
(2019) 03 J&K CK 0150

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1066 Of 2015, IA 1361 Of 2015

Vidya Sagar Khanna

APPELLANT

Vs

Kendriya Vidyalaya Sangathan & Ors

RESPONDENT

Date of Decision : 27-03-2019

Acts Referred:

Education Code For Kendriya Vidyalayas, — Article 81(D), 81(D)(6)

Citation : (2019) 03 J&K CK 0150

Hon'ble Judges : Gita Mittal, CJ; Sindhu Sharma, J

Bench : Division Bench

Advocate : P. N. Raina, Sonam Dorjay, Rajneesh Raina

Final Decision : Disposed Off

Judgement

Gita Mittal CJ

1. By way of the instant writ petition, the petitioner has assailed the order dated 2nd December, 2014, whereby the Central Administrative Tribunal has rejected OA No.481-JK-2013. By this petition, the petitioner had assailed the action of the Kendriya Vidyalaya Sangathan, respondent No.1 herein, in taking proceedings under Article-81(D) of the Education Code for Kendriya Vidyalayas, resulting in loss of the petitioner's lien on the post which he was holding with effect from March, 2007 and removal of service for unauthorized and unexplained absence for fifteen (15) days and beyond.

2. The facts giving rise to the instant case to the extent necessary for the present adjudication and as have been placed by Mr. P. N. Raina, learned senior counsel for the petitioner, and by Mr. Rajneesh Raina, learned CGSC for the respondents, and to the extent necessary are set down hereafter.

Factual background

3. While posted as a Upper Division Clerk (UDC) at the Kendriya Vidyalaya, Awantipora, the petitioner sought leave on 9th March, 2007, which was not

granted. It is an admitted position that on 10th March, 2007 the petitioner left the station and proceeded to Jammu. According to the petitioner, this was on medical grounds. Be that as it may, the view and the stand taken by the respondents that the petitioner's proceeding on leave as well as leaving the station was without any sanction from the competent authority, is not disputed.

4. It appears that the respondents thereafter sought to issue notice to the petitioner to resume duties and also, with regard to his stand that he was ailing, required him to appear before the Regular Medical Board for a medical examination. According to the respondents, the petitioner failed to do so, resulting in passing of an order dated 5th October, 2007 confirming loss of lien of the petitioner on the post of UDC having abandoned the same and thereby removing him from service with effect from the date of his having remained absent from duty.

5. This order came to be assailed by the petitioner by way of original application No.268/JK/2008 before the Central Administrative Tribunal, Chandigarh Bench (Circuit Bench at Jammu). This original application was decided by an order passed on 18th November, 2009, inter alia holding that the order dated 5th October, 2007 had been passed without affording an opportunity of hearing to the present petitioner. The order dated 5th October, 2007 came to be quashed having been passed in violation of principles of natural justice. The concerned authority was further directed to issue notice to the petitioner to appear before it for personal hearing and thereafter pass appropriate orders, as directed by the Writ Court. The Central Administrative Tribunal left it to the competent authority to allow the petitioner to join at Awantipora keeping in view the fact that the impugned order had been quashed and set aside.

6. It appears that the order dated 18th November, 2009 passed by the Central Administrative Tribunal was also challenged by the official respondents by way of SWP No.D-2289/2010, which writ petition was dismissed by the Division Bench vide order dated 4th November, 2010.

7. In compliance to the order passed by this Court dated 4th November, 2010 in SWP No.D-2289/2010, the disciplinary authority granted hearing to the present petitioner and thereafter vide order dated 4th March, 2011 passed the order confirming the loss of lien of the petitioner on the post of UDC and directing that he stood removed from the service of the Kendriya Vidyalaya Sangathan with effect from 9th March, 2007, in terms of the provisions of Article-81(D)(6) of the Education Code for the Kendriya Vidyalayas.

8. The petitioner's appeal against this order was rejected by an order passed on 12th June, 2012, by the Joint Commissioner (Admn.), who was an Appellate Authority under the Education Code for the Kendriya Vidyalayas.

9. It appears that the petitioner filed a revision appeal before the Ministry of Human Resource & Development, department of School Education & Literacy, Government of India, however, the same was not entertained as not being

maintainable.

