

(1)

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Applications Nos.804,810,812 & 1063 of 2005

Jabalpur this the 22nd day of September, 2006.

**Hon'ble Dr.G.C.Srivastava,Vice Chairman
Hon'ble Shri A.K.Gaur, Judicial Member**

(1) Original Application No.804 of 2005

1. Deepak Roy, S/o Shri M. M. Roy, Aged about 55 years, Principal, Kendriya Vidyalaya CWS, Jayant Colliery, District- Sidhi (M.P.)
2. M.Vellatham, S/o Shri M.Muthu, Aged about 40 years, Principal, Kendriya Vidyalaya, Barkuhi, District- Chhindwara (MP)
3. Joy Joseph, S/o late Shri P.J.Joseph, Aged about 42 years, Principal, Kendriya Vidyalaya, Sarni – District – Betul (MP)/
4. Keshav Prasad Mishra, S/o Shri M.L.Mishra, Aged about 52 years, Principal, Kendriya Vidyalaya, Ratlam (MP).
5. V.K. Gaur, S/o Shri D.L. Sharma, Aged about 45 years, Principal, Kendriya Vidyalaya, Satna (M.P.)

-Applicants

(By Advocate – Shri Manoj Sharma)

V E R S U S

1. Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110016. Through it's Commissioner.
2. The Chairman, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110016.

3. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Bhopal Region, Opposite Maida Mill, Bhopal (MP).
4. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Jabalpur Region, GCF Estate, Jabalpur (MP).

(2) **-Respondents**

(By Advocate – Shri M.K.Verma)

(2) Original Application No.810 of 2005

1. Mrs. P.V.V.Prasanna W/o Shri Ravi Shankar, Aged about 45 years, Principal Kendriya Vidyalaya-1, Raipur.
2. Mr.K.V.V.Ramamurty, S/o Shri K.Suryanarayana, Aged about 54 years, Principal Kendriya Vidyalaya, Kirandul.
3. Mr.M.L.Agrawal, Shri B.L.Agrawal, Aged about 51 years, Principal Kendriya Vidyalaya-5, Gwalior.
4. R.Leela Bai, W/o Shri M.Ramaswamy, Aged about 54 years, Principal K.V.- Bilaspur.

-Applicants

(By Advocate – Shri Manoj Sharma)

V E R S U S

1. Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110016. Through it's Commissioner.
2. The Chairman, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110016.
3. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Jabalpur Region, GCF Estate, Jabalpur (MP).
4. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Bhopal Region, Opposite Maida Mill, Bhopal (MP).

-Respondents

(By Advocate – Shri M.K.Verma)

(3)

(3) Original Application No.812 of 2005

S. C.

1. D.P.Sastry, S/o Shri D.Purushottam, Aged about 54 years, Principal Kendriya Vidyalaya, Balco, Korba.
2. Miss N.Geeta Rao, D/o Shri R.Narayana Rao, Aged about 45 years, Principal Kendriya Vidyalaya, Mahasamund.
3. Smt. Shanti Chauhan, Shri P.S.Chouhan, Aged about 58 years, Principal Kendriya Vidyalaya, Gwalior.

(3)

Applicants

(By Advocate – Shri Manoj Sharma)

VERSUS

1. Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110016. Through it's Commissioner.
2. The Chairman, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110016.
3. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Bhopal Region, Opposite Maida Mill, Bhopal (MP).
4. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Jabalpur Region, GCF Estate, Jabalpur (MP).

(3)

Respondents

(By Advocate – Shri M.K.Verma)

(4) Original Application No.1063 of 2005

1. M.Vellaichamy, S/o Shri M.Muthu, Aged about 40 years, Principal, Kendriya Vidyalaya, Barkuhi, District-Chhindwara (MP)
2. V.K. Gaur, S/o Shri D.L. Sharma, Aged about 45 years, Principal, Kendriya Vidyalaya, Satna (M.P.)
3. K.V.V.Ramamurty, S/o Shri K.Suryanarayana, Aged about 54 years, Principal, Kendriya Vidyalaya, Kirandul.

(4)

Applicants

(By Advocate – Shri Manoj Sharma)

VERUS

1. Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110016. Through it's Commissioner.
2. The Chairman, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110016.
3. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Bhopal Region, Opposite Maida Mill, Bhopal (MP).
4. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Jabalpur Region, GCF Estate, Jabalpur (MP).

