

**Central Administrative Tribunal
Principal Bench, New Delhi
OA No. 4077/2016**

New Delhi this the 17th September, 2018

Hon'ble Sh. Pradeep Kumar, Member (A)

Udai Singh Yadav, Aged -63 years
S/o Lt. Sh. Rampat Singh Yadav
R/o H.No. 152,
Ganga Sagar-B, Vaishali Nagar
Jaipur, Rajasthan
Group -B
Subject-For Pension & Gratuity

... Applicant

Kendriya Vidyalaya Sanghtan

(By Advocate : Sh. Sajan Kumar Singh)

Versus

1. Through the Commissioner
K V S
18, Institutional Area
Saheed Jeet Singh Marg
New Delhi.

2. The Vice Chairman
Kendriya Vidyalaya Sanghtan
18, Institutional Area
Saheed Jeet Singh Marg
New Delhi

...Respondents

(By Advocate : Sh. S Rajappa)

ORDER (ORAL)

Heard the learned counsel for the applicant as well as learned counsel for the respondents.

2. The applicant was working as PGT in Kendriya Vidyalaya from 1981 till he was terminated from service on 24.10.2008. The termination was on account of disciplinary action taken in a case of

moral turpitude against the applicant, wherein complaint was lodged by one of his girl student. The said termination was thereafter challenged by filing appeal to the appellate authority. The appellate authority rejected the appeal and thus termination was enforced by paying three months salary in lieu of the notice for this duration. The applicant, thereafter, filed OA No. 1907/2010 which was decided on 05.05.2011 wherein the orders of termination was upheld. The operative part of this judgment is as under :-

“35. In the instant case we find all the conditions as laid down in Babban Prasad's case were compiled with inasmuch as summary trial was held. It was found in the summary trial that applicant was guilty of moral turpitude. Competent authority was satisfied that the applicant was guilty and it was not expedient to hold the enquiry. He has passed a well reasoned order. Since this is a case where applicant had indulged in immoral behaviour with a girl student, we find no good ground to interfere in the case. O.A. is accordingly dismissed. No costs.”

3. This was challenged by the applicant in the Hon'ble High Court of Delhi in Writ Petition (C) No. 8440/2011 which was decided on 28.05.2015. The Hon'ble High Court upheld the orders given by CAT. The operative part of the order reads as follows:-

“21. In the light of the aforesaid discussion, we find no reasons to disagree with the well reasoned order passed by the learned Tribunal thereby dismissing the Original Application and the Review Application preferred by the petitioner. Accordingly the impugned orders dated 05.05.2010 & 26.07.2011 passed in OA No. 1907/2010 and R.A. No. 231/2011 respectively are upheld and the present petition and the pending applications filed by the petitioner are dismissed there being no merit.”

4. The applicant preferred a SLP which was also dismissed by the Hon'ble Supreme Court. Thus, the decision in respect of termination by Tribunal as upheld by the Hon'ble High Court, became final.

5. The applicant represented to the Hon'ble Vice Chairman, Kendriya Vidyalaya Sangathan vide letter dated 10.06.2016 in which it was pleaded that even though termination has been upheld, yet his 28 years of past service cannot be obliterated and accordingly, the applicant sought release of his pension and gratuity etc. This was rejected by the respondents. Being aggrieved, the present OA has been filed seeking release of retiral benefits including gratuity etc.

6. The respondents have filed their counter. Certain part of the counter are extracted as follows: -

"4. That KVS being a co-educational system, a special provision under Article 81 (B) of the Education Code for kendriya Vidyalayas is provided for termination of services of an employee who is found guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards the students. This Article provides that (verbatim) – "Where the Commissioner is satisfied after such a summary enquiry as he deems proper and practicable in the circumstances of the case that any member of the Kedriya 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 Sangathan. In such cases, procedure prescribed for holding enquiry for imposing major penalty in accordance with CCS (CCA) Rules, 1965 as applicable to the employees of the Sangathan shall be dispensed with , provided that the Commissioner is of the opinion that it is not expedient to hold regular enquiry on

