

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET

APPLICATION NO.: 806/2012

Applicant (S)

Advocate for Applicant (S)

Respondent (S)

Advocate for Respondent (S)

NOTES OF THE REGISTRY	ORDERS OF THE TRIBUNAL
	<p><u>13/05/2014</u> <u>O.A. No. 806/2012</u></p> <p>Mr. Amit Mathur, counsel for the applicant. Mr. Hawa Singh, counsel for the respondents.</p> <p>Heard the learned counsel for the parties. <u>Order Reserved.</u></p> <p><u>M. Nagarajan</u> (M. Nagarajan) Member (J)</p>
<u>28/5/14</u>	<p>Order pronounced today in the open Court by the aforesaid Bench</p> <p><u>28/5/14.</u> C.O.</p>

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 806/2012

**Order reserved on : 13/05/2014
Date of Order: 28. /05/2014**

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**Hon'ble Shri Anil Kumar, Administrative Member
Hon'ble Shri M. Nagarajan, Judicial Member**

Madhvi Sharma daughter of Shri P.M. Sharma, aged about 48 years, resident of 81/113, Mansarovar, Jaipur

.....Applicant
(By Advocate : Shri Amit Mathur)

V E R S U S

1. Union of India through Joint Commissioner, KVS, Institutional Area, New Delhi.
2. Deputy Commissioner, KVS, Bajaj Nagar, Jaipur.

.....Respondents.
(By Advocate : Shri Hawa Singh)

O R D E R

(Per : Hon'ble Shri M. Nagarajan, Judicial Member)

The present original application is filed by the applicant with a prayer to quash and set aside the order dated 18/07/2012 (Annexure A/1) and for directions to the respondents to reinstate her in to service with all consequential benefits.

2. The facts which are necessary to be noticed for the disposal of this O.A. as stated by the applicant are that by an order dated 07/08/1987, she was appointed to the

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post of Post Graduate Teacher (Chemistry), issued by the Assistant Commissioner, KVS, Jammu Region vide Annexure-A/2. In pursuance of that order dated 07/08/1987, she joined services on 22/08/1987. According to the applicant at the time of initial appointment, she was not possessing a qualification of Bachelor of Education (B.Ed.), but she acquired B.Ed. degree in the year 1990 from Varanasya Sanskrit Vishvavidhyalaya on 26/01/1990. Her services was confirmed w.e.f. 22/08/1989, by an order dated 19, September 1990.

3. The Assistant Commissioner, KVS, Jammu Region on coming to know about the fact that Varanasya Sanskrit Vishvavidhyalaya was declared as a fake university, vide a memorandum dated 06/10/2000 informed the applicant about the fake status of the said University and stated that the applicant have gained employment as PGT in KVS on the basis of B.Ed. degree obtained by her from the said University and asked her to show cause as to why appropriate action shall not taken against her for the reason that she did not have the qualification prescribed for the post of PGT on which she was appointed. The applicant submitted a reply dated 16/01/2001 to said notice in which she stated that she was not appointed on the basis of B.Ed. degree and further stated that at the time of initial appointment, she

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did not possess the B.Ed. degree and also her services were confirmed on the basis of acquiring two years satisfactory performance and two year teaching in the school as per the conditions of her appointment order. In her reply, she further stated that she was confirmed by the KVS w.e.f. the year 1989 immediately after two years from the date she joined the services and her confirmation is even before acquiring B.Ed. degree from the said university.

4. Subsequently, she was transferred to Jaipur in April 2002. When she demanded for sanction of Senior Scale benefit, the office of the KVS at Jaipur on 16/01/2004 asked her to give the status about B.Ed. qualification. She made representations dated 04/02/2004 and 22/04/2004 stating that B.Ed. is not an essential qualification for appointment to the post of PGT. Despite the stand taken by her in her said representations dated 04/02/2004 and 22/04/2004, she joined B.Ed. degree course through distance education from Jammu University in the month of 2004. But, she could not pass the said B.Ed. degree course from the Jammu University due to some personal problems.

