



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CWP No.7105 of 2019 (O&M)

Reserved on: 23.01.2025

Date of Decision: 20th February, 2025

Kendriya Vidyalaya Sangathan and another

...Petitioners

Versus

Dhanesh Dutt Sharma and another

...Respondents

**CORAM: *HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA*
*HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA***

Argued by:- Mr. Harsh Aggarwal, Advocate
for the petitioners.

Mr. Vijay Sharma, Advocate
for respondent No.1.

SANJEEV PRAKASH SHARMA, J.

1. The brief facts, which have been culled out from the record, are that respondent No.1 was, initially, appointed as a Trained Graduate Teacher (TGT) at Kendriya Vidyalaya Sangathan and later-on, he was appointed as Post Graduate Teacher (PGT) and thereafter, he was promoted to the position of officiating Principal at Kendriya Vidyalaya No. 3, Patiala. In March 1993, he was accused of committing serious misconduct, specifically of outraging the modesty of a female staff member namely Ms. Ruby Sharma. A charge sheet was issued against him on 02.02.1996 and a detailed inquiry followed thereafter. The Inquiry Officer submitted his report on 12.06.2002 to the effect that the charges levelled against respondent No.1



stood substantiated. Following the inquiry, respondent No.1 was given an opportunity to present his defence, as per the principles of natural justice and was, subsequently, removed from service vide the order dated 19.08.2002.

2. Respondent No.1 preferred an appeal against the order of his removal from service, which was dismissed on 16.10.2003. Then, he filed OA No.1255 of 2003 before the Central Administrative Tribunal (CAT), which was dismissed on 29.06.2004. Civil Writ Petition No.10367 of 2005 as filed by him before this Court was also dismissed on 12.07.2005 and then, he filed a Special Leave Petition (SLP) before the Hon'ble Supreme Court and the same was dismissed on 02.01.2006 and the Review Petition moved by him was also dismissed by the Apex Court on 27.07.2006.

3. In 2014 and 2015, respondent No.1 moved applications, requesting therein for the release of his pension and retiral benefits and the same were duly considered by the concerned authorities in accordance with law and rejected the same on 28.05.2015. Then, respondent No.1 filed OA No.060/00539/2015 before the CAT which was disposed of vide order dated 21.01.2016, with a direction to him to move representation to writ-petitioners who were directed to decide the same within two months thereafter.

4. Though the Deputy Commissioner, Chandigarh Regional Office, accepted the representation of respondent No.1 vide order dated 15.03.2016 but the Commissioner, Kendriya Vidyalaya Sangathan (KVS) rejected his claim for compassionate allowance vide the order dated 18.04.2016. Subsequently, the Deputy Commissioner vide order dated



25.01.2017, reviewed and withdrew the earlier order dated 15.03.2016. Respondent No.1, thereafter, filed an application OA No.060/00896/2017 before the Central Administrative Tribunal (CAT) and the same was allowed vide the impugned order (Annexure P-1) on 23.08.2018.

5. We have heard learned counsel for the petitioners as well as learned counsel for respondent No.1 in the instant appeal and have also perused the file thoroughly.

6. Learned counsel for the petitioners (KVS) has contended that the impugned order passed by the Tribunal (Annexure P-1) is untenable in law as it violates Article 14 (Right to Equality) and Article 16 (Equality of opportunity in matters of public employment) of the Constitution of India as well as the CCS (Pension) Rules, 1972 and moreover, the same is contrary to the facts of the case and the Tribunal erred in law by quashing the order dated 18.04.2016 passed by the Commissioner, KVS and by upholding the Deputy Commissioner's order dated 25.01.2017 and has also wrongly concluded that it was the Deputy Commissioner and not the Commissioner, who was the competent authority to grant or reject the compassionate allowance under Rule 41 of the CCS (Pension) Rules, 1972 whereas in fact, the Commissioner is the head of the department and the Chief Executive Officer (CEO) of KVS and thus, holds a higher position than the Deputy Commissioner. According to Annexure P-6, the Education Code for Kendriya Vidyalayas, the Commissioner is not only the competent authority to approve or disapprove compassionate allowance but also has the authority to dismiss or remove the employees from service and



therefore, the Tribunal's reasoning is erroneous and illegal.

