

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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CONTEMPT CASE No.1627 of 2015

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ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

In this Contempt Case the petitioner has invoked the jurisdiction of this Court alleging violation of the orders passed in W.P.No.1498 of 2015 dated 27.01.2015. The order passed by this Court, in the aforesaid Writ Petition, was in terms of the order passed by the earlier Division Bench in W.P.No.41120 of 2014 dated 31.12.2014. While following the said order, this Court modified the order of the Central Administrative Tribunal and disposed of the Writ Petition.

After taking note of the prayer in W.P.No.1856 of 2005, in which W.A.No.2560 of 2005 was filed, claiming grant of temporary status and regularization with all consequential benefits, the Division Bench, in its order in W.P.No.41120 of 2014 dated 31.12.2014, observed that the petitioner therein was granted temporary status with effect from 01.01.2004; the only question was whether he was entitled to be regularized as a regular mazdoor provided he fulfilled the eligibility criteria as per the scheme, if any, existing in the department; and, therefore, an appropriate decision had to be taken by the respondent-BSNL for absorption of the employee as regular mazdoor in the existing vacancies. W.P.No.41120 of 2014 was disposed of directing the respondent-BSNL to take an appropriate decision for absorption of the employee as a regular mazdoor as per his eligibility, and existing vacancies in terms of the scheme, if any, available within a period of eight weeks from the date of receipt of a copy of the order. The respondent-contemnor has passed an order on 05.11.2015 holding that the employee was not entitled to the status of a regular mazdoor, either on facts or in law, as the scheme of regularization, under which

employees were regularized earlier, was a 'one time scheme', and not an 'on going scheme'.

Dr.A.Raghu Kumar, learned counsel for the petitioner, would draw attention of this Court to the order of the Central Administrative Tribunal in T.A.No.1/2013 and batch, wherein the respondents herein are said to have admitted that the petitioner stands similarly situated to that of the petitioner in W.A.No.2560 of 2005. Learned counsel would submit that the appellants in W.A.No.2560 of 2005 had sought a similar relief of regularization of services; and this Court, by order dated 09.10.2014, had observed that the employees therein must be deemed to have been converted from part-time casual labourers to full-time casual labourers, and then conferred with temporary status from 30.06.2004; and shall also be deemed to have been regularized with effect from 01.07.2007. While denying them arrears of salary, the Division Bench, by its order in W.A.No.2560 of 2005 dated 09.10.2014, directed that the employees shall be paid salary as regular employees with effect from 01.11.2014. Learned counsel would also place reliance on the judgment in **M.Kasturi v. Senior Deputy Director General, BSNL, New Delhi and others**^[1], which was confirmed in W.A.No.2213 of 2004 and batch dated 01.02.2005, to submit that a similar contention, of the scheme being a one time measure, was negatived therein; and the respondent was directed to regularize the services of the employees, notwithstanding that there was no such scheme in existence.

Sri Vedula Venkataramana, learned Senior Counsel appearing on behalf of the respondent-contemnor, would submit that a Review Petition has been filed against the order passed in W.A.No.2560 of 2005 dated 09.10.2014 which is still pending on the file of this Court; however, the S.L.P. preferred against the order passed in W.P.No.1498 of 2015 dated 27.01.2015 was dismissed by the

Supreme Court on 12.10.2015; and the respondents have passed the order on 05.11.2015 soon after the S.L.P. was dismissed.

The jurisdiction, which this Court exercises under the Contempt of Courts Act, 1971, is limited. It is only if the order passed by this Court has been violated, and the violation is wilful and deliberate, would action be required to be taken to punish the contemnors. The order, violation of which is alleged in this Contempt Case, is the order passed in W.P.No.1498 of 2015 dated 27.01.2015 wherein this Court had merely followed the earlier order passed by the Division Bench in W.P.No.41120 of 2014 dated 31.12.2014. As noted hereinabove, though the order passed by the Division Bench in W.A.No.2560 of 2005 was brought to the notice of the Division Bench in W.P.No.41120 of 2014, the only direction issued to the respondent-BSNL was to take an appropriate decision for absorption of the petitioner herein as a regular mazdoor as per his eligibility and existing vacancies in terms of the scheme, if any, available. The respondent-contemnor has taken a decision on 05.11.2015 holding that the employee was not entitled for regularization as the scheme was a one time measure, and no such scheme is in existence as on date.

In contempt proceedings, this Court would not go behind the order or examine the contention urged by the petitioner on merits. The limited scope of enquiry is whether the order of this Court has been violated. In the present case no mandamus was issued to the respondent-contemnor to regularize the services of the employee. All that was directed was for a decision to be taken for his absorption in terms of the scheme, if any. As it is the case of the respondent-BSNL that the earlier scheme was a one time measure, and there is no scheme in existence, the order of this Court cannot be said to have been violated much less wilfully and deliberately. Reliance placed by Dr.A.Raghu Kumar, learned counsel for the petitioner, on various

judgments of this Court regarding regularization of services, cannot be examined in contempt proceedings as the scope of enquiry is limited only to the question whether the order of this Court has been violated or not.

As the respondent-contemnor has passed an order on 05.11.2015, (*albeit* only after the S.L.P. filed by them was dismissed by the Supreme Court on 12.10.2015), we see no reason to punish them under the Contempt of Courts Act for the delay in compliance.

The Contempt Case as filed is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall stand also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

17th December, 2015.

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