

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 9073 OF 2015**

Anil Kumar, CPO (179550-W) .. Petitioner
versus
Union of India & Ors. .. Respondents

Mr. A. N. Ojha for petitioner.
Mrs. Neeta V. Masurkar for respondents.

**CORAM: D. H. WAGHELA, C. J. AND
M. S. SONAK, J.
DATE : 11 MARCH 2016**

P.C.:

1] The challenge in this petition is to the order dated 28 August 2015 made by the Armed Forces Tribunal (AFT) in misc. application no. 71 of 2015 in original application no. 69 of 2015 and the order / letter dated 2 September 2015 issued by the Commodore, Bureau of Sailors (respondent no. 3).

2] The original application no. 69 of 2015 has been instituted before the AFT to challenge order dated 26 June 2015, in terms of which, the re-engagement of the petitioner – sailor beyond 31 July 2015 has not been approved. Pending the final disposal of original application no. 69 of 2015, the petitioner, by misc. application no. 71 of 2015, applied for stay against the operation, implementation and execution of the order dated 26 June 2015. The AFT, by impugned order dated 28 August 2015, has admitted the original application no. 69 of 2015 but declined any interim relief. The reasons for declining interim relief have been set out in the impugned order dated 28 August 2015 and the same warrant no interference by this court.

3] The AFT, in the impugned order dated 28 August 2015, has rightly observed that grant of re-engagement, cannot be claimed by the sailor as a matter of right. In any case, the AFT has rightly held that in such matters there is no question of grant of any interim relief restraining the respondent from releasing the sailor, because, if the sailor ultimately succeeds in the original application, appropriate relief can always be granted. In the facts and circumstances of the present case, we approve of such reasoning. Grant of interim relief by the AFT as prayed for by the petitioner, would have virtually resulted in the grant of final relief to the petitioner, at the interim stage. At least, in a defence establishment, the AFT was quite justified in declining such interim relief. Accordingly, there is no case made out to interfere with the impugned order dated 28 August 2015.

4] Since, interim relief was declined by the AFT by its order dated 28 August 2015, there was no restraint upon respondent no. 3 to issue the order dated 2 September 2015, discharging the petitioner with effect from 11 September 2015. Learned counsel for the petitioner contended that this court, in writ petition no. 7410 of 2015 on 31 July 2015, had granted interim relief restraining implementation of the order dated 26 June 2015 for a period of six weeks. Learned counsel for the petitioner has therefore contended that during the operation of the interim order dated 31 July 2015, the respondents had no authority to make the discharge order dated 2 September 2015.

5] On perusal of the order dated 31 July 2015 made by this court in writ petition no. 7410 of 2015, we find that interim protection for six weeks was granted by this court so as to enable the petitioner to

approach the AFT and seek redressal from AFT. In pursuance of such order, the petitioner did approach the AFT by institution of original application no. 69 of 2015 and misc. application no. 71 of 2015 seeking stay on the implementation of the order dated 26 June 2015. By order dated 28 August 2015, AFT, declined the interim relief. Respondent no. 3, taking cognizance of the circumstance that the interim relief granted by this court by its order dated 31 July 2015 was to expire on 11 September 2015, has discharged the petitioner from 11 September 2015. In these circumstances, it cannot be said that the order dated 2 September 2015 is in breach of either the letter or the spirit of the order dated 31 July 2015 made by this court in writ petition no. 7410 of 2015.

6] In this petition, we are not required to consider the legality of the order dated 2 September 2015, as the petitioner has alternate and efficacious remedy of challenging the said order before the AFT. In fact, the order dated 2 September 2015 is consequential order dated 26 June 2015 which has already been challenged by the petitioner before the AFT in the original application no. 69 of 2015. The petitioner therefore, is at liberty to either institute a fresh original application to challenge the order dated 2 September 2015 or to amend the original application no. 69 of 2015, in order to challenge the order dated 2 September 2015. The petitioner cannot be permitted to directly question the order dated 2 September 2015 in this court by-passing alternate and efficacious remedies available to the petitioner.

7] For the aforesaid reasons, the challenge to the order dated 28 August 2015 made by the AFT is dismissed on merits and the challenge to the order dated 2 September 2015 is not entertained on account of the petitioner having alternate and efficacious remedy

available to him. The petitioner is granted liberty to avail such alternate remedy, if he chooses to.

8] Although, interim relief was granted in this petition on 10 September 2015, it was made clear that the same was to operate till the next date. The matter was thereafter taken up for consideration on 15 February 2016, 17 February 2016, 1 March 2016 and 3 March 2016. On none of these dates, the interim relief was continued. Thus, from 15 February 2016, there is no interim relief in operation in this petition. In these circumstances, we are indeed surprised as to how, the respondents have till date, not implemented their order dated 2 September 2015. Be that as it may, whilst dismissing this petition, we clarify that there is no interim relief in operation.

9] This petition is therefore dismissed with liberty as aforesaid in the context of order dated 2 September 2015. We are satisfied that the petitioner has taken undue advantage of the pendency of this petition and continued in services, even though, there was no interim order in operation at least from 15 February 2016 onwards. In these circumstances, the petitioner, shall pay costs of Rs.5,000/- (Rupees Five Thousand) to the respondents.

10] All concerned to act on basis of authenticated copy of this order.

CHIEF JUSTICE

(M.S.SONAK, J.)