

(2020) 01 SC CK 0012
In the Supreme Court Of India
Case No : Writ Petition (C) No. 32 Of 2020

Mangilal Kajodia

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 08-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 32
Kendriya Vidyalaya Sangathan Educational Code, — Article 81(d), 81(d)(iii), 81(d)(6)
Central Civil Services (Conduct) Rules, 1964 — Rule 7(ii)
Central Civil Services (Joining Time) Rules, 1979 — Rule 12(2)

Citation : (2020) 1 JT 34 : (2020) 1 Scale 555 : (2020) 2 SCC 723 : (2020) 1 SCT 581 : (2020) 1 SCC(L&S) 306 : (2020) 1 Supreme 153

Hon'ble Judges : R. F. Nariman, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Gurmeet Singh Makker

Final Decision : Disposed Of

Judgement

1. The present petitioner has approached this Court directly under Article 32 of the Constitution, seeking diverse reliefs. Essentially, his grievance is with respect to the order of removal issued by his employer, the respondent Kendriya Vidyalaya Sangathan (hereafter referred to as "KVS"), terminating him from its services with effect from 21.07.2008.

2. Barring essential facts, an elaborate discussion is unnecessary in view of the judgment and relief that the Court would be granting. Briefly, the petitioner joined KVS on 05.11.1981. Whilst working with the KVS in its school, the petitioner was apparently elected as an office bearer of the employees' association, i.e. as Assistant General Secretary (of the Hqs). Inter se disputes with respect to who held the position of General Secretary arose which became the subject matter of proceedings, in the Civil Court at Tis Hazari, Delhi. The KVS apparently took the position that it would act in accordance with the order of the court dated 03.07.2004. The petitioner alleges that he was again elected as the Assistant General Secretary HQ. He alleges that in this capacity as an office

bearer of the Association, he was instrumental in exposing irregularities involving defalcation with school funds, including, but not limited to purchase of books and equipment such as computer and other electronic items. Some minor disciplinary proceedings appear to have been initiated against him on 12.04.2007 and a show-cause notice was issued, to which he replied.

3. The petitioner claims that his endeavors showed results inasmuch as the Assistant Commissioner of the KVS at Bhopal received an audit report dated 27.02.2008 stating that the purchase of books and computers were irregular. The petitioner then mentions some RTI queries made and copies of documents elicited by him which the KVS refused altogether. Eventually, in compliance with the order of the Central Information Commissioner, some information was provided.

4. On 05.05.2008, the KVS HQs issued an order transferring the petitioner from Kendriya Vidyalaya, Devas, M.P. to Kendriya Vidyalaya, Kargil (J&K). He was relieved from his post almost forthwith, i.e. 06.05.2008. The petitioner addressed representations to the Commissioner, KVS on 21.05.2008 asking him for cancellation of the transfer orders. Since the petitioner did not join the place of his posting, a communication was addressed to him by the Assistant Commissioner, Bhopal on 09.06.2008, citing provisional loss of lien under Article 81(d)(iii) of the KVS Educational Code. He protested this but the representation was later rejected on 18.06.2008. Apparently, on the next date, he initiated a satyagraha and later proposed a hunger strike. The Assistant Commissioner, Bhopal, on 03.07.2008 issued a show- cause notice as to why disciplinary action and penalty ought not to be resorted to for omitting to join the place where he was transferred i.e. Kargil. The petitioner was asked to show cause within ten days.

5. On 21.07.2008, the petitioner was removed from the services of the KVS. The order of removal reads as follows:

"Kendriya Vidyalaya Sangathan

Bhopal Region

Opp.Maida Mills Bhopal 462011

F.2-4(MLK)/81(d)/2008/KVS(BPL)4709

Dated:

21/07/2008

Registered A.D./

ORDER

Speed post

Whereas, Shri M.L. Kajodia, PRT was transferred under Para 8(iv)of transfer guidelines effective from 14.03.2006 and amended from time to time,from K V Dewas to KV Kargil on administrative ground vide Order No.F.11046/1/

(AG)/2008/KVSHQ/(Estt.II)dated 05.05.2008 by KVS, Hqrs, New Delhi and he was relieved in the afternoon of 06.05.2008 from KV Dewas but he had not reported to KV Kargil till date.

Whereas, Shri M.L. Kajodia has not reported to Kendriya Vidyalaya Kargil and remained on un-authorized absent for a period of more than one month. He was issued a show cause notice under article 81(d)(3)of Education Code vide this office Memorandum|no.2-4/2008/KVS/BPL/3592 dated 09.06.2008, communicating him that he is deemed to have voluntary abandonment his service and provisionally lost the lien on the post of Primary Teacher.

