

(2020) 09 CAT CK 0054
In the Central Administrative Tribunal
Case No : Original Application No. 965 Of 2017

Mahkar Singh

APPELLANT

Vs

Commissioner & Others

RESPONDENT

Date of Decision : 14-09-2020

Acts Referred:

Citation : (2020) 09 CAT CK 0054

Hon'ble Judges : L. Narasimha Reddy, J; Mohd. Jamshed, Member (A)

Bench : Division Bench

Advocate : Sanjeev Kumar Choudhary, U.N. Singh

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. The applicant joined the service of Kendriya Vidyalaya Sangathan (KVS) as Post Graduate Teacher (PGT) (Physics) on 19.09.2003. While serving that organization, he applied for the post of Principal in an Inter-College in the State of U.P. He was selected for the post on 10.10.2009. Soon thereafter, the applicant submitted a representation dated 12.10.2009 with a request to grant him two years lien, enabling him to join the post, to which he was selected. His request, however, was turned down on 14.10.2009. Thereafter, the applicant submitted a resignation on 06.11.2009. Since the Principal of the Institution, where he was working, is said to have permitted him to handover the charge and issued a certificate on 07.12.2009, the applicant submitted another letter of resignation on 11.12.2009. It is stated that though the respondents accepted his resignation, they did not treat it as technical resignation and that on account of this, he is not able to avail any benefit.

2. The applicant has undertaken correspondences with the respondents over the period. On 06.12.2016, the respondents informed him that he would not be entitled for any benefit whatever, since resignation, accepted on 26.03.2010 was not technical in nature. They have also made a payment of Rs.1,10,823/-

through a cheque, being the amount, credited in his GPF account.

3. This O.A. is filed challenging the communication dated 06.12.2016 and for a direction to the respondents to accept his technical resignation w.e.f. 11.12.2009. Another prayer is to direct the respondents to pay the GPF amount with interest, and to transfer the same to the DIOS Office, Bijnor, U.P.

4. The applicant contends that he applied for the post of Principal after obtaining the prior permission of the respondent organization, and that there was absolutely no basis in not accepting his technical resignation. He contends that the plea taken by the respondents that the Institution, in which the applicant was selected as Principal, is a private one, is also not correct. Various other grounds are also urged.

5. The respondents filed a reply to the OA. According to them, the applicant left the Institution, without waiting for acceptance of the resignation, and ultimately, it was accepted on 26.03.2010. It is also stated that the question of acceptance of technical resignation would arise only when a regular employee of the Sangathan is selected to another Govt. organization. It is stated that the Institution, in which the applicant was selected, is a private one, and his request cannot be accepted. The respondents further contend that the orders dated 26.03.2010 and 31.03.2010 became final and any relief claimed contrary to that is not tenable in law.

6. We heard Shri Sanjeev Kumar Choudhary, learned counsel for the applicant and Shri U.N. Singh, learned counsel for the respondents.

7. The applicant initially joined the respondent organization as a PGT (Physics). After serving for about six years, he applied for the post of Principal in a private aided institution in the State of U.P. On being selected for that post, the applicant sought lien for a period of two years from 12.10.2009. His request was immediately turned down on 14.10.2009. Thereafter, he submitted technical resignation, and issued a notice of one month through letter dated 06.11.2009, proposing to resign. Nothing transpired thereafter and the applicant left the Institution in which he was serving, on 07.12.2009, by handing over the charge. This is followed by submission of another resignation on 11.12.2009. The respondents acted upon the letter dated 06.11.2009 and passed an order dated 26.03.2010. It reads as under:

"With reference to his application/resignation dated 06.11.2009 forwarded by the Principal, Kendriya Vidyalaya Delhi Cantt No. 1 under his letter no. KV/1DC/2009-10/531 dated 19.11.2009, the resignation tendered by Sh. Mahkar Singh, Ex. PGT (Phy) KV No.1 Delhi Cantt is hereby accepted w.e.f. 11.12.2009 in absentia. As he remained unauthorizedly absent and proceeded to join the new department without having his resignation accepted by Kendriya Vidyalaya Sangathan as per rules, his resignation cannot be treated as "technical resignation" and he will not be entitled for any benefits which accrues on technical resignation."

8. From this, it is evident that the respondents accepted his resignation in absentia and did not treat it as a one, on technical grounds. It is only when the technical resignation is accepted, that the employee can get the benefit of continuity of service or other benefits, in the organization, in which he joins later. Since the respondents have taken the view that the organization, which the applicant has joined, is a private one, they cannot accede to his request. This order was followed by another letter dated 31.03.2010, forwarding the order dated 26.03.2010. It reads as under:

"Please find enclosed herewith KVS(DR) Memorandum No. F.19044/2010/03/ Admn.-KVS(DR)/11510-16 dated 26.03.2010 issued by the Assistant Commissioner, KVS (DR), New Delhi, vide which your resignation has been accepted w.e.f. 11.12.2009 in absentia. As per the said orders you are hereby informed that your resignation has not been treated as "technical resignation" and you are not entitled for any benefit which accrues on technical resignation.

You are also requested to deposit one month salary in this office, immediately, i.e., Rs. 33228/- Gross Pay."

The respondents have made their stand very clear.

9. In case, the applicant was of the view that the action taken by the respondents through the order dated 26.03.2010, is not correct, he was supposed to challenge the same by instituting the proceedings in the competent court of law. He did not do that and went on corresponding with the respondents on the same issue. The respondents, have at one stage, informed him that no further correspondence would be undertaken.

10. Coming to the question of depositing any amount to the credit of the GPF account of the applicant, it needs to be noted that the respondents, have forwarded a cheque of Rs.1,10,823/- to the applicant through a communication dated 06.12.2016. Except that the amount due to the applicant in his GPF account was forwarded through letter dated 06.12.2016 did not bring about any new legal relationship. It is brought to our notice that the applicant had returned the cheque. During the course of the arguments, the learned counsel for the applicant mentioned that his client may be paid that amount. It is already mentioned that the request of the applicant for acceptance of his technical resignation cannot be considered at this stage, once he did not challenge the order dated 26.03.2010.

11. We, therefore, dismiss the O.A., however, by directing that the respondents shall pay the GPF amount, lying to the credit of the applicant, with stipulated rate of interest on GPF from the date of his resignation, within a period of six weeks from the date of receipt of a copy of this order. There shall be no order as to costs.