

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 03.03.2017	Date of pronouncing Judgment 28.03.2017
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CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR. JUSTICE V. PARTHIBAN

Writ Petition No.5424 of 2017

1 K.Murugan
2 A.Ramkumar
3 M.Kannan Rajan
4 C.Mariappan
5 P.Boominathan
6 S.Muniyandi
7 A.Nandichamy .. Petitioners

Versus

1 The Joint Secretary (Admn)
Government of India
Ministry of Finance
Department of Revenue, CBEC
North Block
New Delhi.
2 The Chairman
Central Board of Excise and Customs
North Block, Department of Revenue
Ministry of Finance
Government of India
New Delhi.
3 The Chief Commissioner of Central Excise
Chennai.
4 The Commissioner of Central Excise
Bibikulam, Madurai.
5 The Registrar
Central Administrative Tribunal
Chennai.

.. Respondents

Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records in proceedings CP. 310/00075/2014 a/w MA 310/00307/2016 in O.A.No. 782 of 2009 dated 03.01.2017 on the file of 5th respondent and quash the same as illegal, incompetent and wholly without justification and further direct the 1st respondent to regularize the service of the petitioners.

For Petitioners : Mr.Avinash Wadhwani
for
M/s.V.Raghavachari

ORDER

(Order of the Court was delivered by V.PARTHIBAN,J.)

The Writ Petition has been filed against the order passed by the Central Administrative Tribunal, Madras Bench in C.P.No.75 of 2014 and M.A.No.307 of 2016 in O.A.No.782 of 2009 dated 03.01.2017 closing the Contempt Petition as well M.A., filed by the petitioner herein.

2. The facts and the issues, which necessitated filing of the present Writ Petition, are stated hereunder:-

(i) The petitioners herein have approached the Central Administrative Tribunal in O.A.No.782 of 2009 seeking the following reliefs:-

"to quash the proceedings in C.No.III/26/01/2006 - Estt and dated 06.2009 on the file of the 4th respondent and further direct the respondents to regularize the services of the applicants."

(ii) The said application was disposed of by the learned Tribunal on 07.01.2011 with the following directions as extracted below:-

"In the instant case, since the condition of ten years has not been fulfilled vide para-3 of the counter, the claim of the applicants cannot be acceded to. However, if the applicants could establish with documentary evidences that they fulfil the requisite conditions (as according to them they have put in more than ten years, vide para IV (1) of the OA) they may move the respondents by way of a representation, in which event the respondents may consider the same and decide their cases for regularisation. It is made clear that as regards the other contentions that the

applicants have not been engaged against the sanctioned posts, our decision in the other OAs ie., O.A.No.764 of 2009 and 852 of 2009 would apply."

(iii) Against the direction given by the learned Tribunal, the petitioners have filed W.P.No.20664 of 2011, which was part of the batch of Writ Petitions and were disposed of on 12.08.2011 by this Court, on the basis of this Court's earlier order dated 19.07.2011 passed in W.P.No.16733 of 2009 batch. This Court has passed order in the above said batch, which is extracted below:-

"... the issue involved in this Writ Petition is covered by a decision of this Court in W.P.No.16733 of 2009 etc., batch, dated 19.07.2011. Therefore, this Writ Petition is disposed of following the earlier order dated 19.07.2011.

"In the light of the above, the 1st respondent in W.P.16733 of 2009, the respondents in W.P.16899/09, WPs in W.P.11492/06 and W.P.18969/2006, the applicants have put in fairly long spells of service, we have no hesitation to hold that denying them the temporary status service and the consequent regularisation is not a prudent and fair practice (and that too when the Department of Personnel and Training vide office memorandum dated 10.09.1993 framed one time regularisation scheme). Otherwise, it would amount to violating the tenor and spirit of Articles 14 and 16 of the Constitution of India, besides discrimination and arbitrariness and unreasonableness.

