

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5372 OF 2012

(Arising out of SLP (C) No. 23219 of 2010)

R.S. Misra

... Appellant

Versus

Union of India and others

... Respondents

J U D G M E N T

G. S. Singhvi, J.

1. This appeal is directed against order dated 5.2.2010 passed by the Division Bench of the Delhi High Court whereby the civil miscellaneous application filed by the appellant in Writ Petition No.3902/2008 for issue of a direction to the respondents to pay him salary for the period between 5.11.2003 and 24.1.2006 was dismissed.

2. While he was holding the post of Post Graduate Teacher (Chemistry) in Kendriya Vidyalaya Sangathan (for short, 'KVS'), the appellant's services were terminated by the Commissioner, KVS under Article 81 (b) of the Education

Code. CWP No.3354 of 1994 filed by the appellant was allowed by the learned Single Judge of the Delhi High Court vide order dated 19.9.1994 and the termination of his service was quashed. The operative portion of that order reads as under:

“In the result I allow the writ petition, quash the order of dismissal dated February 11, 1988 and direct that the petitioner shall be reinstated in service forthwith with all consequential benefits from the date of his dismissal. Needless to say it would be open to the respondents, if so advised, to proceed against the petitioner afresh as per the Rules of the Education Code.”

3. LPA No.116/1994 filed by the respondents was dismissed by the Division Bench of the High Court. Thereafter, the Commissioner, KVS passed order dated 3.10.2000 for reinstatement of the appellant with a stipulation that the period during which he had not worked, i.e., from 11.2.1988 to the date of joining the duty shall be treated as ‘dies-non’.

4. Since the appellant was not given consequential benefits, he filed Contempt Petition No. 550/2000 which was disposed of by the learned Single Judge of the High Court vide order dated 25.1.2001, the relevant portion of which is reproduced below:

“In this case judgment of the learned Single Judge has merged in the judgment passed in LPA. There is no dispute about one aspect that the petitioner has been appointed vide annexure-2 vide order 3.10.2000 at page 33. In case there is non compliance of order of Division Bench then petitioner is at liberty to file a fresh petition.

With the above observations, the application and petition stand disposed of.”

5. The appellant sent legal notice dated 20.2.2001 through his advocate for grant of consequential benefits but the same was rejected vide letter dated 4.4.2001. Thereupon, he filed Contempt Petition No. 151/2001. The learned Single Judge noted that the appellant had already been reinstated and a sum of Rs.11,48,625/- were paid to him by way of arrears of pay and allowances and directed the non-petitioner in the contempt petition to consider his case for grant of such benefits to which he may be found entitled. The learned Single Judge also made it clear that if the appellant feels aggrieved by the decision of the competent authority then he shall be free to avail appropriate legal remedy.

6. In the meanwhile, the appellant was served with memorandum dated 11.3.2002 and was called upon to explain as to why disciplinary action should not be taken against him under Article 81(b) of the Education Code on six allegations, three of which related to misbehaviour with girl students. The Enquiry Officer/Summary Enquiry Committee submitted report dated 9.4.2002 with the finding that allegations leveled against the appellant have been proved. After considering the Enquiry Report, the Commissioner issued memorandum dated 31.3.2003 proposing to pass final order under Article 81(b) of the Education Code and gave opportunity to the appellant to make representation in the context of the findings recorded against him. The appellant submitted

detailed representation dated 15.4.2003 to contest the findings recorded in the Enquiry Report. After considering the same, the Commissioner, KVS passed order dated 5.11.2003 and terminated the appellant's service with immediate effect.

7. The appellant challenged memorandum dated 31.3.2003 by filing an application under Section 19 of the Administrative Tribunals Act, which was registered as OA No.2008/2003. He also filed a miscellaneous application for stay of order dated 5.11.2003 passed by the Commissioner, KVS for termination of his service. By an order dated 29.12.2003, the Principal Bench of the Central Administrative Tribunal (for short, 'the Tribunal') stayed the operation of order dated 5.11.2003. The Commissioner, KVS challenged that order in WP(C) No. 3141/2004, which was disposed of by the Division Bench of the High Court vide order dated 16.8.2004, the substantive portion of which reads as under:

“Petition is disposed of by providing that the termination order passed against the petitioner shall remain in abeyance for two months from this period. Tribunal is directed to dispose of the OA of the respondent expeditiously.

During this period, respondent will be deemed to be in service and petitioner shall pay 50% of his salaries subject to the outcome of the OA. Respondent will not however enter the school premises for discharge of his duties during this period in view of the nature of allegations levelled against him. This will not, however be any expression of opinion on the merit of the OA or the nature of charges against the respondent.”

8. OA No.2008/2003 was finally disposed of by the Tribunal vide order dated 15.12.2005 and a direction was issued to the Commissioner, KVS to pass fresh order after considering the representation made by the appellant and keeping in view his forthcoming superannuation with effect from 31.12.2005. Simultaneously, it was directed that the respondents shall continue to pay 50% salary till the decision was taken in the matter.

9. In view of the aforesaid order of the Tribunal, the Commissioner considered the appellant's representation and passed order dated 20/24.01.2006 whereby he again terminated the appellant's service with immediate effect under Article 81(b) of the Education Code and directed that the amount payable to him in terms of the Tribunal's order and 3 months pay and allowances in lieu of notice be paid to him immediately. The operative portion of that order reads as under:

“Considering the gravity of the proven immoral behaviour towards girl students, I hereby terminate the services of Shri R.S. Misra with immediate effect pursuant to the provisions of Article 81(b) of Education Code for Kendriya Vidyalaya. This order is issued in compliance to the Orders dated 15.12.2005 of Hon'ble CAT, Principal Bench, New Delhi in Original Application No.2008 of 2003. The amount payable to Sh.R.S. Misra in terms of Hon'ble CAT's order as well as three month's pay and allowances in lieu of notice period also in terms of Article 81(b) be paid to him immediately.”

10. The appeal filed by the appellant against the order of the Commissioner was dismissed by the Vice-Chairman, KVS vide order dated 18/21.4.2006.

11. The appellant challenged the order of termination as well as the appellate order in OA No. 996/2006, which was dismissed by the Tribunal by observing that the exercise of power by the Chairman, KVS under Article 81(b) did not suffer from any legal error. The writ petition filed by the appellant was dismissed by the Division Bench of the Delhi High Court. The same was the fate of review petition filed by him before the High Court and SLP(C) Nos.8219-8220/2010 filed before this Court.

12. Having failed to convince the Tribunal, the High Court and this Court to quash the termination of his service, the appellant filed Civil Miscellaneous Application No. 14140/2009 in Writ Petition No.3902/2008 and prayed that a direction be issued to the respondents to pay him full salary for the period between 5.11.2003 and 24.1.2006.

13. The Division Bench of the High 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, order dated 15.12.2005 passed by the Tribunal in OA No.2008/2003 and held that in view of the directions contained in those orders, the appellant is not entitled to more than 50% salary.

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.

.....J.
[G.S. Singhvi]

.....J.
[Fakkir Mohamed Ibrahim Kalifulla]

New Delhi,
August 22, 2012.

JUDGMENT