Whereas, Shri M.L. Kajodia had submitted a representation date 12.06.2008 which has been considered sympathetically by the undersigned and replied point-wise Memorandum No.F.2-4/(MLK)/2008-KVS/(BPL)/3845 date 18.06.2008.

Whereas, Shri M.L. Kajodia again submitted a representation dated 24.06.2008 and which has been considered sympathetically and replied vide letter No.F.2- 4/(MLK)/2008-KVS/(BPL)/4229 date 03.07.2008 and he was directed to join K V Kargil within 10 days failing which action would be taken against him as per rules.

Whereas, Shri M.L. Kajodia instead of reporting on duty at K.V.Kargil has been indulging in Dharana and hunger strike which is against Rule 7(ii)of CCS Conduct Rules 1964 as applicable to KVS employees. His representation including representation dated 08.07.2008 have been considered and undersigned has come to the conclusion that Shri M. L. Kajodia could not place any document and convincing reason for his un-authorized absence from duties without any application w.e.f. 07.05.2008, in spite of the fact that full opportunity provided to him.

Now, the undersigned is satisfied that Sh. M.L. Kajodia has voluntarily abandoned his services in terms of provisions of sub clause 6 of Article 81(d)of the Education Code. Therefore, the undersigned orders confirming the loss of lien on his post. Thus Shri M.L.Kajodia PRT is hereby removed from the services of Kendriya Vidyalaya Sangathan w.e.f. 07.05.2008.

Sd/-

(V.K.Shrivastav)

Assistant Commissioner

To,

Shri M.L.Kajodia

43,Chamundapuri Dewas-455001"

6. The petitioner appealed against the order of removal to the concerned appellate authority under Article 81(d) of the Educational Code applicable to the KVS, on 30.08.2008. On 04.11.2008, the appellate authority rejected the petitioner's plea. The petitioner avers that several representations were made to

various authorities, including the Secretary, President's Secretariat etc. He ultimately challenged his removal by filing OA 33/2011 before the Central Administrative Tribunal (CAT) at Jabalpur Bench and in its Indore Bench. In this, the CAT directed the Secretary, Ministry of Human Resource Development (hereafter "HRD", in short) to dispose of the petitioner's appeal through the President. This order was apparently not complied with, leading to initiation of contempt proceedings. The KVS approached the Madhya Pradesh High Court by filing W.P.(C)10789/2002, aggrieved by the order in contempt proceedings. The High Court dismissed this writ petition on 07.07.2014 and imposed costs upon the KVS. In these circumstances, the petitioner asked the Secretary (HRD) to comply with the CAT's order.

7. On 23.09.2015, the Union Minister of HRD disposed of the petitioner's appeal, to the President of India. It is alleged that the petitioner made several unsuccessful attempts to meet with various high-ranking officials and ministers to seek redressal of his grievance but met with no success. In these circumstances, he approached this court claiming the reliefs outlined at the beginning of this judgment.

8. The petitioner is a self-represented litigant, the court heard him and after issuing notice, requested the learned Attorney General to inquire into the case and examine if some relief could be granted. As a result, various subsequent hearings were held in these proceedings on 06.05.2019, 05.07.2019, 08.09.2019, 25.10.2019 and 25.11.2019. The Attorney General placed on record, a sealed cover containing the decisions of the Union Minister for HRD who had facilitated a fresh hearing, to the petitioner by the incumbent Secretary (HRD) on 30.10.2019. The order of the Minister, after reciting the background of facts and the proceedings before this Court stated as follows:

"Whereas, it is clear that, KV, Kargil, where Shri Kajodia was transferred was not on vacation when the transfer orders were issued and after availing joining time, he should have joined the new place of posting on expiry of the joining time. It is, therefore, clear that the petitioner, Shri Kajodia had wilfully violated the orders of transfer;

Notwithstanding the above, in the light of the observations of the Hon'ble Supreme Court in its orders dated 9.8.2019 mentioned above, I am inclined to take a lenient view in the matter and the representation dated 29.9.2008 submitted by Shri Kajodia has been considered sympathetically and consequently order that he may be reinstated in the service of KVS from the date of his removal from service vide orders dated 21.7.2008 (i.e. w.e.f. 7.5.2008). However, the period of absence from the duty w.e.f. 7.5.2008 till the date of his joining his duties on reinstatement will be treated as 'dies non' for all purposes."

