

24.09.2009

OA No. 274/2005

OA No. 275/2005

Ms. Dilshad Khan, Counsel for applicant.

Mr. V.S. Gurjar, Counsel for respondents.

Heard learned counsel for the parties.

ORDER RESERVED.

(B.L. KHATRI)

MEMBER (A)

(M.L. CHAUHAN)

MEMBER (J)

ARQ

5/10/2009

order pronounced today
in the open court by the
Honble Sh. M.L. Chauhan M(J)

in S.M.C. Matter relating

original judgement to D.B.
to Sh. M.L. Chauhan M(J) OA No. 274/2005

5/10/09

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the ^{1st} ~~September~~ ^{oct} 2009
5th

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

1. ORIGINAL APPLICATION NO. 274/2005

Mrs. Deepa Kumari Rawat wife of Shri Kishan Rawat, aged about 25 years, resident of 19/488, Trilokpuri, New Delhi.

.....APPLICANT

(By Advocate: Ms. Dilshad Khan)

VERSUS

1. Kendriya Vidhyalaya Sangathan through its Commissioner, Kendriya Vidhyalaya Sangathan Headquarter, New Delhi.
2. The Regional Commissioner, Kendriya Vidhyalaya Sangathan, 92, Gandhinagar Marg, Bajaj Nagar, Jaipur.
3. Shri O.P. Dave, Assistant Commissioner, Kendriya Vidhyalaya Sangathan, 92, Gandhinagar Marg, Bajaj Nagar, Jaipur.
4. Shri P.C. Shah, Kendriya Vidhyalaya (BSF) Anoopgarh, P.O. Anoopgarh, District Gangangar (Rajasthan).

.....RESPONDENTS

(By Advocate: Mr. V.S. Gurjar)

2. ORIGINAL APPLICATION NO. 275/2005

Ms. Shuchi Mitra daughter of Mr. S.K. Mitra, aged about 26 years, resident of F 1/16, Sector 2, Vidhyadhar Nagar, Jaipur.

.....APPLICANT

(By Advocate: Ms. Dilshad Khan)

VERSUS

1. Kendriya Vidhyalaya Sangathan through its Commissioner, Kendriya Vidhyalaya Sangathan Headquarter, New Delhi.
2. The Regional Commissioner, Kendriya Vidhyalaya Sangathan, 92, Gandhinagar Marg, Bajaj Nagar, Jaipur.

3. Shri O.P. Dave, Assistant Commissioner, Kendriya Vidhyalaya Sangathan, 92, Gandhinagar Marg, Bajaj Nagar, Jaipur.
4. Shri P.C. Shah, Kendriya Vidhyalaya (BSF) Anoopgarh, P.O. Anoopgarh, District Gangangar (Rajasthan).

.....RESPONDENTS

(By Advocate: Mr. V.S. Gurjar)

ORDER

PER HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER

By this common order, we propose to dispose of both these OAs as both the applicants are aggrieved by the Memorandum dated 11.05.2005 (Annexure A/1) in both the OAs whereby the services of the applicants were terminated in terms of Para No. 5 of the appointment letter dated 17.07.2003.

2. Briefly stated, facts of the case are that both the applicants were appointed as Primary Teacher by the respondents vide letter dated 17.07.2003. Their service had been terminated vide impugned order dated 11.05.2005 within the probation period of two years. As can be seen from the impugned order, the services of the applicants have been terminated in terms of Para No. 5 of their appointment letter. Before terminating the service of the applicants, they were issued memorandums.

3. In the case of applicant in OA No. 274/2005, Mrs. Deepa Kumar Rawat, the allegations were to the effect that vide office order dated 10.03.2004, she was instructed to escort the girls of senior classes for Kabaddi Regional Meet held at Kendriya Vidyalaya (AFS) Jaisalmer on 21 & 22 August, 2004 vide KVS (RO) letter dated 27.07.2004. The

