

Vivek Kumar Vs. State of U.P. and Others

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Court : Allahabad

Decided On : May-19-1999

Reported in : 1999(3)AWC2008; 2000CriLJ547; (1999)2UPLBEC1144

Judge : D.K. Seth, J.

Appeal No. : C.M.W.P. No. 20615 of 1999

Appellant : Vivek Kumar

Respondent : State of U.P. and Others

Advocate for Def. : S.C. and;V.K. Rai, Adv.

Advocate for Pet/Ap. : Arun Kumar Gupta, Adv.

Judgement :

D. K. Seth, J.

1. The petitioner was transferred by an order dated 27.2.1999 which was challenged in Writ Petition No. 9190 of 1999. By an order dated 12.3.1999, the operation of the order dated 27.2.1999 was stayed and the respondents were directed to continue to pay the salary to the petitioner regularly. The petitioner has been suspended by an order dated 17.3.1999 on the ground that the petitioner did not join the transferred post in contemplation of an enquiry. The said order is Annexure-13 to the writ petition.

2. Mr. Arun Kumar Gupta, learned counsel for the petitioner contends that the said order is anti-dated. According to him, the petitioner had been in the office on 20.3.1999 but the respondents did not receive copy of the interim order, on the other hand, impugned order has been passed with an anti date. The petitioner ultimately had produced copy of the interim order before the Managing Director on 10.4.1999. The Managing Director by his order dated 19.4.1999, contained in Annexure-18 to the writ petition, has communicated his decision. In the said decision, it was mentioned that the order of suspension was issued on 17.3.1999 before the interim order, dated 12.3.1999 was communicated. Therefore, the interim order has become inoperative. On the other hand, the charge-sheet would be issued and the petitioner has been directed to submit his reply for consideration of the Managing Director.

3. Shri V, K. Rai, learned counsel for the respondent No. 1 State has justified the situation and the stand taken by the respondents.

4. I have heard learned counsel for the petitioner Shri Arun Kumar Gupta and Shri V. K. Rai, learned brief holder of the State.

5. Admittedly, the impugned order of transfer dated 27.2.1999 was subject-matter in Writ Petition No, 9190 of 1999 in which the order of transfer order dated 27.2.1999 was stayed by an order dated 12.3.1999. Non-communication of the said order might lead the respondents to pass the order of suspension on 17.3.1999. Absence of knowledge in respect of the Interim order may not make the respondents liable to contempt on account of passing of the order dated 17.3.1999 suspending the petitioner and subjecting him to the disciplinary proceedings. But that does not mean that by reason of passing an order of suspension, the interim order dated 12.3.1999 had since been negated or that the interim order passed by this Court could be erased. The interim order is not dependent on the communication. The communication is a matter, which saves a person from incurring the liability of contempt. If without the knowledge of the order, any violation of the order is committed, in that event, it may not make the respondent responsible for contempt but that does not mean that non-communication of order will virtually make it ineffective.

6. Then again even after the order is communicated, it is not open to the respondents to decide as to whether interim order is effective or not. Once the order has been passed by the Court, whether it is effective or not can be decided by the Court only. The effectiveness is not dependent on the decision of the respondents. Such a situation would be completely against the concept of judicial process. In fact the stand taken by the Managing Director Indicates his scant regard to the order of this Court even when it was communicated to him as is apparent from Annexure-18 to the writ petition. As soon the order was communicated, he has to accept the same with grace and respect and act in terms of the interim order. Since the order of suspension was issued after the interim was passed, the same cannot remain effective even if the interim order was communicated after passing of the order of suspension.

7. In that view of the matter, the order of suspension contained in Annexure-13 to the writ petition shall remain stayed subject to the decision in Writ Petition No. 9190 of 1999 or in this writ petition whichever is earlier.

Let this writ petition be connected with Writ Petition No. 9190 of 1999.

8. The petitioner may, however, submit his reply if the charge-sheet is issued to him without prejudice to his right and contention. The enquiry may proceed but no final order shall be passed till disposal of this writ petition. However, the continuance and decision of the enquiry shall be subject to the writ petition as well as that of the Writ Petition No. 9190 of 1999.

9. The petitioner is directed to put in requisites for service upon respondent Nos. 2 and 3 by Registry through registered post with A. D. within a period of one week. Office shall effect service on this respondent within a period of two weeks thereafter. The office shall submit a report for service on the next date of listing. In addition to the normal mode of service, the petitioner shall also serve the said respondents personally as well as through registered post with A. D. within a period of two weeks hereof. Office shall hand over necessary notices in duplicate to the learned counsel for the petitioner within a period of one week. The petitioner shall also file an affidavit of service on the next date of listing. In default of any of the steps to be taken by the petitioner in the manner indicated above, the writ

petition shall stand dismissed.

10. Mr. V. K. Rai, learned brief holder of the State accepts notice on behalf of respondent No. 1. Shri V. K. Rai and respondent Nos. 2 and 3 may file their counter-affidavit within 4.8.1999. Rejoinder, if any, may be filed by 18.8.1999.

List this writ petition along with Writ Petition No. 9190 of 1999 before the appropriate court on 18.8.1999.

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