

Court No. - 2

Case :- SPECIAL APPEAL No. - 126 of 2024

Appellant :- Smt. Anamika Singh , Regional Manager
And Appointing Auth., S.B.I.

Respondent :- Smt. Sunita Bharti

Counsel for Appellant :- Anurag Srivastava

Counsel for Respondent :- Lalit Shukla

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

1. Heard.

2. This appeal has been taken up today on an urgency being mentioned by the appellant's counsel, as, contempt proceedings are fixed before the Contempt Court today.

3. This is an appeal against an order passed by the contempt Judge on 29.04.2024 in Contempt Application (Civil) No.2534 of 2023. The contempt application had been filed on the ground of non-compliance of judgment dated 23.03.2023 passed in writ A No.2746 of 2017, which stood affirmed in appeal vide judgment dated 25.04.2023 passed in Special Appeal No.183 of 2023.

4. The contempt judge has proceeded on the premise as if the order which was set aside by the writ Court was one of dismissal from service, leaving it open for the appellant herein to proceed in accordance with law and pass a fresh order giving proper opportunity of hearing. It has taken note of the fresh order passed by the appellant on 25.04.2024, however, it was of the opinion that the said order is not in consonance with the order passed by the writ court as the petitioner in the contempt petition was never allowed to join, which was obligatory on the part of the appellant-respondent. After joining of the respondent fresh order was required to be passed but the contention of Sri Tiwary, learned Senior counsel appearing for the appellant along with Sri Anurag Srivastava, Advocate, is that it was not a case of dismissal/removal or termination from service but a case of voluntary vacation or cessation in terms of para 28 of the bipartite settlement but due to inadvertence the word voluntary retirement got mentioned, a fact which had been noticed by the writ Court in its judgement dated 23.03.2023 in para 19.

Moreover he has invited our attention to para 22 wherein it is this order of voluntary cessation which was incorrectly mentioned as an order of voluntary retirement which was set aside with liberty to pass a fresh order. Had it been a case where a dismissal or removal or termination order was set aside then of course the respondent would have been reinstated and thereafter proceedings would have taken place but it was a case where the respondent had voluntarily ceased to come to work for almost 6 years, as alleged, therefore the order dated 21.01.2012 was passed. Therefore on its quashing on 23.03.2023 whatever status-quo was existing prior to it, i.e., prior to 23.03.2023 which was that the respondent was not working, would continue and a fresh order would be passed in terms of para 28 of the bipartite settlement.

5. In fact the order impugned before the writ Court was passed on 21.01.2012 which the respondent claims as having been served upon her on 21.10.2016 and the respondent was absent from duty voluntarily, as claimed by appellant, for almost 6 years. There is nothing on record that during pendency of writ petition there was any interim order in her favour entitling her to joining.

6. In any case, even if for a moment it is accepted that this is an arguable proposition as to whether a joining was necessary, it was not for the contempt court to enter into this issue. It was open for the respondent to challenge the fresh order dated 25.04.2024 by initiating fresh proceedings either before the writ court or such other forum or court as may be permissible in law. The respondent could have got this aspect clarified or reviewed from the writ Court itself but did not do so. The contempt Judge in proceeding with the contempt matter even after passing of the order dated 25.04.2024 proceeded on the premise that it was an order of dismissal which had been set aside and that the respondent had not been allowed to join before passing of the compliance order although there was no such direction by the writ court that the respondent-petitioner should be allowed to join, and has traveled beyond the jurisdiction vested in him as he touched on the merits of the issue.

7. On being confronted Sri Lalit Shukla and Sri Shamshad Ahmad Khan, learned counsel for the respondent took us through the judgement of the writ court and the special appellate Court and tried to drive home the point that in fact it was a case of termination from service. However,

on being asked to show a single line from either of the judgements whether passed by the writ court or by the appellate court wherein the order dated 21.01.2012 was treated as an order of termination or removal or dismissal, they could not show any such recital in the said judgments. We on the other hand have seen para 19 and para 22 of the judgment of the writ court which read as under:-

"(19) It is apparent from a perusal of the order dated 21.01.2012 that although it was meant as an order treating the petitioner's services as having 'voluntarily seized or abandoned in terms of a Circular issued on 07.07.2005, the order uses the word 'Voluntarily retired'. The petitioner was less than 35 years of age at the time of issuance of order dated 21.01.2012. She had also not put in the required number of years of service for her to be treated as Voluntarily retired. At the most, the continued unauthorized absence of the petitioner could have been termed as Voluntarily Cessation of work or abandonment of service. It could also have been treated as resignation but not retirement. If an employee is retired voluntarily, he is entitled to terminal benefits including pension computing on the length of service already rendered by him."

"(22) The order dated 21.01.2012 has been passed without application of mind, it is therefore, set aside leaving it open for the petitioner to proceed in accordance with law and pass a fresh order in the case of the petitioner after giving her due opportunity of hearing. The petitioner shall be only asked to submit her Medical Investigation Reports and Prescriptions, if any, and after considering the same, a reasoned and speaking order be passed."

8. Considering the facts of the case, we are of the opinion that the contempt court was not justified in proceeding further vide order date 29.04.2024 on the premise as already discussed here-in-above and has traveled beyond its jurisdiction by entering into the merits of the issues which could not have been seen by it. Therefore we set aside the order dated 29.04.2024.

9. At this stage Sri Tiwari says that in fact prior to the order dated 25.04.2024 two other orders dated 22.05.2023 and 19.06.2023 were passed in compliance of the judgement of the writ court. However, Sri Lalit Shukla, learned counsel for the respondent refutes this fact and says that this contention is not acceptable. We do not wish to enter into this issue in view of the subsequent order dated 25.04.2024. We further make it clear that our judgment shall not be understood as affirming the order dated 25.04.2024 or any other order which the appellants may have passed in purported compliance of the judgment of the writ court and all such orders would be

open to challenge in the light of what has been stated.

10. In view of what we have observed herein no purpose would be served by allowing the contempt proceedings to go on any further. It is always open for the respondent to challenge the order dated 25.04.2024 as per law, uninfluenced by any observation made by us herein or by the contempt court. Contempt proceedings are accordingly dropped. They shall be consigned to records, with liberty aforesaid.

11. Learned counsel for the parties shall inform the contempt court when the proceedings are said to be listed today about this order as it would take sometime for the order to be transcribed and uploaded as also to be provided to the parties.

12. The appeal stands **allowed**.

13. A copy of this order shall be kept on the records of Contempt Application (Civil) No.2534 of 2023.

[Om Prakash Shukla,J.] [Rajan Roy,J.]

Order Date :- 25.5.2024
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