
(2019) 12 DEL CK 0076

In the Delhi High Court

Case No : Civil Writ Petition No. 3488 Of 2017, Civil Miscellaneous Application No. 3091, 3092 Of 2019

R.S. Misra

APPELLANT

Vs

Union Of India & Anr

RESPONDENT

Date of Decision : 10-12-2019

Acts Referred:

Central Civil Services (Leave) Rules, 1972 — Rule 39
Central Civil Services (Pension) Rules, 1972 — Rule 24
Kendriya Vidyalaya Sangathan Education Code, — Article 81(b)

Citation : (2019) 12 DEL CK 0076

Hon'ble Judges : Dr. S. Muralidhar, J; Talwant Singh, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Dr. S. Muralidhar, J

1. The Petitioner, by way of the present petition, challenges an order dated 2nd September, 2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ("CAT"), dismissing his O.A. No.187/2015, as well as an order dated 2nd November, 2016, dismissing his R.A. No.243/ 2016.

2. It must be noted that the Petitioner, who appears in person, had at one stage on 23rd October 2017, sought permission to approach the Secretary, Delhi High Court Legal Services Committee ("DHCLSC") for legal assistance. On 19th February, 2018, the Court appointed an amicus curiae on his behalf. However, it appears that the Petitioner thereafter has been appearing in person. Even today, he appeared in person and made his submissions.

3. The background facts, as can be discerned from the impugned orders as well as the documents placed on record, are that on 11th February, 1988, the Petitioner, who was working as a Post Graduate Teacher ("PGT") in Chemistry in the Kendriya Vidyalaya ("KV") at Rajkot, was found guilty of "moral turpitude involving exhibition of immoral sexual behaviour towards the girl students of his

Vidyalaya." Thereby his services were terminated with immediate effect. He was asked to be paid allowances equal to three months in lieu of the notice period.

4. After the Petitioner's statutory appeal was dismissed by the Chairman of the Kendriya Vidyalaya Sangathan (KVS), he challenged his termination by way of W.P.(C) No.3354/1989 before the learned Single Judge of this Court. The learned Single Judge referred to Article 81 (b) of the Education Code governing the KVS, which empowers the Commissioner to dispense with an enquiry, if he is satisfied "after such a summary enquiry as he deems proper and practicable in the circumstances" that any member of the KVS is prima facie guilty of moral turpitude involving the sexual offence of exhibition of immoral sexual behaviour towards any student. The provision also required the Commissioner to record in writing the reasons under which it was not reasonable and practicable to hold such an enquiry. The learned Single Judge found nothing on the record to show that the Commissioner at any stage had come to the opinion that it would not be reasonable and practicable to hold an enquiry. The departmental file also did not show the formation or existence of any such opinion.

5. The Respondents then contended before the learned Single Judge that the Commissioner had material before him upon which he could form his "opinion" fairly and as he had approved the office draft prepared by the Vigilance Department of the KVS by putting his signatures on it, the office draft should be taken to be the reasons recorded by the Commissioner himself.

6. The learned Single Judge disagreed with this contention and held that the note of the Vigilance Officer could not become an order of the Commissioner. Accordingly, the writ petition was allowed, leaving it open to the KVS to proceed against the Petitioner afresh, as per the rules of the Education Code. This order of the learned Single Judge was upheld by a Division Bench of this Court, by an order dated 4th July, 2000 in L.P.A. No.116/1994.

7. On 3rd October, 2000, the Petitioner was reinstated in service. It was ordered that the period during which he was not in service i.e. from 11th February, 1988 till the date of joining at the assigned place of posting i.e. at Imphal should be treated as "dies-non".

8. This part of the order of treating the period as "dies-non" was challenged again by the Petitioner by filing a contempt petition, being C.C.P. No.151/ 2001, in which an order was passed on 23rd September, 2002, with a direction to the KVS to consider the case of the Petitioner as expeditiously as possible as regards consequential reliefs. It was noted therein that after reinstatement, a sum of Rs.11,48,625/-, after deduction of TDS, had been paid to the Petitioner towards arrears of pay and allowances. The contempt notice was discharged.