5. According to the applicant without considering the facts stated by her in her representations dated 04/02/2004 and 22/04/2004, respondents issued a show

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cause notice dated 04/05/2006 alleging that the applicant has committed a misconduct in furnishing information about the acquiring B.Ed. degree. She replied to the said show cause notice on 30/05/2006 (Annexure-A/4). She challenged the said show cause notice dated 04/05/2006 and the inquiry initiated in pursuance thereof before this Tribunal by way of filing an original application. This Tribunal quashed and set aside the said charge-memo dated 04/05/2006. The applicant alleged that the respondents have withheld the increments due for the year 2006-2007 and denied payment of leave salary for five months and as a consequence of the same she again approached this Tribunal and thereafter, she moved an application before the respondents seeking voluntary retirement by an application dated 05/02/2008. Instead of responding her request for voluntary retirement, the respondents issued a show-cause notice, which was served on her on 01/08/2008 and on receipt of the same she replied to the show cause notice on 18/08/2008. But respondents without considering her reply dated 18/08/2008, on the very same day by an order dated 18/08/2008 terminated her services in terms of Para 5 (iv) of the appointment order dated 07/08/1987 (Annexure A/2).

6. She challenged the said termination order dated 18/08/2008 (Annexure-A/9) before this Tribunal and this

Tribunal allowed the O.A. and set aside the said order of termination, reserving the liberty to pass fresh order after considering her reply dated 18/08/2008 to the show-cause notice. In compliance of the order of the Tribunal, by an order dated 18/07/2012, the respondents terminated her services retrospectively w.e.f. 18/08/2008 which is impugned in the O.A. Being aggrieved by the order of termination dated 18/07/2012 (Annexure-A/1), the applicant has presented this O.A. with a prayer to quash and set aside the same and consequently for necessary direction to the respondents to reinstate her in to service.

7. In pursuance of notice, the respondents have filed their reply contending that under order of appointment dated 07/08/1987 (Annexure-A/2), she was placed on trial basis initially for a period of two years, which may be extended by one year if she is not able to acquire Teaching Degree within two years. In compliance of the condition at Para 5 (ii) of appointment order dated 07/08/1987, to establish the fact that she has acquired teaching degree, she produced a certificate from the said Varanasya Sanskrit Vishvavidhyalaya and claimed that she has acquired the training degree. By relying upon the production of the said certificate by her, vide order dated 19/09/1990, her services were confirmed w.e.f. 22/08/1989. The headquarter office of KVS, New Delhi

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vide letter dated 09/01/2003, intimated the particulars of teachers who are in possession of B.Ed. Degree or equivalent degree of such educational institutes which have been declared as fake University by the University Grant Commission (UGC) and in that letter the name of the applicant figured at serial No. 16. On coming to know of the fact that B.Ed. degree acquired by the applicant is not a degree in the eye of law, since the same was acquired by her from an University which was declared as a fake University by UGC, the applicant was asked to acquire B.Ed. qualification from a recognized University/institute within two years from 16/01/2004, but the applicant failed to acquire the B.Ed. qualification from the recognized University/institution.

8. In their reply, it is specifically stated by the respondents that as per Appendix-III of schedule 1 of Kendriya Vidyalaya Sangathan (Appointment, Promotion, Seniority, etc.) Rules, 1971, one of the essential qualification for the post of PGT is B.Ed. or equivalent qualification from recognized University, which the applicant admittedly did not possess and hence impugned order can not be faulted.

9. In spite of the opportunity given to the applicant to file his rejoinder, it is submitted by the Shri Amit Mathur,

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learned counsel for the applicant that he does not wish to file rejoinder.

10. Heard Shri Amit Mathur, learned counsel for the applicant and Shri Hawa Singh, learned counsel for the respondents. Perused the pleadings and documents annexed to the pleadings of the respective parties.

11. Shri Amit Mathur, learned counsel for the applicant argued that the impugned order dated 18/07/2012 (Annexure-A/1) is liable to be quashed and set aside on the following grounds:

- i) Under the impugned order 18/07/2012 (Annexure-A/1), the services of the applicant was terminated w.e.f. 18/08/2008 and no employee can be terminated from service with effect from a retrospective date.
- ii) As per Para 5 (iv) of the order of appointment dated 07/08/1987, the services of the applicant can be terminated only during the initial two years of trial period and since the services of the applicant came to be confirmed by the order dated 19/09/1990 (Annexure-A/3) with effect from 22/08/1989, the respondents

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cannot invoke Para 5 (iv) of the appointment order for termination of the services of the applicant. The order of confirmation was never withdrawn and as such, it cannot be said that applicant is on trial up to the year 2008.

iii) A confirmed employee cannot be removed/terminated from service

without conducting a departmental enquiry and as such the impugned order is in violation of Article 311 of Constitution of India.

iv) As per Para 5 (i) of the order of appointment there were two sets of appointees : (a) one who opted for acquiring teaching degree during trial period and (b) who opted for their performance to be watched by the competent authority during trial period.

