,
Postgraduate Teacher (Mathematics)
No.I, Kendriya Vidhyalaya,
Cannanore – 670 561.

Applicant

(By Advocate Shri K.P.Dandapani)

Vs.

1. The Commissioner,
Kendriya Vidhyalaya Sangathan,
18, Institutional Area,
Shaheed Singh Marg,
New Delhi – 110 016.

2. The Deputy Commissioner, (Academic)
Kendriya Vidhyalaya Sangathan,
18, Institutional Area,
Shaheed Singh Marg,
New Delhi – 110 016.

3. The Principal,
Kendriya Vidhyalaya Sangathan,
Cannanore I, Kannur 670 561.

Respondent

(By Advocate Shri Elvin Peter P.U.)

ORDER

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

There are three applicants in O.A.258/03 and one applicant in O.A.320/03. The 1st applicant in O.A.258/03 is the All India Kendriya Vidhyalaya Teachers Association represented by General Secretary. Since the issues involved and the reliefs sought for in both these O.As are identical, both these O.As are disposed of by a common order.

2. The applicants are working as Post Graduate Teachers in Pangode and

Kannanore. It is averred in the O.A. that there are 8 sections of Higher Secondary classes (XI and XII) and as per the allocation, 48 periods are to be taught in a week. One post of Post Graduate Teacher (English) in O.A. 258/03 stands withdrawn as per the revised work load which is impugned in these O.As. The remaining one post of PGT will have to handle all the 48 periods. The second applicant in O.A.258/03 will be deployed to the school outside station or region consequent on the implementation of the impugned order. The third applicant in O.A.258/03 being one among the 4 Trained Graduate Teachers will also be redeployed consequent on the increased allocation of work load among the 3 teachers. Applicants 2 and 3 are thus aggrieved for the threat of transfer on the alleged excess work due to revised work load. The grievance of the applicants are that, the service conditions of teachers in Kendriya Vidyalaya Sangathan have been substantially changed, which is detrimental to their right without notice either to the teachers effected or to the Association and the proceedings are unilaterally issued by the Deputy Commissioner increasing the work load without the sanction of the competent authority namely, the Board of Governors. No power is delegated to the Deputy Commissioner to issue direction of substantial nature substantively altering the service conditions of teacher, nor there is an order of authentication enabling the Deputy Commissioner to issue orders. It is further averred in the O.A. that Kendriya Vidhyalaya Sangathan is an autonomous body registered under Societies Registration Act, 1860, under the control of Ministry of Human Resources Development. These schools have been affiliated to Central Board of Secondary Education, New Delhi. Clause 2 of the Education Code of the Kendriya Vidyalaya defines 'Board' means the Board of Governors of Kendriya Vidyalaya Sangathan. Clause 4 defines 'Vice Chairman,' means Vice Chairman of Kendriya Vidyalaya Sangathan who is the Chairman of the Academic Advisory Committee. Clause 5 © defines 'Deputy Commissioner' means the Deputy Commissioner of Sangathan at Headquarters. KVS functions through its General Body called Sangathan and its Executive Committee is called the Board and 3 standing committees constituted by the Board, namely, the Finance Committee, the Academic Advisory Committee and Work committee. The scheme of the Memorandum of Association would indicate that the power to take major policy decisions including the conditions of service of the staff, vest with the Board of Governors. If it deals with the academic and co-curricular programmes, suggestions and recommendations from Academic Advisory Committee is necessary, which is a condition precedent. If any policy decision which is detrimental to the service conditions of teachers, a consultation with Joint