9. On 5th November, 2003, an order was passed by the Vigilance Section of the KVS, noting that it had been brought to the notice of the Commissioner, KVS, by the Secretary, Government of Manipur, who was also the Chairman, VMC, KV No. 1, Imphal, by a letter dated 31st December, 2001, that the Petitioner had

misbehaved with the girl students and had made indecent remarks against them. Pursuant to the said letter, an Enquiry Committee was constituted by an order dated 26th/27th March, 2002, and a summary enquiry was held in which the Petitioner participated. The Committee submitted its report on 9th April, 2002, finding the Petitioner prima facie guilty of moral turpitude.

10. The Commissioner accepted the report which found that the Petitioner had made indecent/sexually coloured remarks against the girl students of Class-XI (Arts) in February, 2001 and also objectionable and physical contact with girls of Class-XII (Arts) with a view to derive sexual satisfaction. The Commissioner recorded that it was not expedient to hold a regular enquiry, as it would cause serious embarrassment to the girl students and their guardians, as well as on account of the tender age of the girl students, since their safety and security had to be protected by preventing their exposure to the tardy process of cross-examination in the enquiry in relation to the conduct of the teacher resulting in sexual harassment of the girl students.

11. Accordingly, by the aforementioned order, the Commissioner on 5th November 2003 exercised the powers under Article 81 (b) of the Education Code for KVS and terminated the Petitioner's service with immediate effect, directing the Petitioner to be paid the pay and allowances admissible under the rules in lieu of the notice period.

12. The Petitioner challenged the above order of termination dated 5th November 2003 by filing O.A. No.2008/2003 before the CAT, Principal Bench, New Delhi. The said termination order was stayed by an order dated 29th December, 2003. The said interim order of the CAT was challenged before this Court by KVS by filing C.W.P. No.3141/2004, which was disposed of on 16th August, 2004, by directing that the termination order would remain in abeyance for two months from that date, during which the CAT would dispose of the O.A. The Petitioner was deemed to be in service, and the KVS was directed to pay 50% of his salary subject to the outcome of the O.A. The Petitioner would, however, not enter the school premises for discharge of his duties during this period, in view of the nature of the allegations against him.

13. S.L.P. (Civil) No.21122/2004 filed by the KVS against the above order was dismissed by the Supreme Court on 5th November, 2004.

14. Finally, on 15th December 2005, the CAT disposed of O.A. No.2008/2003 with a direction to the KVS to consider the Petitioner's representation and also his forthcoming superannuation, while passing an order afresh under Article 81 (b) of the Education Code. This was to be done before the superannuation of the Petitioner on 31st December, 2005. The status of the Petitioner pertaining to the continuance of 50% pay was to remain as it was till a decision was taken.

15. In compliance of the above order of the CAT, the Commissioner passed a detailed order dated 20th/24th January, 2006, terminating the Petitioner's service under Article 81 (b) of the Education Code, as his actual date of

retirement on superannuation was 31st January, 2006, with a direction that the amount payable to the Petitioner, in terms of the order of the CAT, be paid to him.

16. The Petitioner then preferred an appeal before the Appellate Authority ("AA"), which was rejected on 21st April, 2006.

17. Since the Petitioner was deemed to be in service between 5th November, 2003 to 24th January, 2006 in terms of the order of this Court, he was paid 50% salary. It was noted, in an order dated 2nd April, 2009, that the Petitioner had since been making representations for the payment of the remaining 50% of his salary. However, in view of the seriousness of the proven charges, it was directed, by the aforesaid order that there was no case on merit for releasing the remaining 50% of his salary. His representations were accordingly disposed of by the said order dated 2nd April, 2009 of the Joint Commissioner (Admn.) of the KVS. On 24th February, 2011, a sum of Rs.1,05,612/- was paid to the Petitioner on account of leave encashment

18. The Petitioner sought information under the Right to Information Act, 2005 ("RTI Act"). In reply thereto the KVS stated inter alia that since his services were terminated, gratuity was not payable. It appears that the Petitioner had approached the Central Information Commission ("CIC") by way of a second appeal on the ground that the information supplied by the Principal and PIO was misleading and inadequate. The KVS, Delhi Region, wrote to the Joint Commissioner, KVS at the Headquarters on 23rd /26th November, 2012, requesting that the information on Points 8 to 11, sought by the Petitioner, should be supplied by him. The information on Points 1 to 7 was provided to him.

