

Vijay Kumar Vs. K.K. Singh

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Court : Madhya Pradesh

Decided On : Feb-28-2013

Appellant : Vijay Kumar

Respondent : K.K. Singh

Advocate for Def. : Shri. Rohini Prasad Tiwari

Advocate for Pet/Ap. : Shri. Rajendra Pandey

Judgement :

Vijay Kumar versus Shri K.K.Singh & Others Conc.

No.1905

28. 2.2013: Shri Rajendra Pandey, learned counsel for the petitioner.

Shri Rajesh Tiwari, Shri Vivek Agrawal and Shri Rohini Prasad Tiwari, learned counsel for the respondents.

On 28.9.2011 W.P.No.16377/2011 was disposed of by this Court without notice to the respondents and without hearing them and the only direction issued was that claim of petitioner for regularization be considered in accordance to the circular Annexure P-2 that was filed in the original writ petition and decision taken.

Respondents have filed the return and it is brought to the notice of this Court in the return that no such rule as claimed by the petitioner and filed as Annexure P-2 in

the writ petition is available, no such provision has been incorporated by the department and on examination as it was found that no such statutory rule is available.

However, by filing rejoinder petitioner has brought on record orders passed on 29.6.1998 and 5.12.2001 Annexure C-4 and C-5 and contend that on the basis of M.P.Gangman Service Rule, 1996 already 25 persons have been regularized and, therefore, contention that no such rule exists is refuted.

Shri Rajesh Tiwari, learned counsel, points out that if on mistaken fact any action is taken the same cannot be claimed for grant of parity, and an illegality perpetuated.

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

There are no documents or proof available on record to show and as to whether any Rule namely the M.P.Gangmen Service Rules 1996 exists or not.

The rule filed by the petitioner as Annexure P-2 is a photocopy of the cyclostyled order, it does not bear the signature of any person, date of the gazette notification and other relevant information about the rule are not available and even a date on which it has been enforced and notification in the gazette is not available.

That being so, taking note of the specific averments made by the respondents that no such rule exists it is not a fit case where action for contempt can be initiated, as the writ petition is disposed of without considering this aspect of matter and notice to the respondents.

That apart, merely because of misapprehension of certain statutory provisions or rule, if a wrong decision is taken, that does not give a right to the petitioner to seek for initiating action for contempt against respondents.

In case petitioner feels that he has been discriminated and certain other persons similarly situated has been regularized and similar benefit is not granted to him, he may claim the said benefit afresh in accordance to law.

Considering the aforesaid and as issuance and notification of the rule said to have been enacted under Article 309 of the Constitution is disputed, I am not inclined to initiate action for contempt.

The application is, therefore, dismissed and respondents are discharged from the proceedings, with liberty to the petitioner to initiate fresh proceedings in accordance with law, in case he has any grievance still subsisting.

With the aforesaid the petition is disposed of.

(Rajendra Menon) Judge ss/

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