

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Order : 4-X-04

Original Application No.305/2001.

Smt. Nalini Kapoor, W/o Sh. Pradeep Kapoor, aged about 50 years, R/o 295 AWHO Colony, Ambabari, Jaipur.

... Applicant.

v e r s u s

1. Kendriya Vidyalaya Sangathan, through its Commissioner, 18, Institution Area, Shahid Jeet Singh Marg, New Delhi 110 016.
2. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Jaipur, Gandhi Nagar Marg, Bajaj Nagar, Tonk Road, Jaipur.

... Respondents.

Mr. Surendra Sngl proxy counsel for
Mr. M. S. Gupta counsel for applicant.
Mr. V. S. Gurjar counsel for respondents.

CORAM

Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. A. K. Bhandari, Administrative Member.

: O R D E R :
(per Hon'ble Mr. M. L. Chauhan)

The applicant was initially appointed on the post of Primary Teacher in Kendriya Vidyalaya Sangathan (KVS, for short) on 1.9.80 and the course of time she came to be confirmed on the said post as she was holding the said post substantively. During her tenure as Primary Teacher she was transferred to different Schools. Lastly, the applicant was transferred from KVS Agra to KVS, NTPC, Anta (Rajasthan) where she joined on 20.09.1999. While working as such she applied for Earned Leave w.e.f. 06.11.2000 to 10.11.2000 alongwith permission to leave the Station due to the reason, "Mother is not well" and it was further stated that she is the only attendant, which fact has been disputed by the respondents in the reply, as according to the respondents, as per service record, the applicant has one Brother and three Sisters. This information has been supplied by the applicant in

her attestation form, a copy of which has been annexed by the respondents in the reply as Annexure R/1.

2. Be that as it may, the leave for the said period was sanctioned in favour of the applicant. The applicant again requested vide Registered letter dated 13.11.2000 to extend the leave upto 25.11.2000 on the same ground i.e. "Sickness of mother". Letter dated 13.11.2000 was received by the respondents on 15.11.2000 and the respondents on the same day vide letter dated 15.11.2000 allowed the extension upto 18.11.2000. A copy of these communications dated 13.11.2000 and 15.11.2000 has been placed on record by the respondents with the reply as Annexure R/2 and R/3, respectively.

3. Since the applicant has shown her inability to join despite written communications dated 15.11.2000 (Annexure R/3), the respondents by invoking the provisions of Article 81(d) of the Education Code, issued a show cause notice regarding factum of voluntary abandonment of service. Before issuing the show cause notice, the applicant was further given opportunity to join/resume the duties latest by 2.01.2001, failing which the competent authorities will have no option except to initiate disciplinary action against the applicant under provisions of Article 81(d) of the Education Code. A copy of this communication dated 29.12.2000 has also been placed on record as Annexure R/7. The applicant submitted reply to the show cause notice and ultimately the respondents vide impugned order dated 12.02.2001 (Annexure A/1), removed the applicant from service w.e.f. the date of her remaining absent from duties i.e. 19.11.2000. It is this order which is under challenge in this OA. Subsequently during the pendency of this OA, the appeal preferred by the applicant was also considered by the Appellate Authority and after going into the facts and circumstances and after affording an opportunity of personal hearing to the applicant passed order dated 09.01.2002 (Annexure A/16) whereby her appeal was rejected. Pursuant to this further development, the applicant was permitted to amend the OA and by way of *w.e.f.*

amended OA, the applicant has also challenged the validity of this order and prayed that the same be quashed and set aside. In relief clause, the applicant has prayed for quashing the impugned order dated 12.02.2001 (Annexure A/1) and order dated 09.01.2002 (Annexure A/16) passed by the Appellate Authority with further prayer that the respondents may be directed to pass appropriate order of voluntary retirement of applicant in view of application dated 04.12.2000 (Annexure A/6).

