

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

+ **W.P. (C.) No.13643/2009**

% **Date of Decision: 07.12.2009**

Sh.Jitender Munjal & Ors Petitioners

Through Mr. Neeraj Malhotra, Advocate.

Versus

Municipal Corporation of Delhi Respondent

Through Mr. Vikas Sethi, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE VIPIN SANGHI

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

ANIL KUMAR, J.

*

The petitioners have impugned the order dated 29th October, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in CP No.259/2009, which has been dismissed by the Tribunal. The said contempt petition had been filed to seek initiation of contempt proceedings against the respondent for not complying the interim order dated 13th June, 2008 passed by the High Court.

The petitioners had filed W.P(C) 4528/2008 to challenge the advertisement No.1/2008 issued by the respondents to fill up the posts of Physiotherapists. The petitioners were working with the respondents as Physiotherapists on contractual basis for four to five years. The grievance of the petitioners was that the age limit fixed by the respondents was 18 to 27 years whereas they were over age by about 10 months and 20 months. Another grievance was that their past experience was not being given any weightage. With these grievances the writ petition was filed in the High Court and during the pendency of the writ petition an interim order dated 13th June, 2008 was passed granting age relaxation to the petitioners in view of the earlier advertisement No.9/2007 and the respondents were directed to allow the petitioners to apply to the post of Physiotherapist against advertisement No.1/2008. Since in the earlier advertisement No.9/2007 two years experience was prescribed as “desirable”, therefore, it was also directed as an interim measure that it would be desirable to give the petitioners benefit of two years experience while considering their candidature with respect to advertisement No.01/2008.

The writ petition filed by the petitioner where the interim order dated 13th June, 2008 was passed and was later on transferred to Central Administrative Tribunal, Principal Bench and was registered as T.A No.1304/2009. The same is still pending consideration.

According to the petitioners, they participated in the process of selection and in the merit list issued by the respondents, their names appeared at serial Nos.31 and 411. The petitioners thereafter filed the contempt petition contending, inter-alia, that the benefit of two years experience has not been given to the applicants.

The Tribunal dismissed the contempt petition holding that there was nothing to suggest that in the merit applicants were anywhere near the top rankers as applicant No.1 was at 31st position with 135 marks and applicant No.2 was at 411th position with only 95 marks, whereas the top most candidate had scored 148 marks. Regarding the condition that two years experience should be treated as “desirable” the Tribunal held that the order in the writ petition could not be read to warrant a reading that the experience gained by the candidates could be converted to give an advantage over more meritorious candidates. The Tribunal also held that the interim order did not direct that the experience gained by the petitioners was to be converted in terms of marks against the other competent candidates pursuant to the advertisement No.1/2008.

This cannot be disputed that the exercise of power within the meaning of Contempt of Courts Act, 1971 is comparatively a rarity and has to be used sparingly and in the larger interest of society and for proper administration of justice. The element of wilfulness and

intention of the person alleged to have violated the order is an indispensable requirement to take action and mere disobedience of an order may not be sufficient to amount to “civil contempt” within the meaning of Section 2(b) of the Act of 1971. It is also an accepted law that if two interpretations are possible and the action of the alleged contemnor pertains to one of such interpretation which will raise doubts about the wilful nature of conduct, contempt will not be made out. The Supreme Court of India in the case *Perspective Publications (Pvt.) Ltd. v. State of Maharashtra* (AIR 1971 SC 221) has observed at page 230, inter alia thus:

“The summary jurisdiction by way of contempt must be exercised with great care and caution and only when its exercise is necessary for the proper administration of law and justice.” (Per Grover, J.) Contempt of Court is essentially a matter which concerns the administration of justice and the dignity and authority of judicial Tribunals. It is not a right of a party to be invoked for the redress of his grievances. It is not also a mode by which the rights of a party, adjudicated upon by a Tribunal can be enforced against another party. Moreover, if the matter, as in the present case, requires a detailed inquiry, it must be left to the Court which passed the order and which presumably is fully acquainted with the subject-matter of its own order. When the matter relates to mere infringement of an order, as between parties, it is clearly inexpedient to invoke and exercise contempt jurisdiction as a mode of executing the order, merely because other remedies may take time or are more circumlocutory in character. Contempt jurisdiction should be reserved for what essentially brings the administration of justice into contempt or unduly weakens it (vide (1964) 68 Cal WN 148, AIR 1951 Pat 231, AIR 1966 Mad 21 and AIR 1971 ALL 231).”

Having carefully considered the allegations made in the contempt petition and the order of the Tribunal, we are of the opinion that the

action of the respondents do not fall within the ambit of contempt of Courts Act.

For issuing a writ for any other purpose under Article 226 of the Constitution of India, it has always been in the discretion of the Court to interfere or not, depending upon the facts and circumstances of each case. The extent or manner of interference is for the Court to decide and the interference depends upon the facts of each case. The petitioners cannot claim that their two years experience should be translated in terms of 13 additional marks, while considering their selection pursuant to advertisement No.1/2008. Even if the condition of two years experience is considered as “desirable” at best it may have advanced the petitioners case if they were as good or very close in merit, to the candidates on top on merit. That is not the case.

The issuance of a writ is legally a matter of exercise of sound discretion and appropriate orders are to be passed taking into consideration of the circumstances, principle of equity and to give parties complete and substantial justice.

In the circumstances, this Court declines to interfere against the order dated 29th October, 2009 passed in C.P No.259/2009 in T.A No.1304/2009 dismissing the contempt petition of the petitioner. The

writ petition is, therefore, dismissed. Parties are, however, left to bear their own cost.

ANIL KUMAR, J.

DECEMBER 07, 2009

k/dp

VIPIN SANGHI, J.