

(2017) 04 RAJ CK 0026
In the Rajasthan High Court
Case No : 11539 of 2014

Madhvi Sharma

APPELLANT

Vs

The Central Administrative Tribunal

RESPONDENT

Date of Decision : 06-04-2017

Acts Referred:

[Central Civil Services \(Classification, Control and Appeal\) Rules, 1965](#), [Rule 14](#)

Citation : (2017) 04 RAJ CK 0026

Hon'ble Judges : Ajay Rastogi, Kailash Chandra Sharma

Bench : DIVISION BENCH

Advocate : Abhishek Pareek, Krishna Verma

Final Decision : Dismissed

Judgement

1. The present petition is directed against order of the Id. Central Administrative Tribunal dt. 28.05.2014 passed in the Original Application No. 806/2012.
2. After acquiring the Post Graduate degree in Chemistry from the University of Jammu in 1986. The petitioner was appointed on the post of Post Graduate Teacher (Chemistry) in K.V.S. Services on temporary post, as per the procedure for recruitment laid down u/ Art. 44 of the Education Code Edition, 1980 vide order dt. 07.08.1987, pursuant to which she joined service on 22.08.1987. Her appointment was subject to certain terms & conditions, as indicated in the order of appointment dt. 18.07.2012 (Annex. 14), which reads as follows:-

"Her appointment was subject to following further conditions as mentioned in above said Memorandum dated 07/08/1987:- (i) She would be placed "On Trial" basis for a period of two years, which may be extended by one year if she is not able to acquire Teaching Degree within two years. (ii) During the period of Trial, Ms. Madhvi Sharma is required to complete the training degree either by joining regular course in a recognized teachers training institution or through summer-cum- correspondence course of the Regional College of Education. She will have to qualify the teachers training course in not more than two attempts, failing which she will not be eligible for being appointed in the service of the Kendriya Vidyalaya Sangathan on regular basis and will have no claim from KVS. During the period of training on a full time course at the training institution, she will not be entitled to any pay and allowances from the Sangathan and the period of her absence of proceeding on training in the training institution will be treated as extra ordinary leave. (iii) In the event of her completing the training course satisfactorily/acquiring requisite teaching experience, she will be appointed as a PGT(Chem) on regular basis. (iv) Her service may be terminated at any time during the period of Trial on one month's notice on either side without assigning any reasons therefor. The appointing authority however reserves the right to terminate her services before the expiry of the period of notice by making payment a sum equivalent to pay and allowances for the period of notice or unexpired portion thereof. In the event of her resigning at any time during the period of trial, the money at her credit in the Post Office Savings Bank Account on account of 10% deduction as mentioned above will be returned to her. (v) Her appointment will also be subject to other relevant terms and conditions of service as laid down in the Education Code for Kendriya Vidyalayas, as amended from time to time. She will be liable to transfer anywhere in India. This condition has already been accepted by the candidate."

3. The petitioner acquired B.Ed. degree from Varanaseya

Sanskrit Vishwa Vidyalaya and on the basis of the B.Ed. degree

acquired, her services were regularized vide order dt.27.02.1990

w.e.f. 15.01.1990 and she was appointed in substantive capacity

w.e.f. 22.08.1989 vide order dt.19.09.1990 but indisputably her

B.Ed. degree from Varanaseya Sanskrit Vishwa Vidyalaya was

declared a fake University by the University Grants Commission

and the letter issued from the KVS (Headquarters) dt.09.01.2003

intimating the details of teachers who were in possession of B.Ed.

or equivalent degree of such educational Institute which have

been declared as fake University by the University Grants

Commission. The name of the petitioner figured at S.No.16 and

accordingly decision was taken to initiate disciplinary action u/R.14 of the CCS (CCA) Rules, 1965 but taking a lenient view in the matter, the petitioner was asked to acquire B.Ed. qualification from a recognized University/ Institution within two years from 16.01.2004 vide Memorandum dt.16.01.2004 but despite an opportunity being afforded, the petitioner failed to acquire B.Ed. qualification and she was served with the chargesheet vide Memorandum dt.04.05.2006 for not obtaining B.Ed. qualification and Enquiry Officer was appointed who submitted his report on 02.02.2007 holding the charge proved against her with the findings ad infra:-

"This charge has been proved and decision has been given ex- parte decision. Reason being that if she has acquired the B.Ed. degree from a recognized university within 02 years w.e.f. 16.01.2004, then she should have brought it on record. Not bringing & not attending the inquiry itself shows that she has not to say anything in her defence as regard to this specific charge hence this charge is proved."