account of embarrassment to the student or his/her guardians or such practical difficulties. The Commissioner shall record in writing the reasons under which it is not reasonable practicable to hold such enquiry and he shall keep the Chairman of the Sangathan informed of the circumstances leading to such termination of services. It further provides that wherever and as far as possible, a summary enquiry in the complaint of immoral behaviour by a teacher towards the students of Kendriya Vidyalayas may be got investigated by the "Complaints Redressal Committees" constituted in the Regional Offices". It is further submitted that the Hon'ble Supreme Court, vide its judgment dated 16.-8.2010 in SLP No. 4627/2008 filed by KVS vs Rathin Pal has also upheld the decision of KVS related to Article 81 (B) of the Education Code for Kendriya Vidyalayas. It is further submitted that as an employee of KVS who has ceased to be in service by virtue of an order passed against him under the provisions of Article 81 (B) of the Education Code for Kendriya Vidyalayas, may prefer an appeal against the order to the Vice Chairman, KVS. No appeal preferred under this Article shall be entertained unless it is preferred within a period of 45 days from the date on which a copy of the order appealed against is delivered to the appellant. The order of the Appellate Authority made under this Article shall be final and shall not be called into question by way of any further application/petition for revision, review etc."

The respondents pleaded that in the instant case, applicant has exhausted all avenues and the relief sought cannot be granted as the same is not applicable because of disciplinary action taken.

7. The respondents have also taken support from a decision by the Tribunal in OA No. 2878/2014 which was pronounced on 4.11.15 wherein Article 81 (B) of the KVS Education Code had been upheld and the following directions were passed :-

"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."

8. The respondents also drew attention to Rule 24 of CCS Pension Rules, which reads as under :-

"24. Forfeiture of service on dismissal or removal

Dismissal or removal of a Government servant from a service or post entails forfeiture of his past service.

Government of India's Decision

Termination of service under Temporary Services rules or under the term of appointment for failure to pass prescribed examination, does not entail forfeiture of past service.-The Government of India, in consultation with the Ministry of Home Affairs, have held that the termination of service either under CCS (TS) Rules, 1965, or under the terms of appointment for failure to pass a prescribed examination does not amount to dismissal or removal within the meaning of Article 418 (a) CSR (Rule 24). A Government servant whose services are terminated for failure to pass prescribed examination and who is appointed to another post without any break, will count his previous service towards leave and pension.

9. In view of foregoing, respondents pleaded that the instant case, being that of disciplinary action of removal from service due to an act of moral turpitude by a teacher towards his girl student, is a fit case that entails forfeiture of his part service and it follows that retiral dues can be forfeited and, hence, the action taken by the respondents needs to be upheld in the instant case.

10. The applicant pleaded that the Tribunal in the said judgment in OA No. 2878/2014, relied upon by the respondents, has initially observed that the past service cannot be obliterated. In view of this, observation, the applicant is entitled for release of the pension and gratuity etc.

11. The applicant pleaded that the Rule 24 of CCS Pension Rules (para 8 supra) and Article 81 B of the KVS Rule do not prohibit the payment of the retiral dues even if the employee was terminated on the grounds of moral turpitude.

12. The matter was heard at length.

13. The instant case is of a teacher who has admittedly been found guilty of moral turpitude against his girl student. Such kind of behaviour cannot be accepted in a civilised society. The decision of termination was upheld by the Tribunal and had remained unchanged even up to Apex Court and thus it became final. The SLP was dismissed by the Hon'ble Supreme Court.

The rules provide that employees under dismissal or removal are not entitled to get pension. These rules are fully applicable in this case. Pleas put forward by the applicant regarding Rule 24 and Article 81 B (para 11 supra) cannot be accepted.

14. Accordingly, the relief prayed for release of retiral dues and gratuity, cannot be granted in the instant case. The Rule 24 of CCS Pension Rules (para 8 supra) is very categorical in that when an employee is dismissed or removed from service or post, it also entails forfeiture of his past service. The import and effect of Article 81 (B) of KVS Rules was also gone into by Tribunal in another case (para 7 supra) and it was held that its effect is not limited but is actually much wider. Both these provision contradict the averment of applicant made in para 11 above. The petition is, therefore, dismissed being devoid of merit. No costs.

(Pradeep Kumar)
Member (A)