

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

+ **Cont. Cas. (C) No. 88/2008**

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Date of Decision : 29.4.2009

Iqbal Singh & Ors.

.... Petitioner

Through Mr. Javed Ahmed, Advocate

Versus

Sh. Ashok Kumar Nigam

.... Respondent

Through Ms. Madhu Tewatia, Advocate.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | NO |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

V. K. SHALI, J.(Oral)

1. Iqbal Singh has filed the present contempt petition under Section 11 and 12 of the Contempt of Court Act, 1971. Iqbal Singh was one of the petitioners who had filed the writ petition bearing no. 8592/2007 praying that their services as Malaria Beldar be regularized.

2. The learned counsel for the respondents states that the stand of the respondent/MCD was that the petitioners in the said

petition were engaged on contract basis and were doing a seasonal work.

3. On the very first date of hearing an order was passed on 26th November, 2007 on the main writ petition and so far as the stay application was concerned till the next date of hearing the services of the petitioners were not be terminated by the respondents. The matter was adjourned to 13th December, 2007. On 13th December, 2007 the learned counsel for the petitioner could not appear on account of some personal difficulty and the matter was adjourned to 2nd January, 2008. The interim order which was granted on the first date of hearing i.e. 26th November, 2007 was not continued on 13th December, 2007.

4. On 2nd January, 2008 when the matter came up again the application bearing No. 17183/2007 which was filed by the respondents for vacation of stay of interim order granted on 26th November, 2007 was withdrawn on account of the fact that the interim order granted was not continued either on 13th December, 2007 or even on 2nd January, 2008.

5. The contention of the learned counsel for the petitioners is that the non continuance of the interim order on the two dates 13th December, 2007 and 2nd January, 2008 was on account of the inadvertent mistake but in effect the interim order was deem to have been continued. It was urged that this is reflected from

the fact that on 11th January, 2008 the learned Single Judge again reiterated the interim order which was passed on 26th November, 2007 and said it would continue till 28th January, 2008 while as on 5th January, 2008 the services of the petitioner and some of his other colleagues were terminated.

6. On the strength of the aforesaid facts, it is urged that the respondents have not only disobeyed the interim order but the same has been done willfully and this constitutes a civil contempt within the definition of Section 2 sub clause 7 of the Contempt of Court Act, 1971.

7. The learned counsel for the respondents has appeared in response to the advance notice and it is contended that the interim order which was passed originally on the first date of hearing on 26th November, 2007 was admittedly not continued on 13th December, 2007 as well as on 2nd January, 2008. It is also admitted by the learned counsel for the respondents on 11th January, 2008 their application bearing No. 17183/2007 seeking vacation of the interim order dated 26th November, 2007 came to be listed before the learned Single Judge, however, the same was dismissed as withdrawn on account of the fact that the learned Court was of the opinion as the interim order granted on the first date of hearing i.e. 26th November, 2007 was not continued on 13th December, 2007 therefore, there was no action to respondent

to file an application for the vacation of the stay. On account of these observations and the factum of non continuance of the interim order on the two subsequent dates after date of 26th November, 2007 that the respondents passed an order dated 5th January, 2008 terminated the services of the seven persons. On 11th January, 2008 when the matter came up before the learned Single Judge again no doubt the interim order granted on 26th November, 2007 was continued to till 28th January, 2008 but that would not tantamount the staying the operation of the order dated 5th January, 2008 as the services of the some of the petitioners in the original writ petition stood terminated, and therefore, it has been urged that there is no disobedience of the order dated 26th November, 2007 much less the same is willfully.

8. I have heard the learned counsel for the parties and gone through the record carefully.

9. The settled legal position is that any disobedience of an order passed by the Court would not constitute contempt. In order to constitute a contempt not only there must be disobedience, it will be willful and contumacious in other words it should be done with a view to lower the majesty of the Court. Admittedly, in the instant case the respondents were restrained to be terminated. The interim order was granted on 26th November, 2007 and the said interim order was not continued on 13th

December, 2007 the respondents had rightly filed failed an application for the vacation of the interim order dated 26th November, 2007 assuming that the order dated 26th November, 2007 has been discontinued on 13th December, 2007 although there was no specific mention of the same in the said date. But as the application seeking modification/action of the order dated 26th November, 2007 was dismissed as withdrawn, the Court was cognizant of the fact that it is not intending to continue the interim order which has been specifically granted in favour of the petitioners. If that be so the termination of services of the seven persons mentioned in the order dated 5th January, 2008 can hardly be said to be willful, disobedience of the interim order dated 26th November, 2007. This is notwithstanding the fact that on a subsequent date thereto i.e. 11th January, 2008. The interim order dated 26th November, 2007 has been continued till 28th January, 2008. There is another aspect to the matter the present writ petition has been filed by Iqbal Singh and in the order dated 5th January, 2008 the name of the Iqbal Singh was not at all mentioned although there seems to be no dispute about the factum of termination of his services. In the light of the aforesaid factual matrix, I feel that the action of the respondents in terminating the services of the petitioners cannot not be said to be constituted a willful disobedience or contumacious of the interim

order dated 26th November, 2007 with a view to lower the majesty of the Court so as to warrant issuance of any notice to the respondents.

10. For the aforesaid reasons, the present contempt petition is accordingly dismissed.

APRIL 29, 2009
KP

V.K. SHALI, J.