

(2006) 10 DEL CK 0117
In the Delhi High Court
Case No : Writ Petition (C) 4710/03

Ajay Kumar Acharya

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-10-2006

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11
Constitution of India, 1950 — Article 226

Citation : (2006) 92 DRJ 585

Hon'ble Judges : Vipin Sanghi, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : P.P. Relan, for the Appellant; S. Rajappa, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—In this petition under Article 226 of the Constitution of India, petitioner seeks to impugn orders passed by the Central Administrative Tribunal in O.A. No. 1342/01 and dated 20.3.2003 in the review application No. 82/03. Petitioner also prays for setting aside the order passed by the respondent Kendriya Vidyalaya Sangathan terminating his services.

2. Facts in brief are:- Petitioner was appointed as a Primary Teacher in Kendriya Vidyalaya Sangathan w.e.f. 28.7.1981. He completed his period of probation and was appointed as a Primary Teacher by the Kendriya Vidyalaya, Regional Office, Jaipur in substantive capacity vide order dated 15.5.1990.

3. The petitioner was transferred from Kendriya Vidyalaya, Refinery Nagar, Mathura to Kendriya Vidyalaya, Mathura Cant, Mathura vide order dated 27.10.1997. The petitioner states that before he could join his duties at Kendriya Vidyalaya, Mathura Cant, Mathura, he became ill and had to seek leave on medical grounds and Therefore could not join duty at the new posting. He states that after some time the Principal of Kendriya Vidyalaya, Refinery Nagar, Mathura refused to entertain his leave applications and Therefore he sent those

applications supported by medical certificate to Assistant Commissioner, Kendriya Vidyalaya Sangathan, Gwalior and Lucknow. He states that the respondent did not, however, issue any direction to him to appear before a Medical Board and did not even respond to his applications seeking leave of absence on medical grounds.

4. He further states that the respondent issued a communication dated 7.12.2000 wherein, according to the petitioner, the respondent falsely claimed that they had not received leave applications sent by the petitioner from time to time. The letter dated 7.12.2000 of the respondent required the petitioner to report to the office by 25.12.2000. The said letter dated 7.12.2000 reads as follows:

File No. 8-18/2000(KVS)LAK/10688 Dated: 07-12-2000 REGISTERED. MEMO. Shri A.K. Acharya, Primary Teacher, Kendriya Vidyalaya Mathura Cantt is unauthorisedly absent from 29-10-1997 till date without any application. The Principal, directed Shri Acharya on 29.2.1998 vide its Memo. No. 22/98-99/64 and on 25-4-1998 vide Memo. No. KVMC/PF-AKA/98-99/579 to report for duty but Shri Acharya did not report for duty nor submit any application/leave application. Thereafter the Asstt. Commissioner KVS Gwalior on 11-11-1998, file No. 22-12/97/KVMC Gwlr/109 directed him to report to his office for which he made no reply. Thus Shri Acharya, disobeyed the orders of higher authorities in this manner.

Shri A.K. Acharya, Primary Teacher, Kendriya Vidyalaya Mathura Cantt. is again directed to report for duty by 25-12-2000 and if he does not report to this office for duty by 26.12.2000 then it will be presumed that he is not interested in work and his services will stand terminated by 26.12.2000 and no communication will be in this regards will be considered.

5. The petitioner states that in response to the letter dated 7.12.2000, he sent a representation dated 20.12.2000 wherein he requested necessary directions to be issued to the Principal of Kendriya Vidyalaya, Refinery Nagar, Mathura or Kendriya Vidyalaya, Mathura Cantt; Mathura so that he could report for duty as per the directions given by the respondent in their order dated 7.12.2000. The petitioner claims that he had been on medical leave for about 3-1/2 years when the communication dated 7.12.2000 was sent to him by the respondent. The petitioner further states that he did not receive any response to his representation of 20.12.2000 and so he issued further communications dated 10.3.2001 and 16.4.2001 to enable him to join his duties. He states that without a show cause notice or any further opportunity, he was served with the impugned order dated 11.4.2001 whereby his services were terminated by the respondent. The termination order issued to the petitioner dated 11.4.2001 reads as follows:

No. F 8-43/99-KVS(LR)/345 Dated: 11-04-2001 Registered/Conf. ORDER

Whereas Dr. A. K. Acharya was appointed against a temporary post Primary

Teacher in Kendriya Vidyalaya Sangathan and posted in Kendriya Vidyalaya, Bharatpur vide Memorandum No. F.16-19(3)/45/81 KVS(DR)/2995 dated 28-07-1981.

