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

+ **CONT.CAS(C) 1257/2022 & CM APPL. 5943/2023**

R.K. MISHRA

..... Petitioner

Through: Mr. Devesh Chauvia, Mr. Mukul
Lather and Mr. Raghavendra Pratap
Singh, Advocates

versus

NIDHI PANDEY

..... Respondent

Through: Mr. S. Rajappa and Mr. R. Gowri
Shankar, Advocates

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Reserved on: 17th March, 2023

Date of Decision: 24th May, 2023

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. The present petition has been filed making a grievance that the Respondent has not complied with the directions issued by the Division Bench of this Court *vide* judgment dated 11.10.2022 passed in W.P.(C) 14394/2022, whereby this Court directed the Respondent to consider and decide the Petitioner's representation for a 'Request Transfer' within a period of four (4) weeks. The operative directions therein read as under:-

"7. Accordingly, petition is disposed of with liberty to the Petitioner to make an application under the Request Transfer Policy, particularly Rule, 16(h) of the KVS Transfer Guidelines.

8. On an application being made. Respondents are directed to consider the same in accordance with law within a maximum period of four weeks from the receipt of the application.

9. It is clarified that at the time of consideration of the application. Respondents shall not be influenced by anything stated in any of the

earlier orders or the orders of the Tribunal on merit and the application shall be considered on its merits keeping in view of the Request Transfer Policy.

10. Petition and the application filed herewith are accordingly disposed of in above terms.”

2. The Petitioner is a Trained Graduate Teacher (English) working under the Kendriya Vidyalaya Sanghathan ('KVS') at Kendriya Vidyalaya (KV) Pali and he has been seeking a transfer to one of the KVs at Jaipur.

3. It is stated in this petition that the Petitioner had applied for a 'Request Transfer' under Rule 16 (b) (iii) of the Kendriya Vidyalaya Sanghathan Transfer Guidelines, 2021 ('Transfer Guidelines, 2021') *vide* application dated 14.10.2022 on 'spouse ground'; however, since he did not receive any decision on the said representation within four (4) weeks, which expired on 08.11.2022, he filed the present contempt petition on 16.11.2022 aggrieved by the non-communication of the decision.

4. This petition was first listed before this Court on 21.11.2022. The Respondent who appeared on advance service apprised the Court that a decision has already been taken *vide* Memorandum dated 17.11.2022 and the Petitioner's application dated 14.10.2022 has been disposed of. The Respondent was directed to file its compliance affidavit and the matter was listed for hearing on 02.12.2022.

5. The Respondent in its Memorandum dated 17.11.2022 while disposing of the Petitioner's application dated 14.10.2022; recorded that paragraph 16 (b) (iii) of the Transfer Guidelines, 2021 had been kept in abeyance *vide* notice dated 12.09.2022. It was stated that the Annual Transfer Process of KVS has been suspended for the current academic year 2022-23 and only administrative transfers are being affected for the purpose

of re-distribution and rationalisation of the teaching staff. It was stated that currently it is not feasible to transfer the Petitioner to any of the KV at Jaipur on 'spouse ground'.

6. This Court *vide* order dated 02.12.2022, after perusing the Memorandum dated 17.11.2022 opined that it was a non-speaking order and directed the Respondent to pass a reasoned order on the Petitioner's representation dated 14.10.2022.

7. The Respondent in deference to this Court's order dated 02.12.2022 issued a Memorandum dated 09.12.2022, wherein reference was made to a subsequent judgment dated 04.11.2022 passed by a Division Bench of this Court in W.P.(C) 15241/2022, wherein the Division Bench has taken note of the Notice dated 12.09.2022, issued by KVS suspending the Annual Transfer Process for the academic session of 2022-23. The Respondent relied upon the said judgment to state that the Division Bench had duly taken note of the suspension of the Transfer Guidelines 2021 and therefore, reiterated that the Petitioner's request for transfer on the 'spouse ground' is presently suspended and cannot be considered.

8. Pertinently, in the judgment dated 04.11.2022, the Division Bench had granted liberty to the Petitioner therein that he can apply for a transfer as per paragraph 9 of the Transfer Guidelines, 2021.

9. This matter was listed before the Court on 20.12.2022, where after perusing the Memorandum dated 09.12.2022 and the judgment dated 04.11.2022 passed in W.P(C) 15241/2022, the Petitioner herein as well was granted liberty to apply for transfer as per paragraph 9 of the Transfer Guidelines, 2021.