In view of the overall assessment of the facts and circumstances of the present case on hand, which float on the surface, in the interest of equity, fair play, good conscience and on humane considerations, We direct the Respondents Writ Petitioners in W.P.16733/09 and 16889 of 2009 and the Respondents in W.P.11492/06 and 1869/06 (department) to frame a similar scheme like that of Department of Personnel and Training, Official Memorandum dated 10.09.1993 one time regularisation scheme framed already to provide an opportunity of regular entry to the 1st respondent in W.P.No.16733 of 2009, Respondents in W.P.No.16899 of 2009, Writ Petitioners in

W.P.11492 of 2006 and 18969 of 2006, Applicants subject to eligibility, possessing qualification, if any and after relaxing the age bar and consider their case for regularisation, keeping in mind the Art.41 and Part IV of the directives of Constitution of India and grant them security of tenure in accordance with law and the manner known to law, within a period of three months from the date of receipt of a copy of this order."

Following the same, these WPs are also disposed of. Consequently, the connected MAs are closed. However, there shall be no order as to costs."

(iv) The Special Leave Petition filed against the order passed in W.P.No.20664 of 2011 was dismissed on the ground of delay on 13.09.2013 and the Review Petition was also dismissed by the Hon'ble Supreme Court of India.

(v) According to the petitioner, inspite of dismissal of Special Leave Petition and Review Petition by the Hon'ble Supreme Court of India, the directions issued by this Court in Writ Petition have not been complied with. Therefore, the petitioners had moved the Tribunal by way of above Contempt Petition, which was disposed of on 09.07.2015 directing the respondents to implement the orders passed by the High Court within a period of six months. Since the said direction had not been complied with, the petitioners filed M.A.No.283 of 2016 to revive the Contempt Petition and which came to be allowed by the learned Tribunal on 16.03.2016.

(vi) Thereafter, the Contempt Petition was taken up for hearing and by order dated 03.01.2017, the Contempt Petition came to be closed along with M.A.No.307 of 2016. The learned Tribunal closed the Contempt Petition as well as M.A., on the ground that against the orders passed by this Court in W.P.No.16733 of 2009 batch, Special Leave Petitions were filed before the Hon'ble Supreme Court of India and leave was granted and the Special Leave Petitions were converted as Civil Appeals Nos.9988 to 9991 of 2013 and the Hon'ble Supreme Court of India had granted stay of contempt proceedings. Likewise, the Department preferred Special Leave Petition in respect of another similar matter in W.P.No.8711 of 2011 and the Special Leave Petition was admitted as Civil Appeal No.10013 of 2013 by the Hon'ble Supreme Court of India. In such view of the matter, the maintenance of the Contempt Petition before the learned Tribunal was questioned and the learned Tribunal accepted the contention of the Department and closed the Contempt Petition as

well as M.A.,. As against the closure of Contempt Petition, the present Writ Petition has been filed by the petitioners before this Court.

3. At the outset, when the Writ Petition was taken up for hearing, the learned counsel appearing for the petitioners confronted with the question as to how the Contempt Petition was maintainable before the learned Tribunal, since originally the order of the learned Tribunal passed in O.A.No.782 of 2009 dated 07.01.2011 had not granted any benefit to the petitioners. The non-implementation of the order was only in respect of the directions issued by this Court in W.P.No.20664 of 2011 on the basis of the earlier order passed by the learned Tribunal on 19.07.2011 in W.P.No.16733 of 2009 batch. In such circumstances, the Contempt Petition filed before the learned Tribunal was per se not maintainable as the complaint of the petitioners herein was non-implementation of the order passed by this Court. In fact, the petitioners themselves in their Contempt Petition have averred that the Original Application filed by them had been dismissed.

4. While so, Mr.Avinash Wadhwani, learned counsel appearing for the petitioners took pains to emphasize the fact that once the Hon'ble High Court has given direction in the matter, the doctrine of merger would come into play and the order of the learned Tribunal would merge with the order / direction given by this Court. We are unable to accept the said contention in view of the fact that the learned Tribunal had not granted them any relief and if at all any relief was granted, which was only by this Court and if any complaint of disobedience, only this Court will have jurisdiction to look into such complaint.