19. On the specific aspect of "credit of unavailed joining time on earned leave account", which was a matter raised in the application under the RTI i.e. unavailed joining time of 15 days each both ways, while posting in Imphal and KV, Sainik Vihar in public interest, a clarification was sought by the Deputy Commissioner of the Delhi Region from the Headquarters by a letter dated 28th December, 2012. A reminder was sent on 4th February, 2013.

20. On 11th March, 2014, in response to another RTI application, a reply was provided by KVS, Headquarters. On the aspect of EL, it was stated that this query pertained to the Regional Office in Delhi and was transferred to it as such. On 17th January, 2011, an office order had been passed by the Assistant Commissioner, KVS, sanctioning payment of Rs.1,23,816/-towards encashment of 134 days of EL standing in the credit of the Petitioner at the time of his termination on 24th January, 2006 in accordance with the Rule 39 of the CCS (Leave) Rules, 1932. A reply was given under the RTI Act by the KVS, Delhi Region on 18th November 2015, inter alia, confirming that on 17th January, 2011, an office order had been passed by the Assistant Commissioner, KVS, sanctioning payment of Rs.1,23,816/-towards encashment of 134 days of EL standing in the credit of the Petitioner at the time of his termination on 24th January, 2006 in accordance with the Rule 39 of the CCS (Leave) Rules, 1932.

21. The Petitioner then appears to have filed O.A. No.187/2015 before the CAT, where the prayer was for a direction to the Respondent KVS to enter EL against unavailed joining time for both ways with immediate effect and the encashment amount thereafter to be paid; to recalculate an incorrect figure of EL year-wise for the period of the legal battle up to 31st January, 2006; and to pay 12% per annum interest on the delayed payment of leave encashment.

22. By the first impugned order dated 2nd September, 2016, the CAT noted that the challenge to second termination order, which had been raised before the CAT by filing O.A.996/2006, was dismissed on 24th July, 2007. Thereafter W.P. (C) No.3902/2008, filed by the Petitioner challenging the CAT's order dated 24th July 2007, was dismissed by this Court by an order dated 10th July 2009. The S.L.P. against the order of this Court was also dismissed. Therefore, the second termination by the order dated 24th January, 2006 became final. According to the CAT, a relief now sought pertaining to the first termination order dated 11th February, 1988 was no longer relevant, in view of the second termination order having become final.

23. The CAT held that as a result of the second termination, the past service stood forfeited, and there could be no claim pertaining to that period. The CAT referred to the fact that in Contempt Petition Nos.588/2009 and 14/2008, filed in this Court, the Registrar General of this Court had submitted a report dated 28th May, 2012 stating that all issues between the parties stood settled. The CAT, therefore, found no merit in the O.A. and dismissed it.

24. As far as the Review Application No.243/2016 is concerned, the CAT held that there was no error apparent on the face of the order dated 2nd September, 2016, and accordingly dismissed the Review Application by the second impugned order dated 2nd November, 2016.

25. The Petitioner, who appears in person, submitted that on termination of service by payment of pay and allowance in lieu of notice, there is a provision of leave encashment subject to a maximum of 300 days both for EL and HPL in terms of the CCS (CCA) Rules. According to him, the termination will not entail forfeiture of past service unlike dismissal or removal, which entails such forfeiture, in terms of Rule 24 of the CCS (Pension) Rules. He refers to the CAG's letter dated 23rd September, 1967, referring to the decision of the Government of India that termination of service does not amount to dismissal or removal. According to him, these were not referred to by the CAT in considering his plea.

26. The Court finds that the CAT did not refer to one further round of litigation after the dismissal of the Petitioner's petitions challenging the termination of his services. It appears that the Petitioner filed Civil Miscellaneous Application No.14140/2009 in Writ Petition No.3902/2008 in this Court and prayed that a direction be issued to the Respondents to pay him the full salary for the period between 5th November 2003 and 24th January 2006.

