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

+ **WRIT PETITION(CIVIL) NO. 10208/2016**

Date of decision: 2nd November, 2016

KENDRIYA VIDYALAYA SANGATHAN Petitioner

Through Mr. S. Rajappa, Advocate.

versus

EDUNURI MOUNDENAR REDDY Respondent

Through Nemo.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J. (ORAL):

Having heard learned counsel for the petitioner-Kendriya Vidyalaya Sangathan, we do not find any reason to interfere with the impugned order dated 17th May, 2016 passed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) in OA No. 2363/2008.

2. The respondent- Edunuri Moundenar Reddy was appointed as a Post-Graduate Teacher in Kendriya Vidyalaya Sangathan in 1986. From July 1997 to July 2001, he was sent on deputation as Principal, Navodaya Vidyalaya. Subsequently, he was promoted to the post of Principal in

Kendriya Vidyalaya Sangthan by transfer on deputation vide letter/order dated 12th/13th June, 2001. This promotion by way of transfer on deputation was found to be contrary to the Recruitment Rules and consequently vide order dated 24th/26th June, 2003, the respondent was reverted to the post of Post-Graduate Teacher.

3. This reversion, when challenged by the respondent in OA No. 163/2003, was rejected by the Gauhati Bench of the Central Administrative Tribunal vide order dated 2nd December, 2004. The order records that the respondent's claim that he was promoted to the post of Principal on regular basis was incorrect, for the said promotion was *de hors* and contrary to the Recruitment Rules. Further, the appointment by way of transfer on deputation would not confer any right to claim regularisation. Lastly, the reversion order dated 24th/26th June, 2003 being non-stigmatic, was not an adverse order.

4. The respondent had filed Writ Petition (C) No. 2007/2005 before the Gauhati High Court, which was dismissed vide order dated 20th February, 2007. The dismissal order refers to the Recruitment Rule position and the irregularities committed. The promotions were without ensuring adequate and mandated reservation. Appointment as Principal on deputation basis was for a period of one year, extendable for a maximum period of five years. The period of deputation could be curtailed at the sole discretion of the Commissioner, Kendriya Vidyalaya Sangthan. On such termination,

the respondent would be reverted to his parent department or to the feeder post. The respondent having joined as Principal on deputation basis was fully aware and bound by the said terms.

5. Apparently, other teachers/Vice Principals, who had been promoted to the post of Principals by way of deputation on transfer, had succeeded before the Tribunal. Thus, there were conflicting judgments. The reversions had led to wide spread resentment and dissatisfaction. The Chairman of Kendriya Vidyalaya Sangthan, upon consideration, as an ameliorative issued circular dated 19th September, 2007, which records the reason and history for the earlier promotions to the post of the Principal on deputation basis, and introduced a new policy for regularisation. As the entire circular is relevant, we would reproduce the same:-

“A decision was taken by the Chairman, KVS in November, 2004 that the appointments of 322 PGTs/Vice Principals as Principals on deputation basis made by the then Commissioner, KVS were illegal because, the then Commissioner had not followed Article 14 & 16 of the Constitution of India in so far as filling up of the post of Principals meant for SCs, STs, OBCs and unreserved categories both by way of direct recruitment and also through promotion. The then Commissioner had also regularised the services of such deputationist Principals against the posts meant for direct recruits. To set this position right, Chairman, KVS had taken the decision as stated above. Accordingly, a number of Principals who were appointed as such were reverted to their substantive posts namely as PGTs/Vice Principals and also repatriated to their parent organisations.

That various persons had challenged this decision of the Chairman, KVS in various courts/ CATs. Some of the courts have rendered judgment in favour of the aggrieved persons to the effect that they ought to be treated as regularly recruited Principals from the date they were initially appointed as Principals on deputation basis. However, many of the courts including certain high courts have yet to decide on the issue as the matters are still pending consideration.

That in order to give a quietus to the entire issue the Chairman, KVS has now taken a decision to comply with the decision of the courts/CATs which have rendered judgments in favour of the aggrieved Principals and also to withdraw those cases filed by KVS which are pending before High Courts.

It is further stated that the decision of the Chairman, KVS which affected 322 Principals in effect means that all those persons who were appointed as Principals in various KVs and who were reverted to their substantive posts would be considered as regularly appointed Principals with effect from the date they were initially appointed as such.

