

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL**

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

OP (CAT).NO. 172 OF 2014 (Z)

OA 180/2014 OF CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
.....

PETITIONER(S):

**THE COMMISSIONER, KENDRIYA VIDYALAYA SANGATHAN
18 - INSTITUTIONAL AREA, SHAHEED JEET SINGH MARG
NEW DELHI - 110 016- REPRESENTED BY S.SELVARAJ
DEPUTY COMMISSIONER, KENDRIYA VIDYALAYA SANGATHAN
ERNAKULAM REGION, KADAVANTHRA P.O, KOCHI-682020.**

**BY ADVS.SRI.V.VASOKAN (SR.)
SRI.K.MAYANKUTTY MATHER, SC, KENDRIYA VIDYALAYA SANGATHAN**

RESPONDENT(S):

- 1. B.S.VALSALA NAIR
PRINCIPAL, KENDRIYA VIDYALAYA, SAP CAMPUS
PEORKADA, THIRUVANANTHAPURAM - 695 005,
RESIDING AT HOUSE NO.31-A, ANAND TEMPLE ROAD,
PIPINMOODU, SASTHAMANGALAM
THIRUVANANTHAPURAM-695 010.**
- 2. RANVIR SINGH,
FORMER DEPUTY COMMISSIONER
KENDRIYA VIDYALAYA SANGATHAN
ERNAKULAM REGIONAL OFFICE
NOW ON DEPUTATION AS JOINT SECRETARY
CENTRAL BOARD OF SECONDARY EDUCATION (CBSE)
NEW DELHI - 110 016.**

**R1 BY ADV. SRI.ELVIN PETER P.J.
R1 BY ADV. SRI.T.G.SUNIL (PRANAVAM)
R1 BY ADV. SRI.K.R.GANESH**

**THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 06-01-2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS :

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- EXT.P1: TRUE COPY OF THE ORIGINAL APPLICATION NO.180/00362/2014 FILED BY THE IST RESPONDENT.
- EXT.P2: TRUE COPY OF THE REPLY STATEMENT FILED BY THE RESPONDENTS IN THE O.A
- EXT.P3: TRUE COPY OF THE REJOINDER FILED BY THE APPLICANT BEFORE THE TRIBUNAL
- EXT.P4: TRUE COPY OF THE ORDER OF THE TRIBUNAL IN OA NO.180/00362/2014
- EXT.P5: TRUE COPY OF THE ORDER OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH IN O.A.NO.629/2012
- EXT.P6: TRUE COPY OF THE LIST OF THE EMPLOYEES WHO MADE REPRESENTATION AGAINST THE GRADING IN APAR
- EXT.P7: TRUE COPY OF THE TRANSFER GUIDELINES FOR KVS
- EXT.P8: TRUE COPY OF THE OFFICE MEMORANDUM NO.11013/7/04-ESTT(A) ISSUED BY THE DEPARTMENT OF PERSONNEL AND TRAINING (DOP&T)
- EXT.P9: TRUE COPY OF THE INFORMATION UNDER RTI ACT, 2005
- EXT.P10: TRUE COPY OF THE ORDER OF THE LUCKNOW BENCH OF THE CENTRAL ADMINISTRATIVE TRIBUNAL IN MARSHAL FRANKI VS. UNION OF INDIA AND OTHERS.

RESPONDENT(S)' EXHIBITS :

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- EXT.R1(A): TRUE COPY OF THE LETTER DT.22.9.12 ISSUED TO R2
- EXT.R1(B): TRUE COPY OF THE REPLY FILED TO THE MEMO DT.29.9.12 ISSUED BY R2
- EXT.R1(C): TRUE COPY OF THE ORDER DT.2.11.12 ISSUED BY R2
- EXT.R1(D): TRUE COPY OF THE APPLICATION DT.4.1.13 SUBMITTED TO CHAIRMAN OF THE VIDYALAYA MANAGEMENT COMMITTEE, KENDRIYA VIDYALAYA, PATTOM, TRIVANDRUM
- EXT.R1(E): TRUE COPY OF THE PRINT OUT OF E-MAIL SENT TO R2
- EXT.R1(F): TRUE COPY OF THE ORDER DT.23.10.14 IN CRL.M.C.1988/14 OF THIS COURT

OKB

TRUE COPY

P.A. TO JUDGE

THOTTATHIL B. RADHAKRISHNAN & K.HARILAL, JJ.

O.P.(CAT) No.172 of 2014

Dated this the 6th day of January, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

This is an application under Article 227 of the Constitution of India filed by the Kendriya Vidyalaya Sangathan. It challenges the decision of the Central Administrative Tribunal, Ernakulam Bench interfering with a transfer order.

2. We have heard the learned senior counsel appearing for KVS and the learned counsel appearing for the 1st respondent employee.