27. By an order dated 5th February 2010 the Division Bench of this Court

referred to the earlier order passed in WP(C) No.3141/2004 whereby direction was given to the respondents to pay 50% of salary to the appellant subject to the outcome of OA No.2008/2003 as well as the order dated 15th December 2005 passed by the CAT in OA No.2008/2003 and held that in view of the directions contained in those orders, the Petitioner was not entitled to more than 50% salary.

28. The above order dated 5th February 2010 of this Court was challenged by the Petitioner in the Supreme Court in Civil Appeal No.5372 of 2012 which was allowed by the Supreme Court by its judgment dated 22nd August 2012 in *R. S. Misra v. Union of India* (2012) 8 SCC 558, holding inter alia as under:

"14. We have heard the appellant, who has appeared in person and Shri S. Rajappa, learned counsel for the respondents and carefully perused the record. In our opinion, the impugned order is liable to be set aside because the view taken by the High Court on the appellant's entitlement to get full salary for the period between 5.11.2003 and 31.12.2005 is ex-facie erroneous. Once the Tribunal allowed OA No.2008/2003 and directed the Commissioner to pass fresh order under Article 81(b) of the Education Code after considering the representation submitted by the appellant, the earlier order terminating his service will be deemed to have become redundant and the appellant will be deemed to be continuing in service for all purposes. This conclusion is buttressed by the fact that vide order dated 24.1.2006, the Commissioner passed fresh order under Article 81(b) of the Education Code and terminated the appellant's service with immediate effect. The order passed by the High Court in WP(C) No. 3141/2004 was a sort of interim arrangement made to dilute the impact of the stay order passed by the Tribunal on 29.12.2003. Therefore, the same could not be relied upon by the respondents and the High Court for denying the appellant of his right to get full salary between 5.11.2003 and 31.12.2005.

15. It is neither the pleaded case of the respondents nor it was argued before us that during the pendency of the enquiry, the appellant was kept under suspension and he was paid subsistence allowance. This being the position, there could be no justification to deny full salary to the appellant for the period between 5.11.2003 and 31.12.2005.

16. In the result, the appeal is allowed, the impugned order is set aside and the respondents are directed to pay full salary and allowances to the appellant for the period between 5.11.2003 and 31.12.2005. The needful be done within a period of two months from today by getting prepared a demand draft in the appellant's name, which shall be delivered at his residential address on or before the end of two months period."

29. The CAT also does not seem to have noted that the Respondents have already granted promotion to the Petitioner to the post of Vice Principal with effect from 16th May 1996, by way of a memorandum dated 16th July, 2016, with the approval of the CA.

30. This Court could have itself decided the issue had the Respondents filed a reply in the present petition. However, despite opportunities given by the Court that was not done. As a result, the Court is constrained to remand the matter to the CAT for a fresh determination.

31. In that view of the matter, the Court sets aside the impugned orders dated 2nd September and 2nd November 2016 of the CAT and remands the matter to the CAT for a decision afresh keeping in view all the above facts and circumstances.

32. Given the long history of the litigation, the CAT is requested to dispose of O.A. No.187/2015 afresh within six months from the date of receipt of a certified copy of this order. The Petitioner and the Respondents shall cooperate with the CAT and not seek unnecessary adjournments. On the very first day fixed by the CAT for hearing of O.A. No.187/2015 pursuant to this order, the Respondent KVS shall produce the entire records pertaining to the Petitioner before the CAT for its perusal. Thereby, even if the KVS chooses not to file a reply, the CAT can proceed to dispose of the O.A. No.187/2015 finally within the time as directed by this Court.

33. The writ petition is disposed of in the above terms with costs of Rs.10,000 which shall be paid by KVS to the Petitioner within four weeks. Proof of payment of such costs be produced by the KVS before the CAT on the first date when the matter is listed there pursuant to this order. The pending applications are also disposed of.

34. A certified copy of this order be delivered forthwith by a Special Messenger both to the CAT Principal Bench, New Delhi as well as to the Chairman KVS for compliance.