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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 6th May, 2015

+ CONT.CAS(C) 880/2010

RAJENDER KATARIA Petitioner
Represented by: Ms. Kiran Singh, Adv.

versus

SH. P. KRISHNAMURTHY AND ORS. Respondents
Represented by: Ms. Latika Choudhary,
Adv. for Mrs. Avnish Ahlawat, Adv. for
Respondent No.1/Director of Education.
Mrs. Abha Malhotra, Adv. for Respondent
No.2.
Mr. S.C. Rana and Ms. Ruchika Bhan,
Advs. for R3.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the present petition, petitioner seeks directions thereby initiating contempt proceedings against the respondent nos. 1 and 2 for not implementing the order dated 13.05.2010.

2. In Para 6 of the aforesaid order, it was recorded that let a copy of order passed by the Deputy Director (Education) dated 11.02.2010 be served upon the respondent no. 3, Ministry of Social Justice and Empowerment. Ld. Counsel appeared on behalf of the

respondent no. 2 submitted that copy of said order had already been endorsed to respondent no. 3 on 17.02.2010 vide diary no. 309. Ld. Counsel appeared on behalf of respondent no. 3 submitted that in case any action is required to be taken at their end, same shall be initiated as expeditiously as possible.

3. It is pertinent to note that initially respondents were as under:

1. Kalpana Sharma,
Principal
Janta Adarsh Andh Vidyalaya
Siri Fort Road
Behind Bunglow Road No.4.
2. Chander Bhushan Kumar
Director of Education
Govt. of NCT Delhi
Old Secretariat
Delhi-110054
3. S.A. Awaradi
Director
Ministry of Social Justice and empowerment
Shastri Bhawan,
New Delhi.

4. Thereafter vide order dated 06.09.2012, petitioner was directed to file amended memo of parties. Accordingly, the same is on record as under:

1. Sh. P. Krisnamurty
Director of Education
Govt. of NCT Delhi
Old Secretariat
Delhi-110054

2. Sh. K.M. Acharya
Secretary
Ministry of Social Justice and empowerment
Shastri Bhawan,
New Delhi.
3. Sanjay,
Chairman/Manager
Janta Adarsh Andh Vidyalaya
Siri Fort Road
Behind Bunglow Road No.4.

5. Respondent no. 1, Director of Education has filed its affidavit stating therein that on 17.02.2010 Director of Education has already forwarded the copy of order dated 11.02.2010 for necessary action to be taken by respondent no.2.

6. Further stated that further action is now required to be taken by the respondent no.2, who has given undertaking before this Court on 13.05.2010 to the effect that in case any action is required to be taken against the School at their end, same shall be initiated as expeditiously as possible. Respondent no. 2 will have to see that the petitioner is taken on the strength of the School.

7. It is pertinent to mention here that Director of Education passed an order dated 11.02.2010 whereby directed the Management as under:-

- (i) *To re-instate the employees / petitioners of CWP No. 835/1998 and Sh. Rajinder Kataria (petitioner of CWP No. 2660/1998) with immediate effect.*

- (ii) *The management is at liberty to conduct fresh inquiry, if it desires so, by following the procedure laid down in DSEAR-1973.*
- (iii) *They should comply with the above direction within a period of 30 days and submit the compliance report failing which action under relevant provisions of the DSEAR- 1973 will be taken.*

This issue with the prior approval of the Director of Education and dispose of the direction of Hon'ble High Court in the above cited petitions.

8. The aforesaid directions were passed pursuant to directions dated 28.07.2008 passed in W.P.(C) Nos. 835 and 2660 both of 1998.

9. The case of the petitioner is that till date order dated 11.02.2010 passed by Director of Education has not been complied with. I have no hesitation to say that aforementioned order is not judicial against which contempt is the remedy.

10. It is relevant to note here that order dated 11.02.2010 passed by Director of Education has been challenged by the respondent / School in W.P.(C) 2272/2010 which is still pending adjudication.

11. On perusal of order dated 13.05.2010, there is no direction passed by this Court against which contempt can be filed.

12. In such eventuality, proviso attached to Section 12 of the Act is relevant, which reads as under:-

“Section 12:- Punishment for Contempt of Court:-

PROVIDED that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.”

13. Moreover, the Supreme Court in the case of ***Jiwani Kumari vs. Satyabrata Chakraborty, AIR 1991 SC 326*** held that a party (or person) can be committed for contempt only owing to any wilful or deliberate or reckless disobedience of the order of the Court.

14. In view of the above discussion, settled law and the action being taken by the respondents, it is established that in the present case, the respondent has not committed any wilful or deliberate disobedience of the order or direction of this Court, therefore, I am not inclined to pass any order against the respondent in this petition.

15. Accordingly, the petition is disposed of with liberty to the petitioner to challenge the issue raised in the instant petition subject to the outcome of W.P.(C) 2272/2010 filed by respondent / Management.

SURESH KAIT, J

MAY 06, 2015

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