

sr.no.14
AB

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

BEFORE:

The Hon'ble Justice Harish Tandon

And

The Hon'ble Justice Shampa Dutt (Paul)

M. A. T. 2464 of 2023

With

IA CAN 2 of 2023

Rupak Mandal

VS

Sk. Hossain Ali & Others

**For the Appellant : Mr. Shamim Ul Bari, Advocate,
Ms. Asmita Mitra, Advocate,**

**For the State : Mr. Bhaskar Prasad Vaisya, AGP,
Mr. Ranjan Saha, Advocate**

**For the Central School
Service Commission : Mr. Sourav Mitra, Advocate**

For the Respondent No.1, 2 : Mr. Sobhan Majumdar, Advocate

Heard on : July 29, 2024

Judgement on : July 29, 2024

Harish Tandon, J. :

1. The only point involved in the instant appeal is whether the Court in exercise of the contempt jurisdiction can pass an order, which runs

counter to the spirit of the original order for which the allegation of the violation was pleaded in the contempt application.

2. The dispute originated in 2022 when an application for transfer filed by the appellant was sought to be kept in suspended animation on the ground that there is only a single teacher of the subject in the said school. The writ petition was disposed of on August 25, 2022, wherefrom it is revealed that the application for transfer was returned by the Respondent Authority on the ground that the appellant is the only teacher in the subject.
3. The Single Bench categorically observed that the single teacher bar is no longer a restriction after the amendment having brought into the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 and set aside the decision of the Authority in returning the said application for transfer. Apropos the aforesaid observation, the following directions were passed:

“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.

The respondent authorities shall process the petitioner’s application within the time framed stipulated under the Notification dated 21.12.2021.

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.”

4. Subsequently, a contempt application was filed being CPAN 1105 of 2022 alleging that despite the aforesaid directions having passed, the

Authorities have not adhered to the mandate so give in flagrant violation thereof and, therefore, should be punished under the Contempt of Courts Act.

5. In pursuit of a final decision to be taken in the said contempt application, a direction was passed upon the District Inspector of Schools (SE), Malda to remain personally present in Court and to apprise as to why he should not be suitably dealt with having violated the solemn order of the Court. The said Authority informed the Court that he has taken steps by issuing a communication to all the schools within its territorial jurisdiction to replace the petitioner but no response has since been received. On the basis of the aforesaid stand taken by the said Authority, the Single Bench held that there is no case for contempt and proceeded further to direct the said Authority to make efforts to trace out the replacement and shall send the reminders fortnightly. The matter did not set at rest. The second contempt application being CPAN 331 of 2023 was taken out alleging that the application, which was directed to be processed within the time stipulated in the Notification dated 21.12.2021, has been flouted and, therefore, the alleged contemnor should be held guilty of the contempt. By the impugned order, the said 2nd contempt application is dismissed in the following manner:

“1. CPAN 331 of 2023 is the second contempt application. The earlier contempt application being CPAN 1105 of 2022 was disposed of on February 3, 2023. The District Inspector of Schools (SE), Malda was directed to continue make efforts to trace out the replacement of the petitioner.

2. The second contempt application being CPAN 331 of 2023 is filed according to Mr. Shamim ul Bari, learned counsel for the petitioner on the direction contained in the first paragraph of the second page of the order dated August 25, 2022 passed in WPA 9176 of 2022.

3. This Court is of the consistent view that the school cannot be left without a teacher. The question of transferring the petitioner first and seeking replacement later, cannot and does not arise.

4. In view of the above, CPAN 331 of 2023 shall, therefore, stand dismissed. The order dated February 3, 2023 (supra) shall continue to be complied with.

5. There shall be no order as to costs.

6. All parties shall act on the server copy of this order duly downloaded from the official website of this Court”.

6. Interestingly, the School Authority took a stand before us that in view of the provisions contained in the relevant Rules, the application for transfer filed by a teacher being a single teacher in the subject does not mandate the School Authority to forward the said application but after being apprised of the Rules, the Counsel took rebound in submitting that the School Authority have forwarded the application for transfer to the D. I. Of Schools (SE), Malda.

