CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No-2878/2014

Order Reserved on 29.07.2015
Order Pronounced on: 04.11.2015

Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

R.S. Misra,
S/o S.T. Misra
S-93, New Palam Vihar,
Phase-1, Gurgaon-122001
Haryana. -Applicant

(By Advocate: Ms. Deepti Gupta)

Versus

1. Union of India, through
The Secretary,
Department of Education,
(Secondary & Higher)
Ministry of HRD, Shastri Bhawan,
New Delhi-110001.

2. The Commissioner, KVS
18, Institutional Area,
SJS Marg, New Delhi-16.

3. The Joint Commissioner (Pers.)
Kendriya Vidyalaya Sangthan
18, Institutional Area,
SJS Marg, New Delhi-16. -Respondents

(By Advocate: Shri S. Rajappa)

O R D E R

Per Sudhir Kumar, Member (A):

The applicant of this OA is before this Tribunal aggrieved by the rejection of his representation dated 16.12.2013 regarding release of his gratuity and pension through the impugned order dated 07.02.2014

passed by the Respondents Kendriya Vidyalaya Sangathan (KVS, in short). In the result, he has prayed for the following reliefs:-

> "(a) for quashing order dated 07.02.2014 vide its bearing No. F.No.19069/03/2013/-KVS (L & C)/154 issued by Joint Commissioner, (Pers.) Kendriya Vidyalaya Sangathan, New Delhi; and
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> (b) direct the respondent for granting of pension & gratuity and other consequential benefits arising out in accordance with law; and
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> (c) direct the respondents for granting of interest for the deliberated attempt along with cost in holding of pension, gratuity and consequential benefits; and
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> (d) pass such further order or orders which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case".

2. The impugned order itself has explained the facts and the history of the applicant's case in brief, and has stated as follows:-

> "I am to refer to your representation dated 16.12.2013 and other representations on the subject cited above and to state that the Division Bench of Hon'ble Supreme Court of India in order dated 27.09.2013 in CP 30/2013 has not given any direction with regard to payment of pension and gratuity.
>
> You had challenged the termination order of the KVS dated 24.01.2006 before the Hon'ble CAT PB Delhi in OA No. 966/2006, which was dismissed vide order dated 24.07.2007. Your appeal against the CAT order before Delhi High Court in Writ Petition No.3902 of 20087 was dismissed vide order dated 10.07.2009 and review petition No. 407 of 2009 was dismissed by High Court vide order dated 23.10.2009. The SLP No. 8219-20/2010 challenging High Court order was dismissed vide order dated 12.03.2010 and the review petition was also dismissed on 15.07.2010 by the Hon'ble Supreme Court.
>
> The Hon'ble Supreme Court in para 11 & 12 of order dated 22.08.2012 in Civil Appeal No. 5372/12 filed by you have again recorded the facts of your termination.

> In the event of termination of services of a person he forfeits benefits of his services in terms of Rule 24 of CCS (Pension) Rules 1972. In the circumstances you are not entitled to pension, gratuity and other retiral benefits.
>
> This issues with the approval of Commissioner Kendriya Vidyalaya Sangathan".

3. The applicant has been dismissed twice. The first dismissal of the applicant on the ground of exhibition of immoral sexual behaviour towards the girl students of Kendriya Vidyalaya Rajkot had been upheld by this Tribunal vide order dated 11.02.1988. But, later, his Writ Petition filed before the Delhi High Court in CWP No.3354/1989 (Annexure A-3) had been allowed by the Single Bench, quashing the order of his first dismissal dated 11.02.1988, and directing that the petitioner be reinstated in service with all consequential benefits from the date of his dismissal. The respondents had then filed the LPA No.116/1994, which came to be decided by the Division Bench of the High Court on 04.07.2000 through Annexure A-4, refusing to interfere with the Single Judge judgment, since it had left it open to the Respondents (appellants of the LPA) to proceed against the LPA respondent/applicant of the CWP and the OA, as per the Rules of the KVS Education Code, and to take any further steps in the matter, as may be deemed fit and proper in the facts and circumstances of the case.