Applicant falls in the second category and as such the impugned order is liable to be interfered.

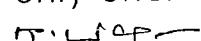
v) To hold the post of PGT, it is not necessary that one should have a B.Ed. qualification. There are large number of PGTs who are still working without B.Ed. qualification, but the applicant has been

singled out. Thus impugned order is a discriminatory one and is in violation of Article 16 of the constitution of India.

12. Per contra Shri Hawa Singh, learned counsel for the respondents submitted that the arguments of Shri Amit Mathur, learned counsel for the applicant are not at all tenable in law.

13. On perusal of the pleadings and upon hearing the learned counsel for both the parties, the following points arise for our consideration:

- i) Whether the applicant could be terminated from service with retrospective effect from 18/08/2008.
- ii) Whether applicant can be terminated from service, after she was confirmed vide order dated 19/09/1990 (Annexure-A/3).
- iii) Whether the principle that a confirmed employee cannot be terminated/ removed from service without holding a regular enquiry is applicable to the facts and circumstances of the case.
- iv) Whether Para 5 (i) of appointment order dated 07/08/1987 comprises two sets of appointees or only one.



v) Whether B.Ed. qualification is a prescribed qualification for the post of PGT under the relevant rules.

Point No. 1

14. Shri Amit Mathur, learned counsel for the applicant vehemently contended that termination of an employee with retrospective effect is unknown to service jurisprudence and as such the impugned order is liable to be interfered with on this ground itself. He placed reliance upon the judgement of Hon'ble High Court of Kerala in case of State of Kerala vs A.P. Janardhanan (WA No. 2773 of 2007) decided on 28/03/2008. We have carefully gone through the said judgment. The point which was considered by the Hon'ble High Court of Kerala in the said A.P Janardhanan's case is "whether a government servant can be dismissed with a retrospective effect." To consider this point, on behalf of the appellants before the Hon'ble High Court of Kerala reliance was placed upon the judgements in the following cases :

- i. Venkiteswaran v. State of Kerala (1963 K.L.T. 1097).
- ii. Narayana Murthy v. State of Kerala (1964 K.L.T. 180).

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iii. State of Kerala v. Gopalan (1979 K.L.T. 907).

15. The respondents in the said A.P. Janardhanan's case in support of their stand that no order of termination/dismissal with retrospective can be made relied upon the following judgments:

- i. Parappuram M.P. Co-op. Society [1999 (1) K.L.T. 121 (DB)].
- ii. Philipose v. State Bank of Hyderabad [2001 (3) K.L.T. 378].
- iii. Jeevaratnam v. State of Madras [AIR 1966 SC 951].

16. By referring to the judgments in the aforesaid cases, the Hon'ble High Court of Kerala in the said A.P. Janardhanan's case at Para 12 of the said order held as:

"12. we are of the view that there is no binding precedent of any court that a Government servant cannot be dismissed with retrospective effect. We also notice that there are at least two Division Bench decisions, Narayana Murthy (supra) and Gopalan (supra) of this Court, taking contrary view."

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Further at Para 14 of the said order held as :

".....There is no binding precedent of this Court or of the Apex Court, concerning the invalidity of imposition of a punishment with retrospective effect, on a Government servant working under the State of Kerala. Even assuming Jeevaratnam's case (supra) had considered whether retrospective effect could be given to a dismissal, the same can only be a decision concerning service conditions of Government servants working under the erstwhile Madras Government. So, the said decision cannot have any application to the facts of this case. In the result, we reverse the judgment of the learned Single Judge, to the extent it holds a punishment of compulsory retirement cannot be awarded with retrospective effect."

The operative portion of the said order in A.P. Janaradhanan (Supra) reads as :

"In the result, the Writ Appeal is allowed, the judgment under appeal is reversed and the Writ petition is dismissed. No costs."

