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

+ **CONT.CAS(C) 234/2019**

BHARTI SHARMA

..... Petitioner

Through: Mr. Parvinder Chauhan and Ms.
Aakriti Garg, Advs.
Mob: 8077154576
Email:
parvinderchauhan.adv@gmail.com

versus

M.P JAIPURIA & ORS.

..... Respondents

Through: Dr. M.Y. Khan, Advocate alongwith
Mr. Rohit Chopra, Manager of
School.
Mob: 9810761110

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Date of Decision: 03rd April, 2024

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

1. The present petition has been filed against the respondents for willful disobedience of the judgment dated 18th February, 2019 passed by Division Bench of this Court in *LPA No. 199/2018*, whereby the Division Bench upheld the order of the Delhi School Tribunal (“DST”), thereby reinstating the petitioner with back wages. Further, the respondents were directed to comply with the orders of reinstating the petitioner.

2. Since it was alleged that the judgment dated 18th February, 2019



passed by this Court had not been implemented in its true letter and spirit, the present petition had been filed.

3. The facts on record show that the petitioner was appointed as Assistant Teacher in the year 1994. On introduction of the 5th Pay Commission, the schools of Government of NCT of Delhi implemented the pay revision w.e.f. 1st January, 1996. Since the management of the respondent-school implemented the pay revision in terms of the 5th Pay Commission belatedly w.e.f. 1st April, 1997 as against 1st January, 1996, the petitioner along with other similarly situated persons approached this Court by way of *W.P.(C) No. 5046/1999*. The said petition was decided in favour of the petitioner and other employees vide judgment dated 11th January, 2010. Since the respondent-school failed to comply with the aforesaid judgment dated 11th January, 2010, a contempt petition being *CONT.CAS(C) 630/2010* was filed.

4. Subsequently, the petitioner was removed from service on 8th April, 2013. An appeal was filed by the petitioner before the DST, wherein by judgment dated 19th April, 2016, the learned DST directed reinstatement of the petitioner herein, with full back wages and all consequential benefits. The school management assailed the said Judgment dated 19th April, 2016 passed by the learned DST in *W.P.(C) No. 6155/2016*. The said petition was disposed of vide judgment dated 5th March, 2018, wherein learned Single Judge of this Court allowed the school management to conduct de-novo inquiry.

5. Aggrieved by the aforesaid judgment, the petitioner herein filed *LPA No. 199/2018*, which was allowed by the learned Division Bench, thereby upholding the order passed by the learned DST for reinstatement of the



petitioner. Thereafter, the petitioner approached the respondent-school on 19th February, 2019 for joining her duties. However, the respondent-school refused to accept the joining report of the petitioner. Thus, the present petition was filed.

6. Learned counsel appearing for the petitioner submits that though the petitioner has now been reinstated on 9th May, 2019, however, the arrears of the petitioner from 19th April, 2016, i.e., the date of judgment passed by the learned DST till her reinstatement, i.e., 9th May, 2019, have not been paid to her.

7. He further submits that the representation of the petitioner for payment of arrears from 8th April, 2013, i.e., the date of her termination till 19th April, 2016, i.e., the judgment of the DST, has also not been decided by the respondent. He draws the attention of this Court to the judgment dated 9th April, 2016 passed by the learned DST, and submits that there were categorical directions by the learned DST that the petitioner herein was entitled to full wages alongwith all the consequential benefits from the date of the order.

8. He further submits that the directions passed in Para 30 of the judgment dated 19th April, 2016 passed by the learned DST, has also not been complied with.

9. Per contra, learned counsel appearing for the respondents has drawn the attention of this Court to the counter affidavit filed on behalf of the respondents, wherein it is clearly stated that the petitioner has been paid all the monetary consequential benefits which have been calculated from the date of the judgment passed by the learned DST, i.e., 19th April, 2016.

10. Learned counsel for the respondent further submits that the petitioner



has not made any comprehensive representation in terms of the directions passed by the learned DST. Therefore, he submits that the respondents are not guilty of any non-compliance and that the present petition has become infructuous.

11. I have heard learned counsel for the parties and have perused the record.

12. At the outset, it would be relevant to note the operational part of the judgment dated 19th April, 2016 passed by the learned DST, which is extracted hereunder:

“xxx xxx xxx

29. *Considering the cumulative effect of the facts that Sh. S. K. Saxena, Principal of the Respondent School had appeared as a witness in the inquiry proceedings against the Appellant and had also participated in the meeting of Disciplinary Committee; no nominee of the Directorate of Education was present in the Disciplinary Committee; no Teachers' Representative was included in the Disciplinary Committee; relevant documents were not provided to the Appellant in spite of her demand, the findings of the Inquiry Officer is perverted. This Tribunal is of the Opinion that the impugned order dated 08.04.2013 is illegal and arbitrary hence the same is set aside. R1 and R3 are directed to re-instate the Appellant with immediate effect. Appellant will be entitled for full wages alongwith all the consequential benefits from the date of this order onwards.*

