

GAHC010240102019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Cont.Cas(C)/630/2019

KANAN DEKA
D/O- SRI HEMANTA DEKA, R/O- VILL- BHAKATPARA, P.O AND P.S-
TAMULPUR, DIST- BAKSA, ASSAM, PIN- 781367

VERSUS

RABI SANKAR BARGUARI AND ANR.
DIRECTOR, EDUCATION, BTC, KOKRAJHAR, ASSAM

2:M C HAZIOARD
SECRETARY
EDUCATION
BTC
KOKRAJHAR
ASSA

Advocate for the Petitioner : MR. S NATH

Advocate for the Respondent : SC, BTC

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 10-04-2023

Heard Mr. S. Nath, learned counsel for the petitioner as well as Mr. R.K. Musahary, learned counsel for the respondent.

2. By filing this contempt petition, the petitioner has alleged willful disobedience of order dated 23.04.2015 passed in WP(C) 3625/2007.

3. On a query of the Court as regards limitation in initiating action for contempt as prescribed under section 20 of the Contempt of Courts Act, 1971 the learned counsel for the petitioner has submitted that as the order of the Court was not complied with, the petitioner had approached this Court on previous occasion by filing a contempt petition which was registered as Cont Cas (C) 260/2016 and it is submitted that this Court while closing the contempt petition granted liberty to the petitioner to approach the Court again, if so advised.

4. The operative part of the order dated 17.12.2018 passed in Cont. Cas (C) 260/2016 is extracted below:

“This Contempt petition was preferred on the premises that the requirement of the order dated 23.04.2015 was not followed.

The Director of Education, BTC has filed an affidavit-in-opposition wherein, in paragraph 7 a stand had been taken that the authorities in the BTC had not received any representation from the petitioner for carrying out the needful as per the order dated 23.04.2015 in WP(C) 3625/2007.

The consequence of interfering with the order dated 23.01.2005 on the ground that the authorities in the Elementary Education Department of the Govt. of Assam did not have any role to perform would be that the consequential benefit would now be considered and given by the authorities in the BTC. As the petitioner had not approached the BTC for doing the needful, we are of the view that no deliberate and willful violation has been committed by the respondent contemnor of the order dated 23.04.2015.

The said stand of the Director of Education in the BTC has neither been disputed by the petitioner by filing any counter affidavit nor the petitioner has appeared before the Court to address the issue.

In view of the above, the petition is accordingly closed.

Liberty is granted to the petitioner to approach the Court again, if so advised."

5. Accordingly, the learned counsel for the petitioner has submitted that after passing of the order dated 17.12.2018, the petitioner has submitted a representation dated 08.04.2019 before the Director of BTC, Kokrajhar for considering the order dated 23.04.2015 passed by this Court in WP(C) 3625/2007 for reinstatement of the petitioner in service and as the said representation was not acted upon, the present contempt petition has been filed.

6. In context of the submission made by the learned counsel for the petitioner, the provision of section 20 of the Contempt of Court Act, 1971 prescribes that no Court shall initiate any proceedings of contempt, either on its own motion or otherwise after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.

7. It appears from the order dated 23.04.2015 that the respondent nos.7 and 8 were represented by the learned standing counsel, BTC. Be that as it may, from the order dated 17.12.2018, passed in Cont. Cas (C) 260/2016 it appears that the stand of the Director of Education, BTC in an affidavit-in-opposition filed therein was to the effect that the authorities of BTC had not received any representation from the petitioner for carrying out the order dated 23.04.2015

passed in WP(C) 3625/2017. As the petitioner has not controverted the said stand, this Court had closed the writ petition granting liberty to the petitioner to approach the Court again, if so advised.

8. The petitioner before approaching this Court had submitted a representation dated 08.04.2019 to the Director of Education, BTC and thereafter the present contempt was filed on 25.09.2019. Therefore, in terms of the limitation prescribed in section 20 of the Contempt of Courts Act, 1971 the present application is held to be barred by limitation.

9. The Court is further inclined to hold that merely because in order dated 17.12.2018 passed in Cont. Cas (C) 260/2016, this Court had granted liberty to the petitioner to approach the Court again, cannot be construed to be an order by which period of limitation prescribed under section 20 of the Contempt of Courts Act, 1971 has been extended.

10. At this juncture Mr. B. Choudhury, learned standing counsel for the BTC has submitted that although he has not appeared for any of the respondents in this contempt petition, he has appeared as directed by this Court by order dated 27.02.2023 and it is submitted that as standing counsel for the BTC has received instructions vide letter dated 23.03.2023 that the petitioner was appointed by the then Deputy Inspector of Schools, Nalbari in the year 1999 before bifurcation of Nalbari district to Baksa district and his service was terminated by the Director of Elementary Education, Assam on 26.12.2006 and therefore the Director of Elementary Education Assam is the sole authority to clarify the matter since the BTC has no connection with selection, appointment and/or

maintaining other service records of the petitioner.

11. Accordingly, the learned standing counsel for the BTC has submitted that as the appointment of the petitioner was made by the Director of Elementary Education, Assam, the BTC authorities would not have jurisdiction to take any decision in the matter of the petitioner, who was appointed by the Director of Elementary Education, Assam and that his service was never placed before the Director of Education, BTC.

12. In view of the period of limitation prescribed under section 20 of the Contempt of Courts Act, 1971 the Court is constrained to hold that the present contempt application for non-compliance of order dated 23.04.2015, passed in WP(C) 3625/2007, having been filed on 25.09.2019, was beyond the period of limitation.

13. Be that as it may, as the petitioner was granted liberty by order dated 17.12.2018 passed in Cont. Cas(C) 260/2016, it is hoped that the petitioner may be well advised to approach the appropriate Court to agitate his grievance.

14. Accordingly, this contempt petition being barred by limitation stands closed.

JUDGE

Comparing Assistant