

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
Order reserved on: 23.08.2018

ORIGINAL APPLICATION NO. 060/ 00217/2018

Chandigarh, this the 4th day of September, 2018

...
**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)**

...
Kusum Dhawan, TGT (Bio) (Retd.) wife of Sh. A.C. Dhawan, aged 68 years, K.V. High Ground Chandigarh (Group-C). R/o House No. 1003, Sector 45-B, Chandigarh.

....APPLICANT

(By Advocate : Shri Khuskaran Kumar proxy for Mr. Vikas Chatrath, Advocate)

VERSUS

1. Kendriya Vidyalaya Sangathan, through its Joint Commissioner (Acad.) and Appellate Authority, 18, Industrial Area, Shaheed Jeet Singh Marg, New Delhi.
2. Deputy Commissioner, Kendriya Vidyalaya Sangathan, SCO NO. 72-73, Dakshin Marg, Sector 31-A, Chandigarh.
3. Principal, Kendriya Vidyalaya, AFS High Ground, Zirakpur-Patiala Road, Chandigarh.

....RESPONDENTS

(By Advocate: Shri R.K. Sharma)

ORDER

AJANTA DAYALAN, MEMBER (A)

The present Original Application has been filed by the applicant Kusum Dhawan, feeling aggrieved against the impugned orders date 23.10.2015 (Annexure A-6) passed by the Appellate Authority and order dated 16.11.2015 (Annexure A-7) treating her period of absence from 21.6.2005 to 2.6.2009 as non duty period

and giving her voluntary retirement on 2.6.2009 on attaining the age of 60 years without reinstatement. As per these orders, she was held not entitled for pay and allowances during the intervening non duty period. The applicant has sought the period to be treated as duty period and granting of all consequential benefits thereto including pay and allowances alongwith interest for the delayed payment of retiral benefits. She has also sought re-fixation of her pension in terms of 6th Central Pay Commission recommendations applicable from 1.1.2006 and has also prayed for quashing of reference dated 16.7.2016 regarding her retiral benefits (Annexure A-9) and reference dated 27.7.2016 (Annexure A-10) intimating her about release of retiral benefits.

2. We have heard the learned counsels for the parties and have also gone through the pleadings of the case.

3. The facts of the case are not in dispute. The applicant was appointed as Trained Graduate Teacher (PCB) on 18.8.1981 in Kendriya Vidyalaya Sangathan (KVS). In 2005, she was transferred from AFS High Ground, Chandigarh to Patiala. She requested for transfer to Chandimandir which was rejected. Thereafter, she applied for leave which was not sanctioned. She requested for change of her transfer order, but without any response. She then unauthorizedly absented herself from duty w.e.f. 21.6.2005 to 2.6.2009 when she attained the age of superannuation on 60 years. In terms of Article 81 (D) Education Code for Kendriya Vidyalayas, which has been upheld upto Hon'ble Apex Court and is reproduced at page 32 to 34 of O.A., she was given show cause

notice for unauthorized absence, on 3.10.2005. Her explanation dated 18.10.2005 was found unacceptable. As she had still not joined duty at her new place of posting, another show cause notice dated 14.12.2005 was issued directing her to appear for personal hearing on 19.12.2005 before the 'confirmation of loss of lien' on her post in terms of Education Code aforementioned. The 'speed post envelope' was returned with the remarks 'addressee left India', where after the show cause notice was published in newspaper on 26.1.2006 and order of removal from service w.e.f. 21.6.2005 was issued on 9.3.2006 (Annexure A-1). She preferred an appeal on 31.5.2008 (Annexure A-2) which was rejected on ground of limitation on 16.9.2008 (Annexures A-3 and A-4).

4. The applicant had filed O.A. No. 1211/CH/2011 in this Tribunal which was dismissed on 9.3.2012. Against this order, CWP NO. 4082-CAT of 2013 was filed in the Hon'ble High Court of Punjab and Haryana wherein the High Court after sympathetic consideration held the view that it was a fit case to be considered by the Appellate Authority sympathetically in view of the fact that petitioner has served the organization for over 22 years without any blemish. The High Court held that 'while we strongly disapprove the petitioner's absence from duty which indeed amounts to misconduct, nevertheless the Appellate Authority would be under an onerous duty to consider whether the said misconduct warrants the punishment of removal from service and/or the ends of justice can adequately be met by imposing a lesser punishment.' Accordingly, order of removal from service was set aside. The

Appellate Authority after reconsidering the matter issued fresh order dated 23.10.2015 which is placed at Annexure A-6 and is challenged in the present O.A.

5. In view of the High Court's order dated 7.4.2015 and taking into consideration the facts and circumstances brought out in her written appeal and personal hearing, the Appellate Authority set aside the original order dated 9.3.2006. However, since the applicant had already attained the age of 60 years in 2009, it was ordered that the Appointing/Disciplinary Authorities should consider her application for voluntary retirement and grant her the same w.e.f. 2.6.2009 as per rules. It was clearly stated that she is not reinstated in service and hence she is not entitled for pay and allowances during the intervening non duty period i.e. 21.6.2005 to 2.6.2009. This order has been implemented and she has been given pay and allowances and other pensionary benefits based on this order in February and March 2016.

6. The counsel for applicant submitted that after her transfer order, the applicant was in depression and suffered paralytic attack. Her movement was stopped and she left Chandigarh for treatment. Meanwhile, her father-in-law died on 7.3.2006. The order of removal from service dated 9.3.2006 was not received by her and hence she could file appeal much later on 31.5.2008 after obtaining the order through RTI. According to the applicant, she needs to be paid full pay and allowances for the intervening period which should be treated as duty. She is also seeking refixation of her pension based on her voluntary retirement in 2009 in terms of

6th Central Pay Commission recommendations, as well as interest on delayed payments.