applicant applied for advance of Rs.8000/- including TA for 12 girls @ Rs.170 X 2 per head for bus fair out of Vidyalaya Vikas Nidhi vide her application dated 16.08.2004. The advance was given to her vide Cheque No. 908540 dated 17.08.2004 for Rs.8000/-. It is further stated in the Memorandum that initially, the applicant was supposed to escort 12 girls, but this number was reduced to 10 girls. It is further stated that vide relieving order dated 19.08.2004, she was relieved alongwith 10 girls on 19.08.2004 (AN) with the instructions to report to the Principal Kendriya Vidyalaya (AFS) Jaisalmer on 20.08.2004 (AN). It is further alleged that initially the applicant was insisting to allow her to go by Jeep or any such vehicle but such request of the applicant was refused by Respondent No. 4, Principal of the Vidyalaya, on the ground of safety of children. It is the case of the respondents that even then the applicant kept the Principal in dark and hired a private vehicle and started the journey on 20.08.2004 by hired vehicle. Not only that, she accompanied her husband in the same vehicle alongwith the girls for both ways journeys. Her husband also stayed in the Kendriya Vidyalaya (AFS) Jaisalmer and accompanied the girls for the whole time. Further allegation is that they also visited the Fort, Temple and sand duens at Village Sam etc., which is 100 Km to & fro from the Kendriya Vidyalaya (AFS) Jaisalmer. According to the allegations leveled by the respondents, the applicant and her husband had spent most of the time in enjoying the sight seeing rather than performing the duties in right earnest. The company of her husband in an unauthorized way with the girls of this Kendriya Vidyalaya had been highly objected by the respondents. Besides this, another allegation is that she sent her husband in the office of Respondent no. 4 on

42

26.08.2004 at about 11.30 AM. He threatened the Principal in the presence of the staff, whose names have been mentioned in the Memorandum dated 01.09.2004 (Annexure A/11), for not bringing him in picture in this episode with any correspondence with her wife. Not only that, a false FIR was also lodged against the Principal on 26.08.2004 at about 7.00 PM in the Police Station to pressurize Respondent no. 4 for not taking action against the applicant and her husband. However, the Police refused to lodge any FIR in the matter being a matter of departmental nature. On these allegations, memorandum was issued to the applicant.

4. The applicant has filed reply to the said allegations in which she has admitted the facts regarding taking all the girls in the private bus and also that she was accompanied by her husband. In the reply, it has also been stated that she did not send her husband to the office of the Principal rather he came in the office for having talk to the authorities and he has no intention to threaten the authority. Copy of the reply has been placed on record as Annexure A/13.

5. Not only that another Memorandum dated 19.01.2005 (Annexure A/21) was also issued to the applicant whereby she was asked whether she has applied for M.Sc (Botany) or any other degree/diploma in any subject of any University/Board and if yes, give full particulars. She was also asked whether she has attended any contact programme or any type of classes/ practical for any such course applied for? If yes, full particulars be given. It was also made clear that disclosure of incorrect information or hiding of facts shall

attract strict action against her. Followed by another Memorandum dated 23.03.2005 (Annexure A/27), the applicant was warned for number of omission & commission committed by her including the fact that she did apply for permission for higher studies (M.Sc. Botany) from Annamalai University vide her application dated 28.06.2004. Permission was not granted to her vide a note on her application which has been noted by her on 19.07.2004. Despite this, she disobeyed the instructions and submitted the application form for M.Sc. (Botany) for 2004-2005 to the University thereby putting the fake signature of the Principal and also putting the rubber stamp of the Principal upon the form/photo wherever required and on the basis of these false documents, she sought admission in Annamalai University, which fact has also been corroborated by the authorities. It is on these allegations, the respondents have terminated the services of the applicant in terms of her appointment letter vide Annexure A/1 during the probation period.

6. So far as applicant in OA No. 275/2005, Miss Shuchi Mitra, is concerned, the allegation is regarding as to whether she has appeared in any examination since she was absent from duty for 47 days w.e.f. 16.11.2004 to 01.01.2005. According to the respondents, the applicant did appeared in the Personal Contact Programme of M.Sc (zoology) 1st year 2004-2005 from Annamalai University for which she was not permitted.

7. As can be seen from the allegations leveled in both the OAs, the case of the applicants are founded on the ground of malafide. The

applicants have stated that after their joining, the Principal of the Vidyalaya started harassing them for fulfilling his illegal demands and when they opposed the same, he became annoyed and started issuing memorandum to them. It is further stated that the applicants have been harassed by the Principal in many ways in as much as respondent no. 4 tried to visit the applicant's house without her permission, he used to call the applicants in his chambers after office hours and asked personal questions. It is further pleaded that when harassment of the respondent no. 4 became intolerable then the applicants left the campus and started residing outside the campus quarter so that the Principal may not call the applicant after office hours. It is further stated that when respondent no. 4 realized that applicants will not compromise, he with the connivance of Shri O.P. Dave, Assistant Commissioner, procured the termination order of the applicants and the services of the applicants were terminated vide impugned order dated 11.05.2005 without giving any charge sheet/show cause notice whatsoever to the applicants. It is on the basis of these allegations; the applicants have sought quashing of the impugned order.