3. The 1st respondent is a Principal in KVS service. She was serving in Kendriya Vidyalaya, Jabalpur. She was transferred, on request, to KV, Pattom on 4/6/2012, KVS thereby honouring her request for a transfer to Kerala. She appears to be one hailing from Thiruvananthapuram. On 20/7/2012, she was transferred from KV, Pattom to KV, Peroorkada, which schools are in Thiruvananthapuram. In O.A. No.629 of 2012, that order of transfer was stayed on 22/7/2012. That original

application filed by the teacher was dismissed ultimately on 7/8/2012. By that time, the academic year was midway and KVS did not insist on the teacher being relieved from KV, Pattom. She just continued as Principal of KV, Pattom until she was again transferred on 7/3/2013 to KV, Peroorkada, as part of general transfer. She joined KV, Peroorkada on that date itself. Thereafter, she challenged the transfer by instituting O.A. No.980 of 2013. No interim order was granted by the Tribunal. Later, that original application was disposed of on 26/2/2014 leaving the teacher with liberty to move the Commissioner with appropriate representation. She filed a representation dated 12/3/2014 before the Commissioner of KVS. That was rejected on 30/4/2014, as per Annexure-A2, in the proceedings before the Tribunal in O.A. No.180 of 2014, from which this petition under Article 227 arises. The rejection order issued by the Commissioner was impeached by the teacher before the Tribunal through O.A. No.180 of 2014 on different grounds including that it is vitiated by non application of mind to relevant facts and factors and that pointed and specific issues raised including as to malice and mala fide exercise of administrative power exercised by the Deputy Commissioner, Ernakulam were not

even redressed. The Tribunal issued notice on the original application with the then Deputy Commissioner, Mr. Ranvir Singh, who was personally impleaded. He did not file any counter affidavit before the Tribunal refuting the personal allegations made against him. The Joint Commissioner, KVS filed a statement before the Tribunal purportedly on behalf of the 2nd respondent also, though the 2nd respondent was impleaded in his personal capacity. The Tribunal, on an elaborate consideration of the entire material, held that the transfer was mala fide and set aside the same. The KVS is before us challenging that decision of the Tribunal, invoking Article 227 of the Constitution of India.

4. The learned senior counsel for KVS argued that the Tribunal exceeded its jurisdiction in visiting an order of transfer, which is essentially an incidence of service and it could have been understood that the transfer order is only to a station much nearer to the home of the teacher and that she is in no way prejudiced by the said transfer. It is further pointed out that the baseless allegations levelled against the Deputy Commissioner did not find favour with the Commissioner and, therefore, no personal attributes could have been made to set aside the order

of transfer on any legally sustainable ground.

5. The learned counsel appearing for the 1st respondent teacher, per contra, argued that the impugned order of transfer and the decision of the Commissioner of KVS rejecting the representation are totally unfounded inasmuch as no relevant plea or material placed by the teacher was considered by the Commissioner and the views expressed in the order of the Commissioner do not base on any fact or material available on record. He further pleaded that the teacher is at the fag end of her career and while it is true that the present station, i.e., KV, Peroorkada, is nearer to her home, what matters for her is her honour as against the action taken to protect a superior officer, namely, the Deputy Commissioner, Ernakulam, when she had made complaint against the misdeeds of that officer, when she was working with him.

6. We have gone through the impugned order of the Tribunal and have bestowed our anxious consideration to the contents of the order of the Commissioner. The nature of the contentions raised by the teacher before the Commissioner, as reflected in Commissioner's order, ought to have necessarily generated an appropriate look rather than merely brushing

aside the allegations made by the teacher. We state it because when the Commissioner has said in Annexure-A2 order that the Deputy Commissioner, being the head of the region, is within the authority to make recommendations for transfer within the region, based on work and conduct and that the Deputy Commissioner, Ernakulam region felt that the teacher is not able to manage the affairs of a big school, like KV, Pattom, smoothly, there was nothing on record to indicate that any such report or material was before the Commissioner when such a decision was rendered by the Commissioner on 30/4/2014. That notwithstanding, the fact of the matter remains that the Commissioner had taken note of various allegations made by the teacher about the attributes and atrocities that she had attributed to the officers, including Mr. Ranvir Singh. However, all those have been brushed aside by merely stating that there is no ill motive behind the transfer and there is no truth in the allegation of mental and emotional harassment, as pleaded by the teacher. Looking at the materials on record, we think that this was an eminently fit case where the Tribunal had to carry out its jurisdiction appropriately in terms of the provisions of the Administrative Tribunals Act, as noted by, and taking note of the

plethora of legal precedents bearing on the point in the realm of administrative law. The fact finding rendered by the Tribunal cannot be treated as one not available on the record. Nor can we say that the Tribunal had misdirected itself in the process of adjudication. There is no exceeded exercise of jurisdiction or perverse reasoning on facts. We see no ground to invoke Article 227 in favour of the establishment. This original petition, therefore, fails.

7. However, what ultimately depends in a school management is the paramount interest of the students. To our query, we have been told that the teacher is to retire on 31/7/2015 by superannuation. We are also told that the current academic year of the Kendriya Vidyalayas comes to a close by mid April, 2015. We also note that the impugned direction of the Tribunal stood stayed at the hands of this Court by an interim order being granted at the stage of admission on 18/11/2014. Taking all these factors into consideration and ensuring that there is no disturbance in both the schools, i.e., KV, Peroorkada and KV, Pattom, for the time being, it is ordered that the impugned decision of the Tribunal would be given effect to by transferring the 1st respondent herein, who was the applicant

before the Tribunal, to KV, Pattom, immediately on the last date of the current academic year so that she would take charge as Principal, KV, Pattom and will be permitted to retire on superannuation from there. Necessary administrative arrangements could also be made at that point of time by the Kendriya Vidyalaya Sangathan as may be necessary consequentially.

Original petition is dismissed subject to what is ordered above.

Sd/-

THOTTATHIL B. RADHAKRISHNAN, JUDGE

Sd/-

K.HARILAL, JUDGE

okb.