

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.355/2003.

Wednesday this the 30th day of June 2004.

CORAM:

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

Lucy Jacob (Primary Teacher),
Kendriya Vidyalaya, K.V.No.1,
Calicut).

Applicant

(By Advocate Shri. K.P.Dandapani)

Vs.

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Sing Marg,
New Delhi -110 016.
2. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, I.I.T. Campus,
Chennai-36.
3. The Principal,
Kendriya Vidyalaya No.1,
Calicut.

Respondents

(By Advocate M/s Iyer & Iyer)


The application having been heard on 30.6.04
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.KV.SACHIDANANDAN, JUDICIAL MEMBER

The applicant who was working as Primary Teacher at Binnaguri(West Bengal) was transferred to KV No.I Calicut vide (A1) order dated 31.3.2003 and she was relieved from Binnaguri and reported to Calicut on 12.4.2003. But she was informed that there was no vacancy at KV No.I Calicut to accommodate the applicant and therefore she was not able to join duty. Aggrieved by the said action on the part of the respondents the applicant has filed this O.A. seeking the following main reliefs:

- i direct the 3rd respondent to permit the applicant to join at Calicut (Kozhikode) K.V.No.I, with effect from 12.4.2003;



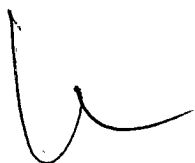
- ii. declare that the applicant is entitled to be posted at Calicut(Kozhikode), K.V.No.I in the displacement vacancy of Smt.Subhanjali, who has been relieved on 8.4.2003;
- iii. to direct the Ist respondent to create a supernumerary post of Primary Teacher at Calicut (Kozhikode) KV No.I, to accommodate the applicant.

2. The respondents have filed a detailed reply statement contending that the respondents could not permit the applicant to join the school by reason for certain circumstances which are beyond her control. In short, eleven primary teachers were transferred from KV No.I Calicut to various other KVs in the country. Three of the teachers transferred to KV Trichur were not able to be relieved as the transfers of their counterparts from KV Trichur were under judicial proceedings. On account of this controversy, 3 teachers posted to KV Trichur out of 11 primary teachers who were proposed to be relieved on transfer, could not join at Trichur and they remained at KV No.1 Calicut. This was on account of a Court Order of the Hon'ble High Court in O.P.10935/2003 that no teacher shall be relieved from KV Trichur, and the applicant could not join duty in the said school.

3. Shri K.P.Dandapani appeared for the applicant and M/s Iyer and Iyer appeared for the respondents.

4. Learned counsel on either side have taken me to various pleadings, material and evidence on record. I have given due consideration to the arguments advanced by the counsel. This Court has issued an interim order dated 29.4.03 and directed the respondents as follows:

"As an interim measure, I take note of the fact that the applicant who has been under orders of transfer from West Bengal to Calicut finds that the vacancy against which she was posted is no longer available. The respondents do not explain as to how the vacancy has




disappeared. It is essential that the applicant should be accommodated at Calicut itself by creating, if necessary, a supernumerary post, till an alternate arrangement is ordered. Respondents are therefore, directed to create a supernumerary post and to accommodate the applicant at KVS Calicut, to which she was posted on transfer."

5. As per this order of the Tribunal the applicant was accommodated at KV Calicut from 30.4.2003 and ever since she is continuing in the same post. The respondents in their reply statement contended that the respondents have taken a plea that A-1 transfer order could not be implemented only due to the fact that the teachers who were transferred to KV Trichur, could not be accommodated for reasons beyond the control of this respondent and no willful default or negligence has been committed by the respondents and due care and action was taken to inform the school where the applicant was earlier working not to relieve her till a vacancy arises at KV No.I Calicut and the matter had been set at rest with the relief of teachers to join KV Trichur on 27.5.2003, the grievance of the applicant no longer subsists.

6. Learned counsel of the applicant submitted that on the strength of the interim order passed by this Tribunal the applicant is continuing in service and requested that the applicant may be regularised from 12.4.03.

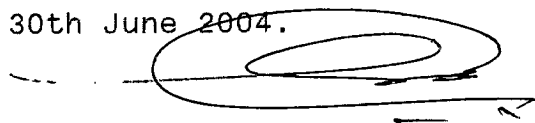
7. On going through the facts and circumstances of the case narrated in the O.A. and the arguments advanced in the Court, I am convinced that the applicant could not join the school since she was not permitted by the respondents. In other words there was no fault or any lapse on the part of the applicant in reporting to the KV No.I Calicut. The fact that she was relieved from West Bengal school, which action was taken by the



respondents and therefore, proper arrangements should have been made by them for joining in the school at Calicut. The explanation that this is due to a Court order pertaining to Trichur KV School she has not been able to accommodate, cannot be a reason for not regularizing her service. Therefore, this Court is of the view that it should be treated that the applicant has been joined KV No.I Calicut from 12.4.03 and she is entitled to the consequential benefits.

8. The O.A. is disposed of as above. In the circumstance no order as to costs.

Dated the 30th June 2004.

A handwritten signature in black ink, consisting of a large, stylized 'S' shape with a horizontal line extending to the right.

K.V.SACHIDANANDAN
JUDICIAL MEMBER

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