4. Those orders of the High Court in the LPA had been obeyed by the official respondents, through Annexure A-5 dated 3.10.2000, reinstating the applicant in service, and further ordering that the period from 11.2.1988 to the date of his joining duty at the assigned place of posting shall be treated as '*dies non*'. The applicant had then approached the

Delhi High Court again in Civil Miscellaneous Petition No.28/2001 and CCP No.550/2000, which came to be disposed of on 25.01.2001, with the High Court noting that the applicant had been re-appointed vide the above-mentioned order dated 03.10.2000, and if there is still any non-compliance of any portion of the order of the Division Bench in the LPA, the applicant/petitioner was at liberty to file a fresh petition.

5. The applicant thereafter approached the High Court once again in CCP No.151/2001 and CM No.121/2001, in which orders came to be passed on 23.09.2002 (Annexure A-9), and the High Court had again noted that the petitioner before the High Court/applicant before us, had since been reinstated in service, and, after deducting the T.D.S. @ 5%, a sum of Rs.11,48,625/-had been paid to the petitioner/applicant of this OA. The High Court had thereafter left the matter in regard to the other consequential benefits to be decided by the official Respondents, stating that if he is found entitled to the same, he will be granted the same, and if he is still aggrieved of any decision taken in this regard, he shall be at liberty to challenge the same in an appropriate forum.

6. Thereafter, when the applicant was posted at a Vidyalaya in Manipur, it so happened that the complaints dated 23.05.2001 (Annexure A-7) and dated 31.12.2001 were received by the Respondent from the Secretary, Government of Manipur, in the latter of which complaint, dated 31.12.2001, it was again alleged that the applicant had indulged in acts of moral turpitude involving exhibition of immoral sexual behaviour towards the girl students of Class-XI Arts (2000-01 Batch) in Kendriya Vidyalaya No.1 Imphal.

7. A fact finding enquiry was ordered, which, in its report dated 09.04.2002, held the applicant to be *prima facie* guilty of moral turpitude and having been involved in immoral sexual behaviour towards girl students. Therefore, through his order dated 31.03.2003 (Annexure A-10) passed under Article-81 (B) of the Education Code for Kendriya Vidyalayas, and after following the procedure laid down by the Supreme Court in their order dated 30.09.1996 in Civil Appeal No.14525/1996 **Avinash Nagra vs. Navodaya Vidyalaya Samiti & Others (1997) 1 SCC 534-548**, which procedure had been reiterated by the High Court of Karnataka also in their judgment dated 01.07.2002 in Writ Petition No.23535/2002, the Respondents issued him a Show Cause Notice. The applicant was given an opportunity to submit a representation to that Show Cause Notice asking as to why his services should not be terminated under Article 81 (B) of the Education Code for Kendriya Vidyalayas.

8. The applicant submitted his reply representation through Annexure A-11 dated 15.04.2003. However, after considering that reply representation, through order dated 05.11.2003 (Annexure A-12), in exercise of the powers conferred upon him under Article-81(B) of Education Code for Kendriya Vidyalayas, the Commissioner, KVS, once again terminated the services of the applicant for an offence similar to that in which his services had been terminated earlier in the year 1988.

9. The applicant had in the meanwhile filed OA No.2008/2003 against the Show Cause Notice issued to him. The orders dated 05.11.2003 for the applicant's dismissal a second time came to be passed during the pendency of that OA. Therefore, through orders in MA No. 2380/2003 in his OA No.2008/2003 dated 29.12.2003, this Tribunal had stayed the operation of the second order of his termination, till the OA No.2008/2003 was finally decided.

10. Since the official respondents were aggrieved by this order, they approached the Delhi High Court in W.P. (C) No.3141/2004, in which, through order dated 16.08.2004, the High Court ordered that the second termination order dated 05.11.2003 passed against the petitioner shall remain in abeyance for two months from the date of that High Court's order (dated 16.08.2004), and this Tribunal was directed to dispose of the pending OA No.2008/2003 expeditiously. It was further ordered by the High Court that during this period of two months, the respondent of the W.P (C)/applicant of the OA, will be deemed to be in service, and shall be paid 50% of his salary, subject to the outcome of the OA. But the High Court further ordered that the applicant shall, however, not enter the school premises for discharge of his duties during this period, in view of the serious nature of the allegations levelled against him. The respondents approached the Supreme Court in SLP (C) No.21122/2004 against this order dated 16.08.2004 passed in W.P. (C) No.3141/2004 but that SLP came to be dismissed on 05.11.2004.

