

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Contempt Petition No.2524 of 2018

1.N.S.Subbulakshmi
2.K.Vijayachandrika
3.V.Ponni
4.A.Karpagam
5.R.Premalatha
6.M.Reena

.. Petitioners

vs

Mr.K.Rajesh,
Secretary in-charge
The Food Corporation of India,
(South Zone) Employees Co-operative Society Ltd.,
No.MSCS/CR-23/92, New No.40, Old.No.133,
2nd Floor, Vepery High Road,
Chennai – 600 003.

.. Respondent

(Respondent's name substituted
as per order dated 29.1.2020
made in Sub.Appln.No.321 of 2019)

Prayer: Petition filed under 11 of the Contempt of Courts Act, 1971 to punish the respondent for his willful and intentional disobedience to the order dated 16.11.2016 in W.A.Nos. 1446 to 1457 of 2016.

For Petitioners : Mr.K.M.Ramesh

For Respondent : Mr.P.Wilson
Senior Counsel
for Mr.A.Praveen Kumar

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

The contempt petition arises out of an order dated November 16, 2016 passed on a batch of writ appeals. The employer preferred the appeals after the order of retrenchment was stayed by the Writ Court.

2. In course of the discussion in the appellate order of November 16, 2016, it was indicated that the writ petition could not have been entertained as there was no cause of action for maintaining the same. The Court observed that an industrial dispute had to be raised and the matter carried to the appropriate Labour Court.

3. The operative part of the order is evident from paragraph 6 thereof:

“6. The order of the learned Single Judge is hereby set aside. However, reinstatement made, pursuant to the order of the learned Single Judge cannot be disturbed for the present, but, it would be subject to the disposal of the litigation/dispute to be raised before the Labour Court and subject to the result of the decision that would be taken by the Presiding Officer/Labour Court and the order of reinstatement would continue. With the above observation, the order of the learned Single Judge is modified and accordingly, the writ petitions are liable to be dismissed. However, all the contentions of the parties are left open to be raised before the Labour Court. It is for the Labour Court to decide the matter, without being influenced by the order or any observation made by the learned Single Judge. However, it is made clear that if salary of the employees is not paid, it is for the employee to file appropriate applications for getting the interim relief before the Labour Court/Labour Officer.”

4. There are two aspects to the order. The relief that was sought was not granted and even an adjudication on the validity of retrenchment was not made. However, it was recorded that since reinstatement had been made pursuant to an order of a Single Bench and such reinstatement had been

permitted in the fear of contempt, the reinstatement was not disturbed. The order also provided that if the salary of the employees had not been paid, it would be for the employees to file appropriate applications for getting the interim relief before the Labour Court.

5. It may be recorded that a special leave petition filed by the employer was not entertained by the Supreme Court.

6. The grievance in the contempt petition is that the petitioners are allowed to enter the office premises and made to wait outside and no salary is paid to them. It is also relevant to note the following assertion at paragraph 11 of the affidavit in support of the contempt petition:

"11 ... This Hon'ble Court in the order referred to above, has stated that salary of the employees is not paid, it is open to the employees to seek interim relief from the Labour Court. However, due to vacancy in the Tribunal, the petitioners are not able to seek interim relief for payment of salary. As stated already, the petitioners are not permitted to work and earn their salary and hence there is total disobedience of the direction issued by this Hon'ble Court by the Respondent Society."

7. It is evident that the contempt petition is utterly unmeritorious as the conclusion of disobedience does not follow from the consequence of the order and even the affidavit in support of the petition could not indicate how the order had been disobeyed or violated.

8. The interesting submission now put forth on behalf of the petitioners is that an order passed in the contempt proceedings on February 26, 2020 has not been complied with. The order dated February 26, 2020 recorded the contemnor's submission that the employees had gone out voluntarily. However, the Court went on to direct as follows:

"4. Considering the submissions made, we permit the petitioners to rejoin from 02.03.2020 onwards. If they do so, they should be allowed to continue."

9. It is elementary that in exercise of the jurisdiction in the quasi-criminal branch of contempt, a substantive order may be made only upon the act of contempt being discovered and such substantive order being deemed necessary to close the breach. At the highest, the order of February 26, 2020 was permissive and there can be no sequitur to such order, either way.

The original order did not grant any relief to the present petitioners. Indeed, it set aside the order of the Writ Court. Such order noticed that reinstatement may have been permitted under fear of contempt and, as such, even after noticing apparent reinstatement, the appellate Court did not allow for the salary to be paid and required the employees to approach the Labour Court for interim relief in such regard.

