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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3044/2014**

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Date of Judgment : 15.10.2015

SOHAN LAL

..... Petitioner

Through : Mr. M. K. Bhardwaj, Advocate

Versus

KENDRIYA VIDHYALAY SANGATHAN & ORS..... Respondent

Through : Mr. S. Rajappa, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J. (ORAL)

1. Challenge in this writ petition is to the order passed by the Central Administrative Tribunal (hereinafter referred to as CAT) dated 04.03.2014.
2. Some necessary facts which are required to be noticed for disposal of this writ petition are that the petitioner was appointed as a Group 'D' Employee against a temporary post w.e.f. 23.04.1986, he was regularized as a Group 'D' Employee w.e.f. 23.04.1988. Petitioner remained on leave from April, 2001 till 07.09.2001 on the ground that he fell seriously ill at his native place on 01.09.2001 and remained under medical treatment till 30.10.2001. Petitioner sent an application on 09.09.2001 for extension of leave by two months. He requested for further leave and he claims that he was fit to join duty w.e.f.

23.12.2001. Petitioner claims that he was not allowed to join duty by the Principal and a memorandum was issued to him on 29.12.2001 removing him from service under Article 81 (D) of the Education Code of CVS. His appeal was rejected by an order dated 02.08.2002 by the Appellate Authority. An OA was filed against the aforesaid order. However, in the meanwhile his Revision Petition was dismissed which led to the filing of another OA. The OA was allowed and the matter was remanded back to the Appellate Authority to reconsider the matter. The Appellate Authority took a sympathetic view in the matter and reinstated the petitioner with immediate effect. The Appellate Authority also decided that the period for which no leave was sanctioned and the period during which the appellant / petitioner herein absented himself from duty wilfully, would be treated as '*dies non*' for all purposes. In the third round of litigation, the petitioner approached the Tribunal and the OA was decided by an order dated 07.01.2009 with a direction to the respondent to reconsider the intervening period treating as qualifying service only for pension and passed an order thereafter. The appellate authority rejected the claim of the petitioner. The petitioner filed a miscellaneous application which was dismissed with leave to the petitioner to challenge the order dated 15/19.05.2009 in appropriate proceedings. Another OA was filed which was dismissed and has led to the filing of the present writ petition.

3. After some hearing in the matter, Mr. Bhardwaj, learned counsel for the petitioner submits that the petitioner has yet not calculated

whether the period of his absence which is to be treated as *dies non* would affect his pensionary benefits or not. He further submits that in case his pensionary benefits are affected, he would then make a representation to the respondents while taking recourse to Rule 28 of CCS (Pension) Rules, 1972.

4. As prayed, present writ petition stands disposed of in above terms.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

OCTOBER 15, 2015

SC