

01
30.07.2024
Ct. No. 11
Jayanta

WP.CT 356 of 2012

Sikander Rajak
vs
Union of India & Ors.

Mr. Achin Kumar Majumder

Ms. Ananya Adhikary

..... For the petitioner.

Mr. Partha Ghosh

Mr. Amitava Nayak

..... For the UoI.

The present writ petition has been preferred challenging an order dated 22nd May, 2012 passed by the learned Tribunal in the contempt application being CPC 10 of 2012 preferred by the petitioner alleging violation of an order dated 13th September, 2010 passed by the learned Tribunal in the original application (in short, OA), being OA 23 of 2005.

The operative part of the order dated 13th September, 2010 runs as follows:-

‘In the facts and circumstances of the case the ends of justice shall be made if the applicant is allowed to resume his duty as a substitute Bunglow Peon to respondent no. 4 under E.C. Railway. He can resume his duty within a week of the receipt of this order. As far as the salary for the intervening period is concerned we direct the Railway Board to look into the matter and decide the issue as the CLW a production unit and Zonal Railway both headed by an officer of GM rank are having contradictory stand and the stand of the Railway Board on the letter sent by the E.C. Railway is not on

record. This exercise shall be completed within two months of the receipt of the copy of this order.'

Records reveal that after disposal of the OA, the petitioner submitted repeated representations dated 22nd November, 2010 and 20th January, 2011, enclosing the copy of the order passed in the OA to the respondents. As no steps were taken, the petitioner was constrained to issue notices through his learned advocate on 26th November, 2010 and 16th August, 2011 calling upon the respondents to implement the order dated 13th September, 2010 but in vain and as such the petitioner was constrained to file the contempt application being CPC 10 of 2010 on 1st February, 2012.

In course of hearing, the learned advocate appearing for the respondents has also brought to our notice an order dated 23rd May, 2023 passed by the learned Tribunal in a review application filed by the respondents in the year 2011 being RA/14/2011. The learned Tribunal disposed of the said application by an order dated 23rd May, 2023 observing, *inter alia*, that '*at this belated stage, we do not deem it proper to pass any further order in the said R.A.*'

Mr. Majumder, learned advocate appearing for the petitioner submits that the contempt application has been dismissed by a cryptic order. The learned Tribunal erred in law in not considering the sequence of facts and dismissed the contempt application failing to appreciate that the non-compliance of the directions contained in the order dated 13th September, 2010 was a continuing wrong.

He argues that as the learned Tribunal did not interfere with the order dated 13th September, 2010 in the review application, the said order attained finality but still the same with has not been complied with by the respondents.

Mr. Nayak, learned advocate appearing for the respondents denies and disputes the contention of the petitioner and submits that as no proceeding for contempt was initiated within the period of one year from the date on which the contempt was alleged to have been committed, the contempt application was rightly dismissed on the ground of limitation and in view thereof, there is no infirmity in the order impugned warranting interference of this Court.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

The learned Tribunal passed an order on 13th September, 2010 directing the respondents to allow the original applicant/petitioner to resume his duty as a substitute Bunglow Peon to the respondent no. 4 under E.C. Railway within a week of the receipt of the said order. As regards the salary for the intervening period, the learned Tribunal also directed the Railway Board to look into the matter and decide the issue within a period of two months from the communication of the order.

Indisputably, the petitioner was not allowed to resume his duties in spite of the order passed by the learned Tribunal and has not been paid any salary till date in spite of repeated representations served demanding compliance

of the order passed by the learned Tribunal. Such denial to comply with the order is a continuing wrong and therefore, there was no scope for application of Section 20 of the Contempt of Court's Act. The contempt application was dismissed by a cryptic order only observing that as the contempt petition was instituted on 2nd February, 2012, the same was barred by limitation.

In view thereof, the order dated 22nd May, 2012 passed by the learned Tribunal in CPC 10 of 2012 is set aside.

The contempt application shall be restored to its original file and number and the learned Tribunal shall consider the contempt application on merits and dispose of the same as expeditiously as possible, preferably within a period of six months from the date of communication of the order.

With the above observations and directions, the present writ petition is disposed of.

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

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Partha Sarathi Chatterjee,J.) (Tapabrata Chakraborty,J.)