

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CONT No.220 of 2018

S. Bhaskar Rao S/o Late M. Narayan Rao, R/o Ward No.17, Anil
Kirana Stores, Steel Nagar, Camp 1, Bhilai, District Durg, CG

---- Petitioner

Versus

1. B. Rajanna, S/o Late B. Ammatalli, Aged About 51 Years, Secretary,
Pravas Andhra Pathshala, Steel Nagar Camp-1, Bhilai, Tahsil &
District Durg, Chhattisgarh
2. Ashutosh Chawre, District Education Officer Durg, District Durg,
Chhattisgarh

---- Respondents

And

CONT No.482 of 2018

B. Rajanna, S/o Late B.Ammatalli, Aged About 51 Years, Secretary,
Pravas Andhra Pathshala, Steel Nagar, Camp 1, Bhilai, Tehsil And
District Durg, Chhattisgarh

---- Petitioner

Versus

S. Bhaskar Rao, S/o Late M. Narayan Rao Aged About 63 Years, R/o
Ward No.17, Anil Kirana Stores, Steel Nagar, Camp 1, Bhilai, District
Durg, Chhattisgarh (Contemnor)

...Respondent

For Petitioner/S. Bhaskar Rao	:	Mr.Vinod Kumar Sharma, Advocate in Contempt Case No.220 of 2018
For Respondent/B. Rajanna	:	Mr.Shikhar Bakhtiyar, Advocate in Contempt Case No.220 of 2018 and Petitioner in Contempt Case No.482 of 2018
For Respondent No.2/ Mr. Ashutosh Chawre	:	Mr.Y.S.Thakur, Advocate in Contempt Case No.220 of 2018

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

29.08.2019

Heard.

1. This order shall dispose off the aforesaid two contempt petitions.
2. The first Contempt Petition No.220/2018 has been filed by the

employee of a private Government Aided School against the Secretary of the Managing Committee of the school. The second contempt petition has been filed by the Secretary against the employee registered as Contempt Petition No.482 of 2018.

3. In the matter of dispute, the District Education Officer issued a direction to the Managing Committee for payment of retiral dues of the two employees named above. That direction issued by the District Education Officer was assailed by the Secretary of the Managing Committee by filing writ petition as WPS No.4816 of 2017. The Secretary of the Committee raised a grievance that even though the employees were retired, they had not vacated the official quarters allotted to them and therefore, the amount could not be paid. During the pendency of the case, it was found that one of the employee, namely, M. Gopal Krishna Murthy had vacated the official quarter, whereas, the other employee S. Bhaskar Rao had given undertaking that he will vacate the official quarter as soon as he receives entire amount.

4. Considering respective submissions, this Court disposed off the writ petition with the direction that the Managing Committee represented through its Secretary shall release all the retiral dues except the amount of gratuity payable to the employees within 30 days from the date of receipt of the copy of the order, whereafter, respondent No.7, therein, namely S. Bhaskar shall vacate the official quarter within two weeks of receiving whole amount.

5. The Managing Committee of the School, however, could pay only Rs.5,78,530/- towards arrears of pay to S. Bhaskar Rao. The other due of leave encashment of an amount of Rs.3,99,400/- was not paid. This led to filing of the contempt petition by Shri S. Bhaskar Rao, the petitioner in Contempt Petition No.220/2018.

6. Later on, the Secretary of the Managing Committee also filed another Contempt Petition alleging that even though the employee S. Bhaskar Rao has been paid arrears of salary, he is not vacating the quarter despite direction of vacating the official quarter within two weeks of receiving whole amount as directed. This contempt be registered as Contempt Case No.482 of 2018.

7. Learned counsel for the employee S. Bhaskar Rao would argue that as per direction of this Court, except gratuity amount, all other retiral dues

would require to be paid. He would submit that he was only paid arrears of salary amounting to Rs.5,78,530/-, strictly speaking, is not retiral dues but only arrears of pay. He submits that Rs.3,99,400/- was liable to be paid to him towards leave encashment. As payment of gratuity was not covered under the order, this amount ought to be paid by the Society and having not made such payment, the Secretary of the Managing Committee of the Society is guilty of willful disobedience of the order of the Court.

