

(2023) 08 DEL CK 0261

In the Delhi High Court

Case No : Civil Writ Petition No. 10691 Of 2023, Civil Miscellaneous Application No. 41456, 41457 Of 2023

Kendriya Vidyalaya Sangathan & Anr.

APPELLANT

Vs

M. L. Chaurasia

RESPONDENT

Date of Decision : 31-08-2023

Acts Referred:

Citation : (2023) 08 DEL CK 0261

Hon'ble Judges : V. Kameswar Rao, J;Anoop Kumar Mendiratta, J

Bench : Division Bench

Advocate : Shubhranshu Padhi, Ashish Yadav, Kripa Shankar Prasad, Alisha K. Shail, Ritu Raj Kumari

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J

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Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 10691/2023

1. The challenge in this petition is to an order dated February 1, 2023 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ("Tribunal", for short) in OA No. 2941/2016, whereby the Tribunal has allowed the OA filed by the respondent herein.

2. The submission of learned counsel appearing for the petitioner No.1 i.e., Kendriya Vidyalaya Sangathan, ("KVS", for short), is primarily that the Tribunal has erred in relying upon the order(s) passed by the KVS in respect of Dr. Sanjay Kumar. In other words, it is his submission that the respondent being the aggressor, which was the basis to subject him to departmental inquiry, which was

not the case /charge against Dr. Sanjay Kumar, he could not have been granted parity qua Dr. Sanjay Kumar.

3. It was the case of the respondent herein before the Tribunal that in his case, though a departmental inquiry was initiated against him, it was not concluded as the Inquiry Officer was of the opinion that because of passage of 7 years, no purpose would be served for conducting a further inquiry. It was based on this report, the disciplinary authority on its own, imposed the penalty of dies non for the period of absence from the date of termination of the respondent to the date of his rejoining or reinstatement. The Tribunal in paragraphs 11, 11 and 12 of the impugned order, has concluded, in the following manner:-

"11. We have gone through the records of the case thoroughly and heard the arguments carefully. In the instant case the records of preliminary inquiry and the subsequent inquiry were not presented by either of the parties. The circumstances upon which the incident occurred and degree of involvement and non-involvement in the said assault was not brought out clearly. These facts may be ascertained from the statement of witnesses and the various inquiry reports submitted during the preliminary inquiry and the subsequent second inquiry. The Disciplinary Authority vide order dated 23.7.2007 has observed that no purpose would be served to continue the disciplinary proceedings against Shri Chaurasia for having altercation with the then principal 7 years back. The Disciplinary Proceedings should not serve to demoralize a good and well-meaning teacher. However, the Disciplinary Authority was reluctant to treat the period of absence from the date of termination of service to the date of joining on duty. Even, on the representation of Shri M.L.Chaurasia vide impugned order the Deputy Commissioner had not gone into the details reasoning as why he was not reviewing the order of the previous authority regarding the dies-non period merely stating that no appeal lies under the provisions of Temporary Services Rules at this belated stage. It may be mentioned here that Shri M.L. Chaurasia did not appeal against any order passed by the Disciplinary Authority under any Statutory Rules. He made a representation to consider his case at par with Dr.Sanjay Kumar for whom the period of dies-non was treated as the period on duty. As the chargesheet against Shri Chaurasia was withdrawn, he was placed at par with Dr. Sanjay Kumar. While rejecting the request of Mr.Chaurasia, the Deputy Commissioner vide the impugned order dated 23.11.2015 has not given a reasoned and speaking order. While declaring the period as dies-non amounts to imposing of penalty by the Disciplinary Authority when the disciplinary proceedings were withdrawn. This amounts to penalizing for misbehavior never proved. Moreover, the applicant needs to be treated at par with Dr. Sanjay Kumar, who was similarly placed and in whose case the period of absence from the date of termination to the date of his joining on reinstatement was treated as duty.

11. In view of the above, the impugned order dated 23.11.2015, vide which the respondents have rejected the request of the applicant to regularize the period

from 17.6.2000 to 14.2.2002, which was declared as dies-non is quashed. This period shall be treated as duty at par with Dr. Sanjay Kumar.

12. The OA is disposed of in terms of the aforesaid directions. There shall be no order as to costs.”

4. From the above it is clear that the chargesheet which was issued to the respondent was withdrawn. Though withdrawn, the respondent was not given the same benefit as was given to Dr. Sanjay Kumar. The Tribunal is right in granting the relief in the manner it did in the impugned order.

5. It is the case of the petitioners, that since the respondent was the aggressor, he could not have been treated at par with Dr. Sanjay Kumar.

6. We are unable to agree with that stand of the petitioners. In the absence of any finding of fact that the respondent was the aggressor because inquiry proceedings were not concluded by the Inquiry Officer, the respondent was rightly granted parity qua Dr. Sanjay Kumar. We do not see any reason to interfere with the impugned order passed by the Tribunal. The petition is dismissed.

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Dismissed as infructuous.