4. That came to be challenged by the petitioner in the Original Application No.62/2007 before the Id.Central Administrative Tribunal and the Id.Tribunal vide its order dt.12.11.2007 quashed and set aside the chargesheet dt.04.05.2006 and the enquiry report dt.02.02.2007 with liberty to the respondents to proceed further in the matter in accordance with law.

5. In compliance of order of the Id.Tribunal dt.12.11.2007, the competent authority vide letter dt.20.03.2008 withdrew the chargesheet as well as the Enquiry Report with the further direction to take necessary action against her in terms of Para-5(iv) of the offer of appointment vide Memorandum dt.07.08.1987. Thereafter vide letter dt.23.07.2008, a show cause notice was issued in compliance of KVS (Headquarters) ldt.15.07.2008 to the petitioner with a direction to submit

explanation regarding her B.Ed. qualification.

6. The petitioner submitted her representation/reply on 18.08.2008 and on the same day order came to be passed terminating her services in terms of Para-5(iv) of her offer of appointment vide order dt.18.08.2008 and that again came to be challenged by the petitioner in Original Application No.329/2008 before the Tribunal and her defence was that reply was submitted by the petitioner and that has not been considered by the competent authority before terminating her services vide order dt.18.08.2008. Although the fact was that the reply was submitted by the petitioner on 18.08.2008 to the show cause notice, which admittedly was received in the office of the respondents on 18.08.2008 and on the very day order of termination was also passed on 18.08.2008 and the Original Application came to be decided by the Id.Tribunal vide order dt.19.03.2012 and while setting aside order of termination dt.18.08.2008 liberty to consider the reply was granted and pass a fresh speaking order in accordance with law.

7. It may be noticed at this stage that there was no order passed by the Id.Tribunal for her reinstatement in service pending further action to be taken by the competent authority in compliance of order dt.19.03.2012 passed by the Id.Tribunal in the Original Application No.329/2008.

8. After consideration of her reply to the show cause notice dt.18.08.2008, the matter was re-visited by the competent authority and her services came to be terminated by a fresh speaking order invoking para-5(iv) of her letter of appointment w.e.f. 18.08.2007 vide order dt.18.07.2012 and that became the subject matter of challenge in the Original Application No.806/2012.

9. The Id.Tribunal after taking note of the pleadings of the parties on record, considered the matter on five issues which read ad infra:-

"i). Whether the applicant could be terminated from service with retrospective effect from 18/08/2008. ii). Whether applicant can be terminated from service, after she was confirmed vide order dated 19.09.1990 (Annexure-A/3). iii). Whether the principle that a confirmed employee cannot be terminated/removed from service without holding a regular enquiry is applicable to the facts and circumstances of the case. iv) Whether Para 5 (i) of appointment order dated 07/08/1987 comprises two sets of appointees or only one. v). Whether B.Ed. qualification is a prescribed qualification for the post of PGT under the relevant rules."

10. After due consideration of the material on record, the Id.Tribunal decided all the issues against the petitioner under its order impugned dt.28.05.2014.

11. Counsel for the petitioner has not made submission for re-appreciation of the submissions made before the Id.Tribunal and so also the finding recorded in respect of the five issues on which the Id.Tribunal considered the matter and expressed its opinion. At the same time, further affidavit has been filed to show that service conditions are regulated in accordance with the Kendriya Vidyalaya Sangathan (Appointment, Promotion, Seniority Etc.) Rules, 1971 and under the eligibility conditions for the post of Post Graduate Teacher, apart from the educational qualifications, the candidate is supposed to hold B.Ed. or equivalent qualification from a recognized University with a note appended thereto that such candidates possessing first class Master's degree as well as First Class Bachelor's Degree, essential qualifications of University Degree/Post graduate diploma in education or teaching may be relaxed and such candidates may be placed on trial for a period of two years which can be extended by one year if the candidate is not able to acquire teaching degree/diploma entail termination

