

Prem Kumar Vs. Mahendra Kumar Singh, D.i.O.S. and ors.

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SooperKanoon Citation : sooperkanoon.com/483222

Court : Allahabad

Decided On : Oct-30-2003

Reported in : 2004(1)AWC262; (2004)1UPLBEC95

Judge : D.P. Singh, J.

Acts : [Contempt of Courts Act, 1971](#) - Sections 2 and 12

Appeal No. : Civil Misc. Contempt Petition No. 1894 of 2001

Appellant : Prem Kumar

Respondent : Mahendra Kumar Singh, D.i.O.S. and ors.

Advocate for Def. : Siddarth Verma, Adv.

Advocate for Pet/Ap. : A.D. Prabhakar, Adv.

Disposition : Petition rejected

Judgement :

D.P. Singh, J.

1. This contempt petition has been filed with the allegation that the opposite parties have deliberately and wilfully violated interim orders dated 15.2.2001 and 7.5.2001 passed by the writ court in Writ Petition No. 5525 of 2001.

2. The contempt court issued notices on 20.7.2001, asking the opposite parties why contempt proceedings be not initiated against them. In response to the notice, affidavits have been exchanged between the parties.

3. Father of applicant late Rajpal Singh while working as Paricharak in the Kisan Inter College, Mohiuddinpur, Meerut, died in-harness on 6.4.1999, The applicant was also given appointment as Paricharak which was affirmed by the District Inspector of Schools, Meerut, vide order dated 16.11.1999. The applicant joined and subsequently he also became a contributory to G.P.F. of the college. However, the District Inspector of Schools vide order dated 2.2.2001, directed the applicant to join as Paricharak against a substantive vacancy at Kisan Mazdoor Inter College, Atrada, Meerut. This order was made subject-matter of the aforesaid writ petition wherein the following interim order was passed on 15.2.2001 :

'Till 22.3.2001, the operation of the impugned order dated 2.2.2001, filed as Annexure-4 to the writ petition shall remain stayed.

Sd. R. K. Agrawal

15.2.2001.'

4. It is alleged that the said order was served on the opposite party No. 1 on 20.2.2001 along with an application. However, no action was taken in spite of several reminders. The applicant was not being allowed to function in either of the two institutions and as such, again he made an application in the writ petition for modification of the stay order. The writ court by a detailed order issued a direction to the opposite parties to permit the applicant to work at Kisan Inter College, Mohiuddinpur, Meerut and salary should be paid to him. Following orders were passed on 7.5.2001 :

'Issue notice.

Vide order dated 15.2.2001, the Court had stayed the operation of the impugned order dated 2.2.2001 filed as Annexure-4 to the writ petition. By the order dated 2.2.2001 the petitioner has been adjusted in Kisan Mazdoor Inter College, Atrada, District Meerut, whereas earlier he had been appointed at Kisan Inter College,

Mohiuddinpur, District Meerut. The petitioner seeks modification of the said order by means of the present application. In Paragraph Nos. 6, 7 and 8 of the affidavit filed in support of the modification application, it has been stated that the respondent No. 2 is neither permitting the petitioner to work at Kisan Inter College, Mohiuddinpur, District Meerut nor he is getting any salary as a result of which the petitioner is on the verge of the starvation. The effect of the saying the operation of the order dated 2.2.2001 was, that his adjustment at Kisan Mazdoor Inter College, Atrada, District Meerut has been stayed consequent upon that he would remain in the earlier institution. There is no justification for the respondent No. 2 in not permitting the petitioner to work at Kisan Inter College, Mohiuddinpur, District Meerut.

The respondents are directed to permit the petitioner to work at Kisan Inter College, Mohiuddinpur, District Meerut, and shall be paid salary.

Sd. R. K. Agrawal

7.5.2001.'

5. The said order was also served on the opposite parties on 18.5.2001, along with an application. In spite of several reminders, forcing the applicant to file the present contempt petition.