Consultative Machinery is also a necessary condition precedent. Further more, in the matter of change in service condition, the affected teachers should be given notice and an opportunity of being heard. The Deputy Commissioner is not vested with the power to take decisions in changing the service conditions of teaching staff. The staff strength has been well defined. Kendriya Vidyalaya Teachers work for 230 days a year. They work for 6 days in a week. Since the students of Kendriya Vidyalaya are mostly the children of Central Government employees including Defence personnel, Kendriya Vidyalaya Teachers are bound to work in all such places, wherever there are congregation of Central Government establishments and Defence Institutions. They follow a continuous and comprehensive evaluation system which includes unit test, assignment, project work, cumulative test, etc apart from the annual examination. Hence, the quantum of work done by a teacher cannot and should not be counted in terms of Physical Teaching inside the class room. Every period of teaching is preceded by at least equal periods of preparation and followed by at least double the period of evaluation. As per the U.G.C. norms, the ratio of actual class room teaching term to that of preparation, research and evaluation is about 40:60. In Kendriya Vidyalaya system, teachers are given extra duty to man the class room, when some teachers are on leave. Every written work done by the students should be checked and corrected scrupulously, page by page and word by word. A teacher in KVS used to undertake an actual classroom teaching of 33 periods as an average. Till the year 1999-2000 the formula/norms for deciding staff strength of each Kendriya Vidyalaya was depending upon local requirements. This was based on total number of periods available for different stages, that is, primary, secondary and Higher Secondary, and the number of students in each section. The total number of actual periods per week was first arrived at (x). The number of periods to be engaged by the Principal, Vice Principal, Post Graduate Teachers, Special Teachers etc. was then calculated as (y). The number of remaining teachers required (TGTs) is then calculated using the formula of $TGTS = X-Y/33$ (For Secondary Section). In the year 2000-2001 the KVS switched over to 8 periods working schedule instead of 9 periods per day. This was a deliberate action to indirectly increase the work load of each teacher to 33/48 instead of 33/54 periods. In effect each subject teacher was compelled to work 6 periods more than the existing one. The dominant intention for adopting this method is to render 20-25% of teachers again surplus. Thus one post of every four posts was withdrawn. Since the number of periods allotted for scholastic subjects was not changed the allotment of non-scholastic subjects like physical education, arts, crafts, yoga etc

was reduced. (Annexure A-4). This is again rendering about 30 percent of specialist teachers post surplus, which resulted in declaration of 50% and more of work experienced teachers, such as Drawing teachers, Physical Education Teachers and Yoga Teachers as surplus. This is discernible from Annexure-A4. Aggrieved by the said inaction on the part of the respondents the applicants have filed this O.A. seeking the following reliefs:

- i. To call for the records leading to Annexure A7 & A8 and set aside the same.
- ii. To direct the respondents not to implement the decision on work load as evidenced by the letter dated 13.2.2003 (Annexure A-8)
- iii. To direct the respondents not to re-deploy applicants 2 & 3 and other teaching staffs on implementation of Annexure circulars dated 13.2.2003, other school or region.
- iv. To direct the respondents to retain the staff pattern and work load or teachers which was prevalent till the year 1999 as evidence by Annexure A-1.

3. The respondents have filed a detailed reply statement contending that, the KVS is an autonomous body registered under the Societies Registration Act, 1860 and fully financed by the Government of India with the main object to cater to the educational needs of the children of Defence personnel, by providing a common programme of education. At present there are about 900 Kendriya Vidyalayas situated all over the country and abroad. The employees appointed in KVS are liable to be transferred anywhere in India in the light of Article 54(k) of the Education Code (Revised Edition). Article 48 of Education Code stipulates that, the staff strength of a Vidyalaya will be determined and sanctioned by the Commissioner, KVS on the basis of workload in accordance with the norms. After the fixation of staff strength, if teachers are found in excess to the required sanctioned staff in a particular school, they are redeployed against clear available vacancies. The recruitment of its teaching and non-teaching employees is done centrally and the staff so appointed is liable to be transferred anywhere in India, as per the provisions in Article 54(k) of Education Code. As regards the staff sanction of a Vidyalaya, it is submitted that, it is an annual exercise carried out for each academic session depending on the requirement of the staff. The staff sanction order is accordingly issued every year by the competent authority. Teachers who were found excess to requirement are redeployed as per rules. The teachers cannot resist transfer, which is made as per rules of the organization

