

Central Administrative Tribunal
Principal Bench
New Delhi

T.A.No.86/2013

Order Reserved on: 18.12.2015
Order Pronounced on 25.01.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)

Ghanshyam
S/o Sh. Sahtu
R/o Village & Post Office Deora Bazar
Sub Post Office Jogia (Udaipur)
District – Siddharth Nagar (U.P.) Petitioner

(By Advocate: Sh. Piyush Sharma)

Versus

1. Union of India through
The Secretary
Ministry of Home (sic. Human) Resource
And Development (Department of Education
Shastri Bhawan
New Delhi.
2. The Commissioner Navodaya Vidyalaya Samiti
B-15 Institutional Area, Sec-62 Noida-201307
Distt. Gautam Buddh Nagar (UP).
3. The Director (Personnel) Navodaya Vidyalaya Samiti
B-15 Institutional Area, Sec-62 Noida-201307
Distt. Gautam Buddh Nagar (UP).
4. Navodaya Vidyalaya Samiti
(An autonomous organization of ministry

of home (sic. human) resource development,
Department of Education)
B-15 Institutional Area, Sec-62 Noida-201307
Distt. Gautam Buddh Nagar (UP). ... Respondents

(By Advocate: Sh. S.Rajappa)

O R D E R

By V. Ajay Kumar, Member (J):

The applicant's WP (C) 5841/2013 filed before the Hon'ble High Court of Delhi was transferred to this Tribunal and numbered as the present TA 86/2013.

2. The Petitioner was initially appointed as Primary Teacher and joined the Vidyalaya on 24.08.1981. Later he was selected for the post of Principal vide Order dated 20.03.1992 (Annexure P1) and joined as such on 14.07.1992. As per the terms of appointment, he was placed on probation for a period of two years from the date of appointment extendable by another one year at the discretion of the competent authority. It was also clarified that failure to complete the period of probation to the satisfaction of the competent authority or found unsuitable for the post during the period of probation, will render him liable for discharge from service at any time without notice.

3. Vide Annexure P2 dated 21.12.1994, as in the opinion of the competent authority the petitioner has failed to complete the initial period of probation successfully, his probation was extended further

for one year with a further condition that in case his performance was not found satisfactory during the extended period, he would be liable to be terminated on expiry of the said period. However, the said period was again extended for one year beyond 19.7.1995.

4. In the meantime, on 06.06.1995 the petitioner was transferred from Navodaya Vidyalaya, Pihani in the district of Hardoi (UP) to Navodaya Vidyalaya, Sonbarsa in the District of Sitamarhi and joined the newly transferred place on 08.08.1995. Accordingly to the petitioner, although after expiry of the period of probation, he was expecting that the authorities would communicate a letter of confirmation, but all of a sudden by the impugned order dated 13.8.1996 (Annexure P3) he was discharged from service..

5. Questioning the said impugned Annexure P3 - discharge order dated 13.08.1996 - the applicant filed CWJC No.1050/1997 before the Hon'ble High Court of Judicature at Patna. After hearing both sides and after considering all the merits, the said CWJC was dismissed vide Order dated 16.07.1998 (Annexure P5) and the relevant portion of the same reads as under:

"7. There is no doubt that the period of petitioner's probation was extended twice by the authorities, but in my view, such an extension of probation cannot be construed as estoppels against them. Because such extensions were with a view to give a chance to the petitioner to improve himself. In case of such opportunities, being available, petitioner could not improve, respondents were at liberty to terminate his service.

8. Learned counsel, however, contended that petitioner in his detailed representation, contained in Annexure 8 dated 66th September 1996 had requested the Director (respondent No.1) to re examine his case on the basis of materials placed in that representation, but unfortunately, no reply has yet been given.

9. In my view, it would be always open to the petitioner to pursue his remedy before that authority. But in the facts and circumstances of this case, it would be difficult for this Court to interfere with the impugned order. In the result, subject to the observation, made above, this writ application is, thus, dismissed."