30. *With respect to the back wages, in view of Rule 121 of Delhi School Education Act and Rules 1973, the Appellant is directed to make exhaustive representation to the R1 and R3 within a period of 4 weeks from the date of this order, as to how and in what manner the Appellant will be entitled to complete wages. The R1 and R3 are directed to decide the representation given by the Appellant within 4 weeks of receiving the same by a speaking order and to communicate the order alongwith the copy of the same to the Appellant. Order accordingly. File be consigned to record room.”*

13. Reading of the aforesaid judgment passed by learned DST clearly shows that the petitioner herein was held entitled for reinstatement



alongwith full wages and consequential benefits from the date of passing of the said judgment.

14. This Court notes that in the counter affidavit filed on behalf of the respondents, it has categorically been stated that the respondents are paying all the monetary consequential benefits to the petitioner, which has been calculated from the date of the judgment dated 19th April, 2016 passed by the learned DST. The relevant portion from the counter affidavit of the respondent, reads as under:

“xxx xxx xxx

2. That the contempt petition of the petitioner has become infructuous because the respondents have implemented the orders/judgments dated 18.02.2019, passed by Hon'ble D.B. of this Hon'ble Court in LPA No. 199/2018, as the respondents have:-

(a) Reinstated the petitioner,

(b) Paying the salary to the petitioner from the day of her Rejoining.

(c) The respondents are also paying monetary Consequential benefits which have been calculated from the date of the order dated 19.04.2016, passed by Ld. Delhi School Tribunal in appeal No. 37/2013.

(d) The respondents have also paid the cost of Rs. 10,000/- to the petitioner as per the order dated 18.02.2019 of the Hon'ble High Court of Delhi.

Therefore, the present contempt petition of the petitioner is not sustainable and liable for rejection. Now, the petitioner is knowingly and intentionally disobeying the order dated 19.04.2016, passed by Ld. DST which has been confirmed in LPA No. 199/2018.

xxx xxx xxx

(b) The reinstatement of the petitioner was ordered immediately by the respondents and monetary consequential benefits from the period 19.04.2016, date of the Order of the Hon'ble DST, such as allowances and increments have been calculated by taking into account her length of service. Accordingly, the benefit of the same have been given to her alongwith the salary for the month of May & June, 2019. The issue of her back wages from 08.04.2013, till the date of joining are to be



determined by the Managing committee of the school on the basis of the documents to be furnished by the petitioner, as required by them, for which the letters have been sent to her. The copies of the same have been enclosed herewith.

xxx xxx xxx”

15. In view of the aforesaid, it is clear that the respondents have not only reinstated the petitioner herein, but have also paid the consequential benefits to the petitioner, which have been calculated from the date of passing of the judgment of the learned DST, i.e., 19th April, 2016.

16. Thus, this Court is of the view that the respondents have complied with the judgment dated 19th April, 2016 passed by learned DST with respect to payment of consequential benefits to the petitioner from the date of passing of the aforesaid judgment of the learned DST.

17. As regards the contention of the petitioner with respect to the directions passed in Para 30 of the judgment passed by the learned DST, wherein there were directions to the respondent to decide the representation of the petitioner, this Court notes the submission made by learned counsel for the respondents that the petitioner has still not made any exhaustive representation in terms of the said judgment. The reply of the respondent in this regard, reads as under:

“xxx xxx xxx

3. As directed by the Ld. Delhi School Tribunal in para 30 of its order dated 19.04.2016, the issue of back wages is to be determined by the Managing Committee therefore, the respondents have written so many letters to the petitioner to give an affidavit of her unemployment for the period 08.04.2013 to 09.05.2019 (from the date of her termination till the date of her rejoining i.e. 09.05.2019) such as letter dated 22.5.2019, dated 15.06.2019, dated 16.07.2019, dated 24.09.2019 and letter dated 22.10.2019 (Copy of letters, is enclosed as ANNEXURE-R-1 (Colly), have been sent to the petitioner but the petitioner has not submitted the same. The management of the school understands that the petitioner was gainfully employed during



intervening period and has paid the Income Tax thereon. Hence, the petitioner cannot allege any kind of violation of any order or judgment passed by Ld. DST or the Hon'ble High Court of Delhi. Moreover, the respondents cannot be held liable for non-determination of her back wages, as the back wages are to be determined by the Managing committee of the school as per the direction of the Ld. Delhi School Tribunal and not by the respondents exclusively.

The Hon'ble supreme Court in Civil Appeal No. 1756 of 2010 Rajasthan State road transport Corporation, Jaipur V/s Shri Phool Chand (Dead) through LRs. Has held in para 11.

