

HON'BLE SRI JUSTICE R. KANTHA RAO
Contempt Case Nos.1514 & 2173 of 2014

COMMON ORDER:

Heard Sri Avinash Desai, learned counsel appearing for the petitioner and Sri K. Ramakanth Reddy, learned standing counsel appearing for the respondent.

2. The brief facts relevant for considering the contempt cases may be stated as follows:

The petitioner filed WP No.18636 of 2014 challenging the proceedings dated 28.04.2014 transferring the petitioner from Hyderabad Branch of Department of Education and Training of Maulana Azad National Urdu University, Hyderabad (for short 'University') to the College of Teacher Education Centre at Asansol, West Bengal, as arbitrary, illegal, in violation of rights of the petitioner under Articles 14, 19 and 21 of the Constitution of India, to set aside the same and consequently direct the respondent to permit the petitioner to continue to work at the Hyderabad branch of the University.

3. This court by order dated 07.07.2014 in WP No.18636 of 2014 issued interim direction extending the date of joining of the petitioner by three weeks at the College of Asansol. After detailed hearing of the writ petition, this court reserved the matter for pronouncing the final orders. In the meanwhile, the petitioner filed another writ petition i.e., WP No.35865 of 2014 challenging the action of the respondent in not releasing the salary from July, 2014 onwards to the petitioner. In the said writ petition, this court issued interim direction, which reads as follows:

"There shall be interim direction to the respondent to pay salary to the petitioner from July, 2014 onwards as per his entitlement. Post after two weeks for filing counter-affidavit."

4. This court pronounced final orders on 06.11.2014 in WP No.18636 of 2014 dismissing the said writ petition. Feeling aggrieved of the dismissal order, the petitioner filed writ appeal i.e., WA No.1676 of 2014, wherein the Division Bench of this court rendered the following judgment on 31.12.2014:-

“Learned counsel appearing for the appellant does not press this appeal on merits and seeks liberty to the appellant to join at the Asansol where he has been transferred till 31.01.2015. Time as prayed is granted. It is also made clear that once the appellant reports at Asansol, it would be open for him to take treatment for his ailment either at Asansol or any other place, as stated by the learned counsel for the respondents. Learned counsel for the respondents on instructions, further submits that in such an eventuality the respondents shall extend all medical facilities to the petitioner as per the rules. His statement is accepted.

With these observations, the writ appeal is disposed of as not pressed.”

5. After dismissal of the writ appeal, according to the learned counsel appearing for the petitioner, the petitioner joined duty at Asansol on 31.01.2015. It is contended by the learned counsel appearing for the petitioner that by virtue of the interim order passed by this court, the petitioner is entitled for the salary from July 2014, till he joined at Asansol on 31.01.2015. The argument of the learned counsel appearing for the petitioner is that since the petitioner was prosecuting his case, even though he did not work during the aforementioned period, he is entitled for salary basing on the interim order passed by this court. On the other hand, learned standing counsel for the respondent would contend that by virtue of the orders passed by this court in the writ petition and writ appeal, the transfer order passed by the University was justified and the petitioner, who did not work even for a single day from the date of his transfer, is not entitled for any salary according to the Rules of the University and therefore, the respondent cannot be made liable for any contempt.

6. Learned counsel appearing for the petitioner relied on a

decision in '***Somesh Tiwari vs. Union of India & others***^[1]' in support of his contention that even though the petitioner did not work during the relevant period, the respondent is liable to pay salary to the petitioner. In the said case, the Supreme Court held as follows:

"The High Court while exercising its jurisdiction under [Article 226](#) of the Constitution of India must consider the fact of each case. Mechanical application of the normal rule "no work no pay" may in a case of this nature, be found to be wholly unjust. No absolute proposition of law in this behalf can be laid down.

This Court in [Commissioner, Karnataka Housing Board v. C. Muddaiah](#), [(2007) 7 SCC 689] laid down the law, thus :-

"33. The matter can be looked at from another angle also. It is true that while granting a relief in favour of a party, the Court must consider the relevant provisions of law and issue appropriate directions keeping in view such provisions. There may, however, be cases where on the facts and in the circumstances, the Court may issue necessary directions in the larger interest of justice keeping in view the principles of justice, equity and good conscience. Take a case, where ex facie injustice has been meted out to an employee. In spite of the fact that he is entitled to certain benefits, they had not been given to him. His representations have been illegally and unjustifiably turned down. He finally approaches a Court of Law. The Court is convinced that gross injustice has been done to him and he was wrongfully, unfairly and with oblique motive deprived of those benefits. The Court, in the circumstances, directs the Authority to extend all benefits which he would have obtained had he not been illegally deprived of them. Is it open to the Authorities in such case to urge that as he has not worked (but held to be illegally deprived), he would not be granted the benefits? Upholding of such plea would amount to allowing a party to take undue advantage of his own wrong. It would perpetrate injustice rather than doing justice to the person wronged.

34. We are conscious and mindful that even in absence of statutory provision, normal rule is 'no work no pay'. In appropriate cases, however, a Court of Law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The

Court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The Court may in the circumstances, direct the Authority to grant him all benefits considering 'as if he had worked'. It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a Court of Law and if such directions are issued by a Court, the Authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant-Board, therefore, has no substance and must be rejected."

7. The facts of the case with reference to the decision rendered by the Supreme Court are entirely different from the facts of the instant case. In the case before the Supreme Court, ultimately the transfer was found to be illegal. Whereas in the instant case, the transfer order passed by the University is found to be valid and was passed on administrative grounds. Further, the crucial question that is to be determined in the instant case is, whether the respondent is guilty of any contempt of afore referred interim orders passed by this court. This court passed interim order directing the respondents to pay salary to the petitioner from July 2014 onwards as per his entitlement. Now the respondent refuses to pay salary to the petitioner on the ground that no rule governing the service conditions of the petitioner, enables to pay salary to the petitioner after his transfer on account of his not joining or not working in any place. However, if it is the case of the petitioner that he is entitled for the salary as per the rules governing in the service conditions, he can make a claim in respect of the salary during the period which he had not worked and spent time in prosecuting his case before the courts. The writ appeal i.e., WA No.1676 of 2014, filed by the petitioner was not pressed by the petitioner unconditionally and he sought liberty to join at Asansol, to which place he was transferred till 31.01.2015. The judgment rendered in the writ appeal does not state anything about the salary to be paid to the petitioner and the Division Bench of this court had not recorded any finding that the

petitioner is entitled for the salary during the period which he has not worked. In that view of the matter, it cannot be said that the respondent is guilty of any contempt.

8. For the aforementioned reasons, in my considered view the respondent has not wilfully violated or disobeyed the interim orders passed by this court and therefore, both the contempt cases are dismissed. No order as to costs. The miscellaneous petitions pending, if any, shall stand closed.

R. KANTHA RAO, J

Date: 16.11.2015
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HON'BLE SRI JUSTICE R. KANTHA RAO

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Date: 16.11.2015

[1] (2009) 2 SCC 592