

24.03.2021

Court No.5

rpan /08-09

CPAN 1618 of 2016

in

W.P.A 7490 of 2016

Paramjit Jana

- Versus -

Abanindra Singh & Another

Mr. Saikat Banerjee,
Mr. Abhijit Basu
... for the petitioner.

Mr. Jahar Lal De,
Mr. Shamim ul Bari
.... For the alleged contemnors.

The present contempt application has been preferred alleging violation of an order dated 28th April, 2016 passed by this Court in a writ petition, being W.P. No.7490 (W) of 2016.

Shorn of unnecessary details the facts are that the petitioner's father died-in-harness on 27th October, 2001 while working in the post of an approved assistant teacher. Thereafter the petitioner submitted an application for compassionate appointment and by memo dated 15th June, 2006, the District Inspector of Schools (S.E.), Kolkata (in short, the DI) informed the Chairman, District Primary School Council, Purba Medinipur (in short, the said Council) that the petitioner's name has been enlisted in the live register. However, subsequent

thereto, the Chairman of the said Council rejected the petitioner's claim by an order dated 19th August, 2008, which was challenged in a writ petition being W.P. No.26987 (W) of 2012. The said writ petition was disposed of by an order dated 1st October, 2015 observing *inter alia* that the impugned order dated 19th August, 2008 is perverse and the Court directed the Chairman of the said Council to send a proposal for appointment of the petitioner to the Commissioner of School Education (in short, the Commissioner) and the Commissioner was asked to consider such proposal, in accordance with law. Pursuant to such direction, the Chairman of the said Council sent a proposal and an order was passed by the Commissioner on 7th April, 2006 rejecting the petitioner's claim. The said order was again challenged in a writ petition being W.P. No.7490 (W) of 2016 which was disposed of by an order dated 28th April, 2016 setting aside the order dated 7th April, 2016 and directing the Commissioner to take a fresh decision on the basis of the categorical findings arrived at in the order dated 1st October, 2015 passed in the earlier writ petition. Pursuant to such direction, the Commissioner passed an order on 15th September, 2016 again rejecting the petitioner's claim.

Drawing the attention of this Court to the said order dated 15th September, 2016 passed by

Commissioner, as annexed at page 33 of the contempt application, Mr. Banerjee, learned advocate appearing for the petitioner submits that the Commissioner has not complied with the directions and the observations contained in the order dated 28th April, 2016 and has shown utter disrespect to the same. The petitioner's claim has neither been considered on the basis of the categorical findings arrived at in the order dated 1st October, 2015 passed in the earlier writ petition nor in terms of the Rules prevailing on the date of death of the petitioner's father. The order thus being derogatory to the directions of this Court, is *non est* in the eye of law.

He further argues that the parameters, as laid down by this Court, have not been taken into consideration while passing the order dated 15th September, 2016. The Commissioner has not considered the fact that the petitioner's name was earlier enlisted in the live register by the competent authority. Such action of the alleged contemnor speaks of his audacity to wilfully violate the directions of this Court. In support of such arguments reliance has been placed upon a judgment delivered in the case of *National Textile Corporation (West Bengal, Assam, Bihar and Orissa)*

& ors. Vs. *Shri S.K. Agnihotri & ors.*, reported in (1987) 2 CLJ 463.

Per contra, Mr. De learned senior advocate appearing for the Commissioner submits that the entries made in the live register does not guarantee approval. No government can fix salary of a Group-C staff below the quantum required to manage two square meals for the family and it was ascertained that at the material point of time, the family of the deceased teacher had a recurring income of Rs. 7397/-, which is more than the initial gross salary of a Group 'C' employee and as such the deceased's family was not suffering from any '*extreme financial distress*'.

He further argues that once an order is passed on the basis of the directions issued by the Court there arises a fresh cause of action to seek redressal in an appropriate forum. In support of such contention he has placed reliance upon a judgment delivered in the case of *J.S. Parihar Vs. Ganpat Duggar & ors.*, reported in (1996) 6 SCC 291. The judgment delivered in the case of *National Textile Corporation* (supra), upon which reliance has been placed by Mr. Banerjee, is distinguishable on facts and furthermore a similar order passed by the learned Single Judge was set aside in an appeal. The said judgment stands reported in 1989 SCC *OnLine*

Cal 164 (*Shri. M. Chakraborty versus National Textile Corporation (West Bengal, Assam, Bihar and Orissa) Ltd., (Staff & Sub-Staff Employees Association) & ors.*)

Mr. De has also drawn the attention of this Court to the Rules notified *vide* government notification dated 22nd November, 1991. In Rule 14 it has *inter alia* been provided that a case would deserve compassionate consideration if in the opinion of the Council the family of the deceased is in extreme economic hardship. By a memo dated 18th January, 1999, such extreme economic hardship was clarified to be financial stress that “*fails to provide two square meals and other essentials to the surviving members of the deceased teacher’s family*”. Let the government notifications, as produced, be kept on record.

Mr. Banerjee, in reply, disputes the contention of Mr. De and submits that it would be evident from the sequence of facts that while determining the economic hardship, the Commissioner has placed reliance upon riders which do not find place in the Rules which were in operation at the time of the teacher’s death.

I have heard the learned advocates appearing for the respective parties and have considered the affidavits, as exchanged by the parties.

In the order dated 1st October, 2015 passed in W.P. No.26987 (W) 2012 the petitioner's claim was directed to be considered keeping in mind the fact that his name was enlisted in the died-in-harness category earlier by the DI. The order passed by the Commissioner thereafter on 7th April, 2016 was set aside by the order of this Court on 28th April, 2016 and the Commissioner was directed to consider the petitioner's claim afresh on the basis of categorical findings contained in the earlier order dated 1st October, 2015. In the order dated 28th April, 2016 this Court also observed that a claim for a compassionate appointment needs to be considered on the basis of the Rules which were in existence at the time of death on the concerned employee. Pursuant to such direction, the alleged contemnor has passed an order dated 15th September, 2016 discussing the issues relegated for consideration. It is not a case that without giving reasons, the Commissioner has deliberately avoided and had sought to wriggle out the parameters as set by this Court. The merits of the order passed by the Commissioner cannot be assessed in a contempt proceeding. The non-compliance of an order has to be wilful and deliberate and not mere accidental or unintentional. The explanation given by the alleged contemnor in the affidavit filed does not reveal that

there was any deliberate and wilful denial on his part to comply with the order of this Court.

For the reasons discussed above, the contempt application, being CPAN 1618 of 2016, is dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties upon compliance of all necessary formalities.

(Tapabrata Chakraborty, J.)