

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

C.P. No.243 of 2014 in Writ Petition No.578 of 2012 (D)

(Dr. Gopal s/o. Ranilalji Bhutada .vs. Satchikitsa Prasarak Mandal and Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : B.P.DHARMADHIKARI &
A.P.BHANGALE, JJ.

DATE : 11.3.2015.

Heard Mr.P.P.Kotwal, learned Counsel for the petitioner and Mr.M.G.Bhangde, learned Senior Advocate for respondent nos.1 to 4.

Perused the order dt.8.8.2012. Submission is - only with a view to continue the petitioner under suspension and to avoid paying him wages and his reinstatement, the inquiry is being delayed and is not allowed to be concluded.

Mr.P.P.Kotwal, learned Counsel for the petitioner submits that there were four directions in orders of this Court dt.8.8.2012. By not concluding recording of evidence of management witness no.1 by 11th August, 2012; by not furnishing the copies of affidavits of three management witnesses well in advance and by not concluding inquiry on 7.11.2012, the said order has been violated.

Reference is made to certain pursis filed by the contempt petitioner on the record of departmental inquiry in this respect.

Mr.M.G.Bhangde, learned Senior Advocate

points out that cross-examination of management witness no.1 was concluded on 4.11.2012. It is thereafter that the affidavits of two witnesses already prepared on 14.8.2012 could be tendered before the Inquiry Officer and then those witnesses were to be cross-examined. It is submitted that the Inquiry Officer, on 7.11.2012, found that the period given by this Court to conclude the inquiry was already over and as such, without proper order of extension, he could not have conducted inquiry further. The Inquiry Officer, therefore, directed the petitioner to obtain appropriate order of extension from this Court.

Mr.P.P.Kotwal, learned Counsel in reply submits that, out of two affidavits filed at the eleventh hour on 6.11.2012, the petitioner could cross-examine only one person and the cross-examination of third witness could not be taken up. He further submits that, as the orders of this Court dt.8.8.2012 are clear, the employer/management should have been asked to apply for extension. He reiterates that, only to deny the petitioner the resultant benefits, the inquiry has not been concluded.

We find that the Inquiry Officer is not a party before this Court. Hence, correctness or otherwise of directions dt.7.11.2012 by him cannot be looked into in this jurisdiction. In any case, the respondents cannot be blamed for those directions.

This Court, while passing orders on 8.8.2012, directed the inquiry to be concluded within a period of three months. It also observed that, if the inquiry was not concluded within the said period for some reason beyond control of present petitioner or was concluded by passing of

adverse order, the petitioner “*may*” make an application for withdrawal of balance sum while impugning the said orders. It, therefore, did not permit the management to withdraw the amount. Thus, the consequences of not concluding the inquiry within the said period are also stipulated by this Court.

If the evidence of management witness no.1 was not complete till 4.11.2012, it would not be proper to expect the management to file affidavits of examination of other witnesses. The facts show that those two affidavits were ready on 14.8.2012, but were tendered on 6.11.2012. The petitioner thereafter could complete cross-examination of only one of the deponents.

Order of this Court to submit affidavits in lieu of examination-in-chief of remaining witnesses and to give advance copy thereof to the petitioner does not show that the affidavits were required to be filed by a particular date. The direction was to see that cross-examination of witness no.1 is complete by 11th August, 2012. The record shows that cross-examination was not complete till 4.11.2012. The petitioner has urged that he was not ready and willing to cross-examine the said witness after 11.8.2012 and has done so because of directions of the Inquiry Officer. Learned Counsel Mr.Kotwal at one stage urged that as other witnesses to be examined were not ready, the petitioner was forced to conduct the said cross-examination.

If the petitioner has conducted cross-examination, we are not in a position to find out any fault with the management for the same. If he was aggrieved by the conduct of management or by the conduct of Inquiry

Officer, suitable grievance could have been made before this Court immediately. Developments supra shows that the petitioner continued to participate in the inquiry proceedings till 7.11.2012.

In this situation, as we do not see any case made out warranting cognizance. Hence, the petition is dismissed. No costs.

JUDGE

JUDGE