

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA-1709-2019 (O&M)

Date of decision:- 04.02.2020

S. Gurinder Singh Dua and another

...Appellants

Versus

Dr. Ashwani Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present:- Mr. Rajesh Garg, Senior Advocate,
with Ms. Nimrata Shergill, Advocate,
for the appellants.

Mr. G.S. Bal, Senior Advocate,
with Mr. Ashish Mehlawat, Advocate,
and Ms. M.K. Madhar, Advocate,
for respondent No. 1.

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RAVI SHANKER JHA, C.J. (ORAL)

This appeal has been filed by the appellants against the orders dated 16.05.2019, 29.08.2019 and 30.09.2019 passed by the learned Single Judge.

Learned senior counsel appearing for the appellants submits that the appellants by way of a writ petition have challenged an order dated 16.11.2018 passed by the Education Tribunal, Punjab directing re-instatement of respondent No. 1 alongwith payment of 50% back-wages. It is stated that the said writ petition is registered as CWP-4035-2019. It is submitted that in the said case, while notices have been issued by this Court, the operation of the order passed by the Education Tribunal, Punjab has not been stayed. Resultantly, respondent No. 1 filed COCP-1040-2019 against the appellants alleging contempt of this Court in not complying with the order passed by the Education Tribunal, Punjab. It is submitted that when the contempt petition came up for hearing before the

learned Single Judge, during the course of arguments, a statement was made by the counsel appearing for the appellants that the amount of back-wages would be deposited by them. It is stated that subsequently in view of the aforesaid statement, the matter was adjourned and taken up on various dates, but the payment could not be made by the appellants and, therefore, the learned Single Judge vide order dated 30.09.2019 had issued bailable warrants against the appellants for ensuring their presence on the next date of hearing. It is submitted that though the statement regarding making of the payment was made by the counsel appearing for the appellants before the learned Single Judge, however, on account of certain unavoidable circumstances, the amount could not be deposited. It is submitted that even if such an amount is not deposited by the appellants, as there was no specific and clear direction of the Court in the contempt case for doing so, issuing bailable warrants and forcing the appellants to make the deposit is contrary to law, as in the absence of any direction by this Court, such a direction could not have been issued.

Learned senior counsel appearing for the appellant, however, on instructions, submits that they are willing to make the deposit within a week. He submits that such a deposit may not be treated to be an act on the part of the appellants accepting or withdrawing the issues raised by them in the writ petition assailing the order of the Education Tribunal, Punjab and the same be made subject to an order to be passed by the learned Single Judge in the writ petition filed by them.

Learned senior counsel appearing for respondent No. 1 per contra submits that the entire proceedings regarding issuance of bailable warrants etc. were taken up by the learned Single Judge on account of non-compliance of the undertaking given by the counsel appearing for the appellants regarding deposit of 50% back-wages. It is submitted that a bare perusal of the order dated 30.09.2019 passed by the learned Single Judge makes it clear that the appellants initially sought pass-

over in the matter for making the deposit, but when the matter was subsequently taken up, it was stated that the payment could not be made without approval of the General House of the Society. It is submitted that learned Single Judge taking exception to the conduct of the appellants has issued the bailable warrants and in such circumstances no fault can be found with the order.

We have heard learned counsel for the parties at length on the main appeal as well as on the application for vacation of the interim order dated 16.10.2019 passed by this Court and have also perused the record.

We are of the considered opinion that, at this stage, recording or making any observations in respect of the conduct of the appellants would prejudice the hearing in the contempt case before the learned Single Judge, more so, as the issue regarding maintainability of the contempt proceedings as well as the interim directions regarding compliance of the order passed by the Education Tribunal, Punjab are also the subject matter of the said contempt petition as well as the writ petition filed by the appellants against the order passed by the Education Tribunal, Punjab.

In such circumstances, taking into consideration the undertaking given by the appellants regarding deposit of 50% back-wages, the present appeal is disposed of with a direction that the appellants shall keep the requisite amount in the form of a fixed deposit in the State Bank of India, High Court Branch, Chandigarh so that the same earns interest. The payment of the amount thereunder would be subject to the final orders to be passed in the writ petition filed by the appellants as well as the contempt petition filed by respondent No. 1 and the parties would be entitled to refund or claim the same, as the case may be, alongwith interest that would be earned by the amount while it is kept in the fixed deposit.

The legal issue regarding the maintainability etc. of the contempt petition as well as the issue regarding enforceability of the order passed by the Education Tribunal, Punjab even during the pendency of the writ petition filed by the appellants and also other issues are kept open to be decided by the learned Single Judge.

In view of the orders passed by this Court on the basis of the undertaking regarding deposit of 50% back-wages, the order dated 30.09.2019 passed by the learned Single Judge issuing bailable warrants etc. is hereby set aside. However, the power and authority of the learned Single Judge to issue such orders in future in the contempt proceedings would remain intact and can be invoked by the learned Single Judge as and when required in the proceedings.

As a consequence, CM-4467-LPA-2019 seeking vacation of the interim order dated 16.10.2019 passed by this Court also stands disposed of.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

04.02.2020
Amodh

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No