5. Be that as it may, inspite of the fact the learned Tribunal had not granted them any relief, without due appreciation of the facts and circumstances of the case, the learned Tribunal entertained the Contempt Petition, which is ought not to have been entertained in the first place. Although the Contempt Petition has been closed eventually, but We are unable to appreciate or comprehend how the Contempt Petition was maintainable before the learned Tribunal, when the complaint was against the non-implementation of the order passed by this Court.

6. The learned counsel appearing for the petitioners also attempted to emphasize the fact that before the learned Tribunal, affidavit was filed in the Contempt Petition, where the Government had given undertaking praying for extension of time to formulate a Scheme for temporary status and regulate the services of the casual labourers and therefore, the Contempt Petition was maintainable before the learned Tribunal. We do not see any merit in the contention for the simple reason that the mere averments and pleadings placed by the Department before

the learned Tribunal would not confer jurisdiction on the Tribunal.

7. Moreover, it ought to be seen that by exercising the contempt power vested with the Tribunal under the relevant rules, the petitioners were indirectly questioning the action of the contemnors in violating the orders passed by this Court, before the learned Tribunal. Further, it ought to be seen by filing the present Writ Petition against the closure of the Contempt Petition, the petitioners want this Court to ensure the contempt powers to be exercised by the learned Tribunal is in order. Such a position is per se misconceived, preposterous and untenable in law. To put it from simplistically, what the learned Tribunal was called upon to decide is to see the authorities punished for violating the orders passed by this Court. Such an interpretation would be grossly out of tune with the contempt powers vested both in the Tribunal as well as in this Court. The plea of merger can be construed to be a plausible argument only in cases where orders passed by the Tribunal is modified by this Court to the benefit of the employees as envisaged in the order passed in the Original Application. In the instant case, no such relief was granted by the Tribunal and if at all, was there any relief, it was only granted by this Court in a batch of Writ Petitions. Therefore, the disposal of the Original Application has merged with the positive order passed by this Court and if at all, any proceedings to be initiated arising out of the relief granted to the petitioners, the same has to be initiated before this Court and the Tribunal will have no jurisdiction to entertain such proceedings either contempt or otherwise.

8. Finally, the learned counsel appearing for the petitioners cited a decision of the Andhra Pradesh High Court reported in 2004 (4) ALT 41 in the matter of "The Director, Intermediate ..vs.. Rama Prabhakar Rao, School ..." dated 30.04.2004. However, the ratio laid down in the said decision was passed on different set of facts and there appears to be some directions issued by the Andhra Pradesh Administrative Tribunal and that directions were not complied with and the question arises there was after filing the Writ Petition independently, whether contempt action has been initiated before the Tribunal. Only in that view of the matter, the said Writ Petition was disposed of. We are unable to persuade ourselves to accept the citations and hold that the Contempt Petition was validly initiated before the Tribunal, since the facts of the present case are completely different and what the petitioners seeking to achieve in the Contempt Petition was to punish the respondents for having flouted the directions passed by this Court and not the Tribunal. Therefore, looking at from any angle, the initiation of Contempt Petition before the Tribunal

and the entertainment of the same by the Tribunal, in its entirety, is invalid and cannot be countenanced in law.

9. In view of the above narrative, We hold that the present Writ Petition is not maintainable for more than one reasons and therefore, the same is dismissed. No costs

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To

- 1 The Joint Secretary (Admn)
Government of India
Ministry of Finance
Department of Revenue, CBEC
North Block
New Delhi.
- 2 The Chairman
Central Board of Excise and Customs
North Block, Department of Revenue
Ministry of Finance
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- 3 The Chief Commissioner of Central Excise
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- 4 The Commissioner of Central Excise
Bibikulam, Madurai.
- 5 The Registrar
Central Administrative Tribunal
Chennai.

+1cc to M/s.V.Raghavachari, Advocate for the petitioner sr.19062

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kj (co)
ss(21/4/2017)