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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 14135 OF 2016

Sujata Saunik,
The Principal Secretary Public Health
and Family Welfare Dept., Mantralaya,
Mumbai – 400 032
Having office at 10th floor,
G.T. Hospital Complex Annex
Mumbai 400 001
Now Transferred to the Department
of Finance, Mantralaya - Mumbai

... Petitioner

V/s.

Dr. Suresh Chunnilal Gupta,
Retired Additional Director,
Health Services, from the
establishment of Director of
Health Services, Maharashtra State,
Mumbai, residing at 101, Shriji Residency,
Gazetted Officers Colony, Civil Lines,
Nagpur - 440 001

... Respondent

Mr. Ashutosh M. Kulkarni for the Petitioner
None for the Respondent

***CORAM : NITIN JAMDAR &
MANJUSHA DESHPANDE, JJ.***

DATE : 30 OCTOBER 2023

JUDGMENT (Per Nitin Jamdar, J.) :-

The Petitioner, Principal Secretary, Public Health and Family Welfare Department in the State of Maharashtra has filed this Writ Petition since a bailable warrant was issued to the Petitioner by the Maharashtra Administrative Tribunal to appear before the Tribunal and in addition to personal appearance, the Petitioner was directed to furnish personal bond in a sum of Rs.25,000/- with cash security to be deposited by cheque drawn from the Petitioner's personal account and to furnish surety bond in a sum of Rs.100/- by at least one officer in the Petitioner's rank. This order came to be passed in the Contempt Application No.41 of 2016 taken out by the Respondent, retired Additional Director of Health Services in the Original Application No. 1225 of 2010.

2. The Respondent – Suresh Chunnilal Gupta, was working as Joint Director of health Services in the State of Maharashtra. The Respondent had filed Original Application No. 685 of 2009 seeking a deemed date of promotion as Additional Director of Health Services from the date the Establishment Board found fit for promotion. By order dated 29 October 2009, the Tribunal directed the State Government to consider the case of the Respondent for promotion to the post of Additional Director. Another employee challenged this order by filing a Writ Petition in

this Court, which was disposed of on 12 April 2010. Thereafter, the Respondent made representation to the State that he should be promoted to the post of Additional Director. Since the representations were not considered, he filed Original Application No. 1225 of 2010 against the State of Maharashtra through the Additional Chief Secretary (Principal Secretary), Public Health and Family Welfare Department and the Chief Secretary, Central Administrative Department, Mantralaya. During the pendency of the Original Application, the Respondent was promoted to the post of Additional Director on 21 April 2011, and he retired on superannuation on 31 January 2012. The question, therefore, remained of the deemed date of promotion.

3. The Tribunal, by order dated 6 February 2015, disposed of the Original Application directing that the Respondent would be given a deemed date of promotion as Additional Director on the date his juniors were so promoted. His pay scale attached to the post of Additional Director had to be fixed, reckoning his deemed date of promotion. The State, through the Petitioner – Principal Secretary, Public Health and Family Welfare Department, was directed to comply with the order within three months from the date of the order.

4. On 29 April 2016, the Respondent filed a Contempt Petition, joining the Petitioner as Principal Secretary of the Public

Health Department as Respondent. The Respondent stated that the order passed by the Tribunal dated 6 February 2015 was not challenged. It was not complied with within three months. Legal notice was served on the Petitioner on 13 April 2016. Yet, no action was taken, and therefore, the Petitioner proceeded with contempt.

5. The Contempt Petition No.41 of 2016 came up on board before the Tribunal on 4 May 2016. The Tribunal adjourned the proceedings to the next date. On 10 June 2016, the order of deemed date of promotion was issued to the Respondent. Thereafter, on 5 July 2016, the Contempt Petition came up on board when none appeared for the Respondent. The Presenting Officer informed the Tribunal that the order was complied with. The Tribunal observed that in view of the delay in complying with the order, the matter can be considered only if an apology is filed. Thereafter, the Respondent submitted an affidavit stating that though there is a delay in implementing the order, it is neither intentional and it was procedural and approval of the General Administration Department and Finance Department was necessary for the deemed date proposal. This affidavit was filed on 2 August 2016.

6. On 8 August 2016, when the contempt proceedings came up before the Chairperson of the Tribunal, the Tribunal recorded submissions of the Advocate for the Respondent that the affidavit filed by the Petitioner did not give day to day explanation

for the delay, reasons why it was impossible to comply with the time, eloquent apology, statement that disobedience is not willful, and the Advocate for the Respondent also added that "the language of apology exhibits that it has not come from heart ". The Tribunal, considering this contention of the Advocate for the Respondent, deferred the hearing for further response of the Petitioner–Contemnor. The Tribunal also observed that the Petitioner had, in many cases, adopted the attitude of a slipshod reply. Thereupon, the Petitioner filed a detailed affidavit on 12 August 2016 stating as under:-

“ I humbly tender my sincere and unconditional apology on behalf of Govt. to this Hon'ble Tribunal and I also assure this Hon'ble Tribunal that due care will be taken that such delay is avoided in future. I pray that the said sincere apology may kindly be accepted and that the present Contempt Application may be disposed of.”

Then, paragraph 5 gave a timeline and chronology, giving a day to day explanation.

