

19-01-2021

ct no. 13

Sl.18

sp

WPA 10271 of 2020

Akhilesh Kumar Sharma

-Versus-

Damodar Valley Corporation & Ors.

Mr. Durga Prasad Dutta,

Mr. Souvik Sen,

Mr. S. Ganguly

...for the petitioner

Mr. Joydip Kar,

Mr. Ranjay De,

Mr. Basabjit Banerjee

...for the respondent nos. 1 to 4

The writ petitioner was empanelled (said panel) as a casual worker on the basis of number of days worked as on December 31, 1986. He had worked for 225 days.

By an order passed by a Co-ordinate Bench of this Court in WP 22988 (W) of 2010 on August 28, 2014, the writ petition was disposed of directing absorption of casual employees from the said panel against permanent vacancy or for the purpose of any further casual engagement. The petitioner was not a party to the writ petition.

A contempt application was filed by the petitioner for violation of the order dated 28.08.2014 which was dismissed.

The matter was carried in appeal in MAT 1381 of 2017 which was dismissed as withdrawn with liberty to file afresh and self-same cause of action.

An application under Article 136 of the Constitution was moved before the Hon'ble Supreme Court in SLP (Civil) Diary No. 41318 of 2017 in which, on November 4, 2019, the Hon'ble Supreme Court, setting out the operative part of the order of the Single Bench dated August 28, 2014 (supra), inter alia held that, while there could not be any contempt against the DVC, the latter was still obliged to comply with the order dated 28.08.2014 (supra).

Similar orders passed on November 23, 2015 in Civil Appeal No. 13766 of 2015 (Murli Gope and others vs. DVC and Ors.) was also relied upon in this regard.

In the said SLP Nos. 26224-26225 of 2019, an I.A. Nos. 191988 and 191997 of 2019 were filed by the DVC seeking modification of the order of the Hon'ble Supreme Court dated November 4, 2019.

The said I.As. were disposed of by the Hon'ble Supreme Court in, inter alia orders dated February 5, 2020 and March 2, 2020. The order dated March 2, 2020 is set out herein below.

“Heard learned counsel for the parties.

We are appalled to notice the untenable plea taken by the applicant for not giving effect to the order dated 04.11.2019 passed in SLP© D. No. 41315 of 2017 and SLP(C) D. No. 41318 of 2017 in its letter and spirit. The stand taken by the applicant, to say the least, is preposterous and an attempt to circumvent the directions issued by this Court on 04.11.2019 and further clarified vide order dated 05.02.2020 passed in the misc. applications under consideration. No further elaboration thereof is required.

We direct the authorities to comply with the directions contained in the aforementioned orders without any exception within two weeks from today. No further indulgence will be shown to the concerned authorities who are obliged to comply with the same. Failure to comply would result in having committed aggravated contempt of the court, which will be viewed sternly.

We place on record our disapproval about the tenor of the affidavit filed in response to order dated 05.02.2020. We find that the affiant has not disclosed this specific fact noted in the order dated 05.02.2020, which he was expected to disclose.

In the peculiar facts of the present case, the misc. applications are rejected with the aforesaid directions.”

Counsel for the petitioner would argue that a plain reading of the orders of the Hon’ble Supreme Court passed in the SLPs referred to herein above would indicate that in substance and essence the Hon’ble Supreme Court had upheld the direction of the Single Judge dated August 28, 2014.

Mr. Joydip Kar, learned Senior Advocate appearing for the DVC would argue that the orders of the Hon’ble Supreme Court in the

SLPs (supra) must be deemed under Article 142 of the Constitution of India and hence should not be treated as a precedent. He placed the decision of the Hon'ble Supreme Court in the case of ***State of Punjab and others vs. Rafiq Masih (Whitewasher)*** reported in **(2014) 8 SCC 883**, particularly, paragraphs 11 and 12 thereof where a distinction between the distinction between Article 141 and 142 of the Constitution of India has been explained.

What is, however, required to be examined is as to whether the decisions of the Hon'ble Supreme Court in the SLPs referred to herein above are under Article 142 of the Constitution of India are restricted to the case of those persons who filed the writ petitions and obtained the order dated 28.08.2014 from the Single Bench of this Court.