7. The counsel for respondents has stated that there is no disputing the fact that the applicant chose to remain absent from duty from 21.6.2005 to 2.6.2009 i.e. for almost 4 years. The provisions of the Education Code applicable for Kendriya Vadayalays are very clear regarding unauthorized absence. As per these provisions, in case an employee has been absent/remains absent without sanction of leave, he shall provisionally lose his lien on his post unless he returns within 15 calendar days of commencement of the absence and satisfies the Appointing Authority that his absence was for the reasons beyond his control. The employee not reporting for duty within 15 calendar days and satisfactorily explaining the reasons for such absence shall be deemed to have voluntarily abandoned his service and would thereby provisionally lose lien on his post. Further it is provided that if the Appointing Authority is satisfied after personal hearing that the employee concerned has voluntarily abandoned his service, he **shall** pass an order confirming loss of employee's lien on his post, and in that event the employee concerned shall be deemed to have been removed from service of Kendriya Vidyalaya Sangathan w.e.f. the date of his remaining absent. In case the Appointing Authority is satisfied that the provisions of sub-clause (1) of clause (d) of this Article are not attracted in the facts and circumstances of the case, he may order re-instatement of employee to the post last held by him, subject to such direction as

he may give regarding the pay and allowances for the period of absence.

8. The counsel for respondents argued that the original order dated 9.3.2006 was passed keeping in view these provisions of the Education Code. It was further argued that even the Hon'ble High Court has not held the applicant to be free of guilt and has held that 'we strongly disapprove the petitioner's absence from duty which indeed amounts to misconduct'. The Hon'ble High Court has only desired the Appellate Authority to consider if a lesser punishment would meet the ends of justice. Keeping in view this specific direction of the Hon'ble High Court, the Appellate Authority has taken a sympathetic view in respect of the applicant and has allowed her to voluntarily retire with all pensionary benefits and other benefits available to her with regard to her actual period of duty. The Appellate Authority's order is a composite order and cannot be accepted by her in part. Having accepted all the retiral benefits based on this order, she cannot now turn around and pray for quashing of this order in part. Further, it is argued that the Appellate Authority's order clearly states that the period of absence would be treated as non duty period and she would not be entitled to any pay and allowances for the intervening period (when she unauthorisedly absented herself from duty). In view of the clear order, she is not entitled to any pay and allowances for that period. Further, as she has not been reinstated into service and has absented herself continuously from 21.6.2005 to 2.6.2009 when she was voluntarily retired, question of fixation of her pension post

1.1.2006 does not arise. The payment of retiral dues has been made immediately after the same became due consequent to the passing of orders by the Hon'ble High Court orders and the Appellate Authority which has reconsidered the matter without any undue delay and hence question of payment of interest also does not arise.

9. We have given our thoughtful consideration to the entire matter and are inclined to agree with the contention of the learned counsel for the respondents. It is not disputed that the applicant remained absent from duty w.e.f. 21.6.2005 to 2.6.2009 that is for almost 4 long years. Though she pleads that she was ready to perform duty, but she did not show any keenness to go and join duty at her new place of posting. As per original records of the case referred to by the Hon'ble High Court in its order, she is even stated to have gone abroad during the period – perhaps without requisite permission of the department. As she is not clear from guilt even as per High Court own orders, question of pay and allowances for the period when she unauthorizedly absented herself from duty, does not arise. Her punishment was reduced from removal from service (wherein she would not have been entitled to any pension) to voluntary retirement from 2.6.2009 (when she had in any case attained the age of 60 years) with a view not to de-entitle her to pension for the service actually rendered by her. This cannot be construed as a basis for granting her extra benefits for the years she remained on unauthorized absence. Now for her to claim benefits including pay and allowances even for the

period she remained unauthorizedly absent and was away from duty (and perhaps even went out of the country) amounts to misusing the sympathy being shown to her by the Hon'ble High Court and the Disciplinary and Appellate Authority. She is entitled to pension only with reference to the period actually served by her and has been granted the same.

10. As indicated above, the order of the Appellate Authority regarding payment of pay and allowances during the interregnum period is quite clear i.e. she is not entitled to the same not having performed duties during this period. This is logical and needs no interference on our part. The question of payment of interest is also quite clear as she was not entitled to any retiral benefits till 2.6.2009 in any case. Even thereafter, due to her continued unauthorized absence for long years, she was removed from service vide Appellate Authority's order dated 9.3.2006 and so was not entitled to retiral benefits. It was only after the Hon'ble High Court order dated 7.4.2015 and consequently Appellate Authority order dated 23.10.2015 (Annexure A-6) taking a sympathetic view and allowing her to voluntary retire from service w.e.f. 2.6.2009, that she became entitled to retiral benefits. Thereafter, as seen from pleadings, no unusual delay in payment of retiral benefits has taken place. Hence, she is not entitled to any interest on retiral benefits.

11. As regards re-fixation of her pension with reference to her date of voluntary retirement on 2.6.2009, no case has been made out by the applicant quoting relevant rules or even the amount of

pension claimed or being drawn by her. Apparently, the whole claim for re-fixation of pension was based on grant of pay and allowances for the intervening period from 21.6.2005 to 2.6.2009 to her. As her claim for pay and allowances during the intervening period is not found to be on merit, her claim for revision of pension on this ground also does not arise. Her pension will need to be fixed keeping in view the facts of her case, the Appellate Authority's order and the relevant rules and needs no intervention on the part of this Tribunal.

12. In the light of above discussion, we do not find the need to interfere with the impugned orders. The O.A. is found to be devoid of merits and is, therefore, dismissed. There shall be no order as to costs.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 04.08.2018

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