

Court No. - 4

Case :- CONTEMPT APPLICATION (CIVIL) No. - 1144 of 2023

Applicant :- Avadh Ram Awasthi And Another

Opposite Party :- Sri. Jai Pratap Singh, District Inspector Of Schools,
Bahraich

Counsel for Applicant :- Ajeya Mishra, Yogendra Kumar Mishra

Hon'ble Rajesh Singh Chauhan,J.

1. Heard learned counsel for the petitioner and Sri Prashant Singh Atal, learned C.S.C.-I for the State.

2. This Court has passed order dated 28.11.2023, which reads as under :

"[Order on C.M. Application No. IA/2/2023 (Impleadment Application)]

1. Heard.

2. On due consideration, the application for impleadment is allowed.

3. Learned counsel for the petitioners is permitted to implead 'Sri Deepak Kumar, Additional Chief Secretary/Principal Secretary', as opposite party no. 4, within three working days.

4. After the necessary exercise being carried out in terms of this order, notices be issued to newly opposite party no. 4. Steps be taken within a week.

[Order on Contempt petition]

1. Heard.

2. This Court has passed the order dated 18.10.2023 which reads as under:

"1. Heard Sri Yogendra Kumar Mishra, learned counsel for the petitioners and Sri Amrendra Pratap Singh, learned Addl. C.S.C. for the State.

2. Learned counsel for the petitioner has stated that the order of the writ court dated 21.10.2022 passed in Writ A No. 21408 of 2021 has not been complied with till date and about one year period has passed but the petitioners have not been paid the amount of G.P.F.. For the convenience the order dated 21.10.2022 is being reproduced here under :

"Learned counsel for the petitioners submits that the petitioners have retired after attaining the age of superannuation on 31.03.2021 but they have not been paid the amount of G.P.F. till date whereas the same has been sanctioned by means of the letter dated 12.03.2021, contained in annexure no.1 and 2 to the writ petition.

The only ground taken in the counter affidavit is that on account of non-availability of funds the amount of G.P.F. has not been paid and the respondent no.5 has made a request for allocation of funds on 09.06.2021.

Learned Standing Counsel submits that the amount of G.P.F. shall be paid expeditiously.

In view of above, the writ petition is disposed of with direction to the respondents to make the payment of amount of G.P.F. of the petitioners namely Awadh Ram Awashti and Rama Kant Trivedi expeditiously say within a period of three months from the date of production of certified copy of this order."

3. Sri Jai Pratap Singh, the then D.I.O.S., Bahraich, presently posted as Vice Principal, District Institute of Education & Training, District Ayodhya and Sri Narendra Dev, presently posted as D.I.O.S., Bahraich are present in person. Both the aforesaid officers have filed application for discharge along with affidavits, same are taken on record.

4. Earlier the D.I.O.S. has stated that since he has been transferred and has taken all required steps so that the order of the writ court could be complied with, therefore, he may be discharged from contempt proceedings and the present D.I.O.S. has stated that he has recently joined on that post, therefore, he may be given some time to make compliance of the order of the writ court.

5. Sri Amrendra Pratap Singh has drawn attention of this Court towards the Annexures, so filed in the affidavit of the earlier D.I.O.S. whereby the earlier D.I.O.S. has sought budget from the Director, Education (Secondary) to make compliance of the order of the writ court. Those correspondences start from 25.1.2023 till 21.6.2023. He has further submitted that the required budget has not been provided to the earlier D.I.O.S., therefore, the compliance of the order of the writ court could not be made. Present D.I.O.S. has also stated that he is trying his level best to get the budget so that the order of the writ court could be complied. Since the writ court had specifically directed the opposite parties to make payment of amount of G.P.F. to the petitioners, therefore, the excuse, so given by the authorities, who are present in person, may not be accepted. Further, the aforesaid correspondences may not be considered a reasonable excuse inasmuch as the contempt court is only concerned with the compliance of the order of the writ court within time, so stipulated and the time which was stipulated by the writ court was three months which has already passed. Notably, vide order dated 12.3.2021 (Annexure no. 2 and 3 to the contempt petition) the Joint Director, Secondary has granted approval for making payment of the G.P.F. amount to the petitioner.

6. Since the present D.I.O.S. namely, Sri Narendra Dev, has not been impleaded in the contempt petition, however, he has filed the affidavit and is present in person, therefore, learned counsel for the petitioner is directed to implead him during the course of the day.

7. He is also permitted to implead Dr. Mahendra Deo who is presently serving as Director, Secondary Education, U.P. in the array of opposite party as opposite party no. 3 during the course of the day.

8. Let the notices be issued to the opposite party no. 3.

9. Steps within two working days.

10. Office to proceed accordingly.

11. It is made clear that if on the next date it is found that the order of the writ court has not been complied with in its letter and spirit the direction for personal appearance of Director, Education (Secondary), the opposite party no. 3 may be issued.

12. On the next date the Secretary, Secondary Education, U.P. may be impleaded in the array of opposite parties for that learned counsel for the petitioner may file appropriate application.

13. List this case on 28.11.2023.

14. On or before 22.11.2023 both the aforesaid officers, present before the Court, shall file affidavit of compliance making compliance of the order of the writ court in its letter and spirit failing which they shall again appear before the Court on the

next date. If the order of the writ court is not complied with on or before the next date the charges may be framed on the next date."

3. In compliance of the aforesaid order Sri Jai Pratap Singh, opposite party no. 1, the then DIOS, Bahraich, presently serving as Vice Principal District Institute of Education & Training, District Ayodhya and Sri Narendra Dev, opposite party no. 2, presently serving as DIOS, Bahraich are present in person. Opposite party no.1 has filed a short counter affidavit and opposite party no. 2 has filed an application seeking time to make compliance. Both the affidavits are taken on record.

