

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4082-CAT of 2013
Date of Decision:- 07.04.2015.

Kusum Dhawan

.....Petitioner

Versus

Central Administrative Tribunal, Chandigarh Bench and others

.....Respondents

**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: Mr. Vikas Chatrath, Advocate and
Mr. S.K. Liberhan, Advocate for the petitioner.

Mr. Aman Chaudhary, Advocate for
respondent Nos.3 to 5.

SURYA KANT, J. (ORAL)

1.) The petitioner impugns the order dated 09.03.2012, passed by Central Administrative Tribunal, Chandigarh Bench, whereby her Original Application in which she challenged the order of her removal from service as also the one rejecting her departmental appeal, has been dismissed.

2.) In the light of the order which we propose to pass, the facts may be noticed briefly.

3.) The petitioner joined Kendriya Vidyalaya Sangathan as a Trained Graduate Teacher (in Biology) on 18.08.1981. While she was posted at the Air Force Station High Ground School at Chandigarh, the petitioner was transferred to Kendriya Vidyalaya No.3 at Patiala vide order dated 20.06.2005.

4.) The petitioner did not join the new place of posting and continued to represent to the authorities for her retention and/or adjustment at Chandigarh.

5.) Kendriya Vidyalaya Sangathan then issued a show cause notice dated 3.10.2005 in purported exercise of its power under Article 81 (D) of the Education Code as to why in view of her continuous absence from duty beyond the sanctioned leave period, her lien from the post be not terminated, namely, why she be not removed from service.

6.) The petitioner replied to the show cause notice on 18.10.2005 reiterating the alleged injustice done to her by means of discriminatory transfer from Chandigarh to Patiala.

7.) The original record produced by the respondents in Court today reveals that the explanation put-forth by the petitioner was not found acceptable. Hence, another show cause notice dated 14.12.2005 was issued to accord her personal hearing on 19.12.2005, before the "confirmation of loss of lien".

8.) The 'speed-post envelope' which is part of the original record bears out that the aforesaid show cause notice was sent vide SPA 0151 dated 15.12.2005 on the petitioner's address but it was returned with the remarks "addressee left India".

9.) The Authorities then got the show cause notice published in the daily newspaper, The Tribune, dated 26.01.2006, which is also available in the record.

10.) The petitioner did not appear for personal hearing.

11.) Kendriya Vidyalaya Sangathan then passed the order dated 09.03.2006 (appears to have been issued on 14.03.2006), ordering the loss of lien of the petitioner on the post of TGT (Biology), with a further direction that consequently, she "shall be deemed to have been removed from the service of Kendriya Vidyalaya Sangathan w.e.f. 21.06.2005 itself i.e., from the date she remained absent".

12.) The endorsement suggests that the order was to be sent to the petitioner by the Speed Post and also the ordinary post.

13.) The above stated order of removal from service was eventually sent by the Speed Post on 18.03.2006 but the original envelope was returned. The only remark mentioned on the envelope is "intimation served". It is not discernible whether the petitioner refused to accept the envelope or she was not found residing there. No one else received the envelope on her behalf as the original one was returned and is lying in the record.

14.) The petitioner relies upon the death certificate of her father-in-law who unfortunately died on 07.03.2006 and was residing in Delhi. According to her, she was away to Delhi when the order of removal was sent by Speed Post.

15.) The order, it appears, was not sent or received by the petitioner through ordinary post.

16.) Unlike the procedure the Authorities adopted to serve the petitioner with the show cause notice for personal hearing, they did not get the order of removal from service or loss of lien published in any newspaper etc.

17.) The petitioner filed the departmental appeal against the order of her removal from service/loss of lien on 31.05.2008. The grounds of appeal include certain mitigating circumstances like:-

(a) Death of petitioner's father-in-law;

(b) paralytic attack;

(c) she had 22 years' unblemished service etc. etc.

18.) The Appellate Authority, vide order dated 16.09.2008, turned down the petitioner's appeal being barred by limitation as she did not prefer the appeal within 45 days from the date the order under appeal was passed, as provided under Rule 25 of the Central Civil Services CCS(CCA) Rules, 1965.

19.) Still aggrieved, the petitioner firstly filed a writ petition in this Court but withdrew the same and then approached the Central Administrative Tribunal. Vide the impugned order dated 09.03.2012,

the Tribunal has dismissed her Original Application being time barred on the same analogy as was given by the Appellate Authority.

20.) We have heard learned counsel for the parties and gone through the original record.