-Respondents

(By Advocate – Shri M.K.Verma)

COMMON ORDER

By Dr.G.C.Srivastava,VC.-

As the issue involved in all the aforementioned four OAs is common and the facts involved and grounds raised are identical, these OAs are being decided by this common order for the sake of convenience.

2. These OAs have been filed by the applicants, who are presently working as Principal in Kendriya Vidyalayas (for short 'KVs') under the Kendriya Vidyalaya Sangathan (for short 'KVS'). M.Vallathamy (subsequently mentioned as M. Vellaichamy) and V.K.Gaur, who were joint applicants in OA 804/2005 and K.V.V.Ramamurty who was an applicant in OA 810/2005 were allowed to withdraw from these OAs vide orders dated 11.11.2005 with a liberty to file fresh OAs. Accordingly, they have filed OA No.1063/2005 jointly. Some of the applicants, viz. M.Vellaichamy, V.K.Gaur, K.V.V.Ramamurty (all in OA 1063/2005), Deepak Rai (in OA 804/2005) D.S.Sastry, N.Geeta Rao (both in OA 812/2005) and P.V.V.Prasanna (in OA 810/2005)

have been repatriated to their parent posts (vide orders at annexure A/1 in respective OA files), while others are apprehensive of similar action. They have approached this Tribunal against their repatriation/ impending repatriation to their parent posts. Accordingly, they have sought for the following main relief:

"ii) Quash and set aside the impugned action so far as it relates to the applicants.

(ii) Hold and declare that applicants have been regularly recruited as direct recruits and are entitled as such to hold the post of Principal regularly and substantively".

In addition, the applicants have also prayed for interim relief, which was allowed by the Tribunal by way of restraining the respondents from giving effect to the impugned repatriation orders (annexure A/1 in respective OAs).

3. The brief facts of the aforementioned 4 OAs are that the applicants in all the OAs have been working as Principal in various 'KVs'. They were earlier working as Post Graduate Teachers (for short 'PGT') but were subsequently appointed as Principals on deputation consequent to recruitment drive based on open advertisements (annexure A/3) and selection process comprising written examination and viva voce. The applicants were appointed as Principals on deputation initially for a period of one year by respective orders issued on different dates in 2002 and 2003 (annexure A/5). Their deputation period was last extended on 28.6.2004 (annexure A/6) till different dates in 2005 or until further orders. Thereafter, the applicants were repatriated to their substantive post of PGT through an order issued on 18.11.2004 (annexure A/8). This order was challenged by the applicants in this Tribunal by way of OA Nos. 1030, 1031, 1037, 1038, 1039, 1053 & 1054/2004, ~~1053/2004 and 1054/2004~~, which were decided by a common order dated 17.5.2005 (annexure A/9). In the said order

(6)

dated 17.5.2005, this Tribunal, relying on the order dated 21.12.2004 passed in OA 2801/2004 (Mrs.Radha G.Krishnan & ors Vs. Kendriya Vidyalaya Sangathan & ors) by the Principal Bench of this Tribunal, opined that all the matters before this Tribunal were covered by the aforementioned order of the Principal Bench and hence, being in full agreement with the same, all the OAs were disposed of in the same terms viz. allowing OAs, quashing the impugned orders and giving liberty to the respondents to take action, if deemed appropriate only in accordance with law and procedure. Aggrieved by this order, the applicants approached the High Court of Madhya Pradesh through Writ Petition Nos.3983-3986 of 2005 (D.S.Sastry & ors Vs. KVS & ors), which were decided by a common order dated 30.7.2005 (annexure A/11) holding that there was no reason to interfere with the aforesaid order dated 17.5.2005 of the Tribunal. The Hon'ble High Court gave liberty to the applicants to raise all contentions, if and when the KVS decides to reinitiate action for terminating the deputation and reverting the applicants. The respondents have now passed the impugned orders on different dates in 2005 (annexure A/1) in respect of some of the applicants, whose names are mentioned in para 2 above. The order reads as follows:

"In compliance with order dated 30.7.2005 in W.P.No.3984/2005 of the Hon'ble High Court of M.P. at Jabalpur and on expiry of the extended period of deputation to the post of Principal,(name), is hereby repatriated to the post of PGT (Biology) with immediate effect."