7. The aforesaid submission percolates a sense of prevarication of stand in different proceedings with an object to frustrate the plea of transfer on one pretext or another. In the original order, it has been categorically held that the single teacher cannot be a bar or an obstacle in considering an application for transfer and, therefore, the School Authority could not or cannot keep the application in suspended animation or return the same on the ground of single teacher. The subsequent amendments, having brought into the aforesaid Rules, are

explicit and exposit the intention of the Legislature that the transfer application cannot be rejected nor can be returned or kept in abeyance if filed by a teacher being a single teacher in the said subject. A corresponding obligation is also entrusted upon the Authorities to make a temporary arrangement or as a stop gap measure be taken so that the students of the school shall not be deprived of learning the said subject.

8. The aforesaid observations are made taking into account the following amendment having brought by way of a Notification No.09-SE/SE/S/IS-04/95 (Pt III), which is as follows:

“In the event a single subject teacher makes application for transfer, the SMC will not reject the application and will inform the DI (SE) about such application. The DI (SE) will immediately discuss the matter with the CSE. In fit cases the DI(SE) will take urgent step in time bound manner to search for a teacher on the same subject from nearby schools and make local arrangement so that the teacher of the other school attends the school wherefrom the teacher concerned has applied for transfer on limited days of the week on a temporary basis till such time a permanent teacher on that subject joins. The DI (SE) will inform such arrangement to the CSE who shall inform the matter to the Chairman of WBCSSC, President of WBBSE and School Education Department CSE will ensure such arrangements in 7 days time immediately. The DI (SE) will communicate such arrangement to the school concerned and the BOI in question will forward the application of the teacher to the DI (SE). The DI (SE) will then forward the case to the WBCSSC for consideration. WBCSSC will suitably recommend the case for transfer to the WBBSE and the Board will issue transfer order accordingly.

This remains in force until further order.”

9. We are unable to appreciate the manner in which the School Authorities have understood the meaning of the provisions contained in the aforesaid Rules, but the point now becomes academic in view of the fact that the School Authorities have already forwarded the said application to the Competent Authority.
10. The identical stand is taken before us that unless the replacement is made, application for transfer filed by the appellant cannot be processed. At the first blush, it appeals to us as the student being the beneficiary of the education system should not be deprived of learning a subject in absence of a teacher, but we find that the Education Department being the conglomerate of the academicians, the experts, the educationists have taken a conscious decision and such right gets blended into a statutory right. The equilibrium between the rights is to be established which appears from the last Notification as quoted above to have been taken note of.
11. It is of primary duty of the D. I. of Schools or the Authority to make a temporary arrangement in order to ensure a seamless imparting of the education in the said subject. A plea is sought to be taken that the said Notification provides the steps to be taken in a time bound manner which we also concur. The question is still hovering around what is the meaning of time bound steps and application for transfer which sees the birth in the year 2022 is still travelling and/or floating into the domain of the Authorities even after completion of half period of the year 2024.

12. A person seeking a transfer is still knocking the doors of the Court since last two years yet, the magnanimity of the time bound steps is a far cry. The Authorities are not supposed to keep the fate in lurch and the aspiration of the recipient of the provisions of the law is still in doldrums. When the Authorities have introduced the expression “time bound”, it has to be decided on the anvil of doctrine of reasonability and not to be construed to make it redundant or otiose for all such purposes. Time has come that the Authorities have to adopt the technologies and with a pace of the technological world so as to wriggle out the clutches of the archaic conventional way of functioning. The fundamental point whether the Court exercising the contempt jurisdiction can subvert the original direction or modify the same or to pass a fresh direction, is no longer *res integra* that the Court exercising contempt jurisdiction shall only see that the order is duly implemented but in the event it is found that the person has committed a contempt wilfully and deliberately and having no sense of a remorse, the Court may pass a suitable order of punishment both in criminal or civil contempt.