17. By reading the judgment in A.P. Janaradhanan, we observe that the appeal before the Division Bench of the Kerala High Court arose out of an order passed by the learned Single Judge to the extent, it was given retrospective effect. The order of learned Single Judge

was set aside by the Division Bench of the Hon'ble High Court by referring to various judgments. Thus, in view of the finding of Hon'ble High Court of Kerala in the case of A.P. Janardhanan that there is no binding precedent of the Apex Court, concerning the invalidity of imposition of punishment with retrospective effect, on a Government servant, we are not persuaded by the argument of the learned counsel for the applicant that impugned order cannot be passed with retrospective effect. Besides, the applicant has not pointed out any rule which prohibits the authorities to pass an order of termination with retrospective effect.

18. Shri Hawa Singh, learned counsel for the respondents submitted that admittedly the applicant was initially terminated from service by an order dated 18/08/2008 (Annexure A/9) and the same was set aside by this Tribunal reserving liberty to the respondents to pass fresh order after considering reply of the applicant to the show-cause notice. He argued that order of termination dated 18/08/2008 (Annexure A/9) was set aside on the ground that the same was passed without considering the reply to the show-cause notice submitted by the applicant on the very same day i.e. 18/08/2008. Since the Tribunal gave liberty to the respondents to consider the representation of the applicant and pass fresh order and in the process of passing fresh order by

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considering the reply of the applicant to the show-cause notice, the respondents could not find any valid ground to differ from the order dated 18/08/2008 (Annexure-A/9) and vide the impugned order services of the applicant was terminated w.e.f. 18/08/2008. He also submitted that this Tribunal while setting aside the order of termination dated 18/08/2008 (Annexure-A/9) did not give any direction to reinstate the applicant in the service, but liberty was reserved to pass fresh order after considering reply of the applicant to the show-cause notice. By referring to these facts, he argued that the impugned order is not liable to be interfered with on the ground that the termination has retrospective effect. We find considerable force in the arguments of learned counsel for the respondents, Shri Hawa Singh. Hence, in view of the finding of Division Bench of Kerala High Court in the said A.P. Janardhanan's case and in view of the fact that the applicant was terminated on 18/08/2008 itself as per the order dated 18/08/2008 (Annexure-A/9), we answer point No. 1 in affirmative.

Point No. 2

19. The fact that the applicant was confirmed in service by an order dated 19/09/1990 w.e.f. 22/08/1989 is not in dispute. It is also an admitted fact that as on the date of appointment of the applicant i.e. 07/08/1987, she did

not possess the qualification of B.Ed. Para 5 of the said order of appointment dated 07/08/1987 makes it crystal clear that the offer of appointment is subject to certain conditions. The relevant conditions at Para 5 of the appointment order reads as :

"5. This offer of appointment is subject to the following conditions:

- i) He/she would be placed 'On Trail' initially for a period of two years, which may be extended by one year if he/she is not able to acquire Teaching Degree within two years or his/her performance is not considered satisfactory by the Competent Authority.*
- ii) During the period of Trial Smt. Madhvi Sharma is required to complete the training degree either by joining regular course in a recognised teacher training institution or through Summer-cum-correspondence course of the Regional college of Education. He/she will have to qualify the teacher training course in not more than two attempts, failing which he/she will not be eligible for being appointed in the service of the Kendriya Vidyalaya Sangathan on regular basis and will have no claim whatsoever on the Sangathan. During the period of training on a full time course at the training institution, he/she will not be entitled to any pay and allowances from the Sangathan and the period of his/her absence for proceeding on training in the*

training institution will be treated as extra ordinary leave.

iii) In the event of his/her completing the training course satisfactorily/acquiring requisite teaching experience, he/she will be appointed as PGT (Chem.) on regular basis."

20. A bare reading of aforesaid conditions attached to the appointment order manifestly reveals that the applicant will be appointed on regular basis only subject to the condition that she completes the training degree either by joining a regular course in a recognised teacher training institution or through Summer-cum-correspondence course of the Regional college of Education. Admittedly the applicant has obtained the training degree from Varanasya Sanskrit Vishvavidhyalaya on 26/01/1990 and upon receipt of the certificate produced by her under the order dated 19/09/1990 (Annexure-A/3), after expiry of about nine months from the date of acquiring the training, the applicant was confirmed in to regular service w.e.f. 22/08/1989. Under the order of appointment the applicant was put on notice that she has to complete teacher training degree either by joining regular course in a recognised teacher training institution or through Summer-cum-correspondence course of the Regional college of Education. To establish the fact that she has fulfilled the condition, she produced the certificate from

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Varanasya Sanskrit Vishvavidhyalaya. It seems that by placing reliance upon the representation of the applicant that she has completed the training degree from a recognised University, under the said order dated 19/09/1990, the services of the applicant was confirmed. The confirmation is based on the representation of the applicant by producing the certificate obtained by her from Varanasya Sanskrit Vishvavidhyalaya. The applicant has misrepresented the fact that Varanasya Sanskrit Vishvavidhyalaya is a recognised teacher training University/institution.