The learned counsel for the applicants has contended that although no order has been passed against others, they have come before this Tribunal apprehending that similar orders may be passed by the respondents in their cases also, sooner or later. The applicants have contended that respondents have incorrectly taken shelter behind the Hon'ble High Court's order dated 30.7.2005 for passing

(7)

the repatriation order and they have the right to continue as Principal on a regular basis.

4. Meanwhile, the order dated 21.12.2004 of the Principal Bench of this Tribunal in the case of **Mrs. Radha G. Krishnan** (supra) was also challenged by the applicants in the High Court of Delhi, and their lordships vide order dated 25.1.2005 remanded the matter back to the Principal Bench for a reasoned finding on the grounds alleged in the OA and to determine the status of the applicants whether they were appointed on deputation or were direct appointees. This matter was still pending in the Principal Bench, when the instant OAs were filed.

5. Opposing the prayer of the applicants, the respondents in their reply have submitted that it was clearly mentioned in the advertisement through which the recruitment was done that the appointment of the applicants was as Principal on deputation. The respondents cited a number of cases in support of their contention that a deputationist has no legal and vested right to resist repatriation to his original post. Some of the cases cited by the learned counsel for the respondents are listed below:

- (i) **State of Madhya Pradesh and others Vs. Ashok Desmukh and another, (1988) 3 SCC 503**
- (ii) **State of Punjab and others Vs. Inder Singh and others, (1997) 8 SCC 372**
- (iii) **Ratilal B. Soni & others Vs. State of Gujarat and others, AIR 1999 SC 1132**

6. The learned counsel for the applicants pointed out that during the aforementioned recruitment drive, 340 Principals were appointed on deputation, out of which about 140 have already been regularized by appointment against temporary vacancies on probation. It was also submitted by the learned counsel for the applicants that the Hon'ble High Court of Calcutta in similar cases - WP(C) 63 of 2005 (**Ram Singh and others Vs. Union of**

(8)

India and others) passed an order on 11.8.2005 holding that “[T]he authorities of KVS cannot treat the petitioners' promotion to the post of Principal of different schools as promotion by way of deputation. This is contrary to principles of deputation and also Kendriya Vidyalaya Sangathan (Appointment, Promotion, Seniority etc.) Rules, 1971”. Accordingly, their lordships declared that “the petitioners are entitled to continue in their appointment unless they are removed/dismissed in accordance with a valid proceeding according to law”. It was further submitted that following the decision of Hon'ble Calcutta High Court, the Bombay Bench of this Tribunal has allowed similar three OAs - leading case **George Thadathil & ors Vs. Union of India & another** (OA No.67/2005) vide common order dated 21.9.2005, holding that the applicants in those OAs are “entitled to continue on the post of Principal, KVS unless removed for any misconduct by following due process of law”. It was also brought to our notice by the learned counsel for the applicants that the matter that was remanded by the Hon'ble High Court of Delhi to the Principal Bench of this Tribunal has also been disposed of by an order dated 28.10.2005 in OA Nos.299/2005 (Mr.S.K.Sharma & ors Vs. KVS & another) and 2801/2004 (Mrs.Radha G.Krishnan & ors Vs. KVS & ors holding as follows:

“75. In the result, for the foregoing reasons, we do not subscribe to the decision taken by the respondents and do not advert to their justification. We hold that appointments of the applicants were on direct recruitment basis and their services cannot be dispensed with other than in accordance with laid down procedure under the rules with a valid proceedings. They are entitled for continuity of service, OAs are allowed. Impugned orders are set aside. Respondents are directed to restore back the applicants to the post of Principal, if reverted, with continuity of service and difference of wages, within a period of three months from the date of receipt of a copy of this order”.