4. Notice of this application was given to the respondents. Respondents have filed reply. In the reply, it has been stated that the applicant applied for Earned Leave w.e.f. 06.11.2000 to 10.11.2000 on account of "Sickness of Mother" and subsequently applied for extension of the leave upto 25.11.2000 vide communication dated 13.11.2000 which was received on 15.11.2000. The applicant vide letter dated 15.11.2000 was informed that the leave has been extended only upto 18.11.2000 and leave beyond 19.11.2000 was refused due to the fact that the important work of the Vidyalaya was suffering (teaching). Thereafter the applicant vide communication dated 22.11.2000 shows her inability to join and in fact she has requested to extend the leave on compassionate grounds. It is further stated that the applicant neither requested for voluntary retirement after completion of 20 years of service nor a notice as alleged by the applicant was ever served. It is further stated that vide letter dated 25.11.2000 the Principle of the Vidyalaya explained the urgency of the work related to teaching, correction in reference to Half Yearly examination, result preparation etc. and, therefore, she was directed to join/resume the duties immediately latest by 29.11.2000 (Annexure R/5). The applicant failed to join the duties. The respondents have also placed on record Memorandum dated 30.11.2000 (Annexure R/6) whereby the attention of the applicant was invited to the letter dated 15.11.2000 whereby leave was refused w.e.f. 19.11.2000 and letter dated 25.11.2000 whereby she was directed to report for duties latest by 29.11.2000 in view of the urgency of

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work. She was given an opportunity to explain the reason for not obeying the aforesaid instructions latest by 04.12.2000 otherwise necessary disciplinary action will be taken against her as per existing Rules. The respondents have also placed on record Memorandum dated 29.12.2000 (Annexure R/7), whereby she was again directed to join her duties latest by 02.01.2001 otherwise respondents will have no option except to initiate disciplinary action against her under Rule 81 (d) of Education Code. Since the applicant has abandoned the service, as such, notice in terms of provisions contained under Article 81(d) of Education Code was given and it is only after considering the reply given by the applicant that the impugned order Annexure A/1 has been passed. The respondents have categorically denied that the applicant has sent any notice for voluntary retirement otherwise her case could have been considered by the appropriate authority.

4.1 It is further stated in the reply that even during the pendency of the appeal the applicant was personally asked by the competent authority, if she was interested and willing to serve the organisation. The applicant expressed her willingness to join the duties only in the event if she is posted at Jaipur on her reinstatement.
4.2 The applicant has filed the rejoinder thereby reiterating the submissions which she has already made in the amended OA.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

6. In this case the applicant has made twofold prayers. First for quashing of the removal order passed by the appointing authority which was confirmed in appeal and second that she may be permitted to seek voluntary retirement in view of the application dated 04.12.2000 (Annexure A/6).

7. Let us first examine the second prayer made by the

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applicant whereby she has prayed that the respondents may be directed to pass appropriate order of Voluntary retirement of the applicant in view of the application dated 04.12.2000 (Annexure A/6).

8. At the outset, it may be stated that the applicant has not made any application for voluntary retirement to the authorities concerned. Learned counsel for the applicant was asked to point out any contemporaneous record/application whereby the applicant has requested the authorities concerned for grant of voluntary retirement. Learned counsel for the applicant could not point out any such application. The submission made by the applicant that she requested the respondents for voluntary retirement vide application dated 04.12.2000 (Annexure A/6) cannot be accepted at all. Vide said letter the applicant has requested the respondents to intimate whether she fulfills the conditions for voluntary retirement. At this stage, it will be useful to quote the letter dated 04.12.2000 (Annexure A/6), which is in the following terms :-

" Annexure A/6

Date : 4.12.2000

Principal
K.V.NTPC
ANTA

VOLUNTARY RETIREMENT IN CASE I HAVE COMPLETED
20 YEARS PENSIONABLE SERVICE

Sir,

I joined KV as a PRT on 1.9.1980 and have completed 20 years service on 1.9.2000. I am now eligible for pension on retirement.