21. At this juncture it is necessary for us to refer to the judgment of the Hon'ble High Court of Rajasthan in the case of Vinod Kumar vs. state of Rajasthan and Ors. [1994 (3) WLC59]. Shri Hawa Singh, learned counsel for the respondents by placing reliance upon the judgment in the case of Vinod Kumar argued that the said Varanasya Sanskrit Vishvavidhyalaya was not at all in existence after 1974. He invited our attention to Para 12 of the said judgment which reads as under :

"12. The main contention of the counsel for the petitioner is that since the derecognition order has been passed on 30.10.92, it could not be made effective on the petitioner who obtained the degree of Shiksha Shastri in, the year 1987. It is no doubt true that the derecognition order has been passed on 30.10.92 but on enquiry which was initiated in pursuance of the direction of this Court given in

S.B.C.W. Pet. No. 3709/989, it has been found that no institution in the name of Varanashay Sanskrit Vishvavidhyalaya Varanashay is in existence after the year 1974. So, it is clear that at the time when the petitioner obtained the alleged degree of Shiksha Shastri from Varanasey Sanskrit Vishvavidhyalaya in the year 1987, the said institution was not in existence and in view of this, the appointment obtained by the petitioner cannot be maintained and the contention of Mr. Bishnoi that the petitioner got appointment by playing fraud with the respondents as the degree on the basis of which the petitioner has got appointment is fake one, has some substance. Furthermore the University Grant Commission vide its circular dt. 28.6.1991 (Anx.R/3) has advised the Vice-Chancellor and Registrars of all Universities, Secretaries, etc. to caution the students not to take admission into fake and self styled Universities and institutions functioning in different parts of the country in violation of the UGC Act, 1956 and in this circular the name of Varanasey Sanskrit Vishwavidyalaya, Varanasi (Uttar Pradesh) is shown at Serial No. 4. Under these circumstances, in my opinion, the petitioner is not entitled to continue in service and the respondents have rightly terminated the services of the petitioner."

By applying the facts and circumstances of the Vinod Kumar's case to the facts and circumstances of the case on hand, we find that as on the date on which the applicant obtained the training degree from the Varanasya Sanskrit Vishvavidhyalaya, the said University

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was not at all in existence. As already observed under the order of appointment, the applicant was put on notice that the training degree which she has to obtain for the purpose of confirmation in to regular service within two years shall be from a recognised University/teacher training institution. The Hon'ble High Court of Rajasthan has held that institution from which the applicant has acquired the training degree is not in existence from 1974. As such, the applicant was confirmed under the order dated 19/09/1990 based on the representation of the applicant by producing certificate obtained by her from Varanasya Sanskrit Vishvavidhyalaya on 26/01/1990. Admittedly it is not the case of the applicant that the said institution from which she has obtained B.Ed. degree is a recognised teacher training institution/University. It is also not the case of the applicant that she has no knowledge about recognition of the said institution/University by the UGC. Thus, these facts leads to an inference that the applicant misrepresented the authorities for the purpose of fulfilling the conditions mentioned at Para 5 (ii) of the appointment order dated 07/08/1987. It is needless to mention that a benefit which has been gained by way of misrepresentation shall not be perpetuated. Even otherwise, we may observe that the Hon'ble High Court of Rajasthan initiated an inquiry in the year 1989 itself, relating to the status of Varanasya Sanskrit

Vishvavidhyalaya and it was found that the same was not in existence from the year 1974. Hence, in view of the above discussion, we are not persuaded with the contention of the learned counsel for the applicant, Shri Amit Mathur that applicant cannot be terminated from service in view of the fact that her services were confirmed by the order dated 19/09/1990 (Annexure-A/3). Accordingly, we hold that the confirmation of the applicant by the said order dated 19/09/1990 w.e.f. 22/08/1989 cannot be a bar for terminating services of the applicant for the want of acquiring a training degree from a recognised teacher training institution/University.