depending on the exigencies of administration. So far as the increase in teaching periods is concerned, it is submitted that the total working hours have remained the same, i.e. six hours and ten minutes and only the teaching periods have been re-organised keeping in view the requirements. The respondents have not caused any change in the service conditions. This is a policy decision, which is not detrimental to the service conditions of teachers of KVS. No change has taken place in the service conditions of teachers and if such decision has been made by the Deputy Commissioner. The decision communicated by the Deputy Commissioner was simply an increase in number of teaching periods which was issued by him after due approval of the competent authority. The evaluation of note books, unit test, assignments, projects, cumulative tests and session ending examinations form an integral part of teaching/learning process, which cannot be treated as extra work. It is for the teacher to plan this work according to the requirements of the pupil. The number of teaching periods have been increased by 3 periods per week only, and there has been no alteration in the total working hours of the teachers. Therefore, the challenge against the revision in the teaching periods is without any rhyme or reason. Some modifications have been made in the methodology of computing the staff strength. These changes have been effected keeping in view the interest of the students and to ensure that teaching learning process becomes more effective and there is optimum use of available resources including the services of teachers. Modifying the process of estimating staff strength is well within the ambit of these respondents. Skill oriented coaches, artisans or musicians are engaged as experts in a particular discipline where the regular Physical Education Teacher, WET etc. do not have the specialization. Their engagement is for a short term limited to some block periods in a week to develop particular skills in the students in the areas in which the students are interested. The payment to these teachers is not made from the salary account but the same is made from collections from the students as well as from Vidyalaya Vikas Nidhi. The payments to the teachers are based on the actual number of students being trained by them. Thus in no way it is detrimental to service conditions of teachers. The redeployment of the 2nd applicant was strictly in terms of the redeployment guidelines formulated by the competent authority of the KVS.

4. The applicants have filed a rejoinder contending that, as per the staff fixation for the academic year 2003 to 2004, the applicants were declared surplus. As per the work load norms, there will be 105 periods for English in Secondary Session and 66 periods for the Higher Secondary Session in the K.V.Pangode. The

service conditions of the teachers are substantially changed due to increase in the work load. Number of periods have been reduced from 54 to 48. This increased the duration of each period from 35 to 40 minutes and a total 155 minutes. Subsequent increase of number of periods to each teacher by 3 as claimed will automatically increase the teaching time by 120 minutes.

5. The respondents have filed a M.A. 749/04 along with additional documents such as Annexures MA-1, MA-2 and MA-3, in which they have reiterated the same contentions as raised in the reply statement and further contended that, the orders have been passed by the competent authority, i.e. the Academic Advisory Committee, which is duly empowered by the Board of Governors of the KVS. The Minutes of the 21st and 22nd Academic Advisory Committee Meeting held on 13.1.2003, 15.3.2003 and the Minutes of the 70th meeting of the Board of Governors dated 19.9.2001 were duly approved by the Chairman. (True copies are Annexures MA-1, MA-2 and MA-3). Therefore, it has to be said that decision has been taken by the Board of Governors.

6. The applicant has filed an additional rejoinder denying all the contentions raised in Annexures MA-1, MA-2 and M.A-3 and further stating that, in Annexure M.A-3 document, the decision taken by Academic Advisory Committee are required to be placed before the Board of Governors for approval. The decisions taken by the committee on 13.1.2003 and 15.1.2003 were never placed before the Board of Governors for approval and therefore, it has to be said that there is no decision taken by the Board of Governors. Therefore, Section (48) of Education Code is violated. Only CBSE is empowered to change the Academic pattern or duration or qualification of teachers. CBSE conducts examination, issue certificates, frame syllabus and sanction permission for schools. Therefore, the decision contained in MA-1 and M.A-2 has no sanctity.

7. Learned counsel for respondents on 14.11.2005 has also filed a statement and contended that an order dated 11.8.2005 (Annexure R-1) has been issued to the effect. It can be seen from Annexure R-1 that the said order applies only to non-scholastic subjects like Arts, Music, Library and computer awareness etc. As the applicant is a PG Teacher in Mathematics, there is no change in the number of periods for classes 1 to 12.

8. Shri P.V.Mohanan and Shri K.P.Dandapani, learned counsel appeared for

the applicants and Shri Elvin Peter P.J. and M/s Iyer & Iyer and Shri TPM Ibrahim Khan, SCGSC appeared for the respondents.

9. Learned counsel appearing for the parties have taken us to various pleadings, evidence and material placed on record. Learned counsel for the applicant argued that, there is no consistent policy adopted by the Board of Governors of KVS regulating the workload, working hours and staff pattern of teaching staff. The Board of Governors is the competent authority for framing Rules, Regulations and Resolutions regulating the conditions of service, including workload and staff pattern. The Board of Governors is only vested with the power to frame and fix workload of teachers. This power is not delegated to the Deputy Commissioner. Annexures A7 and A8 dated 13.2.2003 issued by the Deputy Commissioner who is a lower authority, has no competency and lacks jurisdiction. It affects a large number of teaching staff, which is illegal and opposed to public policy and is violative of Articles 14 and 16 of the Constitution. The teachers have got legitimate and reasonable expectation that they will be heard before a decision is taken drastically changing their service conditions.

