

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 180/2006

This the 22nd day of January, 2009

Hon'ble Mr. M. Kanthaiah, Member (J)
Hon'ble Dr. A. K. Mishra, Member (A)

Smt. Sushma Misra aged about 57 years wife of Shri Ravindra Nath Misra resident of 269/75, Birhana, Lucknow (posted as Post Graduate Teacher (Hindi) in Kendriya Vidyalaya, Lucknow Cantt. Post Office- Dilkusha, Lucknow Cantt.

Applicant

By Advocate: Sri R.C.Singh.

Versus

1. Kendriya Vidyalaya Sangathan, New Delhi through its Commissioner.
2. Commissioner, Kendriya Vidyalaya Sangathan, New Delhi.
3. Education Officer, Kendriya Vidyalaya Sangathan, New Delhi.
4. Principal, Kendriya Vidyalaya, Lucknow Cantt. Post Office, Dilkusha, Lucknow Cantt.

Respondents

By Advocate: Sri Surendran P.

ORDER

HON'BLE DR. A.K. MISHRA, MEMBER (A)

This application has been filed challenging the order dated 6/7-3-2006 issued by respondent No. 3 in the matter of treating the period of absence of the applicant from 9.4.2003 to 20.8.2004.

2. The applicant was transferred from Lucknow on being found surplus. She made a number of representations mentioning her state of disability and requesting to adjust her at Lucknow. Her representations were not taken into consideration. She filed O.A. No. 489/2003 and thereafter O.A. No. 16 of 2004. This Tribunal quashed the orders of transfer, her relief from the school at Lucknow. The respondent No.1 was directed to reconsider her case in view of availability of vacancies at Lucknow where she could be adjusted.

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Pursuant to this direction, the respondents decided to cancel the order of transfer and permitted her to continue at Kendriya Vidyalaya, Lucknow Cantonment against the available vacancy. She rejoined at the post on 20.8.04, and represented that the period of her absence from 9.4.2003 to 20.8.2004 should be treated as on duty and she should be given all consequential benefits. Her representation in this regard was considered and it was decided to treat the period as leave due. to the extent leave is available in the credit of the applicant and the balance period as extra ordinary leave on private ground.

3. Learned counsel for the applicant has placed two judgments of coordinate benches of this Tribunal to support the contention that where the order of transfer is quashed by the Tribunal, it has to be deemed that such an order was not existence from the beginning. If the employee had to remain absent from duty on account of such an order, no fault can be found with the employee and it has to be treated that the absence was occasioned on account of illegal action of the employer in not allowing him/ her to join. The Hon'ble Ernakulam Bench of this Tribunal in O.A. No. 109 of 1987 in the case of M. S. Kutty Vs. Director General , Tele-Communication reported at 1988 (7) SLR , 654 passed a judgment that the absence in such circumstances should be treated as duty. In a recent judgment of the Bangalore Bench of this Tribunal in O.A. No.349/2005 in the case of K. Gopinath Vs. The Central Electricity Authority, New Delhi and others reported at 2006 (2) ATJ 237, the same principle was reiterated. If a transfer order is quashed by a Tribunal , in that event it has to be held that the employee was forcibly kept out of duty due to no fault of his /her . In such circumstances, the principle of no work no pay cannot be applied.

4. Learned counsel for the respondents relied on the judgment of the Hon'ble Allahabad High Court in Writ Petition No. 34246 of 2002 and three others in which it was held that if a teacher had been

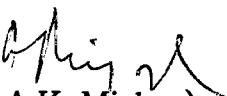
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relieved before the stay order was issued by the Tribunal and the consequential vacancy had been filled up, the principle of no work no pay will be attracted as the stay order could ^{not} be treated as quashing of the transfer order. It would be operative only from the date of passing and it could be interpreted to mean that the transfer order itself was wiped out of existence.

5. The facts of this case which Hon'ble Allahabad High Court were dealt with were different, hence can be distinguished from the facts of the present application. We find that the ratio of the judgments cited by the applicant are fully applicable to the present case. Therefore, we find merit in the submission of the applicant. The impugned order dated 6/7-3-2006 is hereby quashed. The period of absence from 9.4.2003 to 20.8.2004 may be treated as on duty and in that view of the matter, other consequential benefits as are due to the applicant may be extended to her.

6. In the result, application is allowed with the above observations.

No costs.


(Dr. A.K. Mishra)
Member (A)

HLS/-


(M. Kanthaiah)
Member (J)
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