Point No. 3

22. Learned counsel for the applicant Shri Amit Mathur argued that number of issues have to be proved by the respondents and such issues can be proved only by holding a regular departmental inquiry and according to him the issues which are required to be proved are:

- i) Whether an opportunity should have been given to the applicant to defend her claim that she is a confirmed employee or not.
- ii) Whether B.Ed. is a necessary qualification for the post of PGT.
- iii) Whether the order of termination is discriminatory and arbitrary or not.

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In our view, a regular departmental inquiry is not necessary for the purpose of termination. Admittedly, the applicant was given a opportunity to show-cause as to why her services shall not be terminated for want of prescribed qualification for the post of PGT which she was holding. It is an admitted fact that after submission of the representations dated 04/02/2004 and 22/04/2004, she applied in the month of 2004 for acquiring B. Ed. Degree from distance education of Jammu University and she could not pass the B.Ed. degree exam. The fact that by a memo dated 06/01/2004 from the office of KVS at Jaipur she was asked to acquire B.Ed. Degree within two years from recognised teacher training institute/University is not in dispute. The respondents having ascertained the status of the said Varanasya Sanskrit Vishvavidhyalaya have given two years time enabling the applicant to acquire the B.Ed. degree from a recognised institution/University by issuing the letter dated 16/04/2004. The applicant did not utilize this opportunity. From 06/01/2004 and as of now, more than ten years have elapsed and even during the period of ten years, the applicant was not successful in acquiring the B.Ed. degree from a recognised institution/University, which is one of the essential qualification to hold the post of PGT (Chemistry).

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23. Inquiry is necessary only in a circumstance where certain charges are leveled against the applicant, but in the instant case, termination is on account of the fact that she did not have the prescribed qualification which she is required to acquire within two years from the date of appointment i.e. 07/08/1987. She has not fulfilled the condition even after allowing her two years time from the date of receipt of letter dated 16/01/2004. Even now she does not have the prescribed qualification of B.Ed. The applicant was given ample opportunity to acquire the prescribed qualification in terms of order of appointment. Even before taking steps for terminating her service, by the said letter dated 16/01/2004 she was allowed two years time to acquire the qualification of B.Ed. and even now also she has not acquired the qualification. A departmental inquiry is not necessary for the purpose of ascertaining the fact whether B.Ed. qualification is necessary, since prescription of a qualification for a particular post is the domain of the employer. In the order of appointment the applicant was put on notice that she has to acquire a training degree from a recognised University/institution within two years of her appointment which may be extended for another one year.

24. Shri Hawa Singh, learned counsel for the respondents submitted that the qualification for various

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categories of employees in KVS is prescribed under the Education Code for KVS. He invited our attention to Article 44 of the said code which deals with Educational Qualifications and minimum experience required for various category of posts. Relevant portion of the said Article 44 reads as under:

"44. Qualifications

The following are the essential educational qualifications and minimum experience required for the various categories of posts:

(i).....

(ii).....

(iii) Post Graduate Teachers

I. *PGT (Mathematics/Physics/Biology/Chemistry/Hindi/History/Sanskrit/Geography/Economics)*

(i). *At least second class Master's degree (45% marks and above considered as equivalent) in the subject concerned.*

(ii). *University Degree/Post graduate diploma in Education/Teaching.*

(iii). *3 years teaching experience in a recognised High/Higher Secondary school or intermediate College, relaxable for non-teaching employees of the K.V.S. who have put in 5 years regular service in the Sangathan.*

(Note : In case of candidates possessing First Class Master's Degree as well as First Class Bachelor's Degree, essential qualifications (ii) & (iii) shall be

relaxable.

relaxed. Such candidates, if selected, will be placed on trial for a period of 2 years which may be extended by one year if the candidate is not able to acquire teaching Degree/Diploma)."

25. He further submitted that the Board of Governors of the Sangathan in exercise of the power vested under Rule 22 of the Sangathan made a Rule called "Kendriya Vidylaya Sangathan (Appointment, Promotion, Seniority Etc.) Rules 1971. He invited our attention to Rule 6 of the same and it reads as:

"6. Recruitment"

(1) The method of filling up of the posts in various grades of the Service, age limit and other qualifications relating thereto shall be as specified in Schedule I (In case of posts not covered in Schedule I, procedure, qualifications and similar matters shall be determined by the Commissioner). Provided that the upper age limit prescribed for direct recruitment may be relaxed in the case of candidates belonging to the Scheduled Castes/Scheduled Tribes and other specified categories of persons in accordance with the orders issued in this behalf from time to time by the Central Government.