and this was the condition in the order of her appointment when she entered into service, as indicated in the order of appointment dt.07.08.1987 & Para-5(iv) in particular but at a later point of time amendment came to be made under the Rules, 1971 vide Office Memorandum dt.27.08.2008 on the recommendations made by the Board of Governors in its meeting held on 26.07.2008 effective from 01.08.2008 and for the post of Post Graduate Teacher educational qualification and for other professional qualifications like B.Ed. or equivalent degree from a recognized University became the requirement for promotion but that came to be further amended on the recommendations made by the Board of Governors in its 92nd meeting held on 18.05.2012 and the qualification which was existing prior to the amendment of 2008 came to be restored and B.Ed. or equivalent degree was considered to be essential qualification at the time of recruitment to the service vide amendment dt.29.05.2012.

12. The additional affidavit came to be filed by the petitioner to justify that in the interregnum period from 2008 to 2012, certain appointments were made of Post Graduate Teachers who were not holding professional qualification of B.Ed. or equivalent degree from a recognized University/Institution but still they have been allowed to continue and according to her if such candidates can be allowed to continue without holding B.Ed. qualification at least termination of the petitioner in the instant given facts & circumstances cannot be held justified.

13. Reply to the additional affidavit has been filed by the respondents and justification has been offered/tendered, as come on record, that 49 candidates were appointed during May, 2010 to May, 2012 who were not holding B.Ed. qualification at the time of their appointments.

14. Counsel for petitioner has further placed reliance on judgment of the Delhi High Court in Sunil Bhatnagar Vs. Kendriya Vidyalaya Sangathan & Another [Writ Petition (Civil) No.4536/2010] decided on 10.09.2010.

14. This question was not raised and considered by the Id.Tribunal apart from five issues on which detailed discussion has been made by the Id.Tribunal under its order impugned and we find no manifest error being committed by the Id.Tribunal in reference to the five issues on which deliberations have taken place which may call for our interference.

15. As regards the submission made by the petitioner, in our considered view, is of no substance for the reason that indisputably at the time of her appointment in August, 1987 she was governed by the terms & conditions, as mentioned in the order of appointment and also the Rules existing as it was and a fair and reasonable opportunity was afforded to her by the competent authority to acquire B.Ed. or equivalent degree from a recognized University and a decree of B.Ed. which was obtained by her from Varanasya Sanskrit Vishva Vidyalaya was a fake University declared by the University Grants Commission and still she was afforded ample opportunity to acquire B.Ed. or equivalent qualification from a recognized University and still the petitioner was unable to acquire the minimum professional qualification to hold the post of Post Graduate Teacher, later amendment in the scheme of Rules, will not come to her rescue and her submission that if after an amendment, certain candidates who were appointed as Post Graduate Teacher & not possessing the professional qualification of B.Ed. or equivalent degree from a recognized University were allowed to continue and compelling the petitioner to hold qualification of B.Ed. is without substance.

16. The petitioner's candidature is to be governed from the scheme of Rules as existed at the relevant point of time and when an opportunity was afforded to her, it was incumbent upon her, as pre-requisite, to acquire the qualification of B.Ed. to hold the post of Post Graduate Teacher and no parity could be claimed in regard to the induction of the Post Graduate Teacher made after the amendment made in 2008 for the period from May, 2010 to May, 2012, as being referred to by the respondents in their counter affidavit filed by the respondents.

17. The judgment of Delhi High Court relied upon by the counsel may not be of his assistance for the reason that it was a case where the writ petitioner although initially acquired the qualification of B.Ed. degree from Maithli Vishwavidyalaya Peeth Central University, which was not recognized by the University Grants Commission but after an opportunity being afforded, the petitioner acquired B.Ed. degree from a recognized Institution and taking note of the fact that degree of B.Ed. being acquired by the writ petitioner from a recognized Institution, that was considered to be a special reason for his re-induction into service but in the instant case, the petitioner failed to acquire B.Ed. degree from a recognized University despite ample opportunity being afforded and even equity may not come to her rescue.

18. After we have heard counsel for the parties, we find no manifest error being committed by the Id.Tribunal which may call for our interference.

19. Consequently, the instant petition being devoid of merit, accordingly stands dismissed.