

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 402 of 2003

Jabalpur, this the 15th day of September, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Ganesh Shukla, S/o. late Shri
Sankardayal Shukla, aged about 56
years, by occupation Librarian
(removed), Central School, Pachmarhi,
Distt. Hoshangabad. ... Applicant

(By Advocate- Shri D.K. Dixit)

V e r s u s

1. Kendriya Vidyalaya Sangathan,
through the Commissioner,
18, Institutional Area, Shahidjet
Singh Marg, New Delhi.
2. Dy. Commissioner (Admn.),
Kendriya Vidyalaya Sangathan, 18,
Institutional Area, Shahidjet Singh
Marg, New Delhi.
3. Assistant Commissioner, Kendriya
Vidyalaya Sangathan, Regional
Office, Bhopal. ... Respondents

(By Advocate- Shri M.K. Verma)

O R D E R

By Madan Mohan, Judicial Member -

By filing this Original Application the applicant
has claimed the following main reliefs :

- "(ii) to quash the impugned order in Annexure A-28,
- (iii) to strike down the provisions of Article 81(d) of Education Code being ultra vires to the Constitution in Annexure A-21,
- (iv) to command the respondents to reinstate the applicant as Librarian and allow him to join at Central School, Pachmarhi, Hoshangabad or at Sehore forthwith with all consequential benefits,
- (v) to command the respondents to pay to the applicant his salary with effect from 24.8.96 with interest at the rate of 24% per annum till the date of joining."

2. The brief facts of the case are that the applicant was initially appointed on the post of Librarian in the year 1971 and was posted at Pachmarhi. Vide order dated



5.8.1996, the applicant was transferred to Jhabua, issued by the respondent No. 3, which was later on modified vide order dated 21.8.1996, transferring the applicant to Sehore. The applicant challenged the said order before the Hon'ble High Court at Jabalpur in WP No. 3991/1996, which was disposed off with a direction that the representation filed by the applicant be considered and till the communication of the decision the applicant should not be forced to go on transfer. The applicant's representation was decided by the respondents and the same was rejected vide order dated 8.10.1996. Later on one Shri Rajesh Singh who was posted at Seoni Malwa was willing to go to Sehore and therefore, he has submitted an application to this effect. One Smt. Sandhya Tiwari was also willing to go to Sehore and therefore, a representation was made by the association to retain the applicant at Pachmarhi but when it was not considered the applicant again filed a petition before the Hon'ble High Court, which was also disposed of by the Court directing the respondents to consider the representation of the applicant within one month. Again the representation of the applicant was rejected. Thereafter the applicant requested the respondents to allow him to join at Sehore on 1.11.2000. The respondent No. 3 vide letter dated 29.11.2001 asked the applicant to join at Sehore within 15 days or else it will be presumed that he is not willing to serve the Sangathan and the action under Article 81(d) of the Education Code shall be taken against him. The applicant again requested the respondent No. 3 to allow him some more time to join at Sehore looking to the illness of his wife vide representation dated 11.12.2000. The applicant was served a notice cum order dated 24.1.00 of provisional loss of his lien on the post and asking him to show cause as to why he should not be removed from service within 10 days, invoking the provisions of Article

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81(d) of the Education Code. The applicant submitted his reply on 31.1.2001 but the respondent No. 3 issued the order dated 26.3.2001, removing the applicant from service with effect from 14.11.1996 confirming loss of his lien of his post as per the provisions of Article 81(d). The applicant thereafter submitted an appeal which was rejected by the appellate authority vide order dated 16.7.2001. Then the applicant submitted a review application which was also rejected vide order dated 4.2.2002. Aggrieved by the aforesaid orders the applicant filed a OA No. 275/2002, wherein the Tribunal vide order dated 28.2.2002 quashed the orders and the respondent No. 3 was given liberty to pass a fresh order after considering the reasons for not joining as ordered. The applicant then submitted a representation to the respondent No. 3 to pass fresh orders reinstating him so that he may serve on the post. But the respondents passed the order dated 3.6.2003, sticking on their previous stand i.e. confirming the loss of lien of the applicant on the post and removing from the post with effect from 14.11.1996. Hence, this OA is filed.