You are requested to check with Kendriya Vidyalaya Sangathan, New Delhi through AC, Jaipur if I have fulfilled the requisite conditions to be eligible for pension. In that case I would like to submit my paper for Voluntary Retirement.

In case I have not fulfilled any condition the
same may please be intimated to me at the
earliest so that I can fulfill these

conditions. This confirmation may please be obtained from DC (Admn.) KVS, New Delhi.

Till then I request EOL due to my mother's ailment.

Yours Sincerely,

(NALINI KAPUR)"

Thus from the reading of this letter it is clear that the applicant wanted to submit her paper for voluntary retirement and for that purpose she sought certain information from the respondents but the fact remains that the applicant has never submitted such letter for voluntary retirement to the authorities. As such, in the absence of any such request for voluntary retirement, it was not incumbent and legally permissible for the respondents to pass any such order in that behalf. Accordingly, we are of the view that the prayer of the applicant that the respondents may be directed to pass appropriate order of voluntary retirement of the applicant in view of the application dated 04.12.2000 (Annexure A/6) cannot be accepted.

8.1 Now another question which requires our consideration is whether the order of the respondents whereby the applicant has been removed from service of KVS w.e.f. the date of her remaining absent from duty i.e. 19.11.2000 and confirmed by the appellate authority is legally sustainable. For challenging the validity of these orders, the applicant has made two submissions. First is that such order could not have been passed in view of the request made by the applicant for voluntary retirement vide application dated 22.11.2000 and 04.12.2000, Annexure A/5 & A/6, respectively and in the absence of any order to the contrary the applicant shall be deemed to have voluntary retired with immediate effect. The second submission made by the applicant was that the provisions of Article 81(d) of the Education Code is inconsistent to the provisions of the CCS (CCA) Rules 1965 and the service of the applicant could have been removed only after holding a proper inquiry in terms

of law laid down by the Apex Court and inconfirmity with Article 311 of the Constitution of India.

8.2 So far as the first submission made by the learned counsel for the applicant that she could not have been removed from service as no orders to the contrary on the applications dated 22.11.2000 (Annexure A/5) and 04.12.2000 (Annexure A/6), for voluntary retirement was ever passed as such she would be deemed to have voluntary retired with immediate effect, it may be stated that there is no substance in the submissions made by the applicant. We have reproduced letter dated 04.12.2000 (Annexure A/6) in the earlier part of the judgement. This letter cannot be termed as an application for voluntary retirement. Similarly letter dated 22.11.2000 (Annexure A/5) cannot also be termed as application for voluntary retirement. Vide this application the applicant has submitted that she will be submitting application for voluntary retirement separately. At this stage, it will be useful to quote the last para of this letter where such prayer has been made, which is in the following terms :-

" Annexure A/5

Date : 22.11.2000

To

PRINCIPAL
Kendriya Vidyalaya (NTPC)
ANTA

EXTENSION OF LEAVE ON COMPASSIONATE GROUNDS

Sir,

References.....

Further, I have completed 20 years of pensionable service as per my records on 01.09.2000 and an application for voluntary retirement with full benefits is being forwarded separately.

Yours Sincerely,

(NALINI KAPUR)

In fact no such application was ever submitted by the applicant for voluntary retirement. Thus, the applicant has not made out any case on this ground.