7. Learned counsel for the petitioners has further contended that the Tribunal did not address the merits of the case at all as the impugned order is silent on the aspect as to whether respondent No.1 was entitled to compassionate allowance under the CCS (Pension) Rules and it also did not consider the issue as to whether the respondent's circumstances warranted any special consideration for the grant of compassionate allowance, as envisaged under the Rules. Respondent No.1 was removed from service following a departmental inquiry, wherein the charge of misconduct specifically, outraging the modesty of a staff member, Ms. Ruby Sharma, was found to be proved against him and this finding was upheld upto the Apex Court, thus making respondent No.1 ineligible for the compassionate allowance under Rule 41 of the CCS (Pension) Rules. Furthermore, respondent No.1 forfeited his pension and gratuity as per the Rules and there is no evidence qua special considerations that would justify the grant of compassionate allowance and respondent No.1 did not demonstrate any financial hardship, as his wife was employed and his two daughters, aged around 30, were also self-dependent and respondent No.1 did not aver in his representation that his daughters were financially dependent on him.

8. Per contra, learned counsel appearing for respondent No.1 has argued that respondent No.1 has unnecessarily suffered only on account of a wrong and false complaint made by the primary teacher, although after respondent No.1 had lost his battle upto the Supreme Court, it has now come on record that the Station Commandant as well as the Chairman,



Kendriya Vidyalaya, Nabha Cantt, who was a Major Education Officer of the Army, had made complaints regarding unruly behaviour on the part of the concerned primary teacher.

9. Learned counsel for respondent No.1 has further argued that a representation had been submitted by respondent No.1 as there is a provision in the CCS (Pension) Rules, 1972 for grant of compassionate allowance to persons who have rendered long service and the representation moved by respondent No.1 in this regard was considered and the Deputy Commissioner, who is empowered to take decisions relating to the officers of the level of Principal, had allowed compassionate allowance @ Rs.375/- with effect from 20.08.2002 to 31.12.2005 and Rs.3500/- per month from 01.01.2006 onwards. The Commissioner, to whom a copy of the said representation had been sent, had independently passed an order on 18.04.2016 holding that respondent No.1 was not entitled for compassionate allowance.

10. Learned counsel for respondent No.1 has taken this Court to the powers and duties of the officers and employees of the Kendriya Vidyalaya, to argue that while the Commissioner shall be the Principal Executive Officer of the Sangathan, it is the Deputy Commissioner who is empowered to make appointment to the teaching and non-teaching posts in Groups 'B' and 'C' in the Vidyalaya except for those of Vice-Principal and Group-D posts of regional office and the administrative powers of the Deputy Commissioner also include sanctioning of increments to Groups-B, C and D employees of the Regional Offices, Principals and Vice-Principals



in the prescribed time scale and also sanctioning of leave etc. and moreover, the probation and confirmation are also to be approved by him and hence, the power exercised by the Deputy Commissioner could not have usurped by his superior officer, i.e the Commissioner and order passed by the Deputy Commissioner for granting compassionate allowance has erroneously been withdrawn.

11. Learned counsel for respondent No.1 has also argued that though the disciplinary authority imposed punishment of removal from service but however, respondent No.1 was entitled to receive the compassionate allowance at least for rendering distinguished service for 23 years in the Kendriya Vidyalaya.

12. We have considered the afore-discussed submissions and find that the removal of respondent No.1 from service has been upheld by Hon'ble Supreme Court. It being so, the contention, as raised before us qua the grant of compassionate allowance, would amount to examining the order passed by the Commissioner dated 18.04.2016. So far as the impugned order is concerned, the CAT has only gone into the competence of the Commissioner to pass the order rejecting the claim of respondent No.1 and the legality of the said has not been examined therein because the Tribunal has proceeded to hold that the Commissioner was not competent to decide the issue relating to grant of compassionate allowance and rather, it was the Deputy Commissioner alone who was competent to decide the same. We, therefore, would limit ourselves to examine the said aspect alone in the present writ petition, in terms of the powers conferred upon the



Commissioner and the Deputy Commissioner under the relevant Rules, which read as under:-

