

CWP No.2473 of 2014
Date of Decision: 26.03.2015SUSHILA DEVI SCIENCE MISTRESS AND ANOTHER
..... Petitioners
VERSUSSTATE OF HARYANA AND OTHERS
..... Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Karan Bhardwaj, Advocate
for the petitioners.Mr. Ashok Singh Chaudhary, Addl. AG., Haryana
for respondents No.1 to 3.Mr. Rajvir Singh Sihag, Advocate
for respondent No.4.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI J. (ORAL)

By this petition the petitioner has prayed for a direction to the respondent No.4 to reinstate them forthwith.

On 10.02.2014, the following contention was noticed;

“Learned counsel for the petitioners contends that the petitioners were terminated on 18.10.2007 and 20.04.2007, respectively. Against the termination orders, the petitioners filed appeals before respondent No.3, which were allowed vide order dated 22.08.2012 and the petitioners were directed to be reinstated within a period of 30 days. Learned counsel further contends that against order dated 22.08.2012, respondent No.4 filed an appeal, which was dismissed by respondent No.2 vide order dated 30.11.2012 but still the petitioners are not being reinstated only on the ground that civil suit is pending, wherein, neither any stay is

there nor the suit is maintainable, in view of judgment of Division Bench of this Court in CWP No.4315 of 2012 (Management of S.D. Model Senior Secondary School and another Vs. District Judge-cum-Service Tribunal and another) decided on 27.11.2013 by relying upon the judgment of Hon'ble the Apex Court in T.M.A. Pai Foundation and others Vs. State of Karnataka and others (2002) 8 SCC 481.

Notice of motion for 11.03.2014

Dasti only.”

Thereafter on 22.01.2015, the following order was passed;

“It is undisputed on record that the appeal of the respondent-management was dismissed by the Director, vide order dated 30.11.2012 (Annexure P-3), which has become final against the respondent-management. However, the reinstatement order passed in favour of the petitioner has not been implemented so far by the respondent-management in spite of the fact that the respondent-management was duty bound to do so.

Learned counsel for respondent No.4 seeks one last and final opportunity to seek instructions from the respondent-management as to why appropriate action be not initiated against it for not complying with the order passed by the competent authority.

Let respondent No.4 take an appropriate decision in this regard at an early date, but in any case within a period of four weeks from today. Thereafter, Manager of respondent No.4 shall file his own affidavit along with action taken report, failing which he shall come present on the next date of hearing to explain, as to why order at Annexure P-3 has not been complied with so far.

List on 23.03.2015.”

Now an affidavit has been filed wherein it has been mentioned that the petitioners had filed an application under Order 7 Rule 11 CPC for rejecting the plaint on the ground that the suit was not maintainable but that application had been dismissed by the Court and that order has become final. In the circumstances, it is stated that the jurisdiction of the Civil Court cannot be challenged now by the petitioners. It is further stated that the prayer for staying the orders Annexure P-2 and P-3 is still pending before the Civil Court and till such time as the prayer is pending, the respondent No.4 is under no duty to implement the orders.

I put it to learned counsel for respondent No.4 how the Civil suit is maintainable in view of the judgments mentioned above but learned counsel is steadfast in his stand that this issue could have been challenged by the petitioner when the Civil Court rejected his application under Order 7 Rule 11 CPC and, not having done so cannot urge this plea here.

In my opinion, the stand taken by respondent No.4 is a clear attempt to stonewall an order passed by the competent authority. In any case, the mere fact that the trial Court has rejected the application under Order 7 Rule 11 CPC would not preclude this Court from giving a finding on the basis of the judgment in *Management of S.D. Model Senior Secondary School and T.M.A. Pai Foundation (supra)*. This Court cannot be blind to the fact that both the petitioners were dismissed almost 10 years ago. Since then they are on the road and agitating for the vindication of the right given to them by the DEO and the Director. The respondent No.4 is in comparatively more powerful position. The petitioners may not have the wherewithal to challenge every order whereas the respondent No.4 may be in a position to carry the smallest point also up to the Hon'ble Apex Court.

It is against this backdrop of facts that the present petition has to be decided. The undisputed facts are that despite their termination having been set aside and the appeal of the respondent No.4 against that having been dismissed and there being no stay, the respondent No.4 has been able to manage to avoid granting the due relief to the petitioners.

In the circumstances, the petition is allowed. The respondent No.4 is directed to reinstate the petitioners forthwith with all consequential benefits. It is further directed to compute the salary and allowances of the petitioners for the period they have been illegally deprived of the fruit of the orders in their favour and pay the arrears within a period of one month from the date of receipt of a certified copy of this order. In case the necessary payment is not made, the petitioners shall be entitled to claim the same with interest at the rate of 8% per annum from the date/s the amount/s fell down.

At this stage, learned counsel for respondent No.4 prayed that back wages should not be granted to the petitioners since they have not worked on the posts. In normal circumstances, this plea may have been entertained but seeing the obstructive conduct of respondent No.4 and its attempt to somehow or the other avoid giving the benefit to the petitioners, I reject this plea.

(AJAY TEWARI)
JUDGE

March 26, 2015
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