

(2009) 07 DEL CK 0475

In the Delhi High Court

Case No : Writ Petition (Civil) No. 10114 of 2009

Usha Bisht

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-07-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 311
Education Code — Article 81

Citation : (2009) 07 DEL CK 0475

Hon'ble Judges : Madan B. Lokur, J;A.K. Pathak, J

Bench : Division Bench

Advocate : Puneet Agarwal, for the Appellant; Puran Chand, for S. Rajappa, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Pathak, J.—Petitioner joined Respondent No. 2 (Kendriya Vidyalaya Sangathan) on 14th February, 1989 as TGT (Sanskrit). Initially she was posted at Kendriya Vidyalaya, New Tehri, Garhwal. Subsequently, she was transferred to Kendriya Vidyalaya, Raiwala, Dehradun on 14th September, 1995. She was again transferred to Kendriya Vidyalaya No. 1, Amritsar on her request where she joined on 6th August, 1997.

2. While working at Amritsar Petitioner remained on leave for 207 days i.e. from 3rd July, 1998 to 31st August, 1998, 28th June, 1999 to 18th July, 1999, 2nd January, 2000 to 16th January, 2000, 2nd July, 2000 to 29th September, 2000 and 1st November, 2000 to 21st December, 2000. On the last working day before the commencement of winter break she joined her duties on 22nd December, 2000 but again proceeded on leave w.e.f. 6th January, 2001 to 3rd April, 2001 i.e. for 88 days, on the ground of illness. About one month before the summer vacation she again joined her duties on 4th April, 2001. Subsequently, she remained absent w.e.f. 25th June, 2001. Vide application dated 27th July, 2001 she requested for grant of extraordinary leave for a period of one year on the

ground of ill health and family problems.

3. Assistant Commissioner (Jammu) informed the Petitioner that her leave was not sanctioned and directed her to report for duty at Amritsar and in case of illness she shall report for medical examination to the Regional Medical Board at Jammu on 17th August, 2001. Petitioner neither reported for duty at Amritsar nor she presented herself for medical examination. Consequently, show cause notice under Article 81(d) of the Education Code (for short hereinafter referred to as "Code") for Kendriya Vidyalaya was issued to her by the Assistant Commissioner (Jammu Region) on 23rd August, 2001. She did not respond to this notice. Vide order dated 14th September 2001 Assistant Commissioner (Jammu Region) passed an order for removal of Petitioner from services of the Respondent No. 2, under Article 81(d) of the Code.

4. Petitioner preferred statutory appeal before the Appellate Authority against the order of her removal. Vide order dated 8th May, 2003 Appellate Authority dismissed her appeal.

5. Aggrieved by the aforesaid orders Petitioner preferred Original Application bearing OA No. 2864/2004 before the Central Administrative Tribunal, Principal Bench, New Delhi (for short hereinafter referred to as "the Tribunal") inter alia on the ground that Article 81(d) of the Code was unjust, unfair and illegal; Service of the Petitioner, who was a permanent employee, could not have been terminated by adopting the summary procedure which was against the principles of natural justice; impugned order shows complete non-application of mind as the evidence furnished by the Petitioner justifying her absence, was totally ignored. Vide impugned order dated 12th April, 2006 the Tribunal has dismissed the original application of the Petitioner.

5. Tribunal has held that validity of Article 81(d) of the Code was upheld by the Chandigarh Bench of the Tribunal as also by the Delhi High Court in Prem Juneja's case and this question was not open to challenge. Petitioner was not at all interested in joining the school or pursuing the studies of the students or to look after the interest of the Institution as she was more keen on taking leave on one pretext or the other without even bothering to comply with the directions given to her from time to time to join her duties. She even did not appear for her medical examination before the Regional Medical Board at Jammu. After her request for grant of leave was declined she had made a request for transfer and had even visited Delhi on 23rd July, 2001 to meet Dy. Commissioner which shows that she was not sick. Petitioner could have appeared before the Regional Medical Board at Jammu. Full opportunity was given to the Petitioner at every stage. Though, there was delay of one and a half years in filing the appeal even then same was considered on merits and the Petitioner was only granted personal hearing by the Appellate Authority. Circular dated 24th January, 2002 relied upon by the Petitioner contend that Medical Board should have been ordered at the nearest place where Petitioner had fallen sick, was of no help to her as she was removed from service much prior to the issuance of this circular.

6. In factual matrix of this case, we are not inclined to interfere with the order passed by the Tribunal. It is apparent that Petitioner was not interested in the welfare of the students. She was more interested in taking leave on one or the other pretext. Between July 1998 to April 2001 she remained on leave for about 295 days. She again absented herself with effect from 25th June, 2001 till she was removed from service vide order dated 14th September, 2001. We are of the view that Tribunal rightly observed that the Petitioner was not at all interested in pursuing her duties as Teacher as she remained absent from the job most of the time and this action was against the interest of Respondent No. 2. Petitioner did not join her duties at Amritsar nor appeared herself before the Regional Medical Board at Jammu as directed. From the order of the Tribunal it appears that she had visited Delhi in order to meet the Dy. Commissioner. If that is so, she could have very well visited Jammu to appear before Medical Board. We are also of the view that Tribunal rightly observed that the circular dated 24th January, 2002 was of no help to the Petitioner as the service of the Petitioner had been terminated much prior to issuance of this circular.

7. In *Prem Juneja v. Union of India* reported in 2003 I AD (Delhi) 57, this Court has held that Article 81(d) of the Code is not violative of Articles 14 & 16 of Constitution. It has further been held that Article 311 of the Constitution was not applicable to employees of KVS.

8. In the light of above discussions, we do not find any merit in this writ petition and the same is dismissed.