11. However, this Tribunal's order in OA No. 2008/2003 was finally passed on 15.12.2005, disposing of the OA with direction to the respondents to consider the representation given by the applicant in response to the Show Cause Notice issued to him, and also to keep in mind his forth-coming superannuation while passing a fresh order under Article-81 (B) of the Education Code of the KVS, which was ordered to be passed by the Respondents before the date of superannuation of the applicant. It was further ordered by this Tribunal that the status of the applicant, pertaining to the continuation of payment of only 50% of his pay, till the decision has been taken by the Respondents, shall remain unchanged, as had been ordered by the High Court earlier.

12. Thereafter, about a week before his scheduled retirement, the Respondents passed a fresh order under the said Article-81(B) of the KVS Education Code, through Annexure A-17 dated 20/24.01.2006, in which the Commissioner, KVS, had found the applicant *prima-facie* guilty of immoral behaviour/moral turpitude, warranting the imposition of punishment of termination from service with immediate effect. It was further ordered that the amount payable to him in terms of this Tribunal's orders, as well as three months' pay and allowances in lieu of notice period also, in terms of Article 81 (B), shall be paid to him immediately.

13. The applicant thereafter appealed to the Vice-Chairman, KVS, which appeal was also disposed of vide order dated 18/24.04.2006, with

the Vice-Chairman refusing to interfere with the order passed by the Commissioner terminating the applicant's service.

14. The Applicant then again approached this Tribunal in OA No.996/2006, in which the final order came to be passed on 24.07.2007. In this order, this Tribunal had found the order passed by the respondents to be justified, and the OA to be bereft of any merit, which was accordingly dismissed. The applicant filed a Review Application No.208/2007, which also came to be rejected on 19.02.2008.

15. The applicant then approached the Delhi High Court in a third round of litigation there, through W.P. (C) No.3902/2008, in which the judgment was delivered on 10.07.2009, this time holding that there was no error or discrepancy in the orders passed by this Tribunal in the OA, as well as in the R.A., since this time the High Court also was of the considered view that the procedure adopted by the Commissioner KVS, under Article 81 (B) of the KVS Education Code, was absolutely right while passing the order, after having been satisfied regarding the complaints and letters received by him from the Principal of the concerned Vidyalaya at Imphal, as well as from the Secretary of the Maniur State Government, and accordingly the Writ Petition was dismissed.

16. The applicant thereafter filed a Civil Miscellaneous Application No.14140/2009 in the said Writ Petition (C) No.3902/2008. In this Civil Miscellaneous Petition, the applicant had claimed full salary for the period from 05.11.2003 to 24.01.2006 on the ground that when once the

order of termination of his services dated 05.11.2003 was withdrawn and superseded, and a fresh order to the same effect was passed on 24.01.2006, he had to be treated in service for the period from 05.11.2003 to 24.01.2006, and that he was entitled to full salary for this period.

17. In its Order dated 05.02.2010, the High Court noticed that the termination order dated 05.11.2003 stood superseded, and that the applicant would have to be treated to have been terminated from his services only from 24.01.2006. However, it was further noticed by the High Court that when the OA filed by the applicant was decided by this Tribunal vide orders dated 15.12.2005, it had been categorically held that the applicant shall be paid only 50% of the pay for the intervening period (when he was barred from even entering the premises of the concerned Vidyalaya). The High Court, therefore, was of the view that when this Tribunal has directed the intervening period to be treated in a particular manner, the applicant cannot claim that he should be given 100% of his salary for that period. The High Court, therefore, dismissed that Civil Miscellaneous Petition as not even being maintainable, and also being bereft of any merit.