9. Similarly the contention of the applicant that the action taken by the respondents against the applicant in terms of Article 81(d) of the Education Code is contrary to the provisions contained in CCS (CCA) Rules 1965/ under Article 311 of the Constitution of India can also not be accepted. Before this contention is taken note of it will be useful to take notice of the decision rendered by the Delhi High Court in CWP No.1700/2003 in the case of Shanker Sharma vs. The Commission, Kendriya Vidyalaya Sangathan, New Delhi, decided on 05.03.2003 which is squarely applicable to the facts of this case. In this case Hon'ble High Court has categorically held that "Article 81(d) of the Education Code clearly provides that if any employee does not report for duty within fifteen calendar days and does not satisfactorily explain the reasons for such absence, he is deemed to have voluntarily abandoned his service, thereby, provisionally losing lien on his post." Admittedly, the applicant absented herself from duty and vide letter dated 15.11.2000 she was specifically told that her leave has been extended upto 18.11.2000 and leave beyond 19.11.2000 was refused due to the fact that the important work of the Vidyalaya was suffering. Similarly vide communication dated 25.11.2000 (Annexure R/5), she was told that the leave beyond 19.11.2000 onwards has already been refused vide letter dated 15.11.2000 and it was also mentioned that due to the urgency of work related to teaching, correction and half yearly examination, result preparation, she is directed to report on duty immediately latest by 29.11.2000. Similarly the respondents have also placed on record Memorandum dated 30.11.2000 (Annexure R/6), whereby opportunity was given to the applicant to express the reason for not obeying the earlier instructions and why the disciplinary action may not be initiated against her as per existing rules. Not only this, vide letter dated 29.12.2000 (Annexure R/7), the applicant was again directed to join her duty latest by 02.01.2001 otherwise Vidyalaya will have no

option except to initiate disciplinary action against her under Article 81(d) of Education Code.

9.1 Despite these repeated communications, the applicant absented herself from duty. Under these circumstances, no fault can be found with the action of the respondents in resorting to the special provisions contained under Article 81(d) of Education Code which is meant to curb the indiscipline on account of absenteism. Not only this, the Appellate Authority while hearing the appeal, the applicant was giving opportunity of personal hearing and she was apprised whether she was willing to be reinstated in service of KVS but the applicant insisted that she is willing to be posted only in KVS Jaipur on her reinstatement. In view of this we do not find any infirmity with the order passed by the appellate authority whereby the appeal of the applicant was rejected and it was concluded that the applicant is not interested in serving the organisation until and unless she is given a choice posting and KVS having all India transfer liability cannot afford such luxury.

10. At this stage, it will be useful to quote the relevant portion of the order which thus reads as under :-

" Annexure A/16

18, Institutional Area,
Shahid Jeet Singh Marg,
New Delhi 110 016.

No. F.9-74/2001-KVS(Vig.)

Dated 09.01.2002

ORDER

Whereas.....

AND WHEREAS keeping in view the above facts the undersigned, by taking a lenient view of the matter, asked the appellant in the personal hearing, whether she is willing to be reinstated in service of KVS? But, she has given her willingness to be posted only in Kendriya Vidyalayas at Jaipur on her reinstatement.

NOW THEREFORE, the undersigned has come to the conclusion that she is not interested in serving the organisation until and unless she is

given a choice posting. K.V.S. having all India transfer liability cannot afford such a luxury. In view of foregoing, the undersigned is of the view that she does not deserve any consideration and orders of the Assistant Commissioner need not be interferred with. Accordingly, her appeal stands rejected.

(D. S. BIST)
Jt. Commissioner (Admn.)
and
Appellate Authority."

11. Thus in view of what has been stated above, we are of the view that no fault can be found with the action of the respondents in invoking Article 81(d) of the Education Code terminating the services for her voluntary abandonment of service.

12. So far as the submission of the learned counsel for the applicant that Article 81(d) of the Education Code and the action taken against the applicant pursuant thereto run contrary to provision contained in Article 311 of the Constitution/CCS (CCA) Rules, it may be stated that the matter is squarely covered by the judgement rendered by the Delhi High Court in CWP No.4485/2002 decided on 01.11.2002 in the case of Prem Juneja vs. Union of India. At this stage, it will be useful to quote relevant portion of the judgement which is in the following terms :-

"10. It was next contended that Article 81(d) of the Education Code is violative of Articles 14 and 16 of the Constitution. In order to appreciate the submission, we consider it necessary to refer to Article 81(d) of the Education Code. Article 81(d) of the Education Code provides as under :-

"Article 81(d)....voluntary abandonment of service.

(1) If an employee has been absent/remains absent without sanctioned leave or beyond the period of leave originally granted or subsequently extended, he shall provisionally lose his lien on his post unless :-

(a) he returns within fifteen calender days of the commencement of the absence or the expiry of leave originally granted

subsequently extended, as the case may be and.