8. Learned counsel appearing for the respondent-contemnor B. Rajanna, the Secretary of the Committee, would argue that there was no intention to flout the order of the Court. The employee has been paid huge amount towards arrears of pay and later on, Rs.10,00,000/- towards gratuity has also been paid to him. He would argue that the Managing Committee is facing financial crunch, school has also been closed, teachers have been sent to the other Institution and no fund is being made available to the Institution. It is submitted that though normally under the scheme, first payment of leave encashment has to be made and later on, it would be reimbursed by the State, as provided, in Government circular dated 25.08.1986, in the present case, the Institution has been writing to the State authority/District Education Officer for making available sufficient fund as the institution does not have the funds sufficient to release leave encashment of Rs.4,00,000/- to the employee. He would submit that the conduct of the contemnor in releasing the huge amount towards arrears of pay and also payment of gratuity only indicates that there is no intention to withhold the amount but it is because of reasons beyond its own control, on account of lack of funds that leave encashment cannot be paid.

9. Learned counsel appearing for respondent No.2 would submit that as far as payment of leave encashment is concerned, it is to be first paid by the Institution to the teacher employee and only thereafter, it can claim reimbursement as provided in circular dated 25.08.1986. He would submit that the District Education Officer/ respondent No.2 has not been issued any direction nor is there any specific direction to the effect that he should first release the amount towards payment.

10. The other Contempt Petition filed by the Secretary is that the employee despite order of this Court that he had to vacate the official quarter within 2 weeks is not vacating the same. To this, learned counsel for the employee would submit that he is protected by the Court's order and

unless full retiral dues which includes leave encashment is paid, he is not liable to vacate the official quarter and on the other hand entitled to retain the same till the amount is paid.

11. Having heard learned counsel for the parties and having gone through the pleadings and documents on record, this Court finds that though a direction was issued by this Court to the Secretary of the Institution to release retiral dues, which obviously includes leave encashment amount also, the reason for non-payment does not appear to be an act of willful disobedience. The bank account of the institution have also been filed before this Court from which, it is clear that the Institution does not have sufficient balance in their account to pay leave encashment of Rs.3,99,400/- to the employee Mr. Bhaskar. Moreover, this Court finds that the Secretary has been continuously writing to the authority insisting on releasing of the amount first so that the payment could be made to the employee in compliance of the direction of the Court. On the other hand, it appears that the Government authority in view of Government Policy dated 25.08.1986 are insisting the school authority to first pay and then seek reimbursement. In view of the above, it is difficult for this Court to hold that the Secretary of the Institution is guilty of willful disobedience of the order of the Court. The inability to release amount of leave encashment appears to be genuine and not an attempt to flout or overreach the order passed by this Court. Moreover, it is found that as and when the school authorities received funds under specific head of arrears of pay and gratuity, those amounts were instantaneously released in favour of the employee.

12. As far as the other contempt petition is concerned, the employee is protected by the judicial order. Employee will have to vacate the official quarter within two weeks of receiving the whole amount of retiral dues except gratuity. Admittedly, the leave encashment benefits which are part of retiral dues have not been paid to the employee, till date. Therefore, no contempt can be said to be made out by the employee also.

13. In view of the above consideration, the contempt petitions are liable to be closed, discharging Rule issued against the contemnor in both the cases.

14. Before parting with the case, it is observed that looking to the present poor financial condition of the school management, the State may consider present to be a case of exceptional nature to release the amount of leave

encashment due and payable to the employee S. Bhaskar Rao so that the said amount could be paid to him. For this purpose, the management of the school may take up the matter with the office of District Education Officer and in turn, the District Education Officer will also forward the matter for consideration of the Competent Authority for releasing the leave encashment amount for being paid to the management keeping in view that this Court has held in order dated 15.05.2018 passed in WPS No.818/2016 and batch of petitions that the employees of the Government Aided Educational Institution are also entitled to leave encashment benefit at par with the Government employees.

15. The contempt petitions are accordingly disposed off.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Rekha