

Court No. - 9

Case :- CONTEMPT APPLICATION (CIVIL) No. - 5745 of 2023

Applicant :- Sangeeta Rani

Opposite Party :- Sri Deepak Kumar , Principal Secretary, Basic Education And 3 Others

Counsel for Applicant :- S.K. Mishra

Counsel for Opposite Party :- Devesh Vikram

Hon'ble Rohit Ranjan Agarwal,J.

1. The writ Court on 11.01.2023 while disposing of Writ - A No.19657 of 2022 has passed the following order :

"Heard Sri S.K. Mishra, learned counsel for the petitioner, Sri Santosh Kumar, learned Standing Counsel for the respondent No.1 & 2 and Sri Shivam Yadav, learned counsel for the respondent No.4.

The present writ petition is filed with the following prayer:-

"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 7.4.2022 (Annexure No.11) passed by respondent No.4.

(ii) Issue a writ of mandamus commanding respondents to transfer and post the petitioner at any Uchatter Prathamik Vidyalaya at her Gram Panchayat, Mahrauli, Vikas Khand Jani or Meerut or even in town area, Meerut."

Learned counsel for the petitioner submits that as per the provisions of Government Order dated 2.12.2019, petitioner is entitled for choice posting but her claim was rejected in the most mechanical manner. He further submits that as per his information, the post of Science Teacher is vacant at Junior High School, Kajmabad Goon, therefore, the petitioner shall be transferred to the aforesaid Institution.

Learned counsel for the respondent does not disputed this fact that there is a vacancy of Science Teacher in the aforesaid institution and submits that her earlier representation was rejected.

Considering the submissions of learned counsel for the parties and going through the written instructions duly signed by District Basic Education Officer, Meerut dated 10.1.2023, it is evident that one post of Science Teacher is vacant at Junior High School, Kajmabad Goon, therefore, the present writ petition is disposed of with a direction to the petitioner to move a fresh representation before the District Basic Education Officer, Meerut within a period of ten days from today. In case, any such representation is placed before the District Basic Education officer, Meerut, then he shall consider and decide the same by passing an appropriate posting order within a period of four weeks, thereafter."

2. From perusal of the order it is clear that leverage was given to the applicant to move fresh representation before District Basic Education Officer, Meerut, which was to be decided by the officer concerned by passing appropriate posting order

within a period of four weeks.

3. Today a compliance affidavit has been filed by the State, which is taken on record.

4. Learned Standing Counsel as well as Sri Yatindra, learned counsel appearing for opposite party submitted that in pursuance of the order of writ Court, the representation has been decided on 19.07.2023.

5. Learned counsel for the applicant submitted that while deciding the representation, the fact regarding posting of the applicant and the difficulty faced by her in teaching college which is 55 kms. away from her home has not been considered.

6. After hearing counsel for the parties, this Court finds that the only direction was given by the writ Court was to the extent to move representation before the District Basic Education Officer and the officer concerned was required to decide the same by reasoned and speaking order.

7. Recently the Apex Court in **Dr. U.N. Bora, Ex. Chief Executive Officer and others Vs. Assam Roller Flour Mills Association and another 2022 (1) SCC 101** has held that while dealing with a contempt petition, the Court is not expected to conduct a roving inquiry. Relevant para 8 of the judgment is extracted hereas under :

"8. We are dealing with a civil contempt. The Contempt of Courts Act, 1971 explains a civil contempt to mean a willful disobedience of a decision of the Court. Therefore, what is relevant is the "willful" disobedience. Knowledge acquires substantial importance qua a contempt order. Merely because a subordinate official acted in disregard of an order passed by the Court, a liability cannot be fastened on a higher official in the absence of knowledge. When two views are possible, the element of willfulness vanishes as it involves a mental element. It is a deliberate, conscious and intentional act. What is required is a proof beyond reasonable doubt since the proceedings are quasi-criminal in nature. Similarly, when a distinct mechanism is provided and that too, in the same judgment alleged to have been violated, a party has to exhaust the same before approaching the court in exercise of its jurisdiction under the Contempt of Courts Act, 1971. It is well open to the said party to contend that the benefit of the order passed has not been actually given, through separate proceedings while seeking appropriate relief but certainly not by way of a contempt proceeding. While dealing with a contempt petition, the Court is not expected to conduct a roving inquiry and go beyond the very judgment which was allegedly violated. The said principle has to be applied with more vigor when disputed questions of facts are involved and they were raised earlier but consciously not dealt with by creating a specific forum to decide the original proceedings."

8. This Court is a 'court of execution' and not 'court of adjudication'. As the writ Court had only directed the District Basic Education Officer, Meerut to decide the representation, which he has decided on 19.07.2023, no case for contempt is made out. This Court while exercising power of contempt under Section 12 of the Contempt of Courts Act cannot delve into the disputed question of fact and decide the case on merit.

9. Contempt application is misconceived and stands dismissed.

10. Contempt notice stands discharged.

Order Date :- 26.10.2023

Kushal