Accordingly, it is hereby notified by issuing this circular that in order to give effect to the decision of the Chairman, KVS, the undersigned, being the Appointing Authority for Principals in KVS, grants approval for regularising the services of 306 Principals (i) Repatriated to substantive posts $32+4=36$; (ii) Promoted to the post of Principal $1+4=5$; (iii) Regularised deputationists $=119$; (iv) Yet to be regularised $145+1=146$) who were initially appointed on deputation basis and who continued to work as such or as PGTs/Vice Principals on their reversion. It is further approved that those Principals who were regularised to the post of Principal by the then Commissioner, KVS and who were reverted to their substantive posts and who have either got judgments in their favour from courts or not would be accorded the same treatment

of being recognized as regularly appointed Principals. It is further stated that wherever court cases filed by KVS are pending on the issue of regularisation of Principals, they will be allowed to be withdrawn paving way for the regularisation of party respondents in those cases. It is further clarified that all those persons referred to in this circular would be eligible for all consequential benefits upon regularisation in KVS from the date of joining on initial appointment on deputation basis and a separate communication to this effect would be issued to the individuals concerned.

It is also stated that the undersigned is competent to give further instructions to give effect to this circular. ”

The circular records that the earlier Chairman in November, 2004 had made appointments of 322 PGTs/Vice-Principals/Principals on deputation basis. The appointments were made contrary to Articles 14 and 16 of the Constitution as the posts meant for reserved category and direct recruitment category were filled up by promotion and by candidates belonging to general category. Ergo, it was decided that the teachers, promoted as Principals on deputation, would be reverted to their substantive post as Post-Graduate Teachers or Vice-Principals. They were to be repatriated to their parent organisations. However, a number of courts had rendered judgments in favour of the said persons to the effect that they ought to be treated as regularly appointed Principals, from the date they were initially appointed as Principals on deputation basis. Paragraph 2 of the circular notes that many courts, including certain High

Courts, were yet to decide the matters, which were pending consideration. The last but one paragraph thereafter records the decision taken by the Chairman being the appointing authority of the Principals. It was decided to grant approval for regularisation of services of 306 Principals, who were initially appointed on deputation basis and thereafter were reverted to the post of PGT and Vice-Principals. Their appointments as Principals would be regularised. Importantly, it was stipulated that the decision would be effective whether or not the said employee had got a judgment in their favour from the court or not. In other words, it was decided to universally and equally apply the said circular to all teachers/ vice principals, who were appointed as Principal on deputation basis, whether or not they had succeeded in the litigation. All were treated alike. Least there be any confusion, we would like to reproduce the relevant sentence used in the said circular once again:-

“It is further approved that those Principals who were regularised to the post of Principal by the then Commissioner, KVS and who were reverted to their substantive posts and who have either got judgments in their favour from courts or not would be accorded the same treatment of being recognized as regularly appointed Principals.”

A reading of the quotation would show that a conscious decision was taken to give benefit of regularisation to all employees, who were promoted as Principal on deputation basis whether they had a decision in their favour from the courts or not. This circular, according to us, gave a

fresh cause of action to the respondent. In terms of said circular, he could seek regularization as a Principal in spite of the adverse decisions in the OA No. 163/2003 decided by the Gauhati Bench of the Central Administrative Tribunal on 2nd December, 2004 and when Writ Petition (C) No. 2007/2005 was dismissed vide judgment dated 20th February, 2007. The effect of the circular was not examined in the said decisions, which were earlier in point of time. These decisions, therefore, would not curtail and deny the right of the respondent to rely upon the circular and stake his claim for regularisation. It will be wrong and unjust not to grant the benefit of the said circular, which expressly states that the same would be applicable whether or not there is a court decision in favour of the said employee. The circular itself is not under question or doubt. It has not been withdrawn or recalled. Others similarly situated as the respondent who were promoted as principals on deputation basis have got the benefit.

6. After the said circular was issued, the respondent had filed the second OA No. 2165/2007, which was disposed of by the Principal Bench of the Central Administrative Tribunal vide order dated 30th April, 2008 to the following effect:-

“This OA is disposed of with a direction to the respondents to treat the present OA as a representation of the applicant and to consider his claim by way of extending the benefit of Circular dated 19.09.2007, by passing a speaking order within a period of two months

from the date of receipt of a copy of this order.”

