

2023:DHC:5181-DB



Neutral Citation Number: 2023:DHC:5181-DB

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 19.07.2023

% **Judgment delivered on: 26.07.2023**

+ **LPA 180/2023 & C.M. Nos. 11902/2023 & 11903/2023**

COMMISSIONER, KENDRIYA VIDYALAYA SANGATHAN &
ANR. Appellant.

Through: Mr. S. Rajappa and Mr.
Gowrishankar, Advocates.

versus

VIJAY RAJPAL & ORS. Respondent

Through: Mr. Vijay Rajpal, Respondent No.1
(in-person).
Mr. Dev P. Bhardwaj, Govt. Counsel
with Ms. Anubha Bhardwaj, Mr.
Sachin Singh and Ms. Chaahat
Khanna, Advocates for UOI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present Appeal is arising out of an judgment dated 19.12.2022 passed by learned Single Judge in W.P.(C.) No. 4846/2014 titled *Vijay*



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2. The facts of the case reveal that the Respondent before this Court was appointed as a Post Graduate Teacher (PGT), Mathematics on 24.07.2023 in the services of Kendriya Vidyalaya Sangathan (KVS) on probation for a period of two years and during the probationary period his services were discontinued vide order dated 24.04.2003 as his performance was not satisfactory.

3. The undisputed facts also reveal that the Respondent No.1 (*Petitioner in the Writ Petition*) being aggrieved by the order of discharge approached the Central Administrative Tribunal (CAT) and the CAT has declined to grant any relief in the matter.

4. The Respondent herein being aggrieved by the order passed by the CAT preferred a Writ Petition before this Court and a Division Bench of this Court vide judgment dated 06.12.2005 titled *Vijay Rajpal Vs. Information Commissioner, Central Information Commission & Ors.* has dismissed the Writ Petition .

5. The Respondent herein, thereafter, preferred a Special Leave Petition (SLP) before the Hon'ble Supreme Court being SLP No. 3263/2007 titled ***Vijay Rajpal Vs. Union of India & Anr***, and the said SLP was dismissed on 05.02.2007 by the Hon'ble Supreme Court. Thereafter, a Review Petition was also preferred in the matter and the same was also dismissed vide order

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dated 21.08.2007. Meaning thereby, the Respondent's discontinuance has attained the finality.

6. The Respondent No.1 in spite of the fact that his discontinuance from service has attained finality preferred a Writ Petition before this Court for the following reliefs.:

“(1) Quash and set aside the impugned order dated 14.06.2013 and order dated 6.08.2013 passed by the Central Information Commission in view of the information sought and supplied under the RTI Act, 2005, by the respondents that petitioner's ACR for 2001-02 was duly dispatched by the Principal, K.V. Bagafa, vide letter No.203, F.No.20, dated 21.08.2002;

(2) Quash and set aside the Presidential Order dated 21/26.11.2008, which was passed by the authority not competent to pass the order as per provision of Rule 29- A, C.C.S. (C.C.A.) Rules, 1965;

(3) Grant relief to the petitioner on the basis of Annual Confidential Report for 2001-02 containing his signed 'self-Appraisal' and as written by the Principal of the School on his work and conduct which was the subject matter of inquiry and adjudication before the Central Information Commission which ordered the matter to be closed based on the false affidavit filed by Respondent No.4 at the behest of Respondent No.3, to the effect that ACR for 2001-02 in respect of petitioner (Shri Vijay Rajpal) does not exist in the Silchar Office of Kendriya Vidyalaya Sangathan.”

7. The learned Single Judge has declined to grant any relief to the Petitioner (*Respondent No. 1 herein*). The Paragraph Nos. 18 to 23 of the order passed by the learned Single Judge read as under:

“18. The only issue now in the present case is whether the CIC's order of closing the case is valid and justified or not. The Court has perused the RTI application, the affidavit filed by the KVS as also the two documents relied upon by the Petitioners



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i.e., the dispatch register and the letter of the Principal. There is no doubt in the mind of the Court that the two documents relied upon by the Petitioner do create a haze on the question of preparation of the ACR. As per the judgment of the Division Bench, the discharge is without any taint, though the Petitioner feels that if the ACR was made available, he could have proved that the comments in the Probation report regarding his performance could have been disproved by him. The Petitioner, suspects that the ACR of the Principal has been deliberately withheld as the same would have disproved the contents of the Probation report relied upon by KVS to discharge him. This suspicion becomes credible as the dispatch register and the Principal's letter – both confirm that the ACR was prepared and dispatched but he same, curiously is not traceable. Both these documents are not disputed but are in fact admitted by KVS.