(b) satisfied the appointing authority that his absence or his inability to return on the expiry of the leave as the case may be was for reasons beyond his control. The employee not reporting for duty within fifteen calendar days and satisfactorily explaining the reasons for such absence as aforesaid shall be deemed to have voluntarily abandoned his service and would thereby provisionally lost lien on his post.

(2) An employee, who has provisionally lost lien on his post in terms of the aforesaid provisions, shall not be entitled to the pay and allowances or any other benefit after he has provisionally lost lien on his post.

Provided that payment of such pay and allowances will be regulated by such directions as the appointing authority may issue while ordering reinstatement of the employee in terms of Sub-clause (6) of this Article.

(3) In cases falling under Sub-Clause (1) of this Article, an order recording the factum of voluntary abandonment of service by the employee and provisional loss of his lien on the post, shall be made and communicated to the employee concerned at the address recorded in his service book and/or his last known address, to show cause why the provisional order above mentioned may not be confirmed.

(4) The employee may make a written representation to the appointing authority, within ten days of receipt of the order made under sub-clause (3).

(5) The appointing authority may on receipt of the representation, if any, an perusal of materials available on record as also those submitted by the employee, grant, at his discretion, an oral hearing to the employee concerned to represent his case.

(6) If the appointing authority is satisfied after such hearing that the employee concerned has voluntarily abandoned his service in terms of the provisions of Sub Clause (1) of this Article, he shall pass an order confirming the loss of employee's lien on his post, and, in that event, the employee concerned shall be deemed to have been removed from the service of the Kendriya Vidyalaya Sangathan with effect from the date of his remaining absent. In case the appointing authority is satisfied

that the provisions of Sub-Clause (1) of Clause (d) of this Article are not attracted in the facts and circumstances of the case, he may order reinstatement of employee to the post last held by him, subject to such directions as he may give regarding the pay and allowances for the period of absence.

(7) APPELLATE AUTHORITY : An employee aggrieved by an order passed under sub-clause (6) of this Article may prefer an appeal to the appellate authority as notified by the Kendriya Vidyalaya Sangathan from time to time.

(8) PERIOD OF LIMITATION FOR APPEALS : No appeal preferred under this Article shall be entertained unless it is preferred within a period of 45 days from the date on which a copy of the order appealed against is served on the appellant.

Provided that the Appellate Authority may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant was prevented by sufficient cause from not preferring the appeal in time.

(9) FORM AND CONTENTS OF APPEAL : Form and contents of appeal shall mutatis mutandis be the same as prescribed under the CCS (CCA) Rules 1965.

(10) CONSIDERATION OF APPEAL : The appellate authority shall consider :

Whether the requirements laid down under sub-clause (1),(3),(5) and (6) of this Article have been complied with and if no whether such non-compliance has resulted in failure of justice ; and

Whether the order confirming loss of employee's lien on his post and his consequent removal from service is warranted on record ;

and pass order confirming, modifying or setting aside the order passed under sub-clause (6) of this Article.

(11) IMPLEMENTATION OF ORDER OF APPEAL : The appointing authority shall give effect to the order passed by the Appellate Authority.

(12) FINALITY OF ORDER PASSED IN APPEAL : The order of the Appellate Authority made under this Article shall be final and shall not be called in question by way of any further application/petition for revision, review, etc.

WV

(13) APPLICABILITY OF THE CCS (CCA) RULES : In matters falling under this Article and in those matters alone, the procedure prescribed for holding inquiry in accordance with the CCS (Classification, Control & Appeal) Rules 1965 as applicable to the employees of the Kendriya Vidyalaya Sangathan as also other provisions of the said rules which are not consistent with the provisions of this Article shall stand dispensed with.

(14) REMOVAL OF DIFFICULTIES : Notwithstanding anything contained in any rule or order for the time being in force in KVS, the Commissioner KVS may, with the approval of the Vice-Chairman, KVS issue such instructions as he may deem fit to remove difficulties in the implementation of these provisions.

