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2024
Ct. No. 08

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MAT 398 of 2024
IA No. CAN 1 of 2024
IA No. CAN 2 of 2024

Biswarup Das
Vs.
Shri Saumitra Mohan and another.

Mr. Ujjal Roy,
Mr. Sk. Abdur Rahim.

... for the appellant.

Mr. Sk. Md. Galib,
Ms. Sujata Mukherjee.

... for the State.

Mr. Sourav Mitra.

... for the CSSC.

Re: CAN 1 of 2024

This is an application for condonation of delay in preferring the instant appeal. The appellant has elaborately narrated the incident occasioning the delay in preferring the instant appeal in paragraph 4 of the instant application.

Though the delay is enormous yet the law is somewhat settled that the length of delay is immaterial; what should weigh to the Court is the sufficiency of the cause shown by the appellant. The delay of shorter period may not be condoned by the Court in absence of any plausible explanation narrated in the application; whereas the delay of longer period deserves to be condoned if the explanation is coming within the ambit of the expression "sufficient cause".

As indicated above, the explanation is found sufficient and no negligence or carelessness can be attributed to the conduct of the appellant in taking steps for preferring the appeal against the impugned order.

Accordingly, the application for condonation of delay is allowed. The delay in filing the appeal is hereby

condoned.

The office is directed to formally register the appeal.

By consent of the respective Counsels, the appeal is taken up for consideration.

Indubitably, the writ petition challenging the decision of the authorities in rejecting an application for transfer on the premise of a single teacher was disposed of on 28th July 2022 in the following:

“The petitioner applied for transfer from his present school to another. The application has been returned by the respondent authorities on the ground of single teacher in the subject.

The single teacher bar is no longer a restriction after the amendment to the 2015 Rules. Hence the decision of the respondent authorities to return the said application to the petitioner is set aside and quashed.

The respondent authorities shall continue to process the petitioner’s application in terms of the amended Rules of 2015. The petitioner shall apply afresh if necessary only to modify the original choice of schools, if vacancies opted for earlier have been filled up in the meantime.

Upon the transfer of the petitioner, the SSC in consultation with the concerned D.I. of Schools shall arrange to appoint a teacher in the vacancy created.

The petitioner is directed to serve a copy of this order upon the respondent authorities immediately.

With the aforesaid directions, the instant writ petition shall stand disposed of.”

The meaningful reading of the aforesaid order leaves no ambiguity in our mind that the Single Bench did not find support in favour of the decision taken by the authorities rejecting an application for transfer on the ground of single teacher in view of the amendment having brought into the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015. The order of the authorities was quashed and set aside and the direction was passed upon the aforesaid authorities to process the

application in terms of the said amended Rules and liberty was also granted to the appellant to modify the original choice of schools, if the vacancies opted earlier have been filled up in the meantime.

The contempt application was filed alleging willful and deliberate violation of the order/direction passed in the said order dated 28th July 2022, which was disposed of by the Single Bench in the following:

Mr. Ujjal Ray, learned advocate for the petitioner submits that in the instant case the direction on the DI of Schools containing in the order dated 28th July, 2022 is that the petitioner ought to be transferred first and the Commission ought to have recommended somebody in place and stead of the petitioner. It is, therefore, submitted that the question of being any further local arrangement does not and cannot arise.

However, this Court has taken a view, which is expressed in CPAN 1259 of 2022 dated 17th February, 2023. In that view of the matter, the District Inspector of Schools (SE), Malda shall continue aggressively and sincerely to make arrangement first and upon receipt of a suitable candidate to replace the petitioner and only then take steps to effect the petitioner's transfer as requested.

With the aforesaid observations, the contempt application shall stand disposed of.

Rule, if any, shall stand discharged.

There will be no order as to costs.

Interim orders, if any, shall stand vacated.

The first and foremost point involved in the instant appeal is whether the Court exercising the contempt jurisdiction can modify or pass a further direction to somewhat decided in an original proceeding.

It is no longer *res integra* that the Court enjoins power to punish for contempt of its order/decision not only emanating from the Contempt of Courts Act, 1973, but by virtue of Article 215 of the Constitution of India. Such power is inherent and ingrained into the High Court being a Court of Record to be exercised within the four corners of the statutory provisions applicable in this

regard.

The contempt jurisdiction is not only restricted to find out whether there has been a willful and deliberate violation of the order for the purpose of inflicting punishment upon a person having adjudged to violate the solemn order thereby impinging upon the majesty and sanctity of the Courts, but can further be activated for due implementation of the order in its form without venturing to transgress powers in passing a further direction.

The contempt jurisdiction can never be presumed in pursuit of finding fault in the original judgment, which attained finality, nor such order is susceptible to be modified and/or reversed under the contempt jurisdiction. The only consideration before the Contempt Court is whether its order has been duly respected and/or implemented with full rigor and force and its violation, if there be any, is deliberate and/or intentional tarnishing the image and majesty of the Court, which it possessed under the Constitution of India.

We do not find that the contempt jurisdiction can be stretched too far and blended with the powers conferred upon the Appellate Court nor the Contempt Court can usurp the power of review, but its jurisdiction is restricted within the contour of the order for which the alleged violation is brought to the notice of the Court. Any transgression of the power shall offend legislative intent underlying the incorporation of the Contempt of Courts Act and the constitutional right bestowed upon the High Court under Article 215 of the Constitution of India.

The order as quoted herein above, leaves no ambiguity in our mind that in exercise of the contempt jurisdiction the Single Bench has transgressed the peripheral of the statutory powers and, therefore, the order warrants interference.

The order impugned is, thus, set aside.

The matter is relegated to the Single Bench for deciding the contempt application afresh on merit in accordance with law.

With these observations, the appeal and the connected application being CAN 2 of 2024 are disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)