

A.Suseelamma and Others Vs. the District Educational Officer, Nellor

A.Suseelamma and Others Vs. the District Educational Officer, Nellor

SooperKanoon Citation : sooperkanoon.com/1170296

Court : Andhra Pradesh

Decided On : Apr-29-2014

Judge : The Hon'Ble Sri Justice Dama Seshadri Naidu

Appellant : A.Suseelamma and Others

Respondent : The District Educational Officer, Nellor

Judgement :

THE HONBLE Sr.JUSTICE DAMA SESHADRI NAIDU W.P.No.33314 of 2013 29-04-2014 A.Suseelamma and others....PETITIONERS The District Educational Officer, Nellore,SPSR Nellore District and others.....RESPONDENTS Counsel for the petitioneRs.Sr.M.V.Narasimham Counsel for respondents: Government Pleader for Education : ?.

Cases referred: Nil HONBLE Sr.JUSTICE DAMA SESHADRI NAIDU WRIT PETITION No.33314 of 2013

ORDER

: It is yet another instance to illustrate the attitude of the officials who seem to strongly believe that the orders or judgments of this Court under Article 226 of the Constitution of India are non-implementable or non- executable unless there is an execution petition filed in the style of a contempt case by taking recouRs.to Article 215 of the Constitution of India as well as Section 12 of the Contempt of Courts Act, 1971.

Sad state of affairs to witness.

The callous and impervious, if not imperious, attitude of the officials to the solemn judicial directives of unquestionable efficacy does not augur well to a nation that has sworn allegiance to Rule of Law.

In his seminal book *On the Rule of Law, History, Politics and Theory*, the learned author Brian Z Tamanaha observes that the apparent unanimity in support of the rule of law is a feat unparalleled in history and that no other single political ideal has ever achieved global endorsement.

Reminding us of the ideological abuse and general over-use of what has now become a contested concept of rule of law, albeit in some schools of jurisprudence, the learned author has stressed the aspect that the principle of sovereignty of laws has subordinated the principle of popular sovereignty.

Though we claim to have the advantage of accumulated wisdom, millennia ago, when ideologically man was said to be in a state of *tabula rasa*, Aristotle has observed that there is nothing which should be more jealously maintained than the spirit of obedience to laws.

In fact, Cicero in his rhetorical manner has stated: A Magistrate is speaking law; law, a silent Magistrate.

All this wisdom was during ancient times, a period intellectually penumbral.

Even to this day, it appears that we have not imbued, at least in some quarters, with the principle that law shall prevail and that law alone shall prevail, thereby subordinating everything else to the courts of justice.

It has become a rule, rather than an exception, that a litigant, having obtained an order from a Constitutional Court, is not sure of the order bearing the fruit of relief in actual terms. Every litigant is compelled, under varied circumstances, to knock the doors of the Court repeatedly with the same cause.

The insouciant attitude of certain officials has reduced the solemn constitutional power of contempt, as enshrined under Article 215 of the Constitution of India, to

that of an execution proceeding under Order 21 of Code of Civil Procedure.

Thus, in every second instance of remedial orders given by the High Court, to have the order enforced, the petitioner is required to file a contempt case.

The preamble to the Constitution has the rubric of Republic, among other things.

A Republic is essentially a democratic polity of government governed by Rule of Law, lest mere democracy should descend into a simple state of rule by majority.

In other words, in a system of value norms and respect, we may have to remember the caution of George Savile, as cited in Eugene C.

Gerharts Quote It, that no respect is lasting, but that which is produced by our being in some degree useful to those that pay it.

That caution finds reflected in the Universal Declaration of Human Rights of 1948: It is essential if man is not to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the Rule of Law.

On appreciation of the facts of the present case, this Court has failed to come to any other conclusion than to the above.

When a few persons have come together and filed a writ petition, even after getting an order collectively, only those persons who have filed contempt cases alone have been granted the relief, thus denying the benefit to the rest of the people under the same order.

Long ago, the husbands of the petitioners 1 and 2, now in their mid- sixties, and the 3rd petitioner herself, worked as Teachers and retired.

The record reveals that in the summer vacation of 1991, the husbands of the petitioners 1 and 2 and the 3rd petitioner worked in a Literacy Programme sponsored by the Government.

