

**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G. SHYAM PRASAD**

Writ Petition No.13295 of 2013

ORDER: (per V. Ramasubramanian, J.)

The Management of Kendriya Vidyalaya Sangathan has come up with the above writ petition challenging an order of the Central Administrative Tribunal directing the reinstatement of the respondent herein into service, as a Post Graduate teacher in Physics.

2. We have heard Mr. B. Narasimha Sarma, learned counsel for the petitioners and Mr. Paravasthu Krishna, learned counsel for the respondent.

3. The respondent was appointed as a Post Graduate Teacher in Physics on 07-12-1988. On 26-06-1999 and 29-04-2000, the respondent submitted an application for sanction of education leave to pursue a four year Ph.D. programme, with effect from 01-05-2000. The petitioners agreed to grant leave on condition that the pursuit of Ph.D. should not come in the way of the discharge of his duties as a teacher.

4. However, the respondent wanted leave on loss of pay, since there was no question of pursuing a Ph.D., in a manner not detrimental to the discharge of the official duties. Therefore, the application for leave was rejected on 25-09-2000 and the respondent rejoined duty on 26-09-2000.

5. It appears that the respondent went on medical leave from 17-10-2000. During this period, he was transferred to West Bengal on 13-11-2000. Since the respondent did not join the transferred

place, a show cause notice dated 17-01-2001 was issued under Article 81 (d) (3) of the Education Code. Though the petitioner submitted a reply on 01-02-2001, the petitioners ordered termination of the services of the respondent, by an order dated 19-03-2001.

6. Challenging the order of termination, the respondent filed an application in O.A.No.187 of 2003 on the file of Central Administrative Tribunal. When the application came up for hearing, it was brought to the notice of the Tribunal that in November, 2004, the petitioners institution had issued Amnesty Scheme for taking back teachers, who retired voluntarily or who resigned or who were dismissed from service. Therefore, without going into the correctness of the order of termination, the Tribunal disposed of O.A.No.187 of 2003 by an order dated 29-03-2007 to the following effect:

“.....Accordingly, we dispose of this O.A. without going into the merits of the case and validity or otherwise of the impugned orders as also the appellate order, with a direction to the applicant to prefer an appeal for being reinstated in the service of KVS in terms of the aforesaid notification dated 14.11.2004 in the prescribed format to the Joint Commissioner (Admn) KVS, Delhi within a period of one month from the date of receipt of this order and whereupon such Committee consisting of Joint Commissioner (Admn.) and 2 Senior Principals (as may be nominated by the Chairman, KVS) may consider the appeal of the applicant and pass necessary orders within a period of two months thereafter in accordance with law. It is made clear that the appeal will be duly considered ignoring the last date mentioned for receipt of such appeals as mentioned in the above notification for the reason that the applicant was in litigation before the Tribunal which is being disposed of by this order.”

7. On the ground that the aforesaid order was not complied with, the respondent moved a Contempt Petition before the Tribunal.

At that time a copy of the order dated 29-08-2007 was produced, showing that the case of the respondent was rejected under the Amnesty Scheme.

8. Therefore, challenging the order dated 29-08-2007 rejecting his case under the Amnesty, the respondent filed a second application in O.A.No.178 of 2008 before the Central Administrative Tribunal. In the said case, the Tribunal passed an order dated 05-11-2009 directing the Commissioner of the Kendriya Vidyalaya Sangathan to constitute a 3 Member Committee to consider the appeal of the respondent. The operative portion of the order of the Tribunal dated 05-11-2009 passed in O.A.No.178 of 2008 reads as follows:

“.....We therefore consider that this is a fit case to remit back to the respondent No.5 to constitute a committee comprising of Joint Commissioner (Admn.) and 2 Senior Principals (as may be nominated by the Chairman, KVS) and such committee shall consider the appeal of the applicant on merits and pass appropriate orders taking into consideration the orders passed in respect of similar cases and necessary guidelines, if any, framed for consideration of the appeals on merits. Accordingly, the O.A. is disposed of with such directions and the matter shall be disposed of within three months from the date of receipt of copy of this order. However, there shall be no order as to costs.”

