

Court No. - 9

Case :- CONTEMPT APPLICATION (CIVIL) No. - 6212 of 2023

Applicant :- Deena Nath Gupta

Opposite Party :- Pratap Singh Baghel, Secretary , Basic Shiksha Parishad

Counsel for Applicant :- Krishna Nand Yadav, Anand Prakash Yadav

Hon'ble Rohit Ranjan Agarwal, J.

1. Heard learned counsel for the applicant and Sri Yatindra, learned counsel for the opposite party.

2. The writ Court on 12.09.2022 while disposing of Writ-A 13680 of 2022 has passed the following order :

"Heard learned counsel for the petitioner and Sri Bipin Bihari Pandey, learned counsel appearing for the respondent no.3 as well as Sri Arvind Kumar Shukla, learned counsel who appears for the respondent no.5.

This petition has been filed with the following main prayer:-

"(a) issue a writ, order or direction in the nature of mandamus directing the Secretary Basic Shiksha Parishad U.P. Prayagraj to decide the representation dated 18.01.2022 (Annexure No.6 to this Writ Petition) submitted by the petitioner by speaking and reasoned order, within stipulated period of time.

(b) issue a writ, order or direction in the nature of mandamus directing the Secretary Basic Shiksha Parishad U.P. Prayagraj to consider the claim of petitioner in pursuance of letter dated 21.09.2019 of District Basic Education Officer, Maharajganj."

The petitioner is aggrieved by non consideration of his claim for promotional benefits admissible to him on the post of Head Master of Junior High School since 17.06.2008.

The petitioner was initially appointed as Assistant Teacher of primary school and later on promoted as Head Master of primary school. He retired on 31.03.2020. The petitioner had submitted his representation for promotion to the post of Head Master in junior high school in pursuance of a letter of District Basic Shiksha Adhikari, Maharajganj. Petitioner's name found in the list submitted by the Assistant Basic Education Officer, District Maharajganj but no orders have been passed by the District Basic Shiksha Adhikari, Maharajganj till date. The petitioner made a representation in this regard to

the respondent no.2, a copy of such representation has filed as Annexure-16 to the petition.

This writ petition is disposed of with a direction to the Secretary Basic Shiksha Parishad, Prayagraj to consider the representation of the petitioner strictly in accordance with law and pass a reasoned and speaking order thereon within a period of six weeks from the date a copy of this order is produced before him. In case any dues are found admissible to be paid to the petitioner, the same shall be paid to the petitioner within a period of six weeks from the date of passing of the order on the representation of the petitioner as per the relevant Rules/Government Orders."

3. From perusal of the order it is clear that a direction was issued to the opposite party to consider representation of the applicant strictly in accordance with law.

4. Today a compliance affidavit has been filed wherein it has been stated that the representation of the applicant has been decided on 25.10.2023, a copy of which has been brought on record as Annexure 1 to the affidavit of compliance.

5. Learned counsel for the applicant has contended that the representation has been decided by the opposite party on the wrong facts.

6. This Court finds that the only direction issued by the writ Court was to decide the representation, which the authorities have done. 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."

7. From perusal of the compliance affidavit and the judgment of Apex Court, this Court finds that this Court is only a Court of execution and not a Court of adjudication and no roving inquiry can be done by this Court while exercising power under Section 12 of the Contempt of Courts Act.

8. The contempt application is misconceived and stands dismissed.

9. Contempt notice stands discharged.

10. However, is it open to the applicant to assail the order passed by opposite party before the appropriate Forum, if so advised.

Order Date :- 27.10.2023

Kushal