(15) POWER TO ISSUE INSTRUCTIONS : Without prejudice to the generality of the foregoing provisions, the Commissioner, Kendriya Vidyalaya Sangathan may with the approval of the Vice-Chairman. Kendriya Vidyalaya Sangathan, issue from time to time (whether by way of relaxation of the aforesaid provisions or otherwise)general or special orders as to the guidelines, principles of procedures to be followed in giving effect to the provisions of this Article."

11. A reading of the aforesaid Article 81(d) leaves no manner of doubts that it does not suffer from any of the vices on the basis of which it has been attacked by the learned counsel for the petitioner. We are not impressed by the submission of the learned counsel for the petitioner that the aforesaid Article 81 (d) of the Education Code is violative of the equality clause. There is nothing in Article 81(d) of the Education Code which makes it unjust, unfair and unreasonable. It is meant to deal with an unwarranted situation of absenteeism. Absentism is bane of public service. The erring employees have been taking advantage of the procedure and mocking at the system. Unauthorised absenteeism in offices is rampant. There are instances galore where the employees remained absent for several years and yet were able to successfully challenge the orders of their terminations. This had given undue advantage to the erring employees. They not only were able to get the orders of termination quashed or set aside, but they were also reinstated with full back wages. This situation cannot be allowed to prevail. The indiscipline must be curbed in order to infuse efficiency and discipline in the services. It was possibly in this view of the matter that Article 81(d) of the Education Code was framed.

12. Article 81(d) clearly makes a provision for providing an opportunity to an employee to show cause against the provisional view of the concerned authority that the employee has lost his or her lien on the post on the ground of his unauthorised absence from duty. Such an employee who remained absent, can render his explanation. In case the Disciplinary Authority rejects the explanation and passes an order confirming loss of lien on the post held by him or her and removing him from service, he or she can file an appeal before the Appellate Authority. The Supreme Court in Aligarh Muslim University and others v. Mansoor Ali Khan, 2000 (6) SCALE 125, while dealing with Rules 5(8)(i) of the Aligarh Muslim University Revised Leave Rules, 1969, which rule is identical to Article 81(d) of the Education Code, held as follows :-

"11. It will be seen that Rule 5(8)(i) applies to an employee who absents himself from duty without having previously obtained leave or where he has failed to return to his duties on the expiry of leave without having previously obtained further leave. Then Rules 5(8)(i) refers to the manner in which the employee is to be given an opportunity. If the Appointing Authority regards the explanation as not satisfactory, the employee concerned shall be deemed to have vacated his post without notice from the date of absence without leave. In the context of Rule 10 of the 1972 Rules, which deems vacation of Post if the absence was 5 years, it must follow that the above Rule 5(8)(i) applies to absence for a period of less than 5 years.

12. Rule 5(8)(ii) deals with a different situation. It relates to a case where such an officer is permitted to rejoin duty. It says that if he is so permitted, he will be entitled to no leave allowance or salary for the period of such absence and such period shall be debited against his leave account as leave without pay. The rule says that these consequences will not, however, follow if his leave is extended by the authority empowered to grant leave. Then in its latter part, Rule 5(8)(ii) refers to another situation enabling disciplinary action to be taken treating unauthorised absence as misconduct. If a person has been absent without leave being sanctioned, he could be proceeded against for misconduct.

13. These are the different situations in which Rule 5(8)(ii) apply. Point 1 is decided accordingly.

Point 2 :

14. Rule 10(c)(i)(ii) of the 1972 Rules reads as follows :

"Rule 10: Employee absent from duty:

(a).....

(b).....

(c) (i) No permanent employee shall be granted leave of any kind for a continuous period of five years ;

(ii) When an employee does not resume duty after remaining on leave or a continuous period of five years, or whether an employee after the expiry of his leave remains absent from duty, otherwise than on foreign service or on account of suspension for any period which together with the period of the leave granted to him exceeds five years, he shall, unless the Executive Council in view of the exceptional circumstances of the case otherwise determine, be deemed to have resigned and shall accordingly cease to be in the University Service."