(2) Appointments by direct recruitment or by promotion of departmental candidates shall

be made, except when there are special reasons to be recorded in writing with the approval also of the Chairman, if the order in which the names of eligible candidates are included in the Select Panel of the appropriate grade prepared according to the procedure laid down in Rule 7."

26. He also invited our attention to item No. 12 of Schedule-I of the said Rules of 1971 and the relevant portion of the same reads as:

"12. Recruitment Rules for the Post of Post Graduate Teacher

1. Name of post Post graduate teacher
2. No. of posts As determined from time to time
3. Classification Gr. 'B'
4. Scale of pay **Entry Scale** : 6500-200-1050
Senior Scale : 7500-250-12000
Selection Scale : 8000-275-13500
5. Whether Selection by merit
selection post
or non-
selection post
6. Age limit for 40 years, relaxable upto five years in direct recruits the case of employees of the Kendriya Vidyalaya Sangathan. Age relaxation for SC/ST and other categories as applicable

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under Govt. Of India rules would be applicable.

7. Educational and Essential :

other qualification required for Education of NCERT in the concerned direct recruits

1. Two years' integrated Post Graduate M.Sc. Course of Regional College of subject: or Maste Degree from a Recognised University with at least 50% marks in aggregate in the following subjects:

a. PGT(Sanskrit) - Sanskrit
 b. PGT (English) - English
 c. PGT (Hindi) - Hindi
 d. PGT (Maths)- Mathematics/applied

Mathematics

e. PGT (Physics) - Physics/Electronics/
 Applied Physics/Nuclear Physics

f. PGT(Chemistry)-Chemistry/Bio Chem.

g. PGT (Biology) - Botany/Zoology/Life
 Sciences/Micro-biology/Bio-Technology/
 Molecular Bio/Plant Physiology provided
 they have studied Botany and zoology
 at Graduation level.

h. PGT (History) - History

i. PGT.(Geography) - Geography

j. PGT (Commerce) - Commerce with
 accountancy/Cost Accounting/Financial
 Accountancy as a major subject of
 study. Holder of Degrees of M.Com in

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Applied/Business Economics shall not be eligible.

k. PGT (Economics) - Economics/Applied Economics/Business Economics.

l. PGT (Political Science) - Political Science.

2. B.Ed or equivalent qualification from recognised University.

3. Proficiency in teaching in Hindi and English.

Desirable :

Knowledge of Computer Applications

27. By inviting our attention to the aforesaid Article 44 of the Education Code for Kendriya Vidyalayas and item 12 of the Schedule-I in Appendix-III of the said Rules of 1971, Shri Hawa Singh, learned counsel for the respondents argued that a PG diploma in Education or degree in education is essential qualification for the Post of PGT in Kendriya Vidyalayas. On perusal of the said article 44 and item 12 of the Schedule-I in Appendix-III of the said Rules of 1971, we find that to hold a post of PGT, one of the essential qualifications for a PGT is B.Ed. degree from a recognised University or PG diploma in education. It is not her case that she is a holder of PG Diploma in Education. Thus, in view of the fact that method of recruitment to the post of PGT is prescribed in the Education Code of KVS and in the said Rules of 1971,

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it is not at all necessary to hold a departmental inquiry to ascertain the fact whether B.Ed. degree is an essential qualification or not as claimed by the applicant. We hold that principle that a confirmed employee cannot be terminated without holding a departmental inquiry is not applicable to the facts and circumstances of the case on hand for the simple reason that the applicant was terminated from the service for want of possessing essential qualification prescribed under the said Education Code and in the said Rules of 1971 which was made known to the applicant in the appointment order dated 07/08/1987 and also before passing an order of termination dated 18/08/2008 by issuing a letter dated 16/01/2004 and allowed her further two years time enabling her to acquire degree in education.