8. We have given due consideration to the submission made by the learned counsel for the parties and have gone through the material placed on record. It is not disputed that both the applicants were appointed as Teachers vide order dated 17.07.2003 and they have not even completed the probation period as stipulated in the terms of the appointment letter. It is also not in dispute that services of the applicants could have been terminated in terms of Para No. 5 of their

appointment letter. The main case of the applicants, as pleaded before this Tribunal, is that since they did not accede to the unreasonable demand of the Principal, as such respondent no. 4 procured termination order in connivance of Respondent no. 3, Assistant Commissioner, KVS, Jaipur. At the outset, we wish to mention that so called allegations leveled by the applicants have been leveled by the applicants for the first time in the OA. The applicants were issued number of memorandums¹⁴ for their omission & commission, the reply of which was also submitted by the applicant but nowhere in the reply given to the memorandum, the applicants have not even made a whisper regarding the conduct of respondent no. 4 that he used to call the applicants in his chamber after school hours and used to ask obscene questions. Thus the very basis of the applicants that termination order is the result of malafide action on the part of respondent no. 4 as they have not acceded to the undue demand/wishes of respondent no. 4 cannot be accepted. Fact remains that there is nothing on record to suggest that the applicants have ever made any such grievance before the authorities. Even the learned counsel for the applicant could not point out to us any of such allegations, which have been leveled by the applicants, before or even after issuing of various memorandums whereby the explanation of the applicants were sought. Thus this bald and after thought allegations of the applicants cannot be accepted.

9. Further, Respondents nos. 3 & 4 have also filed separate reply thereby denying the allegations leveled by the applicants. They have categorically stated that the services rendered by the applicants were

not even satisfactory and they were not suitable for confirmation, as such the competent authority in exercise of his power and judgment and overall suitability of the applicants has taken a decision to terminate the services of the applicants.

10. Learned counsel for the respondents has also drawn our attention to Annexure R/1, which is applications submitted by one of the applicant i.e. Shuchi Mitra for seeking permission for higher studies. Perusal of Annexure R/1 reveals that such permission was not granted. The applicants have appended the signature in lieu of the endorsement made by the competent authority thereby recording refusal to grant permission for higher studies. The respondents have also placed on record a copy of letter dated 25.05.2005 (Annexure R/2) on record in OA No. 275/2005, perusal of which shows that both the applicants were enrolled as Member of the Compulsory Personal Contact Programme for the purpose of M.Sc. Zoology 1st year. They have attended the Personal Contact Programme w.e.f. 29.11.2004 to 18.12.2004. Besides this, Mrs. Deepa Rawat has also attended such course w.e.f. 14.02.2005 to 05.03.2005. From the material placed on record, it is also evident that applicants have also applied for medical leave for the aforesaid period to the authorities whereas the fact remains that the applicants were not sick but in fact they have attended the aforesaid course during this period. From the material placed on record, it is also evident that opportunity was given to the applicants to putforth their version regarding memorandum issued to them from time to time and after considering the reply so given by the

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applicants, the respondents have taken action thereby terminating their services during the period of probation.

11. The stand taken by the applicant in OA No. 274/2005, Mrs. Deepa Kumari Rawat, is that she was advised by the Principal to attend the Compulsory Personal Contact Programme without permission. Such an explanation of the applicant cannot be accepted. At this stage, it will be useful to quote Para nos. 4 & 5 of condition of offer of appointment of the applicants, which is in the following terms:-

- "4. He/she will be on probation for a period of two years which may be extended. Upon successful completion of probation, he/she will be confirmed in his/her turn as per Kendriya Vidyalaya Sangathan Rules.
5. During probation and thereafter, until he/she is confirmed, the services of the appointee are terminable by one month's notice on either side without any reason being assigned therefore. The appointing authority, however, reserves the right to terminate the services of the appointee before expiry of the stipulated period of notice by making payment of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof."