9. Pursuant to the said order, a 3 Member Committee was constituted. A 3 Member Committee personally heard the respondent on 21-05-2010. The Committee also took into consideration the representation of the respondent dated 08-02-2010 and eventually recommended that the case of the respondent would not be covered by the Amnesty Scheme. Based upon the recommendation of the 3 Member Committee, the Commissioner,

KVS passed an order dated 24-06-2010 rejecting the request of the respondent. The operative portion of the order of the Commissioner extracting the recommendation of the Committee reads as follows:

“.....Whereas the duly constituted Committee personally heard the applicant on 21-05-2010 and considered his representation dated 08.02.2010 with all the relevant facts & circumstances of the case sympathetically. The points stated by the applicant during the course of personal hearing have also been taken into consideration on merit. The committee has examined the leave account submitted by Sh. C. Bhaskar Reddy, Ex-PGT (Phy) during personal hearing and observed that he availed the leave quite often during 1999 & 2000 without prior sanction from the competent authority and remained on leave most of the time for months together which adversely affected the studies of students. He had also not tried to join at Kendriya Vidyalaya, No.1 Kalaikunda but remained absent from duty on one pretext or other. The Committee has also observed that his absence from duty was from 1999 i.e. well before the transfer policy of 2000 and not merely due to his transfer to Kendriya Vidyalaya, No.1 Kalaikunda. Accordingly, the Committee has decided that Sh. C. Bhaskar Reddy, Ex-PGT (Phy), Kendriya Vidyalaya, No.1 Tirupati was not affected by the harsh transfer policy of 2000, hence his case does not come under the ambit of Amnesty Scheme.

It is pertinent to mention here that in the case of Smt. Prem Juneja, Ex-Accounts Clerk, the Hon'ble High Court of Delhi in C.W.P.No.4485 of 2002 has passed the following directions vide its order dated 01.11.2002:

“It needs to be pointed out that the petitioner was absent from duty for a long period of time. The Joint Commissioner, KVS, took a fair view of the matter on consideration of the representation of the petitioner in reply to the show cause notice. This is evident from the following observations of the Joint Commissioner, KVS, contained in his order dated 04.05.2001.

‘And whereas on consideration of the said representation being lady, her concern for the career of children could be appreciated during the examination days or a little earlier but her unauthorised absence w.e.f. 04.10.2000 does not have any genuine grounds.’

We do not find any violation of the principles of natural justice warranting out interference.

In view of the aforesaid discussion, we do not find any merit in the writ petition. Accordingly, the same is dismissed.”

The Hon'ble Supreme Court of India in Civil Appeal No.1344 of 2004 filed by Smt. Prem Juneja, Ex-Accounts Clerk has also passed the following directions vide its order dated 20.04.2010.

“This appeal has been filed against the impugned judgment of the Delhi High Court dated 01-11-2002. We find no infirmity in the impugned judgment.

‘However, we had, by our order dated 02.02.2010 and thereafter vide order 23.03.2010 allowed the appellant to make a representation to the Chairman of Kendriya Vidyalaya Sangathan against the order dated 25.07.2005 rejecting her prayer under the Amnesty Scheme. Today, we have been shown by learned counsel appearing for the Kendriya Vidyalaya Sangathan order dated 19.04.2010 of the Chairman who has rejected the said representation. Hence, nothing survives in this appeal and it is dismissed.”

Keeping in view of the facts and circumstances as explained, the case of Sh. C. Bhaskar Reddy, Ex-PGT (Phy) has not been recommended by the Committee for his reinstatement in the services of KVS under Amnesty Scheme. The recommendation of the Committee has been placed before the Chairman, KVS for its orders. After carefully going through the connected papers of the file, the Chairman, KVS has approved the decision taken by the Committee and rejected his appeal for reinstatement in the services of KVS as the Amnesty Scheme covered only those cases which are due to harsh transfer policy of 2000. Hence, his case does not fall in the ambit of the said scheme.