18. After all this, the applicant approached the Supreme Court in Civil Appeal No. 5372/2012 arising out of SLP No.23219/2010. The entire claim of the applicant in the present OA is based upon the contents of

the Paragraphs 8 to 16 of the judgment of the Supreme Court dated 22.08.2012 in those proceedings, which were as follows:-

> "8. OA No.2008/2003 was finally disposed of by the Tribunal vide order dated 15.12.2005 and a direction was issued to the Commissioner, KVS to pass fresh order after considering the representation made by the appellant and keeping in view his forthcoming superannuation with effect from 31.12.2005 (sic. 31.01.2006). Simultaneously, it was directed that the respondents shall continue to pay 50% salary till the decision was taken in the matter.
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> 9. In view of the aforesaid order of the Tribunal, the Commissioner considered the appellant's representation and passed order dated 20/24.01.2006 whereby he again terminated the appellant's service with immediate effect under Article 81(b) of the Education Code and directed that the amount payable to him in terms of the Tribunal's order and 3 months pay and allowances in lieu of notice be paid to him immediately. The operative portion of that order reads as under:
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> > "Considering the gravity of the proven immoral behaviour towards girl students, I hereby terminate the services of Shri R.S. Misra with immediate effect pursuant to the provisions of Article 81(b) of Education Code for Kendriya Vidyalaya. This order is issued in compliance to the Orders dated 15.12.2005 of Hon'ble CAT, Principal Bench, New Delhi in Original Application No.2008 of 2003. The amount payable to Sh.R.S. Misra in terms of Hon'ble CAT's order as well as three month's pay and allowances in lieu of notice period also in terms of Article 81(b) be paid to him immediately."
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> 10. The appeal filed by the appellant against the order of the Commissioner was dismissed by the Vice-Chairman, KVS vide order dated 18/21.4.2006.
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> 11. The appellant challenged the order of termination as well as the appellate order in OA No. 996/2006, which was dismissed by the Tribunal by observing that the exercise of power by the Chairman, KVS under Article 81(b) did not suffer from any legal error. The writ petition filed by the appellant was dismissed by the Division Bench of the Delhi High Court. The same was the fate of review petition filed by him before the High Court and SLP(C) Nos.8219-8220/2010 filed before this Court.

12. Having failed to convince the Tribunal, the High Court and this Court to quash the termination of his service, the appellant filed Civil Miscellaneous Application No. 14140/2009 in Writ Petition No.3902/2008 and prayed that a direction be issued to the respondents to pay him full salary for the period between 5.11.2003 and 24.1.2006.

13. The Division Bench of the High Court referred to the earlier order passed in WP(C) No. 3141/2004 whereby direction was given to the respondents to pay 50% of salary to the appellant subject to the outcome of OA No.2008/2003, order dated 15.12.2005 passed by the Tribunal in OA No.2008/2003 and held that in view of the directions contained in those orders, the appellant is not entitled to more than 50% salary.

14. We have heard the appellant, who has appeared in person and Shri S. Rajappa, learned counsel for the respondents and carefully perused the record. In our opinion, the impugned order is liable to be set aside because the view taken by the High Court on the appellant's entitlement to get full salary for the period between 5.11.2003 and 31.12.2005 (sic. 24.01.2006) is ex-facie erroneous. Once the Tribunal allowed OA No.2008/2003 and directed the Commissioner to pass fresh order under Article 81(b) of the Education Code after considering the representation submitted by the appellant, the earlier order terminating his service will be deemed to have become redundant and the appellant will be deemed to be continuing in service for all purposes. This conclusion is buttressed by the fact that vide order dated 24.1.2006, the Commissioner passed fresh order under Article 81(b) of the Education Code and terminated the appellant's service with immediate effect. The order passed by the High Court in WP(C) No. 3141/2004 was a sort of interim arrangement made to dilute the impact of the stay order passed by the Tribunal on 29.12.2003. Therefore, the same could not be relied upon by the respondents and the High Court for denying the appellant of his right to get full salary between 5.11.2003 and 31.12.2005 (sic. 24.01.2006).

15. It is neither the pleaded case of the respondents nor it was argued before us that during the pendency of the enquiry, the appellant was kept under suspension and he was paid subsistence allowance. This being the position, there could be no justification to deny full salary to the appellant for the period between 5.11.2003 and 31.12.2005 (sic. 24.01.2006).

