

IN THE HIGH COURT AT CALCUTTA

Special Civil Jurisdiction
(Appellate Side)

C.P.A.N. 1160 of 2016

In

RVW/158/2010

Zorina Khatun

Vs.

Mr. Dushyant Mariala & Ors.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the petitioner : Mr. Bhudeb Chatterjee, Sr. Adv.
Mr. Dip Jyoti Chakraborty, Adv.
Mr. Joy Chakraborty, Adv.
Mr. Subhendu Roychoudhury, Adv.

For the alleged contemnor : Mr. Bhaskar Prasad Vaisya, learned AGP,
Mr. Sagnik Chatterjee, Adv.

Judgment On : 18.08.2023

Arijit Banerjee, J.:

1. This contempt application has been filed alleging wilful violation of a judgment and order dated September 5, 2014, passed in RVW 158 of 2010 being an application for review of a judgment and order dated January 16, 2008, whereby MAT No. 3514 of 2003 (FMA No. 178 of 2005) was disposed of by a coordinate Bench. The said appeal had been preferred against a judgment and order dated July 22, 2003 passed by a learned Single Judge in WP No. 8885(W) of 2003 filed by the present petitioner. By the said order

the writ petition was dismissed. The appeal therefrom was also dismissed by a Division Bench.

2. An application was filed for review of the order of the Division Bench. By a judgment and order dated September 5, 2014, a Coordinate Bench disposed of the review application with inter alia the following directions:-

“We feel that the present problem cannot be solved in this way. However, unless the said post which was reserved for Scheduled Tribe candidates is de-reserved, the service of the respondent no. 6 cannot be regularised. As the Backward Class Welfare Department, Government of West Bengal, is the competent authority who can de-reserve such post we direct the Principal Secretary, Backward Class Welfare Department, Government of West Bengal, to ascertain from the local employment exchange authority as to the availability of any suitable candidate for the post of Arabic Teacher from the Scheduled Tribe community and in the event it is found that no such suitable candidate is available for the said post from the Scheduled Tribe Community, then the Principal Secretary of the said department should de-reserve the said post by carrying forward such reservation to a post against subsequent vacancy. This exercise should be done within a period of four weeks from the date of communication of this order.

In the event the post concerned is ultimately de-reserved and occasion arises for filling up the said post by the general

candidate, then the concerned authority, after taking into consideration that the respondent no. 6 who was appointed by the school authority, after being selected through a regular selection process in the year 1997 and has been regularly rendering her service in the said school for a paltry sum of Rs.600/- per month, should regularise the service of the respondent no. 6 in the concerned post by grant of post facto prior permission and also by grant of post facto approval of her service.”

3. Pursuant to the order of the Division Bench passed on the review application, the post in question was de-reserved. Post facto prior permission and post facto approval of service was granted by the respondent authorities to the petitioner in terms of the order but with effect from the date of de-reservation of the post in question, which was, sometime in 2015.

4. When the contempt application was filed, de-reservation of the post in question had not taken place and therefore naturally no post facto prior permission or post facto approval had been granted. During the pendency of the contempt application the respondent Authorities de-reserved the concerned post with effect from a date in 2015 and granted post facto prior permission and post facto approval of service of the petitioner from the date of de-reservation of the post.

5. The contention of the petitioner is that since the Court directed regularisation of the petitioner's service, the post facto approval must be granted from the date when the petitioner was first appointed in the post i.e.

sometime in the year 1997. The petitioner accordingly prays for an order directing the respondent authorities to grant such approval with effect from the date of her appointment in 1997.

6. We have heard learned Counsel for the parties in extenso.

7. The contempt application was filed for alleged violation of the order dated September 5, 2014, passed by a coordinate bench. The direction in the order was to regularise the service of the present petitioner in the concerned post by grant of post facto prior permission and post facto approval of service in the event the post in question was de-reserved. In the contempt petition it was alleged that this direction had not been carried out.

8. During the pendency of the contempt petition, the concerned post was de-reserved and post facto prior permission as well as post facto approval of service of the petitioner was granted by the competent authority with effect from the date of de-reservation of the post. In other words, the competent authority, in our view, complied with the order of the coordinate bench in the manner it thought it should. Hence, in our view, the order of this Court has been complied with, although belatedly and after filing of the contempt application. In any event, we do not find any wilful violation of the concerned order, on the part of the alleged contemnors.

9. Learned Advocate for the petitioner says that there has not been full compliance with the concerned order. Post facto prior permission and post facto approval of service of the petitioner should be accorded from the initial date of appointment of the petitioner. Per contra, learned Advocate for the

alleged contemnors says that that cannot be done since the service of the petitioner in the concerned post cannot be regularised with effect from a date of prior to the date of de-reservation of that post, since the petitioner is a general category candidate.

10. Adjudication of the aforesaid issue is beyond the scope of this contempt proceeding. Substantive disputes cannot be resolved by a Court exercising contempt jurisdiction. In a contempt application, the Court cannot pass substantive orders touching the merits of the disputes between the parties.

11. The petitioner will be at liberty to approach the appropriate forum in accordance with law to agitate her claim that post facto prior permission and post facto approval of her service should be granted by the authorities from the date of her initial appointment, if she is entitled to do so in law.

12. CPAN 1160 of 2016 in RVW 158 of 2010 is accordingly disposed of.

13. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Arijit Banerjee, J.)

I agree.

(Apurba Sinha Ray, J.)