Mr. Kar next relied upon the decision of the Hon'ble Supreme Court in the case of ***State of Uttar Pradesh and others vs. Arvind Kumar Srivastava and others*** reported in **(2015) 1 SCC 347**, particularly, paragraphs 22, 21(1) and 22(2) thereof. He would submit that the petitioner is a fence sitter who was watching his colleagues litigate without joining them. Mr. Kar would, therefore, submit that the petitioner

cannot be given the benefit of the order of the Single Judge dated 28.08.2014.

Mr. Kar would finally submit that the petitioner is a casual worker and is seeking absorption in the Group-D post and must be asked to approach the authorities under the Industrial Disputes Act, 1947 for the purpose of seeking relief that he has claimed in the instant writ petition.

I have carefully considered the decisions cited and the arguments of Mr. Joydip Kar, learned Senior Counsel for the DVC and the counsel for the petitioner.

This Court is of the view that once a specific decision of the High Court i.e. the order dated 28.08.2014 is not only set out, but specifically directed by the Supreme Court to be complied with by a respondent, the same is required to be done irrespective of who the petitioners are. The writ petitioner herein was admittedly in the panel and/or list that is referred to in the order dated 28.08.2014. The list is available at Annexure-P/2 to the instant writ application where petitioner is at serial no. 73.

In the said circumstances given a clear and exclusive nature of the order dated November 4, 2019, one need not go into the

question as to whether the orders dated 04.11.2019, 05.02.2020 and 02.03.2020 (supra), by the Supreme Court are under Article 141 or 142 of the Constitution of India.

What is sought to be enforced by the petitioner is not general claim. The petitioner seeks implementation of a specifically approved order by the Hon'ble Supreme Court of a Single Judge of this Court. Hence, the decision of the Hon'ble Supreme Court in the case of **Rafiq Masih (supra)** would not come to the aid of the DVC.

In so far as the contention that the writ petitioner is a fence sitter and the decision of the Supreme Court in the case of **State of Uttar Pradesh and others vs. Arvind Kumar Srivastava and others (supra)**, one must note the facts of the said case. It was a case of recruitment of Homeopathy Compounders or ward boys of the year 1986 in the State of Uttar Pradesh. An order of the Chief Medical Officer, who cancelled the appointments of certain wait listed candidates who were asked to join when the merit listed candidates did not show up was in issue. The said order was initially challenged in 1986 in a suit filed by some respondents therein but the suit was abandoned. Some other candidates also from the said cancelled waiting

list challenged the order of cancellation before the Central Administrative Tribunal in 1987 and succeeded in the year 1991.

The respondents filed a representation before the State in the year 1995 and then moved the High Court and matter came to be dealt with by the Supreme Court.

It is in that context that the Hon'ble Supreme Court held that delay and latches is a clear bar to remedy under Article 226. It was found that allowing remedy to the respondents would prejudice employees working for a long period of time.

The Hon'ble Supreme Court then went on to explain the exceptions to the general principle that the benefit of an order quashing a wrong decision should go to all affected and similarly placed persons. It is in that context that Para 22 of the said decision was rendered.

The said decision is, therefore distinguishable from the facts of the instant case. The petitioner is a casual labourer and differently abled than a educated Homeopathic Compounder. The petitioner, according to this Court, cannot be deemed a fence sitter merely because he did not approach Court. His remedy was already allowed by reason of the judgment dated 28.08.2014 which referred to absorption

of the empanelled candidates. The affirmation of the same by the order of the Supreme Court in 2019 is in fact a reiteration of this right.

Yet another distinguishing factor is that the respondent DVC or anybody would not be prejudiced by the delay in the filing of the instant petition. The writ petitioner, according to this Court, would definitely be entitled to the benefit of the judgment dated 28.08.2014 as affirmed, albeit in an SLP arising out of a contempt proceedings.

In the instant case what is, in fact, clear and explicit is the affirmation of the order dated 28.08.2014 and a direction upon the DVC to specifically comply with the same by the Hon'ble Supreme Court.

In so far as the last argument of Mr. Kar is concerned, this Court, given the nature of relief sought by the petitioner, based on the order of a Co-ordinate Bench of this Court dated 28.08.2014 (supra) is of the clear view that interpretation of orders of this Court and orders of the Hon'ble Supreme Court, should not be left to the Industrial Tribunal.

In view of the above, this Court holds that the writ petitioner is entitled to be absorbed against any vacancy in the Group-D post commensurate with the nature of work he has

performed in the DVC and the DVC is directed as such.

With the aforesaid observations, the instant writ petition is allowed.

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

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

(Rajasekhar Mantha, J.)