

HIGH COURT OF CHHATTISGARH, BILASPUR

CONT No. 565 of 2016

Moh. Idrish Asharfi S/o Shri Hafij Moh. Ibrahim, Aged About 34 Years Patwari
P.H.No.11 Paigdapali, Post, Thana, Tahsil- Bhopalpatnam, District- Bijapur,
Chhattisgarh

---- Petitioner

Versus

Dr. Aiyaz Phakir Bhai Tamboli Collector, Bijapur, Distt. Bijapur, Chhattisgarh

---- Respondent

Shri Somkant Verma, counsel for the petitioner/s.

Shri Vivek Sharma, counsel for the respondent.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

12/01/2017

Heard.

1. This contempt petition has been filed by the petitioner alleging willful disobedience of order dated 01.09.2016 passed by this Court whereby this Court had disposed off the petition with a direction to respondents to relieve the petitioner, if transfer order has not been varied, cancelled or modified by the State Government.

2. As the petitioner was not relieved, the petitioner filed this contempt petition. During the pendency of this contempt petition, the State Government has cancelled the transfer order in respect of which, the order was passed by this Court.

3. Learned counsel for the petitioner submits that the respondent willfully disobeyed the order of the Court in as much as once the order was passed by this Court, he ought to have immediately relieved the petitioner without awaiting any exercise of the Government whether or not to cancel, vary or modify the order. He submits that the spirit of the order required the respondent to relieve the petitioner only by verifying whether till the date of passing of the order of the High Court, the

order of transfer was cancelled, varied or modified.

4. On the other hand, learned counsel for the respondent submits that at the outset, tendered apology by submitting that the respondent had no intention to flout the order of the Court. He submits that to the best of his understanding, the authority was of the opinion that this Court has granted the State an occasion to consider whether the transfer of the petitioner is to be cancelled, modified or varied. For this purpose only, the respondent had entered into communication with the State Government and awaited instructions so that if the Government does not cancel, vary or modify, he may proceed to relieve the petitioner, however, when the State Government has cancelled the transfer order of the petitioner, the petitioner cannot be relieved by him.

5. The order passed by this Court in its true spirit was meant to convey that if the transfer of the petitioner has not been varied, modified or cancelled by the State Government, the petitioner should be relieved. In its true spirit, the order only meant that the authority was required to verify whether till the date of passing of the order, any order was passed by the State Government to cancel, vary or modify the transfer order. It appears that the respondent without due inadvertence to the spirit of the order wrongly construed the order of the Court as if the matter was to be considered by the State Government on his request for cancellation, variation or modification and only in the event, the State Government declining to do so, he was to proceed to relieve the petitioner.

6. Therefore, this Court is of the opinion that the respondent has not properly construed the order of the Court and unnecessarily awaited for direction from the Government though this was not the spirit of the order.

7. However, despite that it appears that it was because of the misconstruction of the order of the Court by the respondents that the present situation has arisen. Therefore, I am not inclined to hold that the action was willful in nature with intention to flout the order of the Court. All that can be said that much more was expected from the respondent as a higher administrative officer of the District to duly consider the order of the Court, in its true spirit, rather than unnecessarily entering into communication with the Government to await cancellation, modification or variation of the order.

8. The respondent is directed to remain careful in future while taking steps in

compliance of the orders passed by this Court.

9. For the reasons stated above, particularly taking into consideration that the Government has now cancelled the transfer order, I am not inclined to proceed further in the matter and placing on record the aforesaid warning given to the respondent to remain careful in future, the contempt petition is closed and is accordingly disposed off.

10. It goes without saying that it would be open for the petitioner to challenge the cancellation order on such grounds as may be available to him under the law in a separately constituted petition.

Sd/-
(Manindra Mohan Shrivastava)
Judge