9

While giving the above directions, the Principal Bench discussed the pronouncements made on this issue by different Benches of this Tribunal as well as the High Courts of Madhya Pradesh and Calcutta. In this connection, the following observations made by the Principal Bench need to be quoted:-

"31. Before the High Court of Madhya Pradesh at Jabalpur in WP Nos.5116 & others (supra), following conclusions have been drawn:

"8. We are of the view that it may not be necessary to remit the matters to the Tribunal. On account of the quashing of the orders of termination of deputation dated 18.11.2004, the petitioners are continuing as "Principals." They will be entitled to continue as Principals unless their appointment is terminated in a manner known to law. The Sangathan has already, issued show cause notices dated 17.6.2005 to the petitioners proposing to cancel the regular appointment. It is, therefore, open to the petitioners to file representations/ objections contending that they are entitled to be continued as Principals. They can also urge all contentions which have been urged before us; that as in-service candidates who were selected after undergoing a selection process, they cannot be treated as being on 'deputation' as there cannot be deputation from KVS to KVS itself where the appointing authority is the same; that 'deputation' would apply to only those appointees who were from other institutions, and not to in-service candidates; that at all events in view of their subsequent regular appointment, several years ago, there can be no cancellation; that alternatively having regard to the experience gained by serving as Principals all these years and having regard to the fact that they had been selected as Principals after undergoing a regular selection process, they should be continued as Principals as long as vacancies exist in regard to the posts of Principal; and that by virtue of their service between the time they were selected as Principals on deputation and as on date, several of them have also become entitled to be considered for regular promotion to the post of Principal and therefore they should be considered for the post of Principal etc. Be that as it may.

(10)

9. We are also informed by the petitioners that the Sangathan is proposing taking a fresh look into the entire matter as a large number of PGTs(340) were appointed as Principals on deputation and as many as 140 out of them were subsequently appointed on regular Principals, their termination will upset the functioning of the Institutions.

10. For the reasons mentioned above, we find no reason to interfere with the order of the Tribunal in the cases of petitioners. Reserving liberty to raise all contentions available in their replies to the show cause notices, these petitions are disposed of. It is needless to say that the Sangathan will consider all aspects before taking any further decision or action in the matter".

32. If one has regard to the above, High Court of Madhya Pradesh has not dealt with the issue and rather upheld the conclusion of the Tribunal 'as to the quashing of the termination order and remand of the matter back to the respondents with liberty to raise all contentions by the petitioners thereof. This is no merit consideration and the precedent following this decision would not hold good and is not binding".

The Principal Bench has further observed as follows:

"54 What has been discerned from the above is that when a judgment of the coordinate Bench or a higher Forum has not considered the statutory rules or ignored the decision, which is binding, is to be rendered as per incuriam loosing its precedent value.

55. In the light of above, while referring to the decision of the High Court of Madhya Pradesh (supra), for want of merit consideration and non-consideration of the rules or adjudication of the issue as to whether the applicants had been appointed on deputation or on direct recruitment, the same does not partake the character of a precedent to be followed. A controversy or issue, which has not been dealt with, this decision has not laid down any ratio decidendi to be followed. By no stretch, it is either in conflict or diametrically opposite to the decision of High Court of Calcutta Bench."

Thereafter, the Principal Bench of this Tribunal has made the following observations regarding the subsequent decision of the Hon'ble High Court of Calcutta in the case of Ram Singh and others (supra)-

“67. Before the High Court of Calcutta though respondents have taken all their objections including appointment of applicants on deputation in violation of recruitment rules without approval of the Chairman of KVS, a categorical finding that applicants had been recruited by way of direct recruitment on all India advertisement with a meticulous discussion that Article 38 would not apply and under Rule 22 of the Rules of KVS, the appointments made are in accordance with rules has to be treated as direct appointment overruling the deputation on the ground that deputation cannot be intra KVS and cannot be made except ‘failing which clause’ under promotion”.

It is thus seen that the Principal Bench duly considered the observations made on the issue by the High Court of Madhya Pradesh before issuing the directions contained in para 75 of the judgment.

7. We have heard the learned counsel for both sides and carefully perused all the decisions relied upon by the learned counsel of both the sides.