“The Commissioner

a. Administrative Powers

- 1. The Commissioner shall be the Principal Executive Officer of the Sangathan and subject to any decision that may be taken by the Board. The Commissioner shall be responsible for the proper administration of the affairs of the Sangathan and the properties and institutions such as the schools, playgrounds, gymnasias hostels, residential quarters for officers, principals, teachers and other employees etc. under the direction and guidance of the Chairman and the Board.*
- 2. To make appointment to all posts at the Headquarters and Regional Offices as well as Vidyalayas, corresponding in status to Group 'A' excluding Deputy Commissioners and above, on the recommendation of the Appointment Committee/ DPC.*
- 3. To post, transfer and assign any duties to all officers and staff at the Headquarters, Regional Offices as well as at the Vidyalayas level.*
- 4. To create posts in Kendriya Vidyalayas for teaching and non-teaching categories.*
- 5. To create posts for the Headquarters/ Regional Offices of the Sangathan for a period up to six months.*
- 6. To approve probation and grant confirmation to Group 'A' officers (including Joint Commissioners).*
- 7. To forward applications of Group 'A' Officers of the level of Deputy Commissioners and above of the*



Headquarters and Regional Offices for posts outside the Sangathan subject to any general orders.

8. *To depute all the employees of the Headquarters of the Sangathan, Regional Offices and Vidyalayas for training abroad, subject to general directions, if any, given by the Board.*
9. *To inspect and supervise the working of the Vidyalayas and to issue directions for development of education in Kendriya Vidyalayas to Principals and other officers of the Headquarters.*
10. *To approve and prescribe text books for all classes including those recommended by the Central Board for classes IX to XII.*
11. *To formulate plans and schemes for development of higher education on the lines of the scheme embodied in the Kendriya Vidyalayas Scheme and to obtain the approval of the Board and the Government of India.*
12. *To grant permission to all employees of the Headquarters, Regional Offices and Kendriya Vidyalayas to write books, or to prosecute higher studies, or to take up other literary work.*
13. *To prescribe admission, examination and promotion rules for Vidyalayas.*
14. *To prescribe school timings of Vidyalayas, Vidyalaya term, Vidyalaya year, vacation and other breaks.*
15. *To prescribe the Headquarters and territorial jurisdiction of Deputy Commissioners and other officers of the Headquarters office.*
16. *To grant scholarships and stipends to students in accordance with the scheme approved by the*



Board.

17. *To issue orders on the analogy of FR9(6)(b) of the Compilation of the Fundamental Rules that employees of the Sangathan in certain circumstances be treated as on duty. In the case of deputation of an employee abroad, this power shall be subject to the concurrence of the Finance Member of the Sangathan.*
- *To sanction advance increments upto a maximum of three increments in a time-scale to teaching staff of vidyalayas on their initial appointment, subject to the recommendation of the selection committee.*
- *To sanction advance increments in a time-scale to non teaching staff of the vidyalayas up to a maximum of three Increments on initial appointment, subject to the recommendation of the selection committee.*
18. *To permit an employee of the Sangathan to undertake work for which a fee is offered, subject to the maximum of Rs. 5000/- in each case.*
19. *To sanction leave to Additional Commissioners, KVS.*
20. *To require Group 'A' officers to produce medical certificate of fitness on return from leave on medical grounds.*
21. *To extend leave of Group 'A' officers in order to regularise over stay of leave.*
22. *To decide whether an employee is vocational or non-vocational staff.*
23. *To accord administrative approval and expenditure sanction in respect of all construction and maintenance works.*

• **Financial Powers**



The Commissioner shall have powers analogous to the powers of the Head of the Department under the Supplementary Rules, General Financial Rules, Central Treasury Rules, Medical Attendance Rules and KVS (Employees) Provident Fund Rules. Some of the relevant powers of the commissioner under the above mentioned rules are detailed in the statement at Appendix-II in the education code for Kendriya Vidyalayas.

Deputy Commissioner

(a) Administrative Powers

- 1. To make appointments to teaching and non-teaching posts in Group B and C in Vidyalayas except that of Vice Principal and Group 'D' posts of Regional Office.*
- 2. To approve probation and grant confirmation to the Group B and C employees in Vidyalayas, except Vice-Principals, and Group 'D' employees of Regional Offices.*
- 3. To forward applications of employees upto Group B (including Vice-Principals) of Vidyalayas and Regional Offices for posts outside the Sangathan but not for the posts abroad and to grant permission for registration with the Employment Exchange.*
- 4. To grant permission upto Group B (excluding Vice-Principal) of Vidyalaya and Regional Offices for appearing at public examination.*
- 5. To depute teaching staff of Group B (excluding Vice-Principals) and Group C establishments of the Vidyalayas and Regional Office for training/ participation in educational programmes in India etc. where such training/participation is*



considered to be in the Sangathan's interest.

