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

\+ CONT.APP. (C) 18/2015

USHA KIRAN VERMA & ORS ..... Appellants

Through: Mr. Rajiv Aneja, Advocate.

versus

BISHAN GUPTA & ORS .... Respondents

Through: Mr. Sunny Choudhary, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% **14.03.2016**

Counsel for the respondents had pointed out initially that the present appeal is not maintainable in view of the phraseology of Section 19 of the Contempt of Courts Act, 1971. The appellants rely upon the decision of the Supreme Court reported as *Midnapore People's Co-op. Bank Ltd. & Ors. v. Chunilal Nanda & Ors.,* 2006 (5) SCC 399. The Court had held that orders made in exercise of contempt jurisdiction which decided the issue, or which made any other direction related to the merits of the dispute in the course of the contempt proceedings, would fall within the appellate jurisdiction, if such orders are ordinarily appealable to a Division Bench.

The bone of contention in the present case is with regard to the correctness of the learned Single Judge's impugned directions to the extent it permits the respondent/Management to initiate such proceedings as are permissible in law to recover "excess amounts" which according to the respondent/Management were paid to the appellants.

The facts to the extent they are relevant are that the petitioners had approached the School Tribunal in 2008. Their claim was accepted, and a final order made some time in 2012 directing the reinstatement and payment of full backwages/service benefits. An appeal to the Division Bench by the Management was rejected. The Management also unsuccessfully sought to impugn these orders before the Supreme Court which rejected its SLP. The petitioners/employees thereafter initiated execution proceedings, during the course of which, on 26.02.2013, for failure to comply with directions and make requisite payments, the School Tribunal, i.e., the executing authority ordered the three months imprisonment term for the Manager of the School. The Management felt aggrieved and thus approached this Court under Article 226 of the Constitution by filing W.P.(C)1758/2013. The Single Judge on 18.03.2013 recorded the statement on behalf of the Management that it would file an undertaking to comply with the order which had - inter alia - directed the payments to be made within 4½ months from 18.03.2013. The Single Judge further recorded the statement of the Management/respondent as follows: -

> *"6. At this stage, it is agreed that since the petitioner agrees that the payment as calculated by the Delhi School Tribunal in terms of the impugned order dated 26.2.2013, will now be cleared on or before 4½ months from today, and also subject to*

the petitioner filing an undertaking under his Chairman and nothing survives so far as the present writ petition is concerned, and which is accordingly disposed of with liberty to the respondent nos. 1 to 8 to initiate appropriate proceedings either before this Court or before the Delhi School Tribunal, in case of non-compliance of today's order.

7. Without in any manner diluting the requirement of paying within 4 ½ months, it is clarified that for any delay in payment, in addition to the Manager and Chairman of the School being responsible for Contempt of Court, the petitioner will also be liable to pay interest on unpaid arrears amount at 18% per annum simple for the period beyond 4 ½ months.

8. Counsel for the petitioner states that the respondent nos. 1 to 8 will be given the necessary experience certificates and which will comply with the orders which were passed earlier by this court in the writ petition and the LPA as also by the Delhi School Tribunal. This aspect be also included in the undertaking to be filed by the Chairman to the School in this Court."

The petitioners were aggrieved because despite the undertaking and despite the Single Judge's orders, there was no compliance. Therefore, they approached the Court by filing contempt case No.619/2013. The Management in its reply persisted with its stand that the amount in dispute had never been quantified. The learned Single Judge, however, rejected this submission since the entire amount was not paid within 4½ months period stipulated and directed (for which an undertaking was also furnished by the Management). The Single Judge in contempt proceedings extended the time further and also directed payment of interest - which was part of the original order dated 18.03.2013. The Single Judge, however, recorded as follows: -

> *"At this stage, learned counsel for the respondents states that the respondents should be given liberty to file proceedings for recovery of excess amount, if any, paid to the petitioners.*
>
> *Without commenting on the admissibility of such proceeding, it is clarified that the respondents shall be at liberty to file appropriate proceedings in accordance with law. However, if any such proceeding is filed, the same shall be decided on its own merits without being influenced by any observations made by this Court. Rights and contentions of all parties are left open including the maintainability of such proceeding."*

Learned counsel for the respondents urged that the above directions were necessitated since according to the Management excess amounts were paid to the petitioners. He submitted that the petitioners/teachers cannot unjustly enrich themselves with an amount they were never entitled to receive.

This Court is of the opinion that the respondent/Management is foreclosed from re-agitating the alleged controversy with regard to the amounts directed to be paid which had attained finality by virtue of the orders dated 26.02.2013 (of the Tribunal) - of which there was an clearer enunciation in this Court's order of 18.03.2013 (in W.P.(C)1758/2013). It is a matter of record that the respondent Management sought to impugn the order of the Single Judge by approaching the Letters Patent Bench and thereafter even the Supreme Court. Concededly, these were in the course of the execution proceedings. Under the circumstances, the directions of the learned Single Judge extracted above clearly could not have been issued. They could not have been issued even otherwise because the matter (as to the correctness of the amount payable to the petitioners) had attained finality.

For the above reasons, the impugned order to the extent it permits the respondents to initiate the proceedings and leaves all contentions and rights open, is hereby set aside.

CONT.APP. (C) 18/2015 is allowed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

MARCH 14, 2016
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