8. We note that in WPs 3983-3986 of 2005, the High Court of Madhya Pradesh, while confirming the order passed by this Tribunal quashing the earlier repatriation orders, made the following observations:

“9. On a careful consideration, we are of the view that it may not be necessary to remit the matters to the Tribunal. On account of the quashing of the orders of termination of deputation dated 18.11.2004, the petitioners are continuing as “Principal-on-deputation.” They will be entitled to continue as Principal unless their deputation comes to end or put to an end, in a manner known to law. If an when the Sangathan decide to put an end to the deputation or revert

(12)

the petitioners back as PGTs, it is open to the petitioners to file representations/ objections contending that they are entitled to be continued as Principals. They can urge all contentions which have been urged before us; that as in-service candidates who were selected after undergoing a selection process, they cannot be treated as being on 'deputation' as there cannot be deputation from KVS to KVS itself where the appointing authority is the same; that 'deputation' would apply to only those appointees who were from other institutions, and not to in-service candidates; that alternatively having regard to the experience gained by serving as Principals all these years and having regard to the fact that they had been selected as Principals after undergoing a regular selection process, they should be continued as Principals as long as vacancies exist in regard to the posts of Principal; and that by virtue of their service between the time they were selected as Principals on deputation and as on date, several of them have also become entitled to be considered for regular promotion to the post of Principal and therefore they should be considered for the post of Principal etc. Be that as it may. It is also possible that KVS may not choose to disturb the petitioners' position as Principal in the changed circumstances. It is not therefore necessary to remand the matters to the Tribunal to consider these questions.

10. We are informed by the petitioners that the Sangathan is taking a fresh look into the entire matter as a large number of PGTs(340) were appointed as Principals on deputation and their termination will upset the functioning of the Institutions. If so, it is hoped that the Sangathan will consider all aspects before taking any further decision or action in the matter. Be that as it may.

11. For the reasons mentioned above, we find no reason to interfere with the order of the Tribunal in the cases of petitioners. Reserving liberty to raise all contentions if and when the Sangathan decides to re-initiate action for terminating the deputation and revert the petitioners, these petitions are disposed of'.

We find that while disposing of the said writ petitions, the High Court gave the liberty to the applicants to raise all the relevant contentions before the respondent, in case they propose to repatriate them. A reading of the impugned orders shows that the

(13)

respondents² claim that these orders have been issued "in compliance with order dated 30.7.2005 in WP No.(the relevant number) of the Hon'ble High Court of M.P.". But, as has been argued by the learned counsel on behalf of the applicants, the ^{Hon'ble} High Court has not given the direction to repatriate the applicants. On the other hand, the ^{Hon'ble} High Court has been under the impression that "the Sangathan is taking a fresh look into the entire matter" as the termination of the applicants' deputation "will upset the functioning of the Institutions". The ^{Hon'ble} High Court, in fact, expressed the hope that "the Sangathan will consider all aspects before taking any further decision or action in the matter". But the hopes of the High Court have been belied inasmuch as repatriation orders have been issued without giving any opportunity to the applicants to file representations/ objection contending that they are entitled to be continued as Principals. Thus the very foundation of the impugned orders is based on wrong premises, as it has incorrectly been mentioned that these have been issued in compliance with High Court's orders. Further, the fact that despite the High Court giving the liberty to the applicants to raise their contentions "if and when the Sangathan decide to put an end to the deputation or revert the petitioners back as PGTs", the respondents gave no such opportunity to the applicants before passing the impugned orders, makes the impugned orders palpably illegal and unsustainable in the eyes of law.

9. As mentioned above, the Principal Bench of this Tribunal has already taken into consideration the observations made by the Hon'ble High Court of Madhya Pradesh on this matter before considering and agreeing with the subsequent decision of the Hon'ble High Court of Calcutta in the case of **Ram Singh and others** (supra). The Principal Bench has, thereafter, held that appointments of Principals, although originally made on deputation, were de facto on direct recruitment basis and,

therefore, they are entitled for continuity of service, and their services cannot be dispensed with other than in accordance with laid down procedure under the rules with a valid proceeding. Agreeing with this decision of the Principal Bench in exactly similar cases, we are setting aside the impugned orders by which some of the applicants were repatriated to their original post of PGT. The respondents are directed to restore back to the post of Principal, if any of the applicants have already been reverted to the post of PGT. The interim order passed earlier is made absolute.

10. In view of the above, all the OAs are allowed and the applicants are entitled to regularization as Principal as if appointed on direct recruitment basis. The respondents are directed to pass an order regularizing the services of the applicants against the available vacancies, as per rules, within a period of three months from the date of receipt of a copy of this order. No costs.

A.K.Gaur
(A.K.Gaur)
Judicial Member

Dr.G.C.Srivastava
(Dr.G.C.Srivastava)
Vice Chairman

rkv