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M/L

08.05.23

Ct. No. 04

Akd

WP.ST. 69 of 2023

Swajan Shome
Vs.
The State of West Bengal & Ors.

Mr. Asim Kumar Niyogi.

... for the petitioner.

Mr. Tapan Kumar Mukherjee, Ld. A.G.P.,

Ms. Tuli Sinha.

... for the State.

Ms. Sanghamitra Nandy.

... for the P.S.C.

A technical objection is projected affront at the behest of the alleged contemnor which has a far-reaching ramification in due implementation of the direction/order passed by the Tribunal.

The Tribunal was approached by the petitioner for consideration of his candidature to the promotional post pending the disciplinary proceeding against him. Initially the disciplinary authority imposed a penalty of withholding two annual increments without future effect which was modified or varied by the appellate authority that the penalty of withholding one increment for one year without cumulative effect should have been proper.

It appears from the stand of the respondents in the tribunal application that the said penalty if reckoned from the date of such penalty as per the Rules is taken into account, it expired on 30th June, 2022 and thereafter there is no impediment on the part of the respondent authorities in considering the candidature of the petitioner to avail the promotional avenue permissible in the hierarchy of the post. Based upon the aforesaid facts, the direction was passed upon the Additional Chief Secretary, Home and Hill

Affairs Department, Government of West Bengal to consider the case of the applicant for promotion to the rank of Deputy Superintendent of Police within eight weeks from the date on which the vacancy for such post arises.

Alleging that despite the direction passed by the Tribunal there is reluctance or a dormant attitude shown by the alleged contemnor in not taking a decision in terms of the said order within the stipulated time. It was a specific stand of the alleged contemnor in the contempt application that the case of the respondent has been considered and since he is holding a Group-A post, an approval or consent of the Public Service Commission is required and, in fact, the file has been sent to the Commission in this regard.

The matter continued in the docket of the Tribunal and on the next date of listing the aforesaid submission was repeated and reiterated by the State which constrained the petitioner to make a prayer that the Secretary of the Public Service Commission, West Bengal, may also be added as alleged contemnor in the contempt application.

Curiously enough the State took a vehement objection to such addition on the score that since the direction was restricted to the Additional Chief Secretary, Home and Hill Affairs Department, the Secretary of the Public Service Commission, West Bengal, cannot be robed in the contempt application. On the ipsi dixit of the aforesaid submission and without considering the other aspects, the Tribunal proceeded to reject the prayer of the petitioner; as a

resultant effect the Secretary of the Public Service Commission was not permitted to be added as a party.

It is not a hard and fast rule that the parties to the proceeding can only be arraigned as a party in the contempt application even a non-party being aware of the order or the judgement passed by the Court or the Tribunal can be added as alleged contemnor, if their role is intricately related to the implementation of the order passed by the Tribunal or the Court. Mere passing the buck cannot defeat the substantial justice to be imparted to the litigant and the moment the technical plea is pitted against the substantial justice, it is the latter which must prevail. The Seaward principle can also be activated, which is well recognized in contempt jurisdiction, where non-party can be held responsible for violation or non-observance of the order passed by the Court.

We, therefore, do not concur with the decision of the Tribunal in this regard. The impugned order is set aside.

The Secretary, Public Service Commission, West Bengal is impleaded as added alleged contemnor in the contempt application being CCP 97 of 2022.

The petitioner is directed to serve a copy of the contempt application upon the added alleged contemnor by speed post and shall file the affidavit of service before the Tribunal on the next date.

It further appears that no date has been fixed by the Tribunal in the impugned order, but our attention is drawn to an earlier order passed on 7th February,

2023 where the said contempt application was directed to be listed on 18th August, 2023.

Liberty is granted to the petitioner to pray for preponement of the said date after service being effected upon the alleged added contemnor and the Tribunal shall make an endeavour to prepone the date and shall see that the contempt application is brought to its logical conclusion at the earliest.

With the above observations, the writ petition is disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)