

MAT 2215 of 2024
CAN 1 of 2024 (Stay)

Md. Masiujjaman
Vs.
Sri Murari Mohan Mandal & Ors.

Mr. Ujjal Roy
Mr. Abdur Rahim ... for the appellant.

Mr. Biswabrata Basu Mallick, Ld. AGP
Mr. Sayan Ganguly ... for the State

1. This is an appeal against an order passed by the learned Single Judge in a contempt jurisdiction by which the rule was discharged. After perusal of the report of the District Inspector of Schools (S.E.) Uttar Dinajpur reveals that in spite of all efforts being made for replacement teacher for the writ petitioner / appellant from nearby school since 2024, no response has been received.
2. Mr. Roy, learned counsel appearing on behalf the appellant / writ petitioner submitted that in disposing of the contempt application the learned single Judge has directed the District Inspector of Schools (SE) to continue to make effort to seek replacement teacher which direction is not permissible in the contempt jurisdiction having regard to the original order passed by the learned Single Judge by which a specific direction was given to the respondent authorities to transfer the petitioner and make suitable arrangement for appointment of teacher in the resultant vacancies. Mr. Roy has referred to the

decision in *MAT 2464 of 2023 [Rupak Mandal vs. Sk. Hossain Ali & Others]* decided on July 29, 2024.

3. Mr. Basu Mallick, learned A.G.P. while objecting to the maintainability of the appeal has submitted that the learned Single Judge on consideration of the report filed by the District Inspector of Schools (S.E.) dated 29.4.2025 wherefrom it would appear that the teachers – students ratio in the school is about to 1:137 and the appellant is only one assistant teacher in Bengali in normal and Higher Secondary Section and he has to take normal classes in Higher Secondary Section has dropped the contempt proceeding with further direction upon the District Inspector of Schools (S.E.) to continue to make such efforts to seek a replacement teacher.
4. In a contempt jurisdiction the Court is required to find out whether there has been any willful and deliberate disobedience and violation of the original order.
5. In *Rupak Mandal* (supra) the co-ordinate Bench in a similar situation of the original order has clearly held that the court exercising the contempt jurisdiction cannot pass a fresh direction or a further direction and in disposing of the contempt application has provided a time frame within which the original order is required to be implemented. In this regard we may refer to the following observation of the Hon'ble Division Bench in *Rupak Mondal* (supra)

“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 willfully and deliberately and having no sense of remorse, the Court may pass a suitable order of punishment both in criminal or civil contempt.

13. In *Midnapore Peoples’ Cooperative Bank Limited & Others v. 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 judgement 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 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 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 willful or deliberate violation of the order and contemptuous conduct of the parties, if any. They 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 the 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.”

6. In the instant case, on the basis on the report filed by the District Inspector of Schools (SE) it cannot be concluded that there has been a willful or deliberate violation of the order passed by the learned Single Judge. The District Inspector of School (SE) has taken into consideration the welfare of the students and the insurmountable difficulties the students of the schools are likely to face in the event the teacher is transferred without replacement teacher.
7. Mr. Roy, has submitted that in view of the decision of the Co-ordinate Bench in *Piyali Goswami vs. The State of West Bengal & Ors.* in **MAT 64 of 2025** dated 19.5.2025 it is legally not permissible for the respondent authorities to indefinitely postpone the said application for transfer and deny the benefit of transfer. This alleged denial may give rise to a fresh cause of action to the writ petitioner for its failure to transfer the writ petitioner in accordance with the notification dated 3rd July, 2022.
8. In *Rupak Mandal* (supra) the Hon’ble Division Bench on consideration of the decisions relied upon by the parties has held that the Court in a contempt jurisdiction cannot

modify, alter or recall the original direction and pass a fresh direction.

9. It is well settled law that a Court of contempt cannot decide the matter afresh on an issue already decided in the writ petition. The apprehension of the Court to indefinitely postpone the consideration of the matter and not to decide the application for transfer was considered in paragraph 15 of the judgment in which it is stated,

“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 in 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 cause 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 D.I. 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.”

10. The observation that the District Inspector of Schools (S.E.), shall continue to make such effort to seek replacement of the teacher was not the consideration for discharging the rule.

11. In the original order the learned Single Judge passed the following Direction;-

“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."

12. The aforesaid decision is conclusive on the fact that a single teacher would not be ground for not considering the application for transfer and it appears that the application for transfer is pending for almost four years. The learned Single Judge did not give any timeframe within which the entire process would be completed. However the compliance of any order in absence of any specific period should be within a reasonable time and a period of three years has already passed since the order dated 02.8.2022 was passed.

13. On such consideration we dispose of the appeal by directing the authorities to complete the entire exercise and process in terms of the order passed by the learned Single Judge on 02.8.2022 on or before February 2026. This order shall be immediately communicated to the District Inspector of Schools (S.E.), Uttar Dinajpur by the learned advocate on record of the State for compliance.

(Soumen Sen, J.)

(Smita Das De, J)