10. Learned counsel for the respondents on the other hand persuasively argued that the staff appointed by the KVS is liable for transfer anywhere in India and staff sanctioned strength is determined by a scientific study and the teachers who are found excess to requirement are deployed as per rules. Though there is an increase in teaching period, the total working hours have remained the same and therefore, no prejudice have been caused and excess teachers are deployed to other places on transfer, which cannot be faulted. This is done in administrative convenience.

11. We have given due consideration to the arguments, evidence and material placed on record. The challenge is against A-7 and A-8 orders increasing the workload of teaching staff, by which the individual applicants have been transferred on excess deployment. The applicants are challenging the O.M. itself on the initial ground that, the authority, the Deputy commissioner who has passed the order, has no competency to pass such orders. It is borne out from the records that, the policy decisions are to be taken by the Board of Governors of KVS regulating the workload, working hours and staff pattern of teaching staff. Admittedly, the Board of Governors have framed the rules and regulations

regarding the service conditions including the staff pattern. The powers to frame and fix the workload of teachers are vested with them. One of the main grounds that has been taken by the applicants is that, the Deputy commissioner, who has issued the order has no power on delegations. It is also submitted that there is no order of authentication enabling the Deputy Commissioner to issue orders in the name of Board of Governors. In this context our attention is drawn to Clauses 17 & 18 and 24 of the Education Code, as mentioned in the O.A, the operative portion of which reads as follows:

Clause 17 :

“The Board of Governors

The Board of Governors is the executive body through which the Sangathan discharges its responsibilities to fulfill the objectives set forth in the Memorandum of Association. The board is responsible for the management of all affairs and funds of the Sangathan and has authority to exercise all powers of the Sangathan. The Ministry of Human Resources Development who is the Chairman of the Sangathan is also the Chairman of Board of Governors.

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The Board shall meet as and when the Chairman may consider it necessary. It shall however, meet at least three times in a year. For every Meeting of the Board, at least ten days notice shall be given in writing to each member. Four members of the Board present in person shall constitute a quorum at any meeting.”

Clause 18 :

“B. Academic Advisory Committee
(a) Composition:

Vice Chairman, KVS	- Chairman
Commissioner, KVS	- Member

To be nominated by the Chairman of the Sangathan from amongst the outstanding Educationist	- Member
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Deputy Commissioner (Acad.), KVS	- Member Secretary
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The Board may, by resolution, appoint Advisory Board or other committees or bodies including Vidyalaya Management committees with such powers as it may think fit, and also dissolve any of the committees and advisory bodies set up by it.

Constitution and Procedure :

The scheme will cover all regular employees of the Sangathan except Group – A Officers.

The Machinery will supplement, and not replace, the facilities provided to employees to make individual representations, or to associations of employees to make representations on matters concerning their respective constituent service grades etc.

The respondents produced Annexure MA-1 dated 23.1.2003, the Minutes of the 22nd Meeting held on 15.1.2003 at the Office of Vice-

Chairman, Kendriya Vidyalaya Sangathan, the operative portion of which reads as follows:

The meeting was held to review the decision taken in 21st Academic Advisory Committee on item No.3 regarding Workload of Teachers. As per the decision, teachers of all categories were to have 36 periods per week. The review was necessary because uniform workload for all teachers would not be desirable as category-wise, nature of duties differ.

The Committee decided that the workload of teaching periods may be fixed as follows:-

PGT – 33 period per week

TGT – 36 periods per week

PRT – 39 periods per week

The scheme would be effective from the session 2003-2004. Staffing norms may be modified accordingly by the Commissioner, Kendriya Vidyalaya Sangathan. A review may be taken up after a period of 5 years to gauge its effectiveness.

12. The respondents would contend that the 22nd Meeting of the Board of Governors has been held on 15.1.2002, ratifying the decision taken in A8. The rule stipulates that the orders have been passed by the competent authority i.e. Academic Advisory Committee which duly empowered by the Board of Governors of the KVS. The Minutes of the 21st & 22nd Academic Advisory Committee Meeting of KVS held on 13.1.2003 and 15.1.2003 are already on record and the orders passed by the Academic Advisory Committee have the force and power of the Board of Governors decision.

