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NEUTRAL CITATION NO: 2022/DHC/001081

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision : 22.03.2022**

+ **W.P.(C) 4593/2022 & CM Nos.13767-68/2022**

SHAMBHUNATH RAI AND ANR

..... Petitioners

Through : Mr Brijender Chahar, Sr. Adv. with
Mr J.S. Mann and Mr Vipul
Upadhyay, Advs.

Versus

AJAY KUMAR BHALLA AND ORS.

..... Respondents

Through : Ms Biji Rajesh, Mr Arpit Srivastava
and Ms Aayushi Jain, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE JASMEET SINGH

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

RAJIV SHAKDHER, J. (ORAL):-

CM No.13768/2022

1. Allowed, subject to just exceptions.

W.P.(C) 4593/2022 & CM No.13767/2022*[Application filed on behalf of
the petitioners seeking interim relief]*

2. Issue notice.

2.1. Ms Biji Rajesh accepts notice on behalf of the respondents.

3. With the consent of the counsel for the parties, the writ petition is taken up for hearing and final disposal, at this stage itself.

4. This writ petition is directed against the order dated 02.03.2022, passed by the Central Administrative Tribunal [in short 'Tribunal'] in Contempt Petition No.269/2021, preferred in O.A.No.2025/2021.



4.1. Besides this, the other reliefs sought for in the writ petition are that a direction be issued to the respondents to change the date of repatriation of the petitioners, or in the alternative, regularize the intervening period spanning between the date of repatriation and the date on which the petitioners joined their parent organization.

4.2. Furthermore, the petitioners also seek a direction to the effect that the Tribunal be asked to render a decision in the petitioners' O.A. i.e., O.A.No.2025/2021, in light of the judgment rendered by this Court dated 18.11.2021, in W.P.(C) No.11791/2021, titled ***Manoj Kumar Gope & Ors. v. Intelligence Bureau.***

5. Strangely, although arguments were also advanced by Mr Brijender Chahar, learned senior counsel, who appears on behalf of the petitioners, as to the dismissal of the miscellaneous application, preferred in the aforesaid OA, i.e., M.A.No.93/2022 via a separate order of the same date i.e., 02.03.2022, there is no challenge laid to the said order.

5.1. Mr Chahar contends that the impugned order i.e., order dated 02.03.2022, which has been passed in the contempt petition, is flawed for the reason that it does not notice the fact that the petitioners had disclosed that they were in the process of being repatriated. For this purpose, Mr Chahar has, *inter alia*, drawn our attention to the documents appended on pages 59 and 60 of the case file, as well as to assertions made in paragraph 4.9 of the O.A. [i.e., O.A.No.2025/2021].

5.2. It is Mr Chahar's contention that at the point in time when the OA was preferred by the petitioners i.e., in and about 10.09.2021, the petitioners had not been served with the repatriation orders.

5.3. It is not in dispute that the repatriation order *qua* petitioner no.1 i.e., Mr Shambhunath Rai was passed on 13.08.2021, while the repatriation order *qua* petitioner no.2 i.e. Jainul Islam was passed on 26.08.2021.



6. On the other hand, Ms. Biji Rajesh, who appears on behalf of the respondents, says that, although the petitioners disclosed, albeit, very broadly, that repatriation orders had been passed, no contempt proceedings, in any event, could have been preferred against the respondents.

6.1 It is Ms Rajesh's contention that the interim order passed by the Tribunal on 16.09.2021, could not have stayed the operation of the repatriation orders which were passed prior in point of time.

6.2. As noticed above, what has compounded the problems of the petitioners is that they have, in the present petition, not challenged the order dated 02.03.2022, passed in M.A.No.93/2022.

6.3. We may also note that the phraseology employed by the petitioners in paragraph 4.9 of the O.A. did not give a clear picture, inasmuch as the words used are "due to be repatriated." A perusal of the documents appended on page 59 and 60 of the case file, however, show that the date of repatriation was clearly indicated to the petitioners.

7. Thus, having regard to the aforesaid circumstances and the record, as placed before us, we are of the opinion that the observations made by the Tribunal that there was concealment by the petitioners as regards the fact that repatriation order that had been passed *qua* them was, perhaps, not warranted. This observation, it appears, came to be incorporated in the order, as the relevant assertions made by the petitioners in the O.A., and the documents appended on pages 59 and 60 of the case file were not brought to the notice of the Tribunal.

7.1. Therefore, insofar as these observations are concerned, the same shall stand redacted from the impugned order.

8. That being said, we are of the view that in any event, the respondents could not have been proceeded against in a contempt petition. The reason being that the repatriation orders concerning the petitioners preceded the



interim order dated 16.09.2021, ^{NEUTRAL CITATION NO: 2022/DHC/001081} passed by the Tribunal.

9. Therefore, the best way forward in the matter, according to us, is to give an opportunity to the petitioners to move a fresh application before the Tribunal so that the Tribunal can deliberate as to whether any interim direction can be passed to protect the interest of the petitioners, pending the disposal of the O.A.

9.1. It is ordered accordingly.

10. Therefore, the conclusion reached by the Tribunal that contempt petition will not lie against the respondents, is sustained, with liberty to the petitioners to move an appropriate application, as indicated hereinabove.

11 We may also indicate that while dismissing the contempt petition, the Tribunal, as a logical sequitur, vacated the interim order dated 16.09.2021. It appears that the Tribunal has passed this direction, in the backdrop of the circumstances indicated above, that the repatriation orders had already been passed.

11.1. However, in our view, the Tribunal can fashion the interim relief *qua* the petitioners, in respect of which liberty has been given i.e., to move an appropriate application.

12. The writ petition is accordingly, disposed of. Consequently, pending application shall stand closed.

RAJIV SHAKDHER, J

JASMEET SINGH, J

MARCH 22, 2022/aj

Click here to check corrigendum, if any