

(2008) 11 DEL CK 0093

In the Delhi High Court

Case No : Writ Petition (Civil) No. 8031 of 2008

The Commissioner Kendriya Vidyalaya Sangathan

APPELLANT

Vs

Atar Singh

RESPONDENT

Date of Decision : 14-11-2008

Acts Referred:

Education Code — Article 81

Citation : (2008) 11 DEL CK 0093

Hon'ble Judges : Suresh Kait, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : S. Rajappa, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Madan B. Lokur, J.

CM No. 15482/2008.

Allowed, subject to just all exceptions.

CM stands disposed of.

W.P.(C) 8031/2008.

The Petitioner is aggrieved by an order dated 31st January, 2008 passed by the Central Administrative Tribunal, Principal Bench in OA No. 582/2007.

1. Allegations were made against the Respondent to the effect that he had made irregular appointments on the posts of PGT and retrenched some persons without the information /approval of the Chairman of the Kendriya Vidyalaya Sangathan (KVS). It was also alleged that he violated relevant instructions by re-engaging a contract teacher.

2. Pursuant to the aforesaid allegations a departmental inquiry was held in which the Respondent was found guilty and removed from service.

3. Feeling aggrieved, the Respondent preferred a departmental appeal which was rejected by the Appellate Authority and then the Respondent filed OA No. 936/2004 in the Central Administrative Tribunal. By an order dated 18th January, 2005, the Tribunal quashed the order of removal and remitted the matter back to the Disciplinary Authority for passing fresh orders.

4. A fresh order was then passed on 23rd June, 2005 whereby the Respondent was reinstated in service and reverted to the rank of PGT (Hindi). The period of his absence from duty that is from the date of his removal from service till his rejoining was treated as dies-non. It was further directed that on reinstatement, the Respondent be posted as PGT (Hindi) in Kendriya Vidyalaya, Barapani with a direction to report for duty within 10 days.

5. Feeling aggrieved by this order, the Respondent preferred a departmental appeal and the Appellate Authority passed an order on 3rd April, 2006 to the effect that the reversion of the Respondent to the post of PGT (Hindi) was for a limited period only. It was further directed by the Appellate Authority that with effect from 1st July, 2006 the Respondent would stand restored to the post of Principal and he would reoccupy his place in the seniority list of Principals which he had prior to the said order. The Appellate Authority also noted that since the Respondent had failed to join as PGT (Hindi) in Barapani within ten days, the concerned authority may take immediate cognizance of it and initiate appropriate action.

6. In compliance with the order dated 3rd April, 2006, the Petitioner issued a show cause notice to the Respondent on 5th June, 2006 in which it was alleged that since the Respondent had failed to join duty within ten days in Barapani, he had voluntarily abandoned his service and thereby provisionally lost his lien under Article 81 of the Education Code.

7. Against the show cause notice, the Respondent filed OA No. 1332/2006. This OA was decided by the Tribunal by an order dated 27th July, 2006 in which it was held that the show cause notice to the Respondent was bad in law. This order passed by the Tribunal was accepted by the Petitioner and there was no challenge to it by filing a writ petition or by taking out any other proceedings.

8. Thereafter, on 29th/ 30th March 2007 the Petitioner again issued a charge-sheet to the Respondent in which it was alleged that since he had not joined his duties in Barapani within ten days, as required by the earlier order dated 23rd June, 2005, the Respondent had committed misconduct and was, therefore, liable to face disciplinary proceedings.

9. The charge-sheet dated 29th/30th March, 2007 was challenged by the Respondent by filing another OA before the Tribunal being OA No. 582/2007. This OA was allowed by the Tribunal by the impugned order dated 31st January, 2008

10. The Tribunal noted that the original order whereby the Respondent was sought to be punished for not reporting to Barapani within ten days and the

proceedings earlier initiated by the show cause notice dated 5th June, 2006 had been the subject matter of OA No. 1332/2006. The show cause notice was quashed by the Tribunal and that was accepted by the Petitioner.

11. Under these circumstances, the Tribunal was of the opinion that it was not permissible for the Petitioner to once again seek to penalise the Respondent for the same alleged misconduct by issuing another show cause notice dated 29th/30th March, 2007 wherein the allegation was the same.

12. We note that during this entire period, the Respondent has been promoted as a Principal and joined duties as such with effect from 1st July, 2006. Learned Counsel for the Petitioner informs us that the Respondent is still working as a Principal.

13. As far as we are concerned, the chapter about the Respondent rejoining duties as PGT (Hindi) in Barapani is now closed not only because of the decision rendered by the Tribunal but also by virtue of the fact that he was promoted to the post of Principal. The Petitioner has, by its conduct, given up all its rights in respect of continuing any action against the Respondent for not joining duties in the lower post of TGT (Hindi). In our opinion there is no error committed by the Tribunal in taking the view that it did. A second charge-sheet could not have been issued to the Respondent on the same fact, particularly when the first charge-sheet was set aside on merits and that decision was accepted by the Petitioner.

14. There is no merit in the writ petition. Dismissed.