3. Heard the learned counsel for the parties and perused the records carefully.

4. It is argued on behalf of the applicant that the respondents have not considered his representations submitted by him from time to time on reasonable and justifiable grounds i.e. of illness of his wife and also of his own illness with certain other grounds that two persons are willing to join at Sehore. The applicant has filed an original Application before this Tribunal and the Tribunal vide its order dated 28th February, 2003 had quashed all the impugned orders passed by the



respondents and directed the respondents to reconsider the case of the applicant after affording him opportunity of hearing. The applicant filed the representation in detail but it was also rejected on 3.6.2003. After putting a long service of 26 years the applicant has been ordered to be removed from service without any reasonable and justifiable grounds. The whole action of the respondents is illegal and unjustified.

5. In reply the learned counsel for the respondents argued that the applicant had been absent from his duty for more than 4 years without any reasonable and justifiable grounds. The ground of his illness of his wife and himself is not duly supported by the genuine medical certificates. The applicant was initially transferred from Pachmari to Jhabua on 5.8.1996 but it was modified subsequently on his own request and he was transferred to Kendriya Vidyalaya, Sehore, considering his representation dated 9.8.1996. Instead of joining the transferred station the applicant filed two writ petitions before the Hon'ble High Court which were not allowed but were only disposed directing the respondents of/to consider his representations. Thereafter he has filed an Original Application before this Tribunal in which the respondents were directed to reconsider the case of the applicant. His representation was duly considered but reasons mentioned therein were not found justifiable and the same was rejected, under Article 81(d) of the Kendriya Vidyalaya Education Code. The impugned order is passed by the respondents in compliance with the aforesaid rules. No illegality or irregularity has been committed by the respondents while passing the impugned order.

6. After hearing the learned counsel for the parties and on careful perusal of the records, we find that the

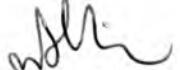


applicant was transferred from Pachmari to Jhabua on 5.8.1996. This order was later on modified on the request of the applicant and he was later transferred to Sehore but he did not join there. He filed ^a/writ petition before the Hon'ble High Court and in compliance of the order of the Hon'ble High Court, the respondents considered his representation and the same was rejected. The applicant again did not joined the transferred place of posting i.e. at Sehore and voluntarily abandoned his services for more than one year. He again filed a writ petition before the Hon'ble High Court. On compliance of the order of the Hon'ble High Court, again his representation was considered by the respondents, resulting into rejection. The applicant again did not joined the transferred place and again voluntarily abandoned his service for more than three years. According to the respondents, it reveals that the applicant has voluntarily abandoned his services from 21.8.1996 to 24.1.2001. The respondents are legally entitled under Article 81(d) to pass the impugned order. Article 81(d) of the Education Code deals with the absence/voluntary abandonment of service of the teachers as well as other staff of KVS. Clause 13 of Article 81(d) provides that "in matters falling under this Article (i.e. 81(d) and in those matter alone, the procedure prescribed for holding inquiry in accordance with the CCS (Classification, Control and Appeal) Rules, 1965 as applicable to the employees of the Kendriya Vidyalaya Sangathan as also the other provisions of the said rules which are not consistent with the provisions of this Article shall stand dispensed with." Article 81(d) has been incorporated with an object to tackle with the problems of unauthorised absence of teachers and other employees. The provision of the said Article are similar to the provisions contained in the standing orders of various industrial establishments.

wherein it has been specifically laid down that an employee is deemed to have been automatically terminated from service in case he remains absent without leave for ten consecutive days. In this case the applicant had been absent from his duties for more than 4 years and the reasons shown by him about the illness of his wife and his own illness is not supported by any genuine medical certificates. Due to absence of the applicant from service the respondents' institution adversely suffers, as it will effect the careers of the students. The clause 13 of Article 81(d) legally empowers the respondents to dispense with the regular departmental enquiry as provided in CCS(CCA) Rules. The Hon'ble High Court has never granted continuous any stay order in favour of the applicant but while deciding the WP No. 3991/1996 has directed the respondents to consider the representation of the applicant and till the decision is communicated to the applicant he should not be forced to go on transfer. On rejection of his representations, the applicant never joined the transferred station. We do not find any illegality or irregularity committed by the respondents while passing the impugned order.

7. In view of the aforesaid, we are of the considered opinion that the applicant has failed to prove his case, and this original Application is liable to be dismissed as having no merits. Accordingly, the original Application is dismissed. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman