

OD-2

RVWO 1 of 2022
 IA No. GA 1 of 2022
 WITH
 CC 135 of 2008
 WPO 864 of 2004
 IN THE HIGH COURT AT CALCUTTA
 Civil Special Jurisdiction
 ORIGINAL SIDE

AMINUL AHSAN
 Vs.
 SMT. KALPANA MAITY & ORS.

BEFORE:
 The Hon'ble JUSTICE ARIJIT BANERJEE
 Date : February 24, 2022.

Appearance:
Mr. Anirban Ray, G.P.
Mr. Biswabrata Basu Mallick, Adv.
Mr. Sayan Ganguly, Adv.
...for the review applicant.

Mr. Kamalesh Bhattacharya, Adv.
Mr. S. P. Pahari, Adv.
Mr. A. Pradhan, Adv.
Mr. A. K. Mahapatra, Adv.
Mr. B. Nag, Adv.
...for respondents

The Court : This application has been taken out for review of an order dated February 19, 2021 whereby CC 135 of 2008 was disposed of.

The contempt application was filed for alleged violation of an order dated April 10, 2008 whereby WPO 864 of 2004 was disposed of. The operative portion of the said order reads as follows :

“Having heard the submissions of the learned Counsel for the writ petitioners and the learned Counsel for the State and considering

the merits of the writ petition, the concerned District Inspector of Schools (SE) Purba Midinipur, the third respondent herein directed to approve the writ petitioners within a period of four weeks from the date of communication of this order.

It is submitted by the learned Advocate for the petitioners that necessary papers regarding the respective services of the writ petitioners have already been sent to the concerned District Inspector of Schools for approval of their appointments.

Needless to mention that on the basis of the approval of the services of the petitioners, the writ petitioners shall be entitled to all financial benefits on the basis of such “approval” in terms of and by virtue of this order.

Till such approvals take place, the petitioners will continue to serve the school as they have been doing for all these years.

The “above order is to be treated to be mandatory by the concerned respondents.”

The State had preferred an appeal against the said order. The appeal was dismissed for default in the year 2013. No steps were taken for restoration of the appeal.

In the course of hearing of the contempt application it was submitted on behalf of the State that there are no records available with the State pertaining to the appointments of the petitioners in the concerned school. I had observed in the order under review that even if the State cannot lay its hands on documents pertaining to the appointments of the petitioners, that is not the concern of the petitioners. The petitioners cannot be deprived of the benefit of an order of this Court, which has attained finality, just because relevant records cannot be traced out by the

administration. It had been submitted on behalf of the alleged contemnor that the order could not be given effect to because of non-availability of relevant records but, notwithstanding that, the order will be implemented if the Court so directs.

Accordingly, I had directed the alleged contemnor to grant approval to the appointments of the petitioners from the respective dates mentioned in the DLIT report dated April 26, 2008 within two weeks from the date of receipt by him of a copy of the said order. I had also directed that all consequential benefits shall be made available to the petitioners. This order by which the contempt application was disposed of is under review.

Appearing for the review petitioner, Mr. Basu Mallick, learned Advocate submitted that no records of the case are available. There is nothing on the basis of which the appointments of the petitioners can be approved. The gist of the case of the review petitioner would appear from paragraphs 16 to 22 and 25 of the stay application filed along with the Memorandum of Review. For the sake of convenience, the said paragraphs are reproduced hereunder :

“16. It is submitted that the alleged contemnor had no intention to willfully and deliberately violate the Order of this Hon’ble Court dated 10th April, 2008 passed in WPO 864 of 2004 against which the contempt petition being C.C. 135 of 2008 was passed and in fact it was the petitioners who were rendering only part time service to the said School prior to recruitment by the S.S.C. and never thereafter but no documentary evidence in this regard is available in the school as categorically stated by the Teacher-in-charge of the said school in

her letter vide no.31/B.K.M.V./18 dated 18th May, 2018. This was in willful and deliberate violation of the Order dated 10th April, 2008 passed by this Hon'ble Court which has been recorded in the affidavit in reply filed by the incumbent District Inspector of Schools (Secondary Education, Purba Medinipur) against the contempt petition.