“In our considered opinion, the Courts below completely failed to see that the back wages could not be awarded by the Court as of right to the workman consequent upon setting aside of his dismissal/termination order. In other words, a workman has no right to clam back wages from his employer as of right only because the Court has set aside his dismissal order in his favour and directed his reinstatement in service.*

In para 12

“It is necessary for the workman in such cases to plead and prove with the aid of evidence that after his dismissal from the service he was not gainfully employed anywhere and had no earning to maintain himself or/and his family. The employer is also entitled to prove it otherwise against the employee, namely that the employee was gainfully employed during the relevant period and hence not entitled to claim any back wages. Initial burden, is, however, on the employee.

xxx xxx xxx”

18. Thus, this Court notes that when no comprehensive representation has been made by the petitioner, there is no question of any such representation being decided by the respondents. This Court also notes the stand of the respondents, which is stated in aforesaid Para 3 of their counter affidavit filed before this Court that the petitioner has failed to give any affidavit of her unemployment for the period from 8th April, 2019 to 9th May, 2019, i.e., from the date of her termination till the date of her joining, i.e., 9th May, 2019.



19. The Court also records the stand of the respondents that it is the understanding of the management of the respondent-school that the petitioner herein was gainfully employed during the aforesaid intervening period and has also paid income tax thereon.

20. Despite the aforesaid categorical averments made by the respondents in their counter affidavit, which was filed on 12th October, 2022, the aforesaid contentions have not been disputed by the petitioner by way of filing any rejoinder till date.

21. Considering the aforesaid, this Court is of the view that substantial compliance of the judgment dated 19th April, 2016 passed by the learned DST and the judgment dated 18th February, 2019 passed by the Division Bench of this Court, has been done by the respondents.

22. The Supreme Court in the case of *Bihar State Government Secondary School Teachers Association Versus Ashok Kumar Sinha and Others, (2014) 7 SCC 416* has categorically held that the Contempt Court has only to see that a substantial compliance has been made and that no willful disobedience has been made by the concerned party. The relevant paragraphs of the aforesaid judgment read as under:

“xxx xxx xxx

24. At the outset, we may observe that we are conscious of the limits within which we can undertake the scrutiny of the steps taken by the respondents, in these contempt proceedings. The Court is supposed to adopt cautionary approach which would mean that if there is a substantial compliance with the directions given in the judgment, this Court is not supposed to go into the nitty-gritty of the various measures taken by the respondents. It is also correct that only if there is wilful and contumacious disobedience of the orders, that the Court would take cognizance. Even when there are two equally consistent possibilities open to the Court, case of contempt is not made out. At the same time, it is permissible for the Court to examine as to whether the steps taken to purportedly comply with the



directions of the judgment are in furtherance of its compliance or they tend to defeat the very purpose for which the directions were issued. We can certainly go into the issue as to whether the Government took certain steps in order to implement the directions of this Court and thereafter withdrew those measures and whether it amounts to non-implementation. Limited inquiry from the aforesaid perspective, into the provisions of the 2014 Rules can also be undertaken to find out as to whether those provisions amount to nullifying the effect of the very merger of BSES with BES. As all these aspects have a direct correlation with the issue as to whether the directions are implemented or not. We are, thus, of the opinion that this Court can indulge in this limited scrutiny as to whether provisions made in the 2014 Rules frustrate the effect of the judgment and attempt is to achieve those results which were the arguments raised by the respondents at the time of hearing of CAs Nos. 8226-27 of 2012 but rejected by this Court. To put it otherwise, we can certainly examine as to whether the 2014 Rules are made to implement the judgment or these Rules in effect nullify the result of merger of the two cadres.

xxx xxx xxx

37. Lest we may be misunderstood, we make it clear that it is the prerogative of the Government to frame service rules in one or the other manner. In case provisions contained in those Rules offend the rights of any of the employees, they have an independent right to challenge the same which can be judicially scrutinised by the courts, applying the settled principles of judicial review. However, if such an exercise is undertaken on the premise that it is done to comply with the directions contained in the judgment and the court finds that, ex facie, it is not so and on the contrary offends the directions in the judgment, such a move cannot be countenanced.

xxx xxx xxx”

(Emphasis Supplied)

23. Considering the aforesaid detailed discussion, this Court holds that there is no willful disobedience on part of the respondents.
24. This Court is also of the view that as far as the contention of the petitioner that her pay has not been correctly fixed, the said issue cannot be decided in the present proceedings. Liberty is granted to the petitioner to address the said issue in appropriate proceedings.



25. At this stage, learned counsel appearing for the petitioner submits that the representation already submitted by the petitioner, may be treated as a comprehensive representation and order be passed accordingly.
26. Accordingly, it is held that it is for the respondent management to pass appropriate orders on the basis of the documents already submitted by the petitioner.
27. With the aforesaid observations, the present petition is disposed of.

MINI PUSHKARNA, J

APRIL 3, 2024/ak