13. In ***Midnapore Peoples’ Cooperative Bank Limited & Others Vs Chunilal Nanda & Ors.*** reported in ***(2006) 5 SCC 399***, the Apex Court in unequivocal words held that the Court cannot pass a fresh direction or further direction which runs counter to the spirit and purpose of the original order in the following. Paragraph 21 of the said judgment reads as follows:

“21. There was also no justification for the further direction by the learned Single Judge in the contempt proceedings, that too by an interlocutory order, that the complainant should immediately and forthwith be reinstated into the service of the Bank, and shall be deemed to be in the service of the Bank all through, that the employee shall not be prevented in any manner from discharging his duties and that he shall be paid all arrears of salary within four weeks, and that the suspension order shall be deemed to have been revoked. These were totally outside the scope of the proceedings for contempt and amounted to adjudication of rights and liabilities not in issue in the contempt proceedings. At all events, on the facts and circumstances, there was no disobedience, breach or neglect on the part of the Bank and its President and Secretary, to provoke the court to issue such directions, even assuming that such directions could be issued in the course of the contempt proceedings. Hence, Directions (2) and (3) and the direction relating to revocation of suspension are liable to be set aside.”

14. The same view is reiterated by a Coordinate Bench in an unreported decision rendered in ***Shipra Barikdar Vs Siddhartha Mazumder & Ors. in MAT 1502 of 2023*** decided on 11.12.2023 in the following :

“11. Undoubtedly, in any case, the learned Single Judge has decided the issue and passed direction relating to the merits of the dispute already adjudicated upon by the learned Single Judge and no appeal was preferred by the State against the said judgment. In a contempt jurisdiction, the Court is required to find out whether there is any wilful or deliberate violation of the order and contemptuous conduct of the parties, if any. The Court may accept the explanation offered by the State in discharging the rule. The Court, however, cannot decide the matter afresh in the contempt jurisdiction on an issue already decided in the writ petition.”

“12. On that score, we are in agreement with the submissions made by Mr. Dhar that the order impugned is beyond the jurisdiction of the

*learned Single Judge while deciding a contempt application. Moreover, the issue involved in the writ petition has been decided by a coordinate Bench in **Prapti Chakraborty vs State of West Bengal & Ors. in MAT 205 of 2023 with IA No.CAN 1 of 2023** on 10th August 2023. In any event, it was not open for the State to take a stand in the contempt petition after having accepted the order and without seeking a review or recalling of the order.”*

15. The law as enunciated hereinabove leaves no ambiguity in our mind that the contempt jurisdiction cannot be exercised to modify or make a fresh investigation into a cause, which had already been decided nor can pass an order which would otherwise tantamount to review of an original order or supplanting the original order. Reverting to the case in hand, original writ petition was disposed of on the ground that there is no bar or restriction in returning or rejecting an application for transfer on the ground of single teacher in the subject. However, the contempt application came to be disposed of as the DI of Schools communicated that he is in a process of finding out the replacement and the order was to the effect that till the replacement is found out, the application for transfer should not be processed. Such direction does not appear to us in consonance with the law enunciated in the above decision rendered by the Apex Court as well as the Co-ordinate Bench and, therefore, is hereby set aside.

16. Taking into account that the Authorities were taking shelter under the first contempt application which is not assailed by the appellant, we, therefore, do not think that it is a fit case where the contempt Rule is

required to be issued against the respondents. However, we direct the respondents to complete the entire exercise in terms of the order dated 25.8.2022 within four week from the date of communication of this order.

17. With the aforesaid directions, the appeal stands disposed of along with the connected application.

18. Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Harish Tandon, J.)

I agree,

(Shampa Dutt (Paul), J.)