10. Whatever may be the effect of the order dated November 16, 2016, by no stretch of imagination can it be accepted that the alleged contemnor has acted in derogation thereof or has violated the same, far less deliberately so. Even though the contempt jurisdiction has been seen as an equitable mode of execution, for an act of contempt to be made out, there must be a clear breach of the order and the breach must be deliberate or willful. Even when an order is capable of two interpretations and the lesser of the two interpretations is given as an excuse for not complying with the order, the benefit of doubt is given to the alleged contemnor.

11. The petitioners herein came to the Writ Court to complain of their retrenchment. The issue was not decided. The order of the Writ Court merged in the appellate order which did not grant any relief to the writ

petitioners, even to the extent of permitting the writ petitioners to be paid upon the writ petitioners having rejoined the services. The subsequent order of February 26, 2020 passed at the initial stage of the contempt proceedings cannot be the basis for seeking a relief that was not granted and could not have been intended to be granted as per the tenor of the relevant orders. The remedy of the petitioners lies before the labour forum and the observations herein will not prejudice them, if they still approach such forum in accordance with law.

Contempt Petition No.2524 of 2018 is disposed of without any order as to costs.

SD/-
ASSISTANT REGISTRAR(COMM.CASES)
sasi/ssm

//Certified to be true copy//

Dated at Madras this the day of 2021.

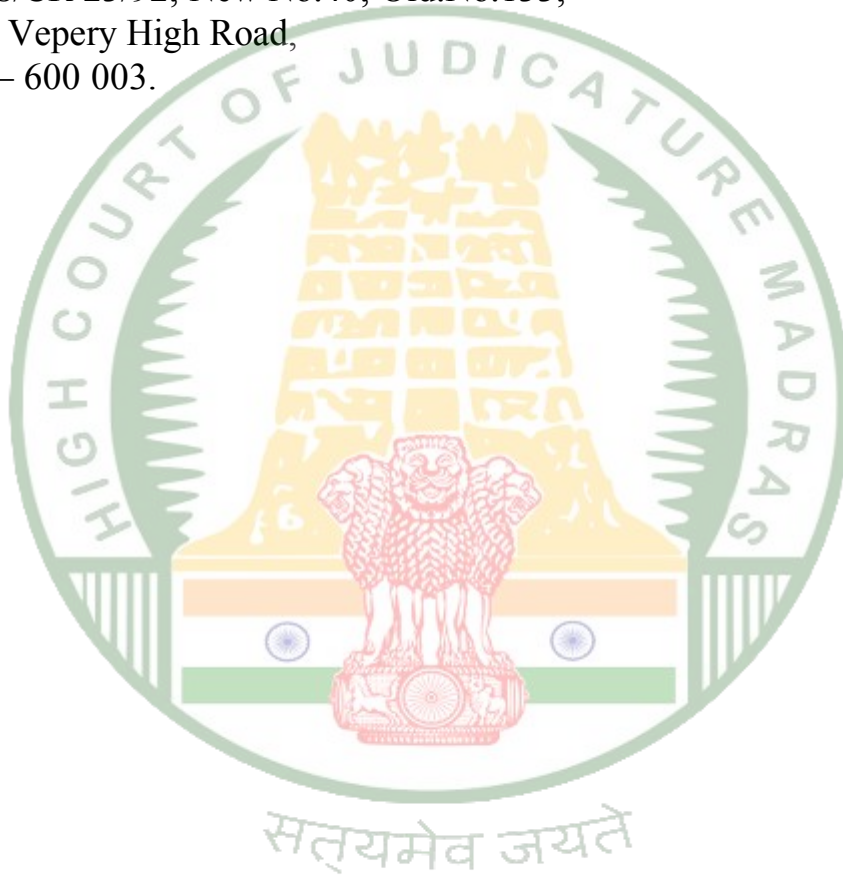
COURT OFFICER(O.S.)

from 25th day of September 2008 the Registry is issuing Certified copies of the Orders/Judgments/Decrees in this format.

GS/29/03/2021

To

The Secretary in-charge
The Food Corporation of India,
(South Zone) Employees Co-operative Society Ltd.,
No.MSCS/CR-23/92, New No.40, Old.No.133,
2nd Floor, Vepery High Road,
Chennai – 600 003.



WEB COPY