

Court No. - 2

Case :- SPECIAL APPEAL No. - 406 of 2022

Appellant :- Ram Deo Singh And Others

Respondent :- Sri Rajeev Agarwal Retired General Manager , North Eastern Railway , Gorakhpur And Others

Counsel for Appellant :- Asim Kumar Singh, Chandra Bhushan Pandey

Counsel for Respondent :- A.S.G.I., Deepanshu Dass

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

Heard Mr. C.B. Pandey, learned counsel for the appellants and Mr. S.B. Pandey, learned Senior Advocate and Deputy Solicitor General of India assisted by Mr. Deepanshu Dass, learned counsel for Union of India.

This is special appeal under Chapter IX Rule 10 of the Allahabad High Court Rules, 1952 challenging the order dated 05.09.2022 passed in Contempt Application (Civil) No. 2384 of 2019; Ram Deo Singh vs. Sri Rajeev Agarwal, General Manager, North Eastern Railway, Gorakhpur and another by which the contempt proceedings initiated by the appellant have been dismissed.

In response to our order dated 20.03.2024, learned counsel for the Union of India has instructions to inform the Court that as per their clients the award of the Tribunal and the judgment of the writ court have been complied and no back wages are payable to the appellant.

Counsel for the appellant says that this is a wrong understanding of the award and the judgment of the writ Court.

The contention of appellant's counsel is that while dismissing the contempt application the contempt Court has entered into merits of the issues based on the award of the Central Government Industrial Tribunal dated 20.08.2014 passed in Industrial Dispute No. 05/2002 and the judgment of the writ Court dated 03.07.2019 rendered in Writ Petition No. 1806 (MS) of 2015 (Union of India and Anr. vs. N.E.R. Employees Union (Prks) Gorakhpur and others) arising from the said award.

The contention is that the observations made by the contempt court on the merits of the issues apart from being without jurisdiction also prejudice the appellant in seeking relief on merits whether by way of clarification or by way of initiation of

separate proceedings, whether before the Tribunal or before the writ Court. This is the sole ground of this appeal.

It is not in dispute that a special appeal would lie against an order and judgment of the contempt Court on limited grounds i.e. if it is without jurisdiction or while passing an order the contempt Court has itself decided the merits of the issues which may be pending before any Court or Forum or has prejudged the merits of the issues or has held anything contrary to what has already been held by the writ Court.

The contention of the appellants' counsel is that the Industrial Tribunal had answered the reference before it in favour of the appellant-workman vide its award dated 20.08.2014.

We have perused the said award and we find that the Industrial Tribunal by the said award has concluded that *'the action of the Management of the NER in not regularizing the workmen and terminating them w.e.f. 04.07.1990 was not only illegal but also unjustified. Therefore, the workmen whose cause has been espoused in the present industrial dispute are entitled for reinstatement and regularization w.e.f. 03.07.1990, the date when the canteen was taken over by the NER.'* We have also perused the question which was referred to the Tribunal and the said question reads as under:

"Whether the action of the management of N.E. Railway, Gorakhpur in not regularizing the services of 12 workmen as per list submitted by the Union (enclosed herewith) as railway servant and also terminating them from the services w.e.f. 04.07.1990 are legal and justified? If not, what relief the workmen are entitled?"

The aforesaid reference was answered in terms already mentioned hereinabove. Against the said award, NER and its Officials filed writ petition before this Court as already referred earlier and the said writ petition was dismissed on 03.07.2019. The operative portion of the said judgment reads as under:

"The Award of the CGIT shall be complied with forthwith by the Railways and all consequential benefits arising out of the Award shall be given to all the workmen who were engaged by the Administrator within the sanctioned strength of seventy four, within a period of three months from today. The two junior most employees amongst the list of eighteen employees engaged by the Administrator before 1.4.1990 can be valid left out by the Railways."

We have perused the award as also the judgment of the writ

Court carefully.

Now, we come to the initial order passed in the contempt proceedings on 04.08.2022 on which great emphasis was laid by Mr. C.B. Pandey, learned counsel for the appellant and based on it his contention was that the contempt Court initially was of the view that the award had not been complied with and did not accept the contention of the counsel for the respondents before it that back wages are not to be paid, therefore, a contrary view taken by the contempt Court subsequently by the impugned order dated 05.09.2022 is apparently not sustainable and without jurisdiction.

We have perused the said order dated 04.08.2022. The observations made therein are only *prima facie* observations.

Now, when we come to impugned order before us, we find that its operative portion by which the appellant appears to be aggrieved reads as under:

"Considering the arguments advanced by the learned for the applicant as well as Shri S.B. Pandey, learned Assistant Solicitor General and going through the record, including the award dated 20.08.2014 and the order of the writ Court along with the affidavit of compliance, it is evident that there was no order for the payment of back wages. It is also evident that the canteen in question was being operated by the private operator till 03.07.1990 and thereafter it was taken over by the NER. Thus, the award as well as order of the writ Court is already complied with.

In view of above, no case for contempt is made out.

The application, accordingly, stands dismissed."

In our understanding the aforesaid recital in the impugned order does not decide any issue on merits contrary to what has already been decided by the Tribunal or the writ Court. We do not wish to venture into the merits of the issues involved and if we give reasons further in support of our recital hereinabove, then, it will prejudice the rights of the appellant to get a clarification from the Tribunal or from the writ Court itself. Suffice it to say that in our understanding of things the observations by the contempt Court cannot be said to be without jurisdiction as these observations are only for the purposes of disposal of the contempt proceedings i.e. as to whether any civil contempt is made out or not. The view taken by the contempt Court is a possible view. It cannot be said to be without jurisdiction.

At this stage, Mr. Pandey submitted that it should be left open for the appellant to pursue the matter before the writ Court or before such other Forum as may be permissible in law. That is always open for the appellant to pursue such matter uninfluenced by any perceived observations of the contempt Court as contained in the impugned order as also in the earlier order dated 04.08.2022.

With these observations, we find no reason to interfere with the order of the contempt Court in an intra Court appeal which is not maintainable against such orders.

The special appeal is ***dismissed***.

[Om Prakash Shukla, J.] [Rajan Roy, J.]

Order Date :- 10.4.2024
Santosh/-