10. The Petitioner, however, elected not to file any application as per

paragraph 9 of the Transfer Guidelines, 2021.

11. The Petitioner herein filed a CM APPL No. 5943/2023 contending that there are vacancies in KV No. 1, Jaipur and KV No. 2, Jaipur, wherein the Petitioner can be accommodated and it was averred that the rejection of the Petitioner's application dated 14.10.2022 is in contravention of the direction issued by the Division Bench *vide* order dated 11.10.2022.

12. The Respondent filed its reply to CM APPL No. 5943/2023 explaining the circumstances in which the Annual Transfer Process has been suspended and the rationale behind it. The Respondent has taken a stand that the Petitioner is not eligible for transfer to KVs, at Jaipur at this stage. The Respondent has also placed on record written instructions dated 07.03.2023 to contend that two other applicants namely Sh. Ranveer Singh and Sh. Chander Kant Bakokia, who had applied for transfer to KVs in Jaipur and even though the said applicants had more transfer counts than the Petitioner herein, their applications were not accepted.

13. This Court perused the paper book and heard the counsel for the parties.

14. This Court is of the opinion that in the facts and circumstances of this case, the direction issued by the Division Bench of this Court *vide* judgment dated 11.10.2022 has been complied. The Respondent has issued the Memorandum dated 17.11.2022 and 09.12.2022 explaining the circumstances in which the request for transfer on 'spouse ground' cannot be considered by them. The Respondent has also placed reliance on the Notice dated 12.09.2022 suspending the Annual Transfer Process for the academic year 2022-23 and its consideration by the Division Bench in the subsequent judgment dated 04.11.2022 in W.P.(C) No. 15241/2022.

15. In the facts of this case, the Petitioner is now aggrieved by the Memorandum dated 17.11.2022 and 09.12.2022 issued by Respondent declining the transfer; and he is seeking to impugn the said order on merits in these proceedings.

16. In this regard, it would be relevant to refer to the judgement of the Supreme Court in *J.S. Parihar v. Ganpat Duggar and Others*, (1996) 6 SCC 291, and has held as under: -

*“6. The question then is whether the Division Bench was right in setting aside the direction issued by the learned Single Judge to redraw the seniority list. It is contended by Mr S.K. Jain, the learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three Benches, the learned Judge cannot come to a conclusion whether or not the respondent had wilfully or deliberately disobeyed the orders of the Court as defined under Section 2(b) of the Act. Therefore, the learned Single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2-7-1991. Subsequently promotions came to be made. The question is whether seniority list is open to review in the contempt proceedings to find out whether it is in conformity with the directions issued by the earlier Benches. **It is seen that once there is an order passed by the Government on the basis of the directions issued by the court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act.***

Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the Single Judge; the Division Bench corrected the mistake committed by the learned Single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned Single Judge when the matter was already seized of the Division Bench.”

(Emphasis supplied)

17. In the present case, the directions issued by the Division Bench was limited to directing the Respondent to 'consider' the said application and the said direction has been complied with.

18. The contents of the written instructions dated 07.03.2023 filed by the Respondent have not been disputed by the Petitioner and in fact the contents thereof are borne out by the copies of the RTI reply handed over to the Court by the Petitioner at the hearing dated 17.03.2023. In these circumstances, when other applicants who as well are seeking transfer to KVs at Jaipur and having been denied the said transfer despite having higher number of transfer count, this Court fails to appreciate the wrong as alleged by the Petitioner.

19. This Court is therefore of the opinion that the directions issued by the Division Bench of this Court *vide* judgment dated 11.10.2022 have been complied with by the Respondent. In this regard it would be relevant to refer to the decision of the Supreme Court in ***Ram Kishan v. Tarun Bajaj & Ors., (2014) 16 SCC 204***, wherein the Supreme Court observed that the Court has to be satisfied beyond reasonable doubt that a contempt has been committed by the Respondent. The relevant portion of the said judgment reads as under:

“11. The contempt jurisdiction conferred on to the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi-criminal in nature and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. It

would rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities.”

(Emphasis Supplied)

20. In the facts of this case, as noted above, in the opinion of this Court there has been no violation or disobedience of the judgment dated 11.10.2022. Accordingly, the present petition alleging contempt cannot be maintained. The present petition and CM APPL. No. 5943/2023 are accordingly dismissed.

21. Pending applications, if any, stand disposed of.

MANMEET PRITAM SINGH ARORA, J

MAY 24, 2023/hp/asb