- 6. To inspect and supervise Vidyalayas to ensure that curricular and co-curricular activities are properly carried out in the Vidyalayas and to suggest improvements, if any.*
- 7. To inspect, supervise and to suggest improvements in the administration of Vidyalayas.*
- 8. To allow alteration in the name/sumame of the Group B, C & D employees of the Vidyalayas, excluding Vice-Principals.*
- 9. To look after the welfare of the employees of the Vidyalayas/ Regional office.*
- 10. To grant permission to the Group B and C employees of Vidyalayas/ Regional Office (excluding Vice-Principals) to prosecute higher studies or to write books or to take up any literary work.*
- 11. To issue orders on the analogy of FR 9(6) of the Fundamental Rules in respect of Group C employees of the Vidyalaya/Regional Office that an employee in certain circumstances be treated as on duty, subject to such instructions as may be issued.*
- 12. To transfer Vidyalaya staff other than the Principals and Vice-Principals from one place to another within the Region subject to general orders of KVS HQrs from time to time in this regard.*
- 13. To dispense with a medical certificate of fitness in respect of Group C employees of Vidyalayas and the Regional Office.*
- 14. To sanction annual increments to Group B, C and D employees of the Regional Office and Principals and Vice-Principals of the Vidyalayas in the*



prescribed time-scale.

15. *To sanction the undertaking of work for which a fee is offered and an acceptance of the fee by the staff of the Vidyalaya (other than the Principal) and the Regional Office subject to a maximum of Rs. 2500/- (Rupees two thousand and five hundred only) in each case.*
16. *To grant leave preparatory to retirement and refuse leave etc. to Group B and C employees of Vidyalayas.*
17. *To grant leave to Group B, C and D employees of the Regional Office.*

(b) Financial Power

He shall have powers analogous to powers under the Supplementary Rules, General Financial Rules, Central Treasury Rules, Medical Attendance Rules and KVS Employees' Provident Fund Rules as detailed in Appendix II."

13. The administrative powers of the Commissioner, as per clause 1 itself, reflect that the Commissioner would be the Principal Executive Officer of the Sangathan and shall be responsible for the affairs of the properties and the institutions. Therefore, he has to be considered as the final authority with respect to any administrative decision, taken in the matters within his jurisdiction and also to be responsible for the decisions taken by his subordinates. Thus, a decision taken by the Deputy Commissioner for grant of compassionate allowance would be deemed to require an approval from his superior officer, i.e the Commissioner. However, in the instant case, there is peculiar circumstance where both of them have taken two different decisions, one for grant of compassionate



allowance while the other for the refusal. Since the superior officer had refused to grant the above-said benefits, therefore, the order regarding the grant of the compassionate allowance by the subordinate officer, namely, the Deputy Commissioner, has been withdrawn. In administrative echelon, a superior officer's view has to be respected by his subordinate.

14. We also examine the said aspect from yet another angle. In case, the Deputy Commissioner would have rejected the prayer of grant of compassionate allowance, respondent No.1 would have filed a representation to the superior officer, i.e the Commissioner and if the Commissioner would have granted the compassionate allowance, the same would have to be implemented by the Deputy Commissioner. Thus, looking it from all angles, we find that the order passed by the learned Tribunal cannot be sustained and the order passed by the Commissioner, rejecting the prayer for grant of compassionate allowance has to be treated as the final order and the order passed by his subordinate officer, the Deputy Commissioner, on 15.03.2016 has rightly been withdrawn vide the order as conveyed to respondent No.1 vide letter dated 25.01.2017. However, we have noticed that the CAT has revived the order dated 15.03.2016 without setting aside the order/letter dated 25.01.2017 qua the withdrawal of the afore-referred order passed on 15.03.2016.

15. As a sequel to the fore-going discussion, the impugned order handed down by the Central Administrative Tribunal, setting aside the order dated 18.04.2016, is hereby quashed. Having upheld the order dated 18.04.2016, passed by the Commissioner, on the ground of competency,



we find that this order has not been examined by the CAT on merits.

16. We, therefore, remand the case to the CAT with liberty to both the parties to address arguments on the question of legality and validity of the order passed by the Commissioner on 18.04.2016 on merits. It is expected from learned CAT to decide the said issue expeditiously preferably within a period of three months. The case be listed before the CAT on 05.03.2025. For the said purpose, the OA shall be revived to its original number and heard on merits. The present writ petition stands disposed of with the above-said directions.

17. All pending applications stand disposed of.

18. No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

20th February, 2025
vs/neetu

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: Yes