16. In the result, the appeal is allowed, the impugned order is set aside and the respondents are directed to pay full salary and allowances to the appellant for the period between 5.11.2003 and

> 31.12.2005 (sic. 24.01.2006). The needful be done within a period of two months from today by getting prepared a demand draft in the appellant's name, which shall be delivered at his residential address on or before the end of two months period.

19. By the above-reproduced judgment, while in para 12 of the judgment the correct dates had been noted, the Supreme Court had directed the official respondents to pay full salary and allowances to the present applicant for the period between 05.11.2003 and 31.12.2005. At that time the Supreme Court perhaps failed to notice that the date of superannuation of the applicant was 31.012006, and not 31.12.2005, and that the fresh order of termination of his services was passed on 24.01.2006, one week prior to the date of his due superannuation.

20. In regard to the correction of the date of superannuation, the Supreme Court itself had later on allowed IA Nos.7 & 8 in Civil Appeal No. 5372/2012 on 05.11.2012, and had directed that in the order passed on 22.08.2012, the date of superannuation dated 31.12.2005 shall be substituted and shall always be deemed to have been substituted with 31.01.2006.

21. Later, on 07.07.2014, the Supreme Court disposed of the IA Nos. 1&2 in Contempt Petition (Civil) No.30/2013 in the same Civil Appeal No.5372/2012, and the IA No.9 in the same Civil Appeal No.5372/2012, filed by the present applicant, and ordered as follows:-

> "These applications are not maintainable and the same are dismissed.
>
> The petitioner/appellant will have to work out his remedy for non-payment of pension before the appropriate forum, if he is so entitled".

22. Thus, it is clear that all the IAs were found by the Supreme Court to be not maintainable, and the issue regarding non-payment of pension was left to be worked out by the petitioner/appellant (applicant before us) before the appropriate forum, if he is so entitled. Therefore, while the present applicant's entitlement for full salary and allowances had been determined by the Supreme Court through para 14, 15 & 16 of the judgment dated 22.08.2012, the issue of his entitlement for pension was left to be worked out by him.

23. In the meanwhile, when the applicant's services had been terminated by the Respondents for the third time, through order dated 24.01.2006, his OA No.996/2006 against that order of termination was dismissed by this Tribunal through order dated 24.07.2007. Later, the applicant's Writ Petition No.3902/2008, challenging this Tribunal's order, was dismissed by the Delhi High Court through order dated 10.07.2009. The applicant had then filed a Review Petition No. 407/2009, which was also dismissed by the High Court vide order dated 23.10.2009. The applicant then challenged the High Court's order in another SLP No.8219-20/2010, which was also dismissed by the Supreme Court through order dated 12.03.2010. The applicant then filed a Review Petition, which was also dismissed by the Supreme Court on 15.07.2010. The applicant's second Civil Appeal No.5372/2012 was decided later by the Supreme Court on 22.08.2012, as already noted above.

24. In the impugned order, as already reproduced above, the Respondents have taken a stand that since the termination of the applicant has become final, and in the event of termination of services of an employee, he forfeits the benefit of his services in terms of Rule-24 of the CCS (Pension) Rules, 1972, therefore, he is not entitled to pension, gratuity and other retiral benefits.

25. The case of the respondents is that since the applicant's services were terminated on 24.01.2006, about a week before his date of superannuation on 31.01.2006, in the case of such termination of his services, he is not entitled to any pension, and especially so, because the applicant had already once again, separately, challenged this order of termination dated 24.01.2006 also before this Tribunal, through his OA No. 996/2006, which was dismissed through the order dated 24.07.2007 (supra), and he was un-successful in the subsequent proceedings also, in the orders passed by the High Court on 10.07.2009 (supra), on 23.10.2009 (supra), and by the Supreme Court in the SLP on 12.03.2010, and in the Review Petition on 15.07.2010, and, therefore, there is no merit in the present OA, and the same may be dismissed.