13. On going through the rule position, we find that, the only stipulation is that the orders on these matters were passed by the Deputy Commissioner, for that purpose, the Deputy Commissioner need to be placed the matter before the Advisory Committee, and if a contra decision is taken in other words, not approved, this will not come into force and it may not be in operative. What is

required as per rules is ratification and not prior approval which has been complied in this case. Therefore, that ground will not stand hold good.

14. The next limb of the argument that, the increase in the number of period of teaching staff constitute a change in the service conditions of the applicant to evaluate books, unit test assignments, projects, cumulative tests and session ending examination form an integral part of teaching learning process, which cannot be treated as extra work. In a teaching institution like Kendriya Vidyalaya, a teacher has to plan the work according to the requirements of the pupil. So far as the UGC norms are concerned, they are entirely different and cannot be made applicable in respect of school teaching as they are meant for college teachers imparting higher education and doing research work. Correction of note books, test assignments etc. are the integral part of his/her duty. The further contention that the insistence to teach and evaluate the answer scripts properly is overburdening them is not in consonance with the profession of teaching, as it involves future of children. On going through the change in the norms we find that, the teaching periods have been increased by 3 periods per week only, and there has been no alteration in the total working hours of the teachers. The averments and arguments advanced by the counsel that, skill oriented coaches, artisans or musicians are engaged as experts in a particular discipline where the regular Physical Education Teacher, WET etc. do not have the specialization. The Physical Education Teachers are employed for a short term limited to some block periods in a week to develop particular skills in the students in the areas in which the students are interested. The contention of the respondents that the payment to these teachers is not made from the salary account but the same is made from collections from the students as well as from Vidyalaya Vikas Nidhi, has certain force. Therefore, the applicant cannot have a good case on these grounds.

15. Apart from that, the matter under dispute is purely regarding the administration of curriculum and the fixing of norms/periods, distribution of staff strength, allotment of work which are challenged in these O.As., are absolutely a policy matter which lies with the domain of the administration. Further, we find from the material placed on record that a scientific study has been made by the respondents to arrive at such a conclusion. It is natural that there would be alternations in the allotment of work and there would be some surpluses also. The only thing that the respondents should observe is to keep in mind the overall interest of the children and to minimize the sufferings of the teachers as

well. Since this being absolutely a policy matter and based on the Committees evaluation, we are of the considered view that, the interference of this Tribunal is not strictly called for in this issue. The Hon'ble Supreme Court while dealing with such issues remitted that, the Court/Tribunal is not justified in interfering in such matters. The following citations are in this regard.

State of Himachal Pradesh and another Vs. Jafli Devi (Smt) (1997) 5 SCC 301;

Karam Pal and Others Vs. Union of India and others (1985) 2 SCC 457

Commissioner, Corporation of Madras Vs. Madras Corporation Teachers Mandiram and others (1997) 1 SCC 253;

16. The Hon'ble Supreme Court has held that, the policy decisions of the Government cannot be interfered by the Courts/Tribunals and the court shall not interfere with the scheme of working brought out by the Government merely on the ground of hardship.

17. In the circumstances, we are of the view that, the applicants have not made a good case. However, considering the fact that the applicants' transfer has not been effected as per the new guidelines stipulating the transfers within the region and the applicants have been transferred to far of places, we are of the considered view that, as far as possible the respondents should explore the possibility of accommodating the applicants in the nearby places within the region as laid down in the guidelines. Since they are continuing in the work as per the interim orders of this Tribunal, any disturbance may affect the study of the school children. Taking confidence from the decision of the Hon'ble Supreme Court reported in Director of School Education, Madras and others Vs. O.Karuppa Thevan and another (1994) Supp (2) SCC 666, we direct the respondents, not to disturb the applicants from the present station till the end of the current academic year and in the meantime, the respondents shall explore the possibilities to accommodate the

applicants in the nearby station. Appropriate orders shall be passed at the time when the general transfer orders are being processed well before the next academic year.

18. O.As are disposed of as above. In the circumstances, no order as to costs.

Dated the 12th January, 2006.

K.V.SACHIDANANDAN
JUDICIAL MEMBER

rv

SATHI NAIR
VICE CHAIRMAN