19. However, this Court cannot direct any further enquiry in the matter as a committee is already stated to have been appointed by the KVS and the said committee has already arrived at a conclusion. The ACR, for whatever reason is untraceable and at this stage, the Court has no reason to disbelieve the Committee which was formed by the KVS.

20. It is noted by the Court that the Petitioner has been made to pursue these proceedings for a long period and there is some documentary evidence on record to show that the ACR did exist. The KVS being the ultimate managing organization of the Kendriya Vidyalaya in question, there is an issue of governance if such important documents relating to employees cango missing in this manner. Being an educational establishment, there is a duty on the organisation to have better systems for preservation of records. Therefore, the Court is of the opinion that that the Petitioner is entitled to costs in this matter of Rs.2,00,000/-.

21. It is clarified that the said costs are being granted owing to the documents including the dispatch register and the letter of the Principal which shows that the ACR has been prepared as also the negligence in preservation and non-production of the

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ACR by the KVS. The costs shall be paid to the Petitioner, by KVS within eight weeks.

22. Insofar as the concern of the Petitioner qua his performance is concerned, the order dated 6th December, 2005 passed by the Division Bench of this Court, has already made it clear that the order of discharge does not comment on the performance of the Petitioner. Thus, nothing further needs to be said on this score.

23. With these observations, the present petition, along with all pending applications, is disposed of.”

8. The present Appeal is arising out of the aforesaid order and the KVS is aggrieved only to the extent a cost of Rs. 2,00,000/- has been imposed upon KVS.

9. This Court has heard Learned Counsel for the Appellant as well as the Respondent No. 1 who has appeared before this Court in person.

10. The undisputed facts of the case reveal that no relief has been granted to the Petitioner (*Respondent herein*), and only an observation has been made that the KVS was negligent in preservation and non-production of ACR.

11. The learned Single Judge has held that no enquiry could be conducted for the purpose of ascertaining if there is existing ACR of Respondent No.1 or not, and has categorically held that committee formed by KVS found that the ACR was not traceable, therefore, there was no reason to disbelieve the committees report. The Learned Single Judge in spite of the aforesaid observation has imposed a cost of Rs. 2,00,000/- upon the appellant organization.

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12. Learned Single Judge without fixing any responsibility upon any individual has held that it is the duty of the organization to have better system for preservation of records.

13. Learned counsel for the appellant has vehemently argued before this Court that in the Organization there is system for preservation of record, and by making an observation that the KVS was negligent, cost of Rs. 2,00,000/- has been imposed without granting any relief to the Petitioner (*Respondent No.1 herein*) in the Writ Petition. He has also vehemently argued before this Court that the order of termination was affirmed by the CAT, by the Division Bench as well as by the Hon'ble Supreme Court, and at no point of time it was held by the Division Bench of this Court or by the Hon'ble Supreme Court that the KVS was negligent in maintaining the record. Therefore, in respect of the same issue of termination no such cost could have been imposed in the manner and method it has been done.

14. In the considered opinion of this Court, the learned Single Judge has not assigned any cogent reason for imposing the cost of Rs. 2,00,000/- in the matter. The learned Single Judge, though has imposed cost of Rs. 2,00,000/, but has also observed that the order of discharge does not comment upon the performance of the Petitioner (*Respondent No.1 hererin*) as held by the Division Bench vide order dated 06.09.2005.

15. This Court is of the considered opinion that there was no occasion of learned Single Judge to impose a cost in the peculiar facts and circumstances of the case.

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16. We acknowledge the important of instilling efficiency and accountability in the administrative functioning of institutions like KVS. Therefore, Court's comments on the working of KVS were well-founded, as education institutions should indeed have robust systems for the preservation of records.

17. However, in our opinion, the imposition of cost in this case appears to be disproportionate to the circumstances at hand and we consider it appropriate to set aside the same, in the peculiar facts and circumstances noted hereinabove. Instead, it would be more equitable to address the need for better record-keeping by directing KVS to adopt better practices such as digitization etc., to ensure the proper preservation of records so that such incidents do not occur in future.

18. Another aspect of the case is that no Appeal has been preferred by the Respondent No.1 against the order passed by the learned Single Judge wherein no relief has been granted to the Petitioner (*Respondent No.1 herein*). Therefore keeping in view the totality and circumstances of the case, imposition of cost upon an education institution, without there being any substantial material, is unwarranted.

19. According, this Court is of the opinion that the cost imposed upon KVS deserves to be set aside, and, is, accordingly, set aside.

20. No order as to costs.

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(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SANJEEV NARULA)
JUDGE

JULY 26, 2023/aks