26. Heard. Both in his rejoinder, as well as in the oral arguments of, and in the written submissions filed by his learned counsel on 03.08.2015, after the order had been reserved on 29.07.2015, the applicant has taken the plea that even though his services had been terminated vide the impugned order dated 24.01.2006, which has been upheld by this Tribunal, and the higher Courts thereafter, his past

services still cannot be forfeited, and pension and other benefits cannot be denied to him by taking recourse to Rule-24 of the CCS (Pension) Rules, 1972. It was submitted that under Article 81 (B) of the KVS Education Code, the termination is only a termination simplicitor/discharge of the employee, along with one month or three months' notice, or payment of salary in lieu of such notice, according to the status of the employee being temporary or permanent, but that that Article does not provide for imposing any penalty. It was submitted that the provisions of the said Article 81 (B) of the KVS Education Code only lead to discharge of the delinquent employee, for his having been found unsuitable, but no punishment can be imposed for any alleged misconduct. It was submitted that termination simplicitor of the services of an employee, with notice, or pay in lieu of notice, in accordance with the status of appointment, cannot entail forfeiture of past satisfactory service rendered by the employee.

27. It is, therefore, necessary for us to examine that Article 81 (B) of the KVS Education Code, which reads as follows:

> "(B) TERMINATION OF SERVICES OF AN EMPLOYEE FOUND GUILTY OF IMMORAL BEHAVIOUR TOWARDS STUDENTS **Where the Commissioner is satisfied** after such a summary inquiry as he deems proper and practicable in the circumstances of the case **that any member of the Kendriya Vidyalaya is prima-facie guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards any student, he can terminate the services of that employee by giving him one month's or three month's pay and allowances accordingly as the guilty employee is temporary or permanent in the service of the Sangathan.** In such cases, procedure prescribed for holding inquiry for imposing major penalty in accordance with CCS (CCA) Rules, 1965 as applicable to the employees of the Kendriya Vidyalaya Sangathan, shall be dispensed with , provided that the Commissioner is of the opinion that it is not expedient to hold regular inquiry on account of embarrassment to student or his guardians or such other practical difficulties. The Commissioner

> shall record in writing the reasons under which it is not reasonably practicable to hold such inquiry and he shall keep the Chairman of the Sangathan informed of the circumstances leading to such termination of services."
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> (Emphasis supplied).

28. Since the concerned Article, as reproduced above, talks of the satisfaction of the Commissioner regarding *prima facie* guilt of moral turpitude, we cannot accept the argument that termination under this Article would only be a *termination simplicitor*. The Supreme Court has in the case of **State of Punjab & Ors. Vs. Balbir Singh (2004) 11 SCC 743**, held that in order to determine as to whether misconduct is the motive or foundation of the order of termination, the test to be applied is that if an enquiry is aimed at determining only suitability for employment, the enquiry is not punitive, and such termination would be a *termination simplicitor*. However, since in the instant case, the enquiry was conducted to determine the *prima facie* guilt of the applicant, his termination is punitive, and not a *termination simplicitor.*

29. Even though, as we have already recorded above, the High Court of Delhi had vide its order dated 16.08.2004 directed that the applicant shall not enter the school, but shall be paid 50% of the salary, it goes to show that the applicant cannot be allowed to claim to have even worked for the full period, and he cannot claim to have completed 37 years of satisfactory service in any manner whatsoever. After his first termination in 1988, the applicant was out of service from 11.02.1988 onwards, till he was taken back to service, in obedience to the orders of the Delhi High Court, through the order passed by the Commissioner, KVS, dated

03.10.2000, though treating that more than 12 years' period from 11.02.1988 to 03.10.2000 as *dies non*. Therefore, that 12 years' period cannot certainly be counted towards satisfactory completion of service. The applicant had even laid an unsuccessful challenge to that order, when his Civil Miscellaneous Petition No.28/2001 and CCP No. 550/2000 were disposed of by the Delhi High Court on 25.01.2001.

30. Therefore, even though as per the orders of the Delhi High Court, salary for that period, being Rs.11,48,625/-, after deducting TDS @ 5%, had been paid to the applicant, but mere payment of salary and allowances does not amount to his having rendered actual service.

