

COC-349-2021

Date of Decision: 08.03.2021.

Taj Mohammad

...Petitioner

vs.

Ankur Gupta and another

...Respondents

Coram : Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Vivek Singla, Advocate for the petitioner.

Mr. Pawan Kumar Longia, DAG, Haryana.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.

2. Learned counsel contends that vide order dated 26.10.2020, in CWP-17573-2020, while issuing notice of motion for 26.11.2020, order of promotion dated 05.05.2020, of the private respondents on the basis of seniority list was stayed but despite supply of certified copy of the order on 29.10.2020 to the respondents, the respondents allowed the private respondents to continue on the promoted post although now order dated 04.03.2021 has been passed keeping promotion order dated 05.05.2020 qua the private respondents in abeyance and that in the circumstances the petitioner is not interested in pursuing the Contempt Petition.

3. Reply dated 05.03.2021 filed by Learned DAG, Haryana on behalf of respondent No.2 is taken on record. Learned DAG, Haryana, contends that on receipt of orders of the High Court dated 26.10.2020, the matter was referred to the Advocate General, Haryana, for opinion as to whether order of promotion dated 05.05.2020 qua the private respondents

Haryana admits that the reply does not mention the date on which the clarification was sought. Learned DAG states that in response to the query, the Advocate General, Haryana, advised that promotion order dated 05.05.2020, be kept in abeyance till vacation of exparte stay order or the decision of the writ petition, whichever was earlier, besides, application be filed for vacation of ex parte stay order dated 26.10.2020. Learned DAG contends that thereupon the department sent the case to the Government for consideration and issuing order to keep in abeyance promotion order dated 05.05.2020 and that pursuant thereto, respondent No.1 passed order dated 04.03.2021, keeping the promotion of private respondents, as made vide order dated 05.05.2020, in abeyance. Learned DAG contends that the delay in passing order dated 04.03.2021, occurred due to procedural exigencies and there was no deliberate or intentional omission on the part of the answering respondents and further that the respondents had the highest regard for the orders of the High Court and could not even think of violating the orders and that if there was any error in compliance with the order of the High Court, unconditional and unqualified apology tendered by respondent No. 2 be accepted.

4. I have considered the submissions of learned counsel.

5. Admittedly, order dated 26.10.2020, in CWP-17573-2020, is very clear inasmuch as while issuing notice for 26.11.2020, it was ordered that till then, order of promotion dated 05.05.2020, qua the private respondents, on the basis of seniority list, would remain stayed. Interim order dated 26.10.2020 was renewed from time to time and despite the aforementioned order being very clear and having been brought to the

notice of the respondents on 29.10.2020, the respondents instead of forthwith complying with the same, sought opinion from the Advocate General, Haryana whether order dated 05.05.2020, be kept in abeyance till the same was vacated or the writ petition was decided, whichever was earlier. Orders dated 26.10.2020 were crystal clear and were required to be complied with forthwith. In case clarification was deemed essential, the same ought to have been sought forthwith so as to avoid the charge of intentional and willful defiance of order dated 04.03.2021. Failure to comply with order dated 26.10.2020 despite the same being crystal clear tantamounts to intentional and willful defiance of said order till 04.03.2021. The explanation of time having been consumed in procedural exigencies does not justify non compliance with orders dated 26.10.2020 till 04.03.2021. Accordingly, this Court holds that there was intentional and willful defiance of order dated 26.10.2020 till 04.03.2021, and in the circumstances, records its displeasure for non-compliance of order dated 26.10.2020, till 04.03.2021. However, taking lenient view of the matter, unconditional and unqualified apology tendered by respondent No.2 is accepted, rule discharged and Contempt Petition disposed of.

(B.S. Walia)
Judge

08.03.2021.
'Rajesh'

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