On such participation, the 2nd respondent is said to have sanctioned them 25 days of earned leave.

When all their efforts, even till the time of their superannuation, failed to have those earned leaves encashed, the husbands of the petitioners 1 and 2 along with another retired teacher filed W.P.No.17196 of 2008; whereas the 3rd petitioner on her own filed W.P.No.17211 of 2008 before this Court.

In couRs.of time, all the writ petitions have been allowed by this Court.

Through a common order dated 15.12.2010 in W.P.Nos.17196 of 2007 and 18261 of 2008, a learned Single Judge of this Court directed the respondents to credit 25 days of earned leave to the account of each of the petitioners therein, if not already credited, for their participation in the Summer Vacation Literacy Programme, with a further consequential direction to permit those petitioners to encash it within a period of two months.

It may be observed that it is a judicial mandamus in mandatory terMs.but not a direction to consider.

Similarly in the case of the 3rd petitioner, her writ petition was allowed on 13.06.2011 by another learned Single Judge by placing reliance on the common order in W.P.No.17196 of 2008 and batch.

Indeed, in another instance, certain similarly situated Teachers were said to have approached the learned A.P.Administrative Tribunal with the same grievance by filing O.A.No.6915 of 2009.

When it was dismissed on 30.06.2009 on the ground of delay, those teachers approached this Court by filing W.P.No.16148 of 2009.

Repelling the contention of delay and laches, a learned Division Bench of this Court disposed of the writ petition permitting those teachers to make fresh representations to the authorities, who were in turn directed to consider the petitioners cases without reference to any delay or limitation.

Thus the issue has the judicial imprimatur of a learned Division Bench as well.

Strange as it seeMs.the record reveals that one of the petitioners in W.P.No.17196 of 2008 chose to file Contempt Case No.1181 of 2012 complaining of inaction on

the part of the respondent officials.

Thus, under the pain of contempt, only was that person alone paid the encashed amount of earned leave, leaving aside all other petitioners who have not chosen to file the contempt cases.

It may be remembered that initially the writ petition was filed by five persons.

The husbands of the petitioners 1 and 2 have died in the interregnum.

Owing to lack of knowledge and proper legal advice, the petitioners 1 and 2, being the wives of the retired teachers in whose favour the writ was allowed, could not press for the relief, at least, by laying an execution petition in the name of a contempt case.

Under those circumstances, along with the 3rd petitioner, who is also in her mid-60s, those hapless women approached this Court by filing this writ petition in 2013.

The record reveals that on 21.11.2013, this Court issued a notice and directed the matter to be listed in three weeks thereafter.

As the matter has not been listed subsequently until now, the learned counsel for the petitioner made a mention before this Court the other day stating that it is a covered matter and that it could be disposed of.

This Court cannot help observing that in the face of the inordinate delay, at least as soon as authorities came to know of the writ petition, for they had been served with notice and represented by their learned counsel, they could have acted promptly and paid off those luckless women; thus, the issue could have had poetic justice in the end.

The Court hastens to add that the amount involved may be small; a fortiori, the very smallness exposes the meanness of the officialdom.

When a case is everything for an indigent litigant, it is a mere numeral in the dusty dockets for the respondents, who would happily wait to have the litigation matured

and ripened into final hearing, a decade down the line.

With a fond hope that the times will change and that the authorities would realise that justice is done only when it is done promptly and timely, this Court disposes of the writ petition, hoping that the petitioners would not be compelled to take recourse to contempt proceedings for fruition, with the following direction, almost on the same lines as has been done earlier: There shall accordingly be a direction to the respondents to credit 25 days earned leave, along with simple savings interest to the account of each of the petitioners if not already credited, for the participation of the husbands of the petitioners 1 & 2 and the 3rd petitioner herself in the summer vacation Literacy Programmes and permit encashment thereof within a period of two (2) months from the date of receipt of a copy of this order.

This Court refrains from imposing exemplary costs not to burden the exchequer for the indolence of certain individual officers. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any pending in this writ petition, shall stand closed.

DAMA SESHADRI NAIDU, J Date : 29-04-2014

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com