31. Once again the services of the applicant were terminated the second time through the orders dated 05.11.2003 and 07.11.2003, but, since the High Court itself had on 05.02.2010 upheld the directions of this Tribunal dated 15.12.2005 (supra) that the applicant shall not enter the school, and he shall be paid only 50% of the salary for the intervening period, and he was paid the full salary only through the implementation of the orders of the Supreme Court, he cannot be allowed to state that he was actually rendering satisfactory service during the concerned period. Further, even though through the orders dated 22.08.2012 of the Supreme Court read with the modification dated 05.11.2012, the applicant had been allowed full salary from the period from 05.11.2003 to 24.01.2006, the last third order of termination of his services issued on 24.01.2006 was not disturbed even by the Supreme Court also. The

correction through the Supreme Court's order dated 05.11.2012 only stated that the date of superannuation of the applicant shall be corrected to be read as 31.01.2006, rather than 31.12.2005.

32. Learned counsel for the applicant had relied upon the Supreme Court judgment in **Major G.S. Sodhi vs. Union of India 1992 (5) SLR 108**, in which, under Section 16(a) of the Army Pension Regulations 1961, it was held that when an officer concerned had been ordered to be removed from service after the trial at the Court Martial, but the order as passed in the Court Martial did not mention punishment of forfeiture of pension, or other service benefits, the petitioner was held to be entitled to the pension, gratuity and Provident Fund under the Rules. It is seen that the applicant cannot be allowed to derive any benefit out of the cited judgment since the 1961 Pension Regulations for the Army, framed under Article 300-A of the Constitution of India, are not the same as the CCS (Pension) Rules, 1972.

33. When Article 81 (B) of the KVS Education Code specifically provides that in the case of termination of services of a KVS employee, a formal enquiry is not required at all, we do not see any reason or logic to hold otherwise than that past services of such an employee can be forfeited, by taking recourse to Rule-24 of the CCS (Pension) Rules, 1972. Such a termination under Article 81 (B) of the KVS Education Code would always have the character of a punitive termination attached to it, and it can never be classified as a "*termination simplictior*". Therefore, we are of the firm view that the applicant cannot be allowed to state that eligibility for pension did actually accrue to him as a matter of right, in spite of his

services having been punitively terminated on 24.01.2006, 07 days prior to his due date of superannuation on 31.01.2006, through an order which cannot at all be termed as a *"termination simplicitor"*, as the applicant has tried to plead before us.

34. In fact, the respondents have committed a mistake in having paid him three months' salary in lieu of notice, while terminating his services on 24.01.2006, when the only remaining service of the applicant was for 07 days thereafter, and they should have paid only 07 days' salary in lieu of notice, as nobody can be paid salary for the period beyond the due date of his superannuation. In this process, the applicant has already been unduly benefitted by having received the salary for three months in lieu of notice paid mistakenly by the respondents. Even the Supreme Court had, in its order dated 22.08.2012, as modified on 05.11.2012, not ordered for his salary to be paid beyond the date of his third termination order dated 24.01.2006.

35. In fact we are surprised and concerned that the Article 81 (B) of the KVS Education Code stops at the termination of the services of a KVS employee, even if the employee concerned has been found by the Commissioner KVS to be *prima facie* guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards any student, and it does not further prescribe for a criminal case complaint also to be registered against such a KVS employee under the Protection of Children from Sexual Offences Act, 2012 (POSCO Act, in short), and does not cast any responsibility on either the Commissioner, KVS, or anybody below him in the official hierarchy, to become a complainant under that

Act. Sexual harassment, whether physical or verbal, or through exhibitionism, has no place in a civilized society. And such harassment of the school-children is even more reprehensible a crime, which should not be allowed to let go by the society unpunished. As a result, such delinquents, who are found to be *prima facie* guilty of offences which are punishable under the POSCO Act, escape their criminal liability in respect of their offences against the innocent children of the Kendriya Vidyalayas. The scope of this Article 81 (B) of the KVS Education Code obviously needs to be enlarged, to be able to punish such delinquents under the POSCO Act also.

36. Therefore, since we do not find any merit whatsoever in the OA, the OA is, therefore, rejected, but there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.