

CPAN 1847 of 2013
In
WPA 8261 of 2003
With
CAN 1 of 2004 (Old No. CAN 9992 of 2004)
With
CAN 2 of 2004 (Old No. CAN 10611 of 2004)
With
CAN 3 of 2007 (Old No. CAN 7036 of 2007)

Sri Susanta Kumar Mondal
Vs.

Rajesh Kumar Sinha & Anr.

Mr. Rabindra Nath Paul
Mr. Kaustava Ratan Chatterjee

... .. for the petitioner

Ms. Chaitali Bhattacharya
Mr. Mrinal Kanti Ghosh

... .. for the alleged contemnors

This is a contempt petition of 2013 arose from the judgment and order dated September 26, 2011 passed by a Co-ordinate Bench in WP 8261 of 2003, ***annexure X-3 at page 31 to the contempt application.***

The relevant portion from the said judgment and order wherefrom the violation had been alleged is quoted below :

“15. In the light of these facts I dispose of this writ petition with a direction upon the Director of School Education to examine the question as to whether there was any vacancy in the post of bio-science on 29 December 1997 and if there was such vacancy, whether the respondent no.4 had the qualification which

was required at that point of time for being appointed to the said post. In the event the answer to both the questions are in the affirmative, appropriate steps shall be taken to ensure approval of appointment of the respondent no.4 in such post. In the event it is found that on 29 December 1997, being the date on which the writ petition of the respondent no.4 was disposed of, there was a vacancy in the post of an assistant teacher in bio-science in the said school but the post was filled up subsequently during pendency of litigations between the parties, then the case of the respondent no.4 would be dealt with for the post of assistant teacher in physical education, because he should not be made to suffer for delay in the adjudicatory process. But if it is found that on that date there was no vacancy in the said post, then the direction for approval would not be considered to be for compliance of the order of the Court and if such approval is found to have been directed contrary to the recruitment rule prevalent on 29 December 1997, then such direction for approval shall stand invalidated. The Director of School Education shall undertake this exercise within a period of eight weeks from the date of communication of this order.”

The direction as quoted above had two limbs.

In the First Limb the petitioner was directed to be give an appointment for the Bio-Science group at the relevant school for the post of assistant teacher. The modus operandi to give such appointment was also mentioned in the said judgment and order. The ***Second Limb*** was that the petitioner was directed to be accommodate for the Physical Education group in the event the appointment in the Bio-Science group was not possible because of the reason mentioned in the said judgment and order. It was also mentioned in the said Second Limb that in the event an appointment for the Physical Education group was also not possible for whatever reason and more specifically if it was found to be in derogation or in violation of the relevant Recruitment Rule prevailing on **December 29, 1997**, such a direction for appointment in the Physical Education group would be amounting to be an invalid one.

Pursuant to the direction made by the Co-ordinate Bench in the said judgment and order dated September 26, 2011 the alleged contemnor no.2 decided the issue by its **reasoned order dated April 23, 2012, annexure X-4 at page 49 to the contempt application.**

Mr. Rabindra Nath Paul, learned counsel appeared for the petitioner referring to the said reasoned order dated April 23, 2012 passed by the alleged contemnor no.2 submitted that, there was no compliance made by the alleged contemnors in terms of the direction made by the Co-ordinate Bench as quoted above and there was a willful and deliberate violation thereto, hence the contempt was committed by the alleged contemnors. He then referred to a document from **page 53** to the contempt application and drawing attention from a portion of the said document, he submitted that, as on July 08, 1997 there was sufficient vacancy to accommodate the petitioner in terms of the said direction made by the Co-ordinate Bench. But the alleged contemnors willfully and deliberately in violation of the said direction did not issue the appointment in favor of the petitioner.

Per Contra, Ms. Chaitali Bhattacharyya, learned counsel appeared for the alleged contemnors first referred to the said document at page 53 to the contempt application and submitted that even if there was an alleged vacancy created or available as on July 08, 1997 the same was for the **Social Science** and neither for **Bio-Science** nor for **Physical Education**. She then heavily relied upon the **order of compliance dated April 23, 2012, annexure X-4 at page 49 to the contempt**

application and submitted that upon all vacancy position being obtained from the appropriate authority, the alleged contemnor no.2 had taken steps and duly complied with the direction made by the Co-ordinate Bench as quoted above. She further submitted that, the vacancy report furnished by the appropriate authority before the alleged contemnor no.2 clearly showed that there was no scope for giving any appointment to the petitioner in the Bio-Science group as there was no such vacancy as on December 29, 1997. Relied upon the same order of compliance, she submitted that, the petitioner by that time as on the date of consideration of his case in terms of the said direction of the Co-ordinate Bench had already been working in the Physical Education group, therefore, there was no further scope for issuing any appointment in favor of the petitioner in the Physical Education group.

Considering the rival contentions raised on behalf of the parties appearing before this Court today and considering the materials on record, at the outset, this Court is of the view that, in exercise of its contempt jurisdiction the Court has a very limited authority to proceed. The domain of the Court shall be to examine as to whether the direction made by the Court was violated in a willful and deliberate manner. The Court cannot go

beyond the scope of the direction of the Court arising out of which the contempt proceeding is filed. On the basis of the available materials on record before it, the Court will have to examine whether there was any willful or deliberate violation on the part of the alleged contemnors. The Court cannot reopen the issue on the order in contempt was passed.

Considering the settled principle of law as discussed above, it appeared to this Court that, from the compliance order annexed to the contempt application, the alleged contemnor no.2 upon causing a detail fact finding enquiry and upon obtaining the necessary vacancy list came to a specific finding that there was no scope for any appointment in the Bio-Science group as on December 29, 1997 and there was also no scope for appointment in the Physical Education group as on December 29, 1997. The alleged contemnors had duly carried out their tasks in compliance of the direction of the Co-ordinate Bench and arrived at its finding.

On a scrutiny of the said report in the light of the direction made by the Co-ordinate Bench a quoted above, this Court of the considered view that there was no violation of the direction of the Co-ordinate Bench at all far to speak of any willful or deliberate violation. On the contrary the alleged

contemnors had carried out the direction of the Coordinate Bench in its true spirit and purport.

Rule, if any, issued in the proceeding stands discharged.

This contempt proceeding being **CPAN 1847 of 2013 stands dropped** and **the application consequently stands dismissed.**

ACO

(Aniruddha Roy, J.)