

Court No. - 4

Case :- CONTEMPT APPLICATION (CIVIL) No. - 2676 of 2022

Applicant :- Satish Kumar And Another

Opposite Party :- Mr. Sudhir Garg, Addl. Chief Secy. / Prin. Secy. Deptt. Of Revenue, Lko.

Counsel for Applicant :- Abhineet Jaiswal

Hon'ble Rajesh Singh Chauhan,J.

1. Heard.

2. This Court has passed the order dated 28.10.2023, which reads as under:-

"1. Heard.

2. This Court has passed the order dated 04.10.2023, which reads as under:-

"1. Heard Sri Abhineet Jaiswal, learned counsel for the petitioners and Sri Vinayak Saxena, learned Standing Counsel.

2. Sri Abhineet Jaiswal has submitted that in a similar contempt petition bearing Contempt Application (Civil) No. 1300 of 2022, after the order of the contempt Court, the compliance has been done by the authority. The aforesaid case was listed on 03.10.2023. For the convenience, the order dated 30.08.2023 passed in the aforesaid contempt petition is reproduced herein-below:

"1. On account of call of boycott by the Advocates Association, learned counsel for the applicants/ petitioners is not present, however, Sri Sunil Bajpai, learned Addl. Chief Standing Counsel is present.

2. Sri Sunil Bajpai, learned Addl. Chief Standing Counsel has filed affidavit of compliance of Sri Sudhir Garg, presently serving as Additional Chief Secretary, Revenue Department, Civil Secretariat, U.P., Lucknow, the same is taken on record.

3. Attention has been drawn towards order dated 29.08.2023, which has been filed as Annexure No.CA-1 with the aforesaid affidavit of compliance, whereby the concerning authority has complied with the order of the writ court in its letter and spirit subject to the final outcome of pending special appeal.

4. Since learned counsel for the petitioners is not present on account of the aforesaid reason, therefore, the case is adjourned for today.

5. List this case on 03.10.2023 to enable the learned counsel for the petitioners to file objection to the aforesaid affidavit of compliance, if any.

6. It is made clear that on the next date, no officers shall appear in person unless their presence is required by the specific order of this Court."

3. Sri Vinayak Saxena, learned Standing Counsel has stated that in the aforesaid case, the authority has passed the conditional order, making compliance of the order of Writ Court.

4. List this case on 28.10.2023.

5. On or before 28.10.2023, the affidavit of compliance shall be filed by the authority making compliance of the order of Writ Court, failing which the sole opposite party, namely, Mr. Sudhir Garg, Additional Chief Secretary/Principal Secretary, Department of Revenue, Govt. of U.P., Lucknow, shall appear in person on the next date."

3. In compliance of the aforesaid order, Sri Vinayak Saxena, learned Standing Counsel has filed affidavit of compliance and Sri Abhineet Jaiswal, learned counsel for the petitioners has filed supplementary affidavit, the same are taken on record.

4. Sri Vinayak Saxena, learned Standing Counsel has stated that the order of the Writ Court has been complied with vide office memo dated 18.10.2023 passed by the Additional Chief Secretary, Department of Revenue, Government of U.P. (Annexure No.A-1). By means of the aforesaid Office Memo, the authority has stated that he is making compliance of order of the Writ Court subject to final outcome of the pending special appeal.

5. Sri Abhineet Jaiswal, learned counsel for the petitioners has submitted that since the Writ Court has directed that the petitioners are entitled to get the benefit in terms of the Government Order dated 11.01.2016 issued by the Finance Department addressing to all the Principal Secretaries/Secretaries, Government of U.P., therefore, the strict compliance of the order of the Writ Court would be, the petitioners should be given the benefits with effect from 11.01.2016, the date of Government Order issued by the Finance Department.

6. Sri Abhineet Jaiswal, learned counsel for the petitioners has drawn attention of this Court towards the last paragraph of para-1 of the aforesaid Government Order which clearly indicates that the benefit of the aforesaid Government Order would be admissible to the eligible candidates with effect from the date of Government Order dated 11.01.2016, which has been issued by the Finance Department.

7. However, Sri Vinayak Saxena, learned Standing Counsel has drawn attention of this Court towards para-07 of the Office Memo/ Order which provides that for execution of the aforesaid Order, the concurrence of the Finance Department would be required and in the light of para-2 of the aforesaid Government Order, the office memo dated 18.10.2023 (Annexure No.A-1 (supra) has been issued wherein it has been indicated that the benefit of the Government Order dated 11.01.2016 would be given to the petitioners with effect from the date of issuance of the present Order/Office Memo dated 18.10.2023.

8. Having considered the arguments of learned counsel for the parties and having perused the Government Order dated 11.01.2016, I am of the

considered opinion that the strict compliance of order of the Writ Court would be, the admissible benefits should be given to the petitioners with effect from the date of issuance of the Government Order dated 11.01.2016 not from the date of issuance of the Office Memo dated 18.10.2023. Besides, the Office Memo dated 18.10.2023 is not a Government Order but this is an order issued in compliance of the order of the Writ Court in the light of the Government Order dated 11.01.2016. Therefore, para-7 of the Office Memo dated 18.10.2023 is not in conformity with the order being passed by the Writ Court inasmuch as the Office Memo dated 18.10.2023 may not be treated as the Government Order. Further, the order dated 18.10.2023 has not been issued by the Finance Department but the same has been issued by the Additional Chief Secretary, Department of Revenue, Government of U.P., therefore, the Office Memo dated 18.10.2023 may not be treated as strict compliance of the order of the Writ Court.

9. In view of the above, the authority concerned is directed to file a fresh affidavit of compliance making compliance of the order of the Writ Court in its letter and spirit within a period of three weeks, failing which, he shall appear in person before the Court on the next date.

10. It is made clear that if on the next date any affidavit is filed in a manner the present affidavit of compliance has been filed, any order under the Contempt of Courts Act may be issued against the authority concerned.

11. List this case on 30.11.2023."

3. Sri Vinayak Saxena, learned Standing Counsel has filed affidavit of compliance, the same is taken on record.

4. Sri Saxena has stated that the order of the writ court has been complied with in its letter and spirit. However, Sri Abhineet Jaiswal has stated that though the appropriate order has been passed but the amount of arrears has yet not been credited in the account of petitioner no.1.

5. The appropriate order has been passed by the Additional Chief Secretary, Revenue, Government of U.P., Lucknow directing to make payment of arrears of the dues, therefore, there is no purpose to keep this contempt petition pending any longer.

6. Accordingly, the present contempt petition is **dismissed**.

7. Notice is discharged.

8. However, it is made clear that if the amount of arrears of dues in terms of the order of the writ court as well as in terms of the office memo dated 17.11.2023 (Annexure No.A-1) is not credited in the account of petitioner no.1, the same shall be credited with expedition, say within a period of four weeks from today, failing which liberty is given to petitioner no.1 to

file an application seeking revival of the present contempt petition and if such application is filed and it is found that the amount in question has not been credited in the account of petitioner no.1 within a period of four weeks from today, the contempt petition may be revived and in that case, any coercive order may be passed against the authority concerned.

[Rajesh Singh Chauhan,J.]

Order Date :- 30.11.2023
RBS/-