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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CONT.CAS(C) 772/2015 & CM APPL. 21488/2015

DR LAKHWINDER P SINGH

..... Petitioner

Through: Mr. Ashish Dixit, Advocate with
Mr. Sandeep Chatterjee, Advocate.

versus

V SOMASUNDARAN,

SECRETARY UNION OF INDIA,

MINISTRY OF WOMEN & CHILD DEVELOPMENT,

THR STANDING COUNSEL & ORS

..... Respondents

Through: Mr. Sandeep Prabhakar, Amicus Curiae.

Mr. Ashok Mittal, Advocate for
respondents no.2 and 3.

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Date of Decision : 09th October, 2015

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present contempt petition has been filed alleging wilful disobedience of the order dated 31st August, 2015 passed by the Presiding Officer, Industrial Tribunal, Karkardooma Courts, Delhi in RCA No.3/2015 staying the operation of the inquiry report dated 'Nil' holding that it would not be reasonable for the inquiry committee to absolve the petitioner from the allegation of sexual harassment at work place.

2. Learned counsel for petitioner states that despite the aforesaid ad interim ex parte order dated 31st August, 2015, the respondents have not allowed the petitioner to resume office stating that as the matter is sub judice, the aforesaid order cannot be given effect to.

3. Learned counsel for respondents No.2 and 3 states that the Industrial Tribunal has not and could not have given any direction against the respondent No.2-private institute or against the respondent No.3 in the appeal filed by the petitioner. He states that pending inquiry on charges of sexual harassment, the petitioner had been asked to proceed on leave from 06th June, 2015 and the petitioner since then has been receiving his full salary. He also contends that as there is an ambiguity in the order passed by the Industrial Tribunal, the respondents cannot be held guilty of contempt.

4. Mr. Sandeep Prabhakar, learned Amicus Curiae has urged that the petitioner's appeal before the Industrial Tribunal may not be maintainable at this stage because there is no recommendation by the inquiry committee under Section 13(3) of the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013. He refers to Section 18 of the said Act to show that an appeal lies only against orders under Sections 13(2) or 13(3) and not under Section 13(1). He states that in exercise of supervisory jurisdiction under Article 227 of the Constitution of India, this Court should clarify that even if the Industrial Tribunal stays the inquiry committee's report, the stay should be subject to employer's right to suspend the delinquent official in accordance with the rules.

5. In rejoinder, learned counsel for petitioner submits that any order passed by a judicial forum like the Industrial Tribunal would be binding on all the respondents. He also contends that that the petitioner had taken leave

voluntarily. In support of his contention, he relies upon the petitioner's E-mail dated 05th June, 2015 wherein it is stated as under:-

*“Dear Sir,
Now that there is another “complaint” on this issue. I would like to take it to logical conclusion. We have admission round on the 8th and convocation on 11th and a the first meeting of the DST project (June 12-13) next week. I would like to be away from office with effect from June 15, 2015 till the issue reaches logical conclusion.
I am tired of this as I am sure you are. So request a thorough investigation on this.*

With regards”

(emphasis supplied)

6. Learned counsel for petitioner also prays that a direction be issued to the Industrial Tribunal to dispose of the petitioner's appeal in a time bound manner.

7. Having heard learned counsel for parties, this Court is of the view that no case of contempt is made out inasmuch as there is no direction by the Industrial Tribunal vide order dated 31st August, 2015 to the respondents to allow the petitioner to rejoin his duties.

8. Further, as the petitioner in his own E-mail dated 05th June, 2015 had stated that he would like to be away from the office till the issue reaches logical conclusion, the allegation that the petitioner has not been allowed to rejoin in pursuance to the order dated 31st August, 2015 passed by the Industrial Tribunal is misconceived. This Court is of the view that the petitioner would have to abide at least by his own statement in the E-mail dated 05th June, 2015 as by the interim order dated 31st August, 2015, it

cannot be said that the issue of sexual harassment had reached a logical conclusion.

9. Before parting with this case, this Court would like to observe that the interim order passed by the Presiding Officer, Industrial Tribunal, Karkardooma Courts, Delhi, is a bit 'broad in its expanse' inasmuch as even if it was of the prima facie opinion that the inquiry report was in violation of principles of natural justice, it should have stayed the inquiry report after giving a short notice and an opportunity of hearing to the respondents.

10. In fact, the Industrial Tribunal has committed the same infirmity/defect in its ex parte ad interim order that it has pointed out with the inquiry report. This Court is of the view that instead of a status quo order, the Presiding Officer by virtue of an ex parte ad interim order has granted a status quo ante order that means, restored the position prior to the allegation being heard by the inquiry committee against the petitioner.

11. In any event, if the Industrial Tribunal was of the opinion that if immediate interim orders are not passed, the petitioner would suffer irreparable harm and injury, it could have directed that no coercive action shall be taken in pursuance to the inquiry report till the interim application for stay is decided.

12. Keeping in view the nature of allegation in the present case, this Court directs the Industrial Tribunal to decide the matter as expeditiously as possible preferably within a period of four months.

13. Needless to say, the appeal and application would be decided on its own merits without being influenced by any observations made by this Court.

14. This Court places on its record its appreciation for the services rendered by Mr. Sandeep Prabhakar, Amicus Curiae at short notice.

15. With the aforesaid observation and direction, present contempt petition and application stand disposed of.

Order dasti under signature of Court Master.

MANMOHAN, J

OCTOBER 09, 2015

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