7. It is noticeable that the Tribunal did not dismiss the OA on the ground that it was barred by principle of *res judicata*. The direction was to treat the OA as a representation and consider the claim of the respondent for extending the benefit of circular dated 19th September, 2007 by passing a speaking order. This direction and order was not challenged by the petitioner and has attained finality.

8. By order dated 10th June, 2008, the petitioner rejected the respondent's representation and claim for regularisation as a Principal holding that the respondent had already been repatriated to the feeder post, i.e., Post-Graduate Teacher in 2003 and consequently the circular dated 19th September, 2007 was not applicable to him. The case of the respondent, therefore, did not fall within the scope of the circular dated 19th September, 2007. Rejection and dismissal of the OA No. 163/2003 and W.P. (C) No.2007/2005, was not the reason and ground for rejecting the representation. The exact reasoning and ground given in the order dated 10th June, 2008 passed by the petitioner reads as under:-

“Whereas the request of the applicant was considered by the undersigned but could not be acceded to as the benefits under circular dated 19.09.2007 are applicable to those candidates (323) who were affected by the decision of the Hon'ble Chairman, KVS in November, 2004 as quoted in the Para 1 of the said circular. As Shri E.M. Reddy was repatriated to his feeder post of PGT (Chem.) in 2003, the circular dated 19.09.2007 is

not applicable in his case. It is clarified that the case of Shrif E.M. Reddy does not fall within the scope of consideration of circular dated 19.09.2007 and, therefore, no benefit could be granted to him.”

The aforesaid reasoning is contrary to the circular dated 19th September, 2007. The said circular specifically states that teachers, who had been promoted as Principals on deputation basis and had been subsequently repatriated, would be equally granted and given the same benefit. We fail to understand how the order dated 10th June, 2008 had interpreted the circular dated 19th September, 2007, contrary to the clear and plain language.

9. The respondent in these circumstances was compelled to approach the Tribunal by way of OA No. 2363/2008. This OA was initially disposed of vide order dated 8th May, 2009 recording as under:-

“Heard the learned counsel for the parties.

2. We have been told by learned counsel for respondents that when a similar view was taken to extend the benefits of circular dated 19.9.2007 to the persons falling beyond the ambit of 322 Principals by this Tribunal and was further affirmed by the High Court of Delhi, SLP (K.V.S. v. Pramod Saxena) was filed by the respondents in which the Apex Court has stayed the operation and SLP is awaiting disposal.

3. In the light of above, we dispose of this OA with a direction to the respondents to extend the benefits of aforesaid circular upon the applicant on outcome of the sub judice SLP before the Apex Court. It is, however, observed that the applicant shall be at liberty to revive the present OA on non-compliance.

No costs.”

The aforesaid order refers to order passed by the Delhi High Court in the case of one Pramod Saxena, who was similarly promoted as the Principal on deputation and subsequently reverted. The Tribunal held that the respondent would be entitled to benefit of the circular dated 19th September, 2007, a legal position affirmed by the High Court of Delhi in the case of Pramod Saxena. It was directed that the respondent would be entitled to benefit of the circular dated 19th September, 2007 depending upon the outcome or the decision of the Special Leave Petition (SLP) filed by the Kendriya Vidyalaya Sangthan in the case of Pramod Saxena. SLP filed in the case of Pramod Saxena by Kendriya Vidyalaya Sangthan was dismissed by the Supreme Court vide order dated 29th October, 2012. Despite dismissal of the said SLP, the petitioner did not extend the benefit of the circular dated 19th September, 2007 to the respondent. The respondent thereupon had filed contempt petition which was disposed of vide order dated 7th March, 2014 giving liberty to the respondent to revive OA No. 2363/2008. The order dated 7th March, 2014 refers to the stand taken by the petitioner.

10. Thereafter, the respondent filed an application and OA No. 2363/2008 stood revived. Having considered the factual matrix and also the impact and effect of the circular dated 19th September, 2007, we do not

think the petitioners are right in their stand that the respondent cannot be given benefit of the said circular. The circular would be clearly applicable. On a query being raised by the Court, learned counsel for the petitioner has stated that the respondent is not facing any departmental proceedings.

11. In view of the aforesaid position, we do not find any merit in the present writ petition and the same is dismissed.

SANJIV KHANNA, J.

SUNITA GUPTA, J.

NOVEMBER 02, 2016
VKR/NA