10. Aggrieved by the order dated 4th March, 2011 of the Disciplinary Authority and the order dated 12th June, 2012 of the appellate authority, the writ petitioner filed OA No.481-JK-2013 before the Central Administrative Tribunal. Amongst the several other grounds pressed on behalf of the petitioner, Mr. P. N. Raina, learned Senior Counsel for the petitioner, has drawn our attention to one of the main ground which was pressed into service by the writ petitioner. It is the contention of the writ petitioner that even if the allegations as alleged by the respondents against the petitioner are accepted in their entirety, the respondents had failed to make out a case of "voluntary abandonment of service" in terms of the Article-81(D) of the Education Code for the Kendriya Vidyalayas.

11. It is further contended that without admitting the allegations made by the respondents, even if the conduct which is attributed by them to the writ petitioner as true, the same could at best be held to be tantamounting to wilful disobedience of different orders passed by the authorities which would invite appropriate proceedings under the CCS (CCA) Rules 1965. It is vehemently contended by Mr. P. N. Raina, learned senior counsel, that even the complaints placed by the petitioner establish that he had a valid reason and fear for his life, for which reason he was unable to join duties at Awantipora.

Mr. Raina, learned Senior Counsel, would want this Court to accept the petitioner's contention that therefore the respondents have taken an unreasonable stand in not accepting the grievance of the petitioner and, that, they should have done justice to him.

We are also informed by Mr. Raina that these very submissions were placed before the Tribunal in OA No.481-JK-2013 and taken up for consideration.

12. Our attention is drawn to the order dated 2nd December, 2014, whereby the Central Administrative Tribunal rejected the Original Application No.481-JK of 2013 of the petitioner, aggrieved whereby the present writ petition has been filed. We also note that the petitioner had filed a review bearing R.A.No.061/00008 of 2014 in OA No.481-JK-2013 which was also dismissed by an order dated 5th January, 2015 by the learned Central Administrative Tribunal.

13. We have been taken at length through these orders by Mr. P. N. Raina, learned Senior Counsel for the petitioner as well as Mr. Rajneesh Raina, learned counsel for the respondents.

14. The primary ground of challenge by the petitioner before us with regard to the impugned orders is to the effect that the Central Administrative Tribunal has failed to apply its mind to any of the submissions, which are placed before it.

It is contended that the Central Administrative Tribunal was bound to consider the contentions of the petitioner and to have adjudicated thereon in accordance with law. Mr. Raina, learned Senior counsel, would submit that a previous order dated 12th August, 2014 recorded by the Central Administrative Tribunal itself

notes the specific contention of the petitioner that the respondents had failed to make out a case of wilful abandonment of service.

15. We have given our considered thought to the submissions made. A bare perusal of the order dated 2nd December, 2014 would show that the impugned order of the Central Administrative Tribunal largely contains the extract of the last part of the Appellate Authority's order dated 12th June, 2012. After quoting from the Appellate Authority's order, the Central Administrative Tribunal has without any discussion simply recorded that the petitioner was adamant not to join his post at Awantipora and thereafter, straightaway proceeded to hold that he was rightly held guilty of voluntary abandonment of service, leading to his removal from service in terms of Article-81(D) of the Education Code for the Kendriya Vidyalayas.

16. We find substance in the grievance of the petitioner that neither the factual background, which was pleaded by him nor the submissions in law, which stands placed in the Original Application and in the oral submissions, as noted above, have been considered or decided. The contention noticed in the order dated 12.08.2014, has not been examined by the Central Administrative Tribunal. It was incumbent upon the Tribunal to have taken a considered view on the several contentions placed.

17. In view thereof, the impugned orders dated 2nd December, 2014 & 5th January, 2015 are not sustainable and are hereby set aside and quashed.

The matter is remanded for consideration afresh to the Central Administrative Tribunal, Chandigarh Bench.

18. Given the fact that the petitioner is out of service since March, 2007 and OA No.481-JK of 2013 has also been pending for more than five years, it would be in the interest of justice that the matter is heard and decided expeditiously, preferably within a period of four months from today.

19. We are informed that the pleadings in the matter are complete. OA No.481-JK of 2013 shall, therefore, be listed before the Central Administrative Tribunal, Chandigarh Bench on 16th April, 2019 for directions. The parties shall remain present before the Tribunal on the said date.

20. The writ petition is disposed of in the above terms.