17. *It is submitted that it was not brought to the notice of the Hon'ble Court that the finding of the Hon'ble single Judge of this Court in the Writ Petition being WPO No. 864 of 2004 that "necessary papers regarding the respective services of the writ petitioners have already been sent to the concerned District Inspector of Schools for approval of their appointments", while passing an Order for inter alia for approval of the services of the writ petitioners, cannot be sustained as those necessary papers had certain grave anomalies in them due to which appointments of the petitioners could not be approved and such anomalies came to the notice of the District Inspector of Schools while attempting to implement the Order dated 19th February, 2021 passed by this Hon'ble Court.*
18. *It is submitted that it was not considered by the Hon'ble Court that the said school was upgraded as a Class X Secondary School without any financial assistance from the Government with effect from 1st May, 2003 and thus there is no provision for approval of appointment or payment of any salary in the Secondary Section of that school from the Government Exchequer.*
19. *It is submitted the Hon'ble Court has in the Order dated 19th February, 2021, has considered the submissions of the Learned Advocate for the State that there are no records available with the State pertaining to the appointments of the petitioners in the concerned school.*
20. *It is submitted since there are no fit, proper and complete records available with the State, the order dated 10th April, 2008 passed in WPO 864 of 2004, cannot be implemented and thus there is no*

violation of such order and hence the order dated 19th February, 2021 passed in C.C.135 of 2008 by this Hon'ble Court, disposing of the contempt petition cannot be implemented, and the contempt petition ought to have been dismissed.

21. *It is submitted that the Hon'ble Court, while disposing of the contempt petition, directed the alleged contemnor to grant approval to the appointment of the petitioners from the respective dates mentioned in the District Level Inspection Team (DLIT) Report dated 26th April, 2000 which is annexure P-2 to the writ petition. However, the alleged contemnor while attempting to implement the order dated 19th February, 2021 based on the DLIT Report observed that the dates of appointment of the respondents/Writ petitioners as mentioned in the DLIT Report (annexed as P-2 in the writ petition) does not tally with the dates of appointment in the appointment letters of the writ petitioners which was annexed as P-1 to the writ petition, and on noticing such grave anomaly the order dated 19th February, 2021 passed by this Hon'ble Court could not be implemented.*
22. *It is submitted that the alleged contemnor while attempting to implement the order dated 19th February, 2021 based on the DLIT Report also observed that the date of inspection in the DLIT report which was 26th April, 2000, mentioned the writ petitioners to have been appointed as teaching and non teaching staff of classes IX and X while the said school was upgraded to class X only on 1st May, 2003 and this was also averred in the writ petition.*
25. *It is submitted that the applicant cannot act illegally, while ignoring the materials on records to implement the order of this Hon'ble Court dated 19th February, 2021 when the Hon'ble Court did not notice the anomalies in the materials on record while passing such order."*

I have heard Mr. Basu Mallick at length. I have not called upon Mr. Kamalesh Bhattacharya, learned Advocate appearing for the petitioner in the contempt application.

The order under review was passed in the presence of the respondents including the review petitioner. None of the present facts was such that they could not be placed before me at the time of disposal of the contempt application. In fact, the State had even then submitted that it cannot trace out any records. I have recorded as to how the Court responded to such submission.

Sitting in review jurisdiction I cannot act as an Appellate Court. None of the grounds of review enumerated in Order 47 Rule 1 of the Code of Civil Procedure has been made out. There is no error apparent on the face of the order. The present application appears to be a desperate attempt on the part of the State to delay implementation of the order under review which was passed on the basis of the order dated April 10, 2008 which has attained finality.

The review application is completely meritless and amounts to an abuse of the process of Court and the same is dismissed along with the connected application with the contempt that it deserves.

(ARIJIT BANERJEE, J.)