7. Thereafter, the matter was taken up by the Chairperson of the Tribunal on 12 August 2016. The Tribunal narrated the earlier orders. In this matter, when the impugned order came to be passed, the Tribunal noted that on 11 August 2016, the Petitioner was absent, and the Petitioner's representative, Under Secretary, was present. The Tribunal records in the order that the Under Secretary

was asked to State as to when the Petitioner would appear. Then, it was taken up on 12 August 2016. During the hearing, the affidavit of the Petitioner was tendered by the Presenting Officer. The Tribunal recorded what transpired on the earlier date and commented on the affidavit of 12 August 2016, stating that it does not disclose any reason beyond the control of the contemnor. From this, the Tribunal concluded that the Petitioner was not at all serious, even in reading the text of the order of the Tribunal. The Tribunal then recorded that it was in the order dated 4 May 2016; the Tribunal had recorded a finding that this was a fit case to take cognizance, as the Petitioner has shown the least respect to the proceedings and the order of the Tribunal. The Tribunal also observed that the Petitioner is of the rank of the Principal Secretary, and the Petitioner has chosen to remain absent from appearances. Commenting on the past record of Petitioner in other matter and that the Petitioner was facing contempt proceedings before the other Bench; the impugned order came to be passed.

8. The Petitioner filed this Writ Petition on 15 December 2016, and the Division Bench issued notice to the Respondent and stayed the further proceedings in the Contempt Petition.

9. None has appeared for the Respondent. The order in favour of the Respondent is already been implemented. Also, since

the matter arises from the contempt proceedings, we have proceeded to examine the matter.

10. The fact that when the contempt petition was filed, the order of the Tribunal was not complied with within the time period is established. During the pendency of the Contempt Petition, the order was complied with. The Tribunal was right in observing that merely because the order is complied with, it does not mean the contempt proceedings get automatically dropped. The Tribunal is entitled to examine whether the conduct of a party is contemptuous and of deliberate defiance to undermine the process of law.

11. The Administrative Tribunal is constituted under the Administrative Tribunals Act, 1985, under Article 323(A) of the Constitution of India. It is constituted with a view to providing speedy disposal of the cases and inexpensive justice to the State employees on their grievances relating to service matters. The jurisdiction, power and authority of the State Administrative Tribunal under Section 15 of the Act of 1985 is wide. The Tribunal, under Section 17 of the Administrative Tribunal Act, 1985, has the same jurisdiction, powers and authority in respect of contempt of itself as the High Court has and for that purpose, the provisions of the Contempt of Courts Act, 1971 shall have effect. Sequitur of action taken under this provision can have penal consequences and may have serious negative implications on a Government servant.

12. It is necessary to emphasize the purpose and ambit of the power to punish for contempt. The contempt jurisdiction is a vital component of the legal system serving the purpose of upholding the dignity of the authority of a Court or Tribunal while ensuring fair and effective administration of justice. The contempt jurisdiction ensures that there is obedience to the due process of law. This jurisdiction is to be exercised to maintain fairness in the justice system. However, not every breach of the order *ipso facto* results in contempt proceedings and the action thereunder.

13. In the case at hand, during the proceedings before the Tribunal, the order was complied with before the impugned order was passed. A detailed affidavit, including an unconditional apology with day-to-day explanation, was tendered. The Tribunal could have ended the matter at that. Unfortunately, the Tribunal went further and issued a bailable warrant and directions of surety. The observations of the Tribunal in the impugned order and the preceding orders seem to lay emphasis on the conduct of the Petitioner in unconnected matters and in general. However, the question before the Tribunal was whether the power to punish the contempt was to be exercised for the breach that was alleged before the Tribunal. The issue before the Tribunal was regarding a specific case, and the Tribunal was expected to look at it objectively. Unfortunately this was not done.

14. Simultaneously, we do not take note of the Tribunal's anguish about the general conduct of the government officers. One of the primary reasons a senior officer must respect the order of the Administrative Tribunal is to maintain the Rule of law. The Administrative Tribunal is set up to provide for speedy and efficient adjudicatory forum for the Government servants in respect of their service matters. Leaving the grievance of the Government servant unaddressed may demotivate the Government servant, eroding the administrative efficiency. The Tribunal not only ensures governance as per law but also ensures that the State is fair in dealing with its own servants. When the senior government officers refuse to obey the orders of the Administrative Tribunal, they undermine the foundation of the Rule of law, eroding the trust in the Administrative Tribunal and the Government itself. When the senior officers disregards the Tribunal's decision or belittles its proceedings, it sends a wrong signal on behalf of the State that it is not respecting the rights of the Government servants. Therefore, it is more than necessary for them to respect the Tribunal's orders and to set a positive example for the rest of the government servants to encourage a culture of legal compliance and respect for the law.

15. In this case, the situation where aailable warrant under the contempt jurisdiction of the Administrative Tribunal had to be issued to a senior Secretary in the State with a direction to furnish a

personal bond was not desirable and could have been avoided by all concerned.

16. With that said, we have to decide the further course of action. It is now six years since the impugned order was passed, has remained stayed and also the proceedings. The Petitioner had filed an affidavit in December 2016. The main order was complied long ago. Affidavit of unconditional apology and day to day explanation was also filed six years ago. The Contempt proceedings are still pending before the Tribunal. Instead of relegating the Petitioner back to the Tribunal, we are of the opinion that a quietus needs to be put to the proceedings.

17. Accepting the unconditional apology of the Petitioner, the proceedings in Contempt Petition No.41 of 2016 stand terminated, and the Writ Petition is allowed in terms of prayer clause (b).

MANJUSHA DESHPANDE, J.

NITIN JAMDAR, J.

JYOTI
PRAKASH
PAWAR

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by JYOTI
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PAWAR
Date: 2023.11.09
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