21.) It may be mentioned at the outset that the Appellate Authority proceeded on an erroneous premise that the petitioner had filed appeal under the 1965 Rules. The petitioner's appeal ought to have been treated under Article 81 (D) 8 of the Education Code which expressly provides the remedy of appeal against the order passed under Article 81 (D) 6 of the Education Code. The relevant extracts of the Education Code are to the following effect:-

[D] “Voluntary Abandonment of Service

1. If an employee has been absent/remains absent without sanctioned leave or beyond the period of leave originally granted or subsequently extended, he shall provisionally lose his lien on his post unless:-
 - a) he returns within fifteen calendar days of the commencement of the absence or the expiry of leave originally granted or subsequently extended, as the case may be; and
 - b) satisfies the Appointing Authority that his absence or his inability to return on the expiry of the leave, as the case may be, was for reasons beyond his control. The employee not reporting for duty within fifteen calendar days and satisfactorily explaining the reasons for such absence as aforesaid, shall be deemed to have voluntarily abandoned his service and would, thereby, provisionally lose lien on his post.

2. XXXXX----XXX----XXXX

3. XXXXX----XXX----XXXX

4. XXXXX----XXX----XXXX

5. XXXXX----XXX----XXXX

6.If the Appointing Authority is satisfied after such hearing that the employee concerned has voluntarily abandoned his service in terms of the provisions of sub-clause (1) of this Article, he shall pass an order confirming the loss of employee's lien on his post, and in that event, the employee concerned shall be deemed to have been removed from the service of the Kendriya Vidyalaya Sangathan with effect from 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 directions as he may give regarding the pay and allowances for the period of absence.

7.Appellate Authority – An employee aggrieved by an order passed under sub-clause (6) of this Article may prefer an appeal to the Appellate Authority as notified by the Kendriya Vidyalaya Sangathan from time to time.

8.Period of Limitation for Appeals – 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 served on

the appellant;

Provided that the Appellate Authority may entertain the appeal after the expiry of the said period, if it is satisfied that appellant was prevented by sufficient cause from not preferring the appeal in time.”

9. XXXXX----XXX----XXXX

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.

22.) It may be seen that the Appellate Authority under sub-clause 8 of Article 81 (D) is empowered to entertain an appeal even after the expiry of the limitation period of 45 days if it is satisfied that the appellant had a sufficient cause for not preferring the appeal in time. The Appellate Authority is further empowered under sub-clause 10 of Article 81 (D) to ensure that there is no failure of justice and that the order of loss of lien and consequent “removal from service is warranted on record” Further, the Appellate Authority can confirm, modify or set-aside the order challenged before it.

23.) As has been noticed above, the original record does not indicate that the order of loss of lien/removal from service was served

on the petitioner. No such remarks have been made by the Postal Authorities on the original envelope. No subsequent effort appears to have been made by the respondent-organization to communicate the order of removal from service to the petitioner through any well-known method like publication in a newspaper. If it were a fact that the petitioner lost her father-in-law due to which she was away to Delhi or that she had suffered a paralytic attack, then it would be grossly unjustified to infer that she deliberately avoided the receipt of the order sent to her by Speed Post or that she failed to submit the appeal within limitation without any sufficient cause.

24.) Resultantly and having regard to the facts and circumstances as noticed above, it appears to us that the petitioner cannot be entirely blamed for the inordinate delay occurred in filing of the departmental appeal. It further appears that, had there has been due application of mind in terms of the powers and duties assigned under Article 81 (D), sub-clauses 7 to 10 of the Education Code (instead of referring to the 1965 Rules), the Appellate Authority might have been convinced that there were justifiable reasons beyond her control which prevented the petitioner from filing the appeal on time and consequently she was entitled to condonation of delay in filing such appeal.

25.) Having regard to the previous unblemished service record of over 22 years, there appears to be no justification in not entertaining or deciding the petitioner's appeal on merits. The

Appellate order dated 16.12.2008, therefore, must go and is, hereby, quashed. As a necessary consequence, the order passed by the Tribunal too can not sustain and is set aside.

26.) Having held that, we are also of the considered view that its a fit case where the Appellate Authority ought to have considered sympathetically the fact that the petitioner served the organization for over 22 years without any blemish and the sudden transfer order presumably caused so much resentment that she was misdirected into not joining the new place of posting. While we strongly disapprove the petitioner's absence from duty which indeed amounts to mis-conduct, 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. We leave this exercise to be undertaken by the Appellate Authority only. We will appreciate if the Appellate Authority gives an opportunity of personal hearing to the petitioner and then decides 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

April 07, 2015.

sandeep sethi