4. Learned Standing Counsel has also filed an application for grant of time supported with an affidavit of Sri Mahendra Dev, opposite party no. 3, presently serving as Director of Secondary Education, U.P., the same is taken on record.

5. The attention has been drawn of this Court towards affidavit of opposite party no. 2 showing Annexure No. A-1, A-2 and A-3, thereof Annexure A-1 is a letter dated 21st of October, 2023 preferred by DIOS, Bahraich addressing to Special Secretary of the Department making request that the required budget be allotted so that the order of Writ Court could be complied with. In the aforesaid letter the next date fixed before this Court i.e. 28.11.2023 (i.e. today) has been informed. On the same date i.e. 21st of October, 2023, the DIOS, Bahraich preferred a letter to the Director of Secondary Education, U.P. apprising the same fact. The DIOS, Bahraich also sent a reminder/representation on 26th of October, 2023 to the Director Secondary Education, U.P. apprising that before the Contempt Court the next date fixed is 28.11.2023 (i.e. today), therefore, the required budget be provided so that the order of Writ Court may be complied with.

6. The affidavit of opposite party no. 3 i.e. Director of Secondary Education, U.P. indicates that the director has preferred a letter on 14.11.2023 to the Government apprising that the contempt proceeding is pending in the matter, the next date is fixed on 28.11.2023 (i.e. today) and the strict view has been taken by the Contempt Court, therefore, the required fund/budget be allotted so that the order of Writ Court could be complied with.

7. By means of earlier order of this Court dated 18.10.2023, 40 days' time was given to the authorities to make compliance of the order of Writ Court in its letter and spirit and file the affidavit of compliance, failing which the charges may be framed on the next date, but more than 40 days period have passed but the compliance of the order of Writ Court has not been done till date, even the Director of Secondary Education, U.P. has preferred a letter to the Government on 14.11.2023 whereas the DIOS, Bahraich has preferred a letter to him on 21.10.2023 apprising each facts and circumstances of the issue in question in detail but no appropriate initiative has been taken by the Director of Education, Secondary, U.P., inasmuch as after substantial period w.e.f. 21.10.2023, the letter has been written by the Director on 14.11.2023.

8. If in a contempt proceeding the approach of the authority is so casual, then any appropriate order should be passed under the Contempt of Courts Act.

9. Since the opposite parties, who are present in person, have acted properly, therefore, no charge can be framed against the officers who are present in person. Even, opposite party no. 1 has already transferred on 30th of June, 2023, therefore there is no fruitful purpose to summon him on the next date, so his presence is exempted for the next date unless his presence is required for any reason.

10. So far as opposite party no. 2 is concerned, the paper book reveals that pursuant to the order dated 18.10.2023, he has preferred a letter to the Competent Authority on 21.10.2023, therefore, no coercive order, at this stage, would be required against him. Prima facie, the delay in making compliance of the order of Writ Court has been occurred on account of approach of opposite party no. 3 and by the State.

11. List this case on 18th of December, 2023.

12. On or before 18th of December, 2023, opposite party no. 3, namely, Mahendra Dev, Director of Secondary Education, U.P. shall file the affidavit of compliance, making compliance of the order of Writ Court in its letter and spirit, failing which he shall appear in person on the next date.

13. If the notice is served upon the newly impleaded opposite party no. 4, he shall also file the affidavit of compliance, making compliance of the order of Writ Court in its letter and spirit. If it is found that despite service of notice upon newly impleaded opposite party no. 4, the affidavit of compliance has not been filed, the direction for personal appearance may be issued on the next date.

14. On the next date, opposite party no. 2, namely, Narendra Deo, DIOS, Bahraich and opposite party no. 3, namely, Mahendra Dev, Director of Secondary Education, U.P. shall appear in person.

15. It is made clear that if opposite party no. 3 does not make compliance of the order of Writ Court without having any plausible reason, charges may be framed against him."

3. In compliance of the aforesaid order Sri Manendra Deo, Director, Secondary Education, U.P. and Sri Narendra Deo, D.I.O.S., Bahraich are present in person.

4. Learned C.S.C.-I has filed 'Application for discharge of contempt notice and Affidavit of compliance' on behalf of opposite parties no. 2 and 3, same are taken on record.

5. Sri Atal has stated that the order of the writ court has been complied with in its letter and spirit, however, learned counsel for the petitioner has stated that amount in question has not been credited in the account of the petitioners. On that Sri Atal has stated that the amount in question shall be credited in the account of the petitioners within a week.

6. Learned counsel for the petitioner has also stated that the petitioners have not been paid interest on the delayed payment, on that Sri Atal has stated that no such direction has been passed by the writ court to pay interest.

7. Be that as it may, if the order of the writ court has been complied with nothing remains to be adjudicated by this Court in this writ petition.

8. Accordingly, the contempt petition is **dismissed**.

9. Notices discharged.

10. However, it is expected that the amount which is to be paid to the petitioners must be credited in their account within one week from today failing which the liberty is given to the learned counsel for the petitioner to file an application for revival of the present contempt petition and if such application is filed it is found that the amount in question has not been credited in the account of the petitioners, any coercive order

against the authorities may be passed under the Contempt of Courts Act.

11. It is needless to say that if the petitioners are entitled for the interest on the delayed payment of the dues, he may claim the same before the appropriate authority / appropriate Court of law.

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[Rajesh Singh Chauhan, J.]

Order Date :- 18.12.2023

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