

Court No. - 4

Case :- CONTEMPT APPLICATION (CIVIL) No. - 4092 of 2023

Applicant :- Rekha Mishra

Opposite Party :- Smt. Harsita Mathur, D.M., Rae Bareli And Another

Counsel for Applicant :- Brijesh Kumar Tiwari

Hon'ble Rajesh Singh Chauhan,J.

1. Heard.

2. This Court has passed the order dated 22.11.2023, which reads as under:-

"1. Heard Sri Birjesh Kumar Tiwari, learned counsel for the petitioner.

2. Attention has been drawn towards the order of the Writ Court dated 11.08.2023 passed in Writ-A No.5062 of 2023, which reads as under:-

"Heard learned Counsel for the petitioner and learned State Counsel for the opposite parties.

On 26.07.2023, the following order has been passed:-

"Heard learned counsel for petitioner and learned State Counsel appearing on behalf of opposite parties.

Petition has been filed against order dated 27.05.2023 whereby petitioner's services as Anganwadi Karyakatri has been terminated on account of certain allegations levelled against her. Also under challenge is order dated in 06.07.2023 whereby recovery has also been directed against the petitioner alongwith termination.

Learned counsel for petitioner submits that a bare perusal of impugned order will reveal that it has been passed without affording any opportunity of hearing to petitioner since it is the case that notice could not be served upon petitioner. It is further submitted that termination order has been passed in pursuance of FIR No.0266 dated 13.05.2023 lodged in Police Station Kotwali Nagar, District Rae bareli under Section 409 IPC.

It has also been submitted that batch number and manufacturing date of recovered items are clearly in variance with the batch number and date of manufacture as indicated in the impugned order. It is submitted that had an opportunity of hearing been granted to petitioner, all the discrepancies could have been removed.

Learned State counsel on the basis of instruction submits that notice was issued to petitioner with regard to discrepancies which were found at the time of inspection dated 12.05.2023 whereafter notice was sought to be

served personally on 15.05.2023 and also send by registered post on 16.05.2023 which returned with endorsement that petitioner could not be found at her place of residence. It is also submitted that telephonic call was also made to husband of petitioner with regard to show cause notice but petitioner has deliberately avoided the proceedings due to which the authority concerned had no other option but to pass the impugned order.

Considering submissions advanced by learned counsel for parties and upon perusal of material available on record, it is admitted between the parties that despite efforts being made by the department regarding service of notice upon petitioner, notice actually could not be served upon her for whatsoever reason. The order impugned also clearly indicates the fact that it has been passed on an ex parte basis. The impugned order definitely has civil consequences since it pertains not only to termination of services of petitioner but also involves recovery of amount.

In view of the fact that there is no allegation that the petitioner deliberately avoided service of show cause notice being effected upon her and particularly since the orders impugned visit the petitioner with civil consequences, it would be appropriate that any orders required to be passed should be after affording an opportunity of hearing to petitioner. Since the petitioner has appeared before this Court through counsel, learned State counsel is granted two days' time to furnish a complete copy of the show cause notice alongwith annexures before this Court on 28.07.2023, in order to enable its service upon learned counsel for petitioner so that appropriate directions may be passed. It is directed that till next date of listing, no recovery shall be effected against the petitioner in pursuance of impugned order.

List this case on 28.07.2023, as fresh."

In pursuance thereof, learned Counsel for the petitioner admits that a show cause notice dated 15.05.2023 has been served upon him on 08.08.2023.

In view of the aforesaid facts, particularly an observation of this Court on 26.07.2023 that order impugned has been passed on an ex-parte basis, the impugned order dated 27.05.2023 is quashed by issuance of writ in the nature of Certiorari. The petitioner is granted 15 days from today to submit an explanation with regard to the show cause notice dated 15.05.2023. The competent authority shall thereafter consider and pass appropriate orders after considering the reply of petitioner and affording her an opportunity of hearing.

Fresh orders shall be passed ignoring the quashed order dated 27.05.2023.

With the aforesaid observation, the writ petition stands disposed of."

3. Further attention has been drawn towards Annexure No.2 of the affidavit whereby the certified copy of the order has been served upon the opposite party No.2 on 21.08.2023. The copy of the aforesaid order has also been served upon the opposite party No.1.

4. Learned counsel for the petitioner has stated that despite the impugned order dated 27.05.2023 having been quashed by this Court but the

authority concerned has neither permitted the petitioner to submit her joining nor she is being paid her salary. Even the reply to show cause notice has been submitted by the petitioner within time so stipulated but no final decision has been taken till date. The recital to this effect has been given in paras-15 & 16 of the affidavit filed in support of the contempt petition.

5. The matter requires consideration.

6. Issue notice to both the opposite parties returnable at an early date, for which, necessary steps be taken within a week.

7. Office to proceed accordingly.

8. List this case on 19.12.2023 within top ten cases.

9. By that date, both the opposite parties shall explain as to why the compliance of order dated 11.08.2023 passed by this Court in Writ-A No.5062 of 2023 has not been done in its letter and spirit.

10. If the notices have been served upon the opposite parties, they may file their affidavit of compliance, failing which, the opposite party No.2, namely, Mr. Sharad Kumar Tripathi, District Program Officer, District-Raebareli shall appear in person before the Court on the next date."

3. Sri Amarendra Pratap Singh, learned Standing Counsel has filed affidavit of compliance, today in the Court, the same is taken on record, indicating therein that the order of the Writ Court has been complied with in its letter and spirit.

4. Accordingly, the instant contempt petition is **dismissed**.

5. Notices, if any, stand discharged.

6. It is always open for the petitioner to approach the Competent Authority/ Court of law if grievance of the petitioner is still unredressed.

[Rajesh Singh Chauhan,J.]

Order Date :- 19.12.2023

Suresh/