

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO
WRIT PETITION No.31018 OF 2016

ORDER: (per Hon'ble Sri Justice Sanjay Kumar)

The petitioner is the applicant in Contempt Application No.468 of 2016 in O.A.No.1867 of 2016 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad. His prayer in the said Contempt Application was to punish the respondent therein for not implementing the order dated 18.05.2016 passed in the O.A. However, by order dated 18.07.2016, the Tribunal dismissed the Contempt Application. Aggrieved thereby, the petitioner filed the present writ petition seeking restoration of the Contempt Application for fresh disposal.

In the light of the law laid down by the Supreme Court in *Sujitendra Nath Singh Roy v. State of West Bengal*¹, a writ petition would be maintainable before this Court under Article 226 of the Constitution in case the Tribunal refuses to exercise contempt jurisdiction.

The interim order dated 18.05.2016 passed by the Tribunal in O.A.No.1867 of 2016 reads as follows:

“Taking into consideration the above facts and circumstances, pending disposal of the O.A., by way of interim relief, the impugned order by proceedings No. Estt.2/166/2015 dated 10.5.2016 issued by the 1st respondent is suspended until further orders.”

This order was passed in the context of the prayer of the petitioner-applicant for interim relief, which reads as under:

“In the circumstances it is therefore prayed that this Honourable Tribunal may be pleased to suspend the operation of the Proceedings No.Esst-2/166/2015, dt. 10.5.2016 issued by the 1st respondent, with a direction to allow the applicant to continue as Accounts Officer O/o 1st respondent, pending disposal of the OA.”

¹ AIR 2015 SC 1831

In this scenario, the Tribunal was of the opinion that as only interim suspension of the impugned proceedings had been granted and nothing more, there was no further direction to continue the petitioner-applicant as an Accounts Officer in the office of the Director General of Prisons and Correctional Services, State of Andhra Pradesh. It was on this basis that the Tribunal opined that the Contempt Application would not lie and dismissed it.

The interim order dated 18.05.2016 reads to the effect that the proceedings dated 10.05.2016 issued by the Director General of Prisons and Correctional Services, State of Andhra Pradesh, stood suspended. Perusal of the proceedings dated 10.05.2016 demonstrates that the petitioner-applicant, who was working on deputation basis on foreign service in the office of the Director General of Prisons and Correctional Services, State of Andhra Pradesh, was thereby sought to be repatriated to his parent Department, i.e., the Treasuries and Accounts Department, on administrative grounds. Once the said proceedings stood suspended, it would automatically mean that he continued to remain in the office of the Director General of Prisons and Correctional Services, State of Andhra Pradesh. This would be the effect of the suspension of the repatriation proceedings and no further direction was required to be issued to retain him at the office of the Director General of Prisons and Correctional Services, State of Andhra Pradesh. The very suspension of the proceedings dated 10.05.2016 would have that automatic consequence without any further direction.

The understanding of the Tribunal that in every case there should be not only a suspension of the impugned order but also a positive consequential direction, would lead to chaos. This would mean that in a

case where an employee was suspended from service under a particular order and the said order is suspended upon challenge, unless there was a specific direction to reinstate him, the suspended employee would be left nowhere. That cannot be the import of an interim order of suspension and such an interim order, when granted in particular case, would have to be considered in the factual context obtaining therein so as to give it real and proper meaning. The opinion expressed by the Tribunal that in the absence of a positive direction to retain the petitioner-applicant in the office of the Director General of Prisons and Correctional Services, State of Andhra Pradesh, the mere suspension of the repatriation proceedings would not have that effect, therefore cannot be countenanced. That being so, the dismissal of the Contempt Application on the strength of this erroneous construction of the interim order is unsustainable.

The order dated 18.07.2016 passed by the Tribunal in Contempt Application No.468 of 2016 in O.A.No.1867 of 2016 is set aside and the said Contempt Application is restored to the file of the Tribunal for consideration afresh on its own merits and in accordance with law.

The writ petition is allowed to the extent indicated above.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

M. GANGA RAO, J

Date: 28.11.2018
IBL