Whereas the said Dr. A.K.Acharya reported for duty as Primary Teacher in Kendriya Vidyalaya, Bharatpur on 10-08-1981.

Whereas Dr. A.K. Acharya was on probation of two years as per terms and condition laid down vide Sl. No. 5 of the Memorandum dated 28-07-1981 cited above.

Whereas Dr. A.K.Acharya was appointed in substantive capacity as Primary Teacher vide

Kendriya Vidyalaya Sangathan, Regional Office, Jaipur Office Order No. F.2/13/89-KVS (JPR) dated 15-05-1990.

Whereas the services of the confirmed appointee are terminated by three months notice on either side without any reason assigning Therefore as per terms and condition of the appointment ordered as per rules laid down in Education Code of Kendriya Vidyalaya.

Whereas the notice had been served on the said Dr. A.K. Acharya vide Kendriya Vidyalaya Sangathan, Regional Office, Gwalior Memorandum No. F.22-12/97-KVS(GWLR)/10935 dated 11-11-1998 and this office Memorandum of even number dated 01-09-2000 and 07-12-2000 to report to this office by 25-09-2000 and 26-12-2000 with the condition that if he will not report for duty by 26-12-2000 it will be presumed that he is not interested in the services of the Sangathan and his services may be deemed to be terminated w.e.f.26-12-2000 after-noon but the said Dr. A.K. Acharya failed to report to his duties at Kendriya Vidyalaya Sangathan, Regional Officer, Lucknow till date.

Now, Therefore, the undersigned in exercise of the power vest to him terminate the services of Dr. A.K. Acharya as Primary Teacher, Kendriya Vidyalaya Sangathan w.e.f. 11-04-2001 i.e. after expiry of three months notice.

6. Aggrieved by the order of termination, the petitioner preferred Original Application No. 1342/01 before the Tribunal. The said Original Application was kept pending with a direction to the respondent to dispose of the petitioner's departmental appeal dated 17.4.2000. The said appeal was rejected by the Commissioner, Kendriya Vidyalaya Sangathan. Accordingly, the petitioner amended his Original Application. The Tribunal by its order dated 28.1.2003 dismissed the Original Application of the petitioner after hearing the parties. The petitioner preferred a review application before the Tribunal which has also been dismissed vide order dated 20.3.2003. That is how the petitioner is now before us to challenge the order of termination, its confirmation in appeal and the orders passed by the Tribunal dismissing his Original Application and the review application preferred by him.

7. Respondent in the counter affidavit has averred that upon transfer of the petitioner from KVS Refinery Nagar, Mathura to KVS Mathura Cant, Mathura in October, 1997, petitioner abstained and did not report for duty. No application for leave supported with the medical certificate, as claimed by the petitioner, was submitted. Petitioner was repeatedly directed by the respondent to report for duty in November, 1998, September, 2000 and December, 2000. A memo dated 7th December, 2000 was issued by the respondent requiring the petitioner to report to duty, failing which it would be presumed that he was not interested in service and his services would be deemed to be terminated w.e.f. 26th December, 2000.

8. It is clear from the facts of this case that the petitioner had unauthorizedly abstained from duty for more than three and a half years and even after the receipt of memo dated 7th December, 2000, petitioner did not report for duty. Petitioner's Explanation that in response to the memo dated 7th December, 2001, he made a representation, seeking directions to the Principal of KV School, followed by further communications dated 10th March, 2001 and 16th April, 2001 appear to be a mere ruse and do not inspire any confidence. The said letters belatedly express his readiness to join duties are belied by his own conduct. Rather his continued absence for over three and a half years demonstrates to the contrary making it evident that he had no intention of resuming or joining service. Respondents on their part despite the unauthorized absence and failure to join waited for over three months and only on 11th April, 2001 terminated the services vide letter dated 11th April, 2001 on expiry of three months, as per the terms of appointment letter read with Explanation (viii) (c) to Rule 11 of the CCS (CCA) Rules, 1965.

9. We find that the termination of services of the petitioner in the facts of this case cannot be regarded as arbitrary or discriminatory exercise of power. Nor can it be said to be punitive in nature. Rather, in these facts, it is the petitioner who has unauthorizedly remained absent for over three and a half years, failing to report for duty without any plausible cause and did not join duties despite being given opportunities and thereafter also the respondents waited for three months notice period, prior to termination of services. We find that the order of the Tribunal does not suffer from any infirmity or error, warranting interference in the exercise of writ jurisdiction under Article 226 of the Constitution of India.

Dismissed.