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IN THE HIGH COURT OF DELHI AT NEW DELHI

NEUTRAL CITATION NO: 2022/DHC/000824



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Date of decision : 02.03.2022

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W.P.(C) 3566/2022

DHAWLENDU

.....Petitioner

Through Mr Shashikant, Advocate.

versus

MS VASUDHA MISHRA

.....Respondent

Through None

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE JASMEET SINGH

[Physical Court Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):-

CM No.10534/2022

1. Insofar as the prayer made in the above-captioned application to grant exemption from filing typed/certified/original copies of documents is concerned, the same is allowed subject to just exceptions.
2. Likewise, the prayer made in the above-captioned application to grant exemption from filing notarized affidavit(s) is allowed as well, subject to the applicant/petitioner filing duly notarized affidavit(s) within the next two weeks.
3. The application is, accordingly, disposed of.

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4. This writ petition is directed against the order dated 03.01.2022, passed by the Central Administrative Tribunal in Contempt Petition (CP) No.338/2021, preferred in O.A. No.938/2020.
- 4.1. It is not in dispute that relief was granted in O.A. No.938/2020, based on the decision given in another O.A. i.e., OA No.3332/2019, via order dated 07.10.2020. The relevant part of the said is extracted hereafter :

"4. We, therefore, dispose of the OA in terms of the judgement in OA No.3332/2019 and direct the respondents to consider the status of the

applicant under the EWS category....”

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4.2. The contempt petition was dismissed, primarily, based on the following rationale:

“3.....Mr. R.V. Sinha, learned counsel appearing on behalf of the alleged contemnor-UPSC submitted that against the order dated 13.01.2020 passed by the Tribunal in OA No.3332/2019, directing the respondents to extend the benefit of reservation of EWS category in case the candidates fit into the parameters, the respondents approached the Hon’ble High Court of Delhi in Writ Petition(C) No.1158/2020 and 701/2020, and the Hon’ble High Court also affirmed the decision of this Tribunal vide judgment dated 11.09.2020. Thereafter, the UPSC challenged the order of the High Court before the Hon’ble Supreme Court, which is pending disposal.

4. In view of that, no contempt lies. Moreover, the UPSC has passed a detailed order dated 22.01.2021 stating that as far as the result of other two candidates namely, Ms. Satabdi Mazumder and Shri Sridhar Ravesaheb Limbiki is concerned, it is informed that their result was declared in pursuance of the Hon’ble High Court judgment dated 11.09.2020 in W.P.(C) No.1158/2020 and 701/2020 under EWS category. The same has been challenged by the Commission in the Hon’ble Supreme Court. Therefore, there would be no effect of final outcome of the SLP on EWS matters, on the result of Ms. Mazumder and Shri Limbikai which has already been declared under EWS category. As the Hon’ble Supreme Court is seized of the issue in regard to the cases of the EWS category, the UPSC cannot be held in contempt for not complying with the directions of the Tribunal.....”[Emphasis is ours.]

4.3. It is, thus, not in dispute that the judgment on the basis of which the petitioner was given substantive relief by the Central Administrative Tribunal (in short, “the Tribunal”) is pending adjudication before the Supreme Court.

4.4. For this purpose, our attention has been drawn to the order of the Supreme Court dated 18.02.2021, passed in Special Leave Petition (C) Nos.441-445/2021 titled ***Union Public Service Commission vs Saumya Pandey and Ors.***; which is appended on page 153 of the case file. A perusal of the order dated 18.02.2021 shows that notice has been issued by the Supreme Court both in the Special Leave Petitions as well as the prayer made for interim relief.

5. Given the foregoing circumstances, in our view, no contempt would
at this stage, since both the Special Leave Petitions and the prayer made for
interim relief are pending adjudication before the Supreme Court. In this behalf,
the observations made by the Supreme Court in *State of J & K v. Mohd. Yaqoob Khan and Ors.* (1992) 4 SCC 167, being apposite, are extracted
hereafter :

“6..... The scope of a contempt proceeding is very different from that of the pending main case yet to be heard and disposed of (in future). Besides, the respondents in a pending case are at a disadvantage if they are called upon to meet the merits of the claim in a contempt proceeding at the risk of being punished. It is, therefore, not right to suggest that it should be assumed that the initial order of stay got confirmed by the subsequent orders passed in the contempt matter.
7. We, therefore, hold that the High Court should have first taken up the stay matter without any threat to the respondents in the writ case of being punished for contempt. Only after disposing it of, the other case should have been taken up. It is further significant to note that the respondents before the High Court were raising a serious objection disputing the claim of the writ petitioner. Therefore, an order in the nature of mandatory direction could not have been justified unless the court was in a position to consider the objections and record a finding, prima facie in nature, in favour of the writ petitioner. Besides challenging the claim on merits, the respondent was entitled to raise a plea of non-maintainability of a writ application filed for the purpose of executing a decree. It appears that at an earlier stage the decree in question was actually put in execution when the parties are said to have entered into a compromise. According to the case of the State the entire liability under the decree (read with the compromise) has already been discharged. The dispute, therefore, will be covered by Section 47 of the Code of Civil Procedure. It will be a serious question to consider whether in these circumstances the writ petitioner was entitled to maintain his application under Article 226 of the Constitution at all. We do not want to decide any of these controversies between the parties at this stage except holding that the orders passed in the contempt proceeding were not justified, being premature, and must, therefore, be entirely ignored. The High Court should first take up the stay matter in the writ case, and dispose it of by an appropriate order. Only thereafter it shall proceed to consider whether the State and its authorities could be accused of being guilty of having committed contempt of court.”[Emphasis is ours.]

5.1 Also see observations of the Supreme Court in *Modern Food Industries (India) Ltd. v. Sachidanand Dass*, 1995 Supp (4) SCC 465 :



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“4. Before the High Court, appellants urged that before any contempt proceedings could be initiated, it was necessary and appropriate for the Division Bench to examine the prayer for stay, or else, the appeal itself might become infructuous. This did not commend itself to the High Court which sought to proceed with the contempt first. We are afraid, the course adopted by the High Court does not commend itself as proper. If, without considering the prayer for stay, obedience to the Single Judge's order was insisted upon at the pain of committal for contempt, the appellants may find, as has now happened, the very purpose of appeal and the prayer for interlocutory stay infructuous. It is true that a mere filing of an appeal and an application for stay do not by themselves absolve the appellants from obeying the order under appeal and that any compliance with the learned Single Judge's order would be subject to the final result of the appeal. But then the changes brought about in the interregnum in obedience of the order under appeal might themselves be a cause and source of prejudice. Wherever the order whose disobedience is complained about is appealed against and stay of its operation is pending before the Court, it will be appropriate to take up for consideration the prayer for stay either earlier or at least simultaneously with the complaint for contempt. To keep the prayer for stay stand-by and to insist upon proceeding with the complaint for contempt might in many conceivable cases, as here, cause serious prejudice. This is the view taken in State of J & K v. Mohd. Yaqoob Khan [(1992) 4 SCC 167].” [Emphasis is ours.]

6. At this juncture, Mr Shashikant seeks leave to withdraw the writ petition, with liberty to approach the Tribunal, if necessary, at the appropriate stage, albeit, as per law.

7. The writ petition is, accordingly, dismissed as withdrawn with liberty as prayed for.

RAJIV SHAKDHER, J

JASMEET SINGH, J

MARCH 2, 2022/rb

[Click here to check corrigendum, if any](#)