It will be seen that Rule 10 deals with a different aspect. Now Rule 10(c)(i) states that no permanent employee shall be granted leave of any kind for a continuous period of more than 5 years. However, Rule 10(c)(ii) stats that when an employee does not resume duty after remaining on leave for a continuous period of 5 years, or where an employee-after the expiry of his leave-remains absent from duty (otherwise than on foreign service or on account of suspension) for any period which together with the period of the leave granted to him exceeds 5 years, he shall, (unless the Executive Council in view of the exceptional circumstances of the case otherwise determine), be deemed to have resigned and shall accordingly cease to be in the University Service. This is the purport of Rule 10(c). Point 2 is decided accordingly."

13. Thus, it is clear from the aforesaid decision that the Supreme Court did not find fault with the action of the University in resorting to Rule 5(8)(i) of the Aligarh Muslim University Revised Leave Rules, 1969 where an employee failed to resume duty after the expiry of leave granted to him. He was deemed to have vacated his post from the date of his absence without leave by the University. Neither the said rule nor the action of the University thereunder was held to be violative of the principles of natural justice or any of the constitutional functions. Taking cue from the aforesaid judgment of the Supreme Court, it seems to us, that time has come when effect must be given to rules like Article 81(d) of the Education Code so that the malady of absentism is

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remedied. Since Article 81(d) of the Education Code provides an opportunity to the employee to furnish his/her explanation in regard to the provisional view of the competent authority that the employee has lost his/her lien on the post on account of his/her absence from duty and a post decisional hearing in the form of an appeal is also provided, the challenge based on the violation of principles of natural justice does not hold water and stands neutralised.

14. It is noteworthy that the Supreme Court in Aligarh Muslim University's case (supra) also rejected the challenge to the action taken against the appellant therein on the ground that no prejudice was caused to him for want of notice under Rule 5(8)(i) of the Aligarh Muslim University Revised Leave Rules, 1969. The question of prejudice in the instant case does not arise as the petitioner has not given any worthwhile explanation for her absence from duty. An opportunity was given to her by the Competent Authority to furnish her explanation by way of show cause notice under Article 81(d) of the Education Code which opportunity was availed of. The explanation of the petitioner for her absence that she had family problems was considered by the Joint Commissioner before passing the order dated May 4, 2001. Any further opportunity to represent her case will not advance the principles of natural justice.

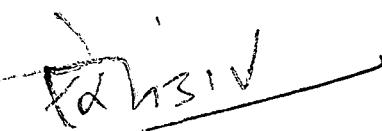
15. It needs to be pointed out that the petitioner was absent from duty for a long period of time. The Joint Commissioner, KVS, took a fair view of the matter on consideration of the representation of the petitioner in reply to the show cause notice. This is evident from the following observations of the Joint Commissioner, KVS, contained in his order dated May 4, 2001 :-

"AND WHEREAS on consideration of the said representation being alady, her concern for the career of children could be appreciated during the examination days or a little earlier but her unauthorised absence w.e.f. 4.10.2000 does not have any genuine grounds."

16. We do not find any violation of the principles of natural justice warranting our interference."

13. The ratio as laid down by the Delhi High Court in the case of Prem Jangal (supra) is squarely applicable in the instant case. Learned counsel for the respondents has also brought to our notice two decisions of the CAT, passed in OA No.90/2001, Shakuntala Kanojia vs. Union of India & Ors. decided by the CAT, Jaipur Bench, on 04.01.2002, whereby the action of the respondents in terminating the services of the applicant in terms of Article 81(d) of Education Code was upheld.

14. For the aforesaid reasons, there is no merit in the present OA which is accordingly dismissed with no order as to costs.


(A. K. BHANDARI)
MEMBER (A)


(M. L. CHAUHAN)
MEMBER (J)