In view of the foregoing, the Chairman, KVS is of the considered view that the case of Sh. C. Bhaskar Reddy does not come under the Amnesty Scheme which was a one time scheme and the decision taken by the Committee constituted under the said scheme is justified and accordingly, disposed of the representation made by him....”

10. Challenging the said order dated 24-06-2010, the respondent filed the third application before the Tribunal in O.A.No.1123 of 2010. This application was allowed by the Tribunal by an order dated 01-03-2013. By the said order the Tribunal

directed the reinstatement of the respondent. However, the period of his absence from duty till the date he would be taken back, was directed to be treated as *dies-non*. The operative portion of the order of the Tribunal reads as follows:

“.....We, accordingly direct that the applicant has to be taken back into service within three months from the date of this order and the period of his absence from duty till the date he is taken back into service (i.e. for maximum period of three months) has to be treated as *dies-non*. In case within three months the applicant is not taken back into service, he shall be entitled for wages after expiry of above three months period onwards.....”

11. It is against the aforesaid order that the Kendriya Vidyalaya Sangthan is before us.

12. Before we proceed to consider the issues raised, we are constrained to take note of two things. The first is that admittedly the total period of service rendered by the respondent as a teacher was actually 12 years, from 1988 to 2000. The period during which he is out of employment is more than about 15 years from 19-03-2001 to till date. In other words, the period for which the respondent worked as a teacher is lesser than the period of his non-employment. The respondent is now nearing 57 years of age, having been born in February, 1960. This fact has to be kept in mind while considering the issues raised by the respondent in view of the fact that what the respondent is seeking is reinstatement in the post of a Post Graduate Teacher in Physics.

13. Another development that we are unable to overlook, though we may not strictly be entitled to take note of, is that the respondent appears to have already completed law and also enrolled himself as an Advocate. We do not know whether it could

be appropriate to reinstate him into service as a Post Graduate Teacher in Physics, especially after the diversification of interest.

14. However keeping the above facts aside for a moment, let us look at the factual and the legal issue. As rightly contended by Mr. B. Narasimha Sarma, learned standing counsel for the petitioners, the order of termination dated 19-03-2001 was never set aside by the Tribunal. All that the Tribunal did by its first order dated 29-03-2007 in O.A.No.187 of 2003 was to direct the petitioners to consider the case of the respondent under the Amnesty Scheme. The respondent did not challenge the order of the Tribunal before this Court. On the other hand, he went before the petitioners under the Amnesty scheme and suffered an order. Though the said order was set aside by the Tribunal in the second Application O.A.No.178 of 2008, the case of the respondent was once again rejected by yet another 3 Member Committee constituted as per the orders of the Tribunal. Therefore, the only question to which the Tribunal could have confined itself is as to whether the refusal of the petitioners to extend the Amnesty scheme to the respondent was proper or not. On this question, the Amnesty Scheme itself contained indications about the probable answer. The Amnesty Scheme considered the cases of voluntary retirements, resignation as well as dismissal from service. The scheme was intended to benefit those who were affected by a harsh transfer policy that existed at the relevant time. But the case of the respondent did not fall within the same.

15. As the very word "Amnesty" indicates, the scheme was for the benefit of those who suffered due to a particular climate. The

respondent suffered for other reasons and hence, the stand taken by the petitioners not to extend the benefit of the Amnesty Scheme, could not have been interfered with by the Tribunal.

16. It must be remembered that a case of termination from service can be tested on certain parameters but a case of refusal to extend the benefit of Amnesty Scheme, could be tested on certain other parameters. A perusal of the order of termination dated 19-03-2001 shows that the respondent has suffered some injustice. But unfortunately, he agreed to go under the Amnesty Scheme, at least after the order of the Tribunal, without questioning the correctness of the order of termination. Therefore, when we apply the parameters for testing the correctness of the orders of the petitioners refusing to extend the Amnesty Scheme, the case on hand would not fall within any of the mischiefs that would entitle the Tribunal to interfere.

In view of the above, the writ petition is allowed and the order of the Tribunal is set aside.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

Date: 13-12-2016

Ksn