

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.15938 of 2008 (O&M)

Date of Decision:- 12.05.2015.

Ravinder Kaur Bedi

.....Petitioner

Versus

Chandigarh Administrative Tribunal, Chandigarh Bench and others

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B. BAJANTHRI**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Ms. Jagdeep Bains, Advocate for the petitioner.

Mr. Aman Chaudhary, Advocate for
respondent Nos.2 to 4.

SURYA KANT, J. (ORAL)

1.) The petitioner is aggrieved by the order dated 25.04.2008 passed by Central Administrative Tribunal, Chandigarh Bench, (hereinafter referred to as 'the Tribunal') whereby her Original Application in which she challenged the orders dated 10.06.2003, 30.12.2005 and 25.04.2008, has been dismissed.

2.) The facts giving rise to the above stated order may be briefly noticed.

3.) The petitioner was appointed as a Primary Teacher in

Kendriya Vidyalaya Sangathan (in short 'Sangathan') on 13.01.1983.

4.) The petitioner allegedly suffered some serious ailment and started getting treatment from Post Graduate Institute of Medical Education & Research, Chandigarh (for short 'PGIMER'). As her health condition was deteriorating, the doctors in PGI are said to have advised her to seek treatment in the United States of America or Canada. The petitioner, therefore, applied for leave from 26.06.2001 to 21.04.2002 which was duly sanctioned. She went to Canada in June, 2001 and claims to have been taking treatment there continuously.

5.) After the leave period was over on 21.04.2002, the petitioner joined her duties on 22.04.2002. She again, sought and was granted medical leave for the period from 08.05.2002 till 22.06.2002.

6.) Before expiry of the above stated medical leave, the petitioner sought extension in the leave period from 26.06.2002 which the Authorities declined.

7.) The petitioner also did not join the duties on expiry of leave period on 22.06.2002 though she continued to apply for extension of such leave. The respondents turned down her request and issued a memo dated 12.05.2003 purportedly under Article 81 (D) (3) of the Education Code insisting that the petitioner must join her duties first and then only her request would be considered. She was also asked to show cause as to why her lien be not terminated

and resultantly, why she be not removed from service.

8.) Since the petitioner was allegedly not in a position to resume duties, she submitted an application on 05.06.2003 seeking 'voluntary retirement'.

9.) The above stated petitioner's request for voluntary retirement was turned down vide order dated 10.06.2003 (Annexure P-10) on the ground that she had not completed 25 years of 'qualifying service' as on 23.06.2002. On the same date, the impugned order dated 10.06.2003 (Annexure P-11) was passed under Article 81 (D) (6) of the Education Code whereby the petitioner was declared to have lost her lien on the post of Primary Teacher and consequently, she was deemed to have been removed from service w.e.f. 24.06.2002 i.e. the date she remained absent.

10.) The petitioner then submitted an appeal dated 26.08.2003 (Annexure P-14) against the order of her removal from service, followed by a reminder dated 17.10.2003 (Annexure P-15). She also served the Authorities with a legal notice dated 05.09.2005 (Annexure P-17) seeking the release of pension to which the Authorities responded vide reply dated 30.12.2005 that she cannot seek reinstatement in service or other service benefits.

11.) Thereafter, the petitioner filed the Original Application before the Tribunal which has been dismissed vide the impugned order primarily on the strength of Article 81 (D) of the Education Code, formulated by the respondent-Sangathan.

12.) We have heard learned counsel for the parties at a considerable length and gone through the record. It appears from the orders passed by this Court from time to time that the Authorities were impressed upon to re-consider the quantum of punishment as well as the petitioner's request for voluntary retirement but the respondents have turned down the request.

13.) The other material aspect which transpires is that, the petitioner had admittedly filed an appeal against the order of her removal from service, apparently within the limitation period prescribed under the Education Code itself. It is also revealed from the stand taken by the respondents before the Tribunal that instead of deciding the petitioner's appeal on merits, they resorted to an escape route by referring to their 'reply to the legal notice' and claimed that after that reply, it was not necessary to decide the appeal.

14.) It would be apt at this stage to briefly notice the following contentions raised on behalf of the petitioner:-

(i) It was not a case of willful or deliberate abandonment of employment. The petitioner proceeded on sanctioning leave for the reasons beyond her control, namely, her ailment and that too on the advise of the doctors from PGIMER, Chandigarh.

(ii) The Sangathan itself acknowledged the genuine cause and sanctioned the leave. The Authorities declined to

extend the leave which the petitioner needed to complete her treatment, in a totally mechanical manner and without any basis. At no point of time the Authorities had doubted that the petitioner was not seriously ill or that she wanted to remain on leave even though she was fit to perform duties.

(iii) Since the order of loss of lien and consequential removal from service were passed, presuming that the petitioner was deliberately absenting from duty, the foundation of that order is a specific misconduct and, therefore, she could not have been removed from service without holding an inquiry in accordance with principles of natural justice under the CCA (Punishment and Appeal) Rules.

(iv) The petitioner relies upon the object and purpose for which Article 81 was formulated by the Board of the Sangathan and its applicability only in case of willful abandonment of employment which was not the case here.

(v) The petitioner could not have been removed from service retrospectively from 23.06.2002 by an order passed after one year in June 2003.

(vi) The petitioner's request for voluntary retirement was arbitrarily rejected as she had completed 20 years of

service on 12.01.2003 and there was no order of removal from service passed on that date. Hence, she was entitled to seek voluntary retirement.

(vii) The action taken against the petitioner is pre-judged, without any application of mind.

15.) In view of the nature of order which we propose to pass, it may not be expedient or desirable for us to express any final views in relation to the contentions noticed above except to say that each and every plea taken by the petitioner merits serious consideration.

16.) This is a case where the Appellate Authority has failed to perform his duties under the Education Code. Article 81 (D) 10 of the Education Code reads as follows:-

“10. Consideration of Appeal – The Appellate Authority shall consider:

Whether the requirements laid down under sub-clauses (1), (3), (5) and (6) of this Article have been complied with and, if not, whether such non-compliance has resulted in failure of justice; and

Whether the order confirming loss of the employee's lien on his post and his consequent removal from service is warranted on record;

And pass order confirming, modifying or setting aside the order passed under sub-clause (6) of this Article.”

17.) Since under the Code, the Appellate Authority is

empowered to set aside, modify or confirm the order passed by the disciplinary authority, we refrain ourselves from expressing any views on merits of the contentions raised by the petitioner and dispose of this writ petition at this stage with a direction to the Appellate Authority to take up the petitioner's appeal, afford her an opportunity of personal hearing and then to decide the petitioner's appeal on merits by passing a speaking order. We make it clear that even if the petitioner has not raised the above mentioned pleas in the grounds of appeal, the same shall be taken to have been raised by her and each such contention shall be dealt with by the Appellate Authority.

18.) Having regard to the fact that the petitioner had served for 20 years (if we ignore her retrospective removal from service), it is a fit case where the Appellate Authority must consider the petitioner's request for voluntary retirement sympathetically and dispassionately. The Appellate Authority shall decide the appeal within a period of four months from the date of receipt of certified copy of this order.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

May 12, 2015.

sandeep sethi