6. Thereafter, the applicant filed OA No.835/2000 (Annexure P6) before the Central Administrative Tribunal, Allahabad Bench and the same was dismissed at the admission stage by order dated 30.10.2000 and the relevant paras of which read as under:

"Shri S. Mishra learned counsel for the applicant. Shri L.M. Singh Proxy to Shri V. Swaroop Learned counsel for the respondents.

The applicant has preferred this OA with the prayer for direction to the respondent no.3 to decide his representation dated 6.9.1996 in the light of direction by the Hon'ble high Court at Patna in W.P.No.1050 of 1997 decided on 16.7.98.

Heard on the point of admission. This OA appears to have been filed to get complied with the direction of the Hon'ble High Court at Patna as referred above. I do not find any good reason to interfere in a matter, the cognizance of which has already been taken at Patna and direction has been issued the order passed by Hon'ble High Court. Moreover I do not find any need to pass another order to get a compliance order of any other Court. The OA is dismissed at admission stage accordingly.

No order as to costs."

7. The Review Application No.79/2000 in OA No.835/2000 was also dismissed by order dated 16.09.2003.

8. The applicant's WP(C) No.1007/2004, filed before the Hon'ble Hon'ble High Court of Judicature at Lucknow Bench, questioning the very same discharge order dated 13.09.1996 was also dismissed by Order dated 19.10.2010 (Annexure P8), and the relevant paras of which read as under:

"A preliminary objection has been raised by the learned counsel appearing for the respondents that the impugned order dated 13.8.1996 has been passed by the Director, Navodaya Vidyalaya, New Delhi which was

impugned before the Central Administrative Tribunal, Allahabad and the tribunal has dismissed on 5.9.2003. All these orders have been impugned and filed as Annexure 1 to 3 to the writ petition.

Submission of the respondent's counsel with regard to maintainability of the writ petition seems to be well founded. Present writ petition seems to be not maintainable at Lucknow bench of the High Court.

The writ petition is accordingly dismissed with liberty to the petitioner to approach the appropriate forum or this court at Allahabad."

9. The Writ Appeal No.43353 of 2011 was also dismissed as not maintainable by order dated 08.08.2011 (Annexure P9), and the relevant paras of which read as under:

"It is well settled that the cause of action is a prime consideration for deciding the territorial jurisdiction of a Court. Herein, in the present case, we have noticed that the entire cause of action arose either in the territory of Delhi or State of Bihar where the order of discharge was passed and the Petitioner was working. Not even a part of cause of action has arisen in the territorial jurisdiction of the High Court of Judicature at Allahabad, therefore, writ petition would not be maintainable here at Allahabad. The view taken by us finds support from the Full Bench decision of this Court in the case of **Rajendra Kumar Mishra vs. Union of India & Ors.**, (2004) 4 SCC 2313.

In view of the above, the writ petition is dismissed as not maintainable."

10. Thereafter, the applicant filed the present application. Heard Shri Piyush Sharma, the learned counsel for the applicant and Shri S. Rajappa, the learned counsel for the respondents and perused the pleadings on record.

11. In view of the sequence of events mentioned above, and on a bare perusal of the same, we are of the considered view that this TA is liable to be dismissed, without going into the other merits, as the same is hit by principle of resjudicata. The applicant questioned the impugned Annexure P3 discharge order date 13.08.1996 initially by filing CWJC No.1050/1997 before the Hon'ble High Court of Judicature

at Patna and the same was dismissed on merits by upholding the validity of the impugned discharge order, as referred above. The passing remark that "*it would be always open to the petitioner to pursue his remedy before the authority*" cannot give fresh cause of action to the applicant to question the very same discharge order dated 13.08.1996, once the validity of which, was upheld by the Hon'ble High Court of Judicature at Patna vide Order dated 16.07.1998 itself.

12. In the circumstances and for the aforesaid reasons the TA is accordingly dismissed. No costs.

(Dr. B. K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

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