Point No. 4

28. To answer the point No. 4, it is necessary for us to refer to Para 5 (i) of the order of appointment, upon which the learned counsel for the applicant placed reliance and argued that as per Para 5 (i) of order of appointment dated 07/08/1987 there were two sets of appointees. Para 5 (i) of appointment order reads as under:

"5. This offer of appointment is subject to the following further conditions:-

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i) *He/She would be placed 'On Trial' initially for a period of two years, which may be extended by one year if he/she is not able to acquire Teaching Degree within Two years or his/her performance is not considered satisfactory by the Competent Authority."*

On perusal of the Para 5 (i) we find that the same does not provide two set of the appointees as contended by the applicant. The Para 5 (i) of the appointment order categorically provides that applicant is placed 'On Trial' initially for the period of two years which may be extended for another one year if she did not acquire teaching degree within the initial period of two years. In addition to the above, the satisfactory performance of the applicant will be considered within the said period of three years by the Competent Authority for the purpose of confirmation. In other words, Para 5 (i) of the appointment order means that the applicant will be on probation for a period of two years extendable for another one year which will be declared/confirmed upon acquiring the B.Ed. Degree and satisfactory performance of the applicant to hold the post of PGT. Thus, in our opinion, the argument of the learned counsel for the applicant, Shri Amit Mathur is based on misconstruction of Para 5 (i) of the appointment order. Hence we hold

that the contention of learned counsel for the applicant that Para 5 (i) of the appointment order has two set of the appointees is wholly untenable.

Point No. 5

29. While dealing with the point No. 3, it is already observed that method of the recruitment to the post of PGT is initially governed under the Education Code for Kendriya Vidyalayas and thereafter under the said Rules of 1971. Article 44 of the said Education Code and item No. 12 Schedule-I in Appendix-III to the Rules of 1971 prescribes the essential qualifications for the post of PGT which are already extracted at Paragraph 24, 25 & 26 above. A bare reading of the Article 44 of the said code and item No. 12 of Schedule I Appendix-III to the said Kendriya Vidyalaya Sangathan (Appointment, Promotion, Seniority Etc.) Rules, 1971 reveals that B.Ed. or equivalent qualification from recognised University is one of the essential qualification for the post of PGT in the KVS and accordingly, we hold that B.Ed. is necessary for the post of PGT in Kendriya Vidyalayas.

30. Shri Amit Mathur, learned counsel for the applicant in support of the prayer of the applicant placed reliance upon the judgement of the Hon'ble High Court of Rajasthan in the case of Sandhya Bhatnagar (Miss) Vs

MLP

State of Rajasthan and Ors. in S.B. Civil Writ Petition No. 4367/1993 [RLW 2004(2) Raj 974]. The question for consideration before the Hon'ble High Court of Rajasthan in the said Sandhya Bhatnagar is "whether at the time of appointment of the petitioner as Music Teacher Grade-III through the order dated 28/03/1985, she was having requisite qualification as prescribed in the Schedule appended to the Rajasthan Education Subordinate Service Rules, 1971 or not". The Hon'ble High Court of Rajasthan answered the point articulated by it at Para 13, 14, 15 & 16 of its order and held as:

".....From this point of view also, it can easily be said that though the petitioner was not having optional music subject in Prathma Examination, but since the word "or" is there in the requisite qualification prescribed in the schedule appended to the Rules of 1971 and the petitioner was having the degree of Sangeet Prabhakar and Junior Diploma and Senior Diploma in Vocal, Singing arid Dance and these certificates cannot be said to be lower in merit than to the optional music subject in secondary, therefore, in these circumstances, it should be treated that the petitioner was having requisite qualifications for the post of Music Teacher Grade-III when she was appointed through order dated 28.3.1985."

The facts and circumstances and question involved in the said Sandhya Bhatnagar's case before the Hon'ble

High Court of Rajasthan is distinct and different from that of the facts and circumstances of the case on hand. In other words, the question before the Hon'ble High Court of Rajasthan is whether the qualification possessed by the appellant Miss Sandhya Bhatnagar is equivalent qualification to that of the qualification prescribed in the said Rajasthan Education Subordinate Service Rules, 1971, whereas in the instant case that is not the issue, but, the issue is whether the applicant has prescribed qualification. It is not the case of applicant that she possesses a qualification equivalent to that of B.Ed. degree from a recognised University/institution. In view of this, the judgment of the Hon'ble High Court of Rajasthan in the said Sandhya Bhatnagar's case is of no help to the applicant.

31. In view of our findings to the aforesaid Point No. 1 to 5 articulated at paragraph 13 above, we do not find any reason to interfere with the Impugned Order and hence the O.A. deserves to be dismissed. Accordingly, O.A. is dismissed. No order as to costs.

நாகராஜன்
(M. Nagarajan)
Member (J)

Anil Kumar
(Anil Kumar)
Member (A)

Vv