12. Thus in view of the stipulation, as noticed above, and the fact that services of the applicants were terminated during the period of probation and they were also paid pay & allowances for one month in lieu of notice for termination (Annexure A/2), It is not permissible for us in exercise of power of judicial review to substitute the finding of the competent authority more particularly, when the order of termination is simplicitor and does not cast any stigma. Law on the point is no longer res-integra. At this stage we wish to notice certain decisions of the Apex Court, which are directly applicable regarding the

point in issue. In the case of Ganganagar Zila Dughd Utpadak Sahakari Sangh Ltd. and another vs. Priyanka Joshi and Another, 1999 (6) SCC 214, the services of the respondent was terminated during the period of probation. The respondent filed Writ Petition before the Hon'ble High court thereby contending that her services cannot be terminated without holding an inquiry. The Single Judge after perusing the entire facts dismissed the Writ Petition holding that impugned order does not cast any stigma. The respondent filed an appeal which was allowed by the Hon'ble High Court by holding that perusal of the impugned order ~~shall~~ reveals that it was an order of dismissal do cast stigma. The Apex Court held that in their opinion, the Division Bench of the High Court was not correct in the conclusion which it arrived at. It was held that when the order dated 30.11.1994 was passed; the respondent was still on probation. The reason for passing of the said order appears to be the absence of the respondent from duty. In the order of appointment, it was clearly stipulated that respondent's services could be terminated during the probationary period if the services were unsatisfactory. When judging the performance of a person if the services are terminated during the period of probation, obviously there has to be a reason for such termination. If the services are terminated during the probationary period without any reason whatsoever, it is possible that such an order may be impugned on the ground that it has been passed arbitrarily. On the other hand, when there is a reason for terminating the services during the probationary period and the order terminating the services is worded in an innocuous manner, we do not see any force in the contention that such an order has to be regarded as by way of

punishment. It was further observed that order dated 30.11.1994 is only of one sentence which states that the respondent's services were being **BARKHAST** (dismissed). The real word used there was "BARKHAST" and under the circumstances even the use of the word "dismissed" cannot, in our opinion, be regarded as by way of punishment.

13. The reasoning given in the case of Priyanka Joshi (*supra*) is squarely applicable in the facts and circumstances of these cases. In these case also, the services of the applicants were terminated because despite permission being refused to undertake M.Sc., both the applicants sought admission in Annamali University and have also attended the course for the period mentioned above. Not only that, they have also submitted false applications to the authorities for their absence for the aforesaid period. That part, in the case of applicant in OA No. 274/2005, there were also serious allegations regarding accompanying the girls with her husband and spent maximum time in an unauthorized manner. Besides it, the allegations against the applicant were regarding not taking permission of the appropriate authority to undertake journey by the private bus and also fact regarding taking her husband alongwith the girls and also the incident of mis-behaviour of her husband in the presence of staff and lodging of a FIR against Respondent no. 4.

14. Another decision which has bearing on the point is the decision of the Apex Court in the case of Kendriya Vidyalaya Sangathan vs. Arunkumar Madhavrao Sinddhaye & Another, 2007(1) SCC 283

whereby the Apex Court has held that respondents was appointed as PT Teacher in Kendriya Vidyalaya Sangathan and as such he does not hold a civil post within the meaning of Article 311 of the Constitution and the said provision does not apply to him. It was further held that since the order of termination of the respondent was wholly innocuous and does not contain any stigma against him nor visits him with any evil consequences and it has been passed in terms of the appointment letter. The service of the respondent was, therefore, not terminated by way of punishment.

15. The Apex Court has again further held in the case of Oil and Natural Gas Commission and others vs. Dr. MD. S. Iskender Ali, 1980 (3) SCC 428, that even if a departmental inquiry has been initiated against the person but later on it was dropped, it is permissible for the appropriate authority to terminate the service during the probation period and the judgment of the Hon'ble High court was reversed whereby the Hon'ble High has held that termination of the service was malafide.

16. Thus viewing the matter from entire angle and various law laid down by the Apex Court, as mentioned above, and finding recorded by us in the earlier part of the judgment, we are of the view that the services of the applicants were terminated in terms of stipulation contained in the order of offer of appointment. The applicants were given opportunity by way of memoranda to put-forth their case and it is only thereafter the competent authority has taken a decision to terminate the services of the applicant during the probation period,

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which order(s) does not cast any stigma. Further bald and after though allegations of the malafide leveled by the applicants for the first time in these OAs without making any such grievance before the appropriate authorities at any point of time before or after issuance of the memorandum cannot be accepted.

17. For the foregoing reasons, both these OAs are bereft of merit and are accordingly dismissed with no order as to costs.

(B.L. KHATRI)
MEMBER (A)

(M.L. CHAUHAN)
MEMBER (J)

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