9. The Central Government's order, under cover of the letter was taken on record and copy of it was made available to the petitioner. Subsequently, on 17.09.2019, when the matter was listed, the petitioner expressed his reservation

with respect to the proposal to reinstate him but treat the entire period of absence as dies non. The petitioner submitted that the action of the authorities, particularly, the order of removal was actuated by mala fides and utterly unfair. It is submitted that the removal order is void on the ground that it is unreasoned and contrary to the rules. Just because the petitioner did not join KVS Kargil within the time prescribed, the same could not have been a justification for his removal or for that matter, to treat his absence as one leading to abandonment of services. The petitioner relied on Rule 12(2) of the Joining Time Rules to say that Kargil had no summer vacations but rather had winter vacations from 07.12.2008 to 15.02.2009 and on the other hand, in Devas, summer vacation had continued from 04.05.2008 to 22.06.2008. In these circumstances, the transfer order was made during the summer vacation and that the petitioner's joining time would have commenced only after 22.06.2008.

10. The petitioner further submitted that even if reinstatement were to be accepted, the condition of dies non is extremely harsh inasmuch as 12 years of service would stand forfeited and he would be deprived of all benefits of pay, increased DA, accrual of PF and pension benefits.

11. The facts discussed reveal petitioner has approached this Court and sought substantive reliefs under Article 32 of the Constitution after almost 9 years of the accrual of cause of action. He approached the CAT which disposed of an application on 10.08.2011 with a direction that he could approach it afresh after the application/fresh petition preferred by him to the President was dealt with and disposed of. As a matter of fact, the petition - in the nature of a mercy plea, was not disposed of; the petitioner initiated contempt proceedings which led to the KVS approaching the Madhya Pradesh High Court. The High Court rebuked the KVS and granted time to it to comply with the directions. Eventually, the Minister, on 23.09.2015 rejected the mercy petition.

12. Having regard to the fact that the petitioner himself did not seek redressal substantively of his grievance, given that the petitioner did not approach the Court in a timely manner - (the application made to CAT itself was after three years of the removal order), and furthermore, has approached this court directly, it would not be appropriate to examine the correctness of the decision of the order of removal by the KVS. At the same time, the court had felt that the order of removal constituted a harsh disciplinary measure and that the petitioner could be meted a lighter penalty. It was with this in mind the Attorney General was asked to intervene and obtain instructions from the Central Government. The order made by the Union Minister now is clear that the petitioner would be taken back into the services in the post that he held at the time of removal. At the same time, the Central Government has clarified that the entire period of absence, i.e. from the date of removal till the date he rejoins would be treated as dies non for which no benefit would accrue to him.

13. This court is of the opinion that the position taken by the Central Government not to grant substantive benefit for the duration of absence cannot

be per se termed harsh and arbitrary. The petitioner did not join the place KV Kargil, nor did he approach the court at the relevant time or even after his removal contemporaneously. In these circumstances, conceding the benefit of arrears of salary, seniority and continuity, arrears of salary and related benefits would not be fair. However, placing the petitioner in the same position he was as on 07.05.2008 (the date of his removal) would be what could be extremely harsh, in the opinion of the court, inasmuch as he would draw salary at the stage at which he was almost 12 years ago.

14. In the peculiar circumstances, in the opinion of this Court, the interest of justice lies in suitably modifying the order proposed by the Central Government. Although the petitioner would not be entitled to the payment of arrears of salary for the period he was out of service, the KVS should issue a separate order fixing his salary having regard to notional increments effective from the date he would have been entitled to the increment in the year 2009 after taking into consideration the relevant increments which accrue thereafter. In other words, the petitioner should be reinstated, and at the same time, the pay fixation order should ensure that the period of absence which would otherwise be treated as dies non is ignored for the purpose of fixation and fitment of salary alone. The order can also expressly state that the benefit of arrears of salary would not accrue to the petitioner.

15. In view of the foregoing discussion, a direction is issued to the Central Government to reinstate the petitioner by firstly issuing an order spelling out the terms of his reinstatement and the place of his posting as well as granting him three weeks' time to join his post. Simultaneously, a pay fixation and fitment of salary order in accordance with the directions of this court should be issued within four weeks from today. It is made clear that this order as well as the order reinstating the petitioner should not in any manner disturb the benefit which had accrued to him for the admitted period of his service, i.e. from the date of initial recruitment, i.e. 05.11.1981 till 21.06.2008.

16. The writ petition is disposed of in the above terms without order on costs.