6. The opposite party No. 2, Principal of the institution filed his affidavit, inter alia, stating that the applicant had procured the appointment on fraud and manipulation, in fact, he was not the son of late Rajpal Singh. It was further stated that the appointment of the applicant was subject-matter of an enquiry and a stay vacation application along with counter-affidavit has already been filed in the main writ petition. The opposite party No. 1, the District Inspector of Schools, Meerut, also filed his counter-affidavit stating that initially the applicant was given appointment in Kisan Mazdoor Inter College vide letter dated 19.8.1999, but as he was not allowed to join there, appointment in Kisan Inter College was given. However, when dispute with regard to vacancy at Kisan Mazdoor Inter College was resolved, the applicant was asked to join in that post. It was stated that there was no substantive vacancy in Kisan Inter College, Mohiuddinpur and as such, it became

very difficult for him to force the college to appoint the applicant. Rejoinder-affidavit has been filed by the applicant controverting the allegations made in the counter-affidavit and stating that, in fact, there was substantive vacancy in Kisan Inter College as his father had worked there on substantive basis from 1972 till his death.

7. The opposite party No. 2 was represented earlier by an advocate who was later elevated to the Bench and as such he was directed to engage another counsel but in spite of the opportunity given to him no one had filed appearance on his behalf. Considering the entire facts that both the positive orders of the writ court were not being complied with as such this Court passed a detailed order on 25.9.2003 framing charges against both the opposite parties.

8. On framing of charges, both the opposite parties have filed their affidavits showing cause why they should not be punished. The opposite party No. 1, the erstwhile D.I.O.S. took up a stand that he worked at Meerut only between 1.10.2000 and 12.3.2002 and as such, he could not at this stage ensure compliance of the order of the writ court. He further stated that since no bills were being submitted by the Principal of the institution and so also the Authorised Controller, he could not pass any order for release of salary of the applicant. He also stated that on his request, the present D.I.O.S. has passed the salary bill of the applicant and the arrears of salary would be transferred in the account of the applicant within a week. In the end he also submitted unqualified and unconditional apologies that he never intended to deliberately and wilfully violate the order of the writ court. The opposite party No. 2, Principal of the institution in his reply to the charges has filed his own affidavit stating that due to 'sheer misapprehension of the order by this Hon'ble Court passed on 15.2.2001 and 7.5.2001, the arrears of salary could not be given.....' However, it was stated that the applicant is now being provided regular salary since 1.10.2003. He has also stated that he has submitted arrears of salary and bills of the applicant on 18.10.2003 to the D.I.O.S. and the same was passed on the same day itself and cheque for a sum of Rs. 8,80,899 had been prepared in favour of the applicant which would be deposited in his account. In the end, he has tendered his unqualified and unconditional apology.

9. Yesterday, on the request of the learned counsel for the opposite party, the matter was posted for today to enable them to file an affidavit showing that in fact the arrears of salary have been actually paid to the applicant. Today, an affidavit sworn by opposite party No. 1 has been filed wherein it has been stated that the total amount of arrears of salary has been credited to the account of the applicant.

10. Learned counsel for the applicant has vehemently urged that simply because contempt has been purged, the opposite parties cannot be let off lightly. Compliance of the order on the threat of being punished under the Contempt of Courts Act, would be irrelevant in case the act constitute contempt otherwise. He has urged that the counter-affidavit in the writ petition was filed after receipt of notices in the contempt petition. It has also been stated that in the counter-affidavit, the entitlement of the applicant has not been substantially challenged. None of the opposite parties have given any reason why the order was not complied with before the filing of the contempt. However, learned counsel for the opposite party has submitted that as the pleadings have been exchanged between the parties in the writ petition, no further proceedings should be taken in the contempt proceedings, which should await the decision on the stay vacation application. In support of his contention, he has relied upon the ratio of the Apex Court rendered in *State of Jammu and Kashmir v. Mohd. Yaqub Khan*, 1992 (2) UPLBEC 1166. In the High Court of Jammu and Kashmir there is no provision for giving 48 hours notice before filing of the writ petition and as such, in that sense the order was an ex parte order. In our High Court, the standing counsel representing the opposite party had been given 48 hours notice and was also heard before the orders were passed. Further, there is no reason whatsoever as to why the orders dated 15.2.2001 and 7.5.2001 were not complied within a reasonable time. In reply to the show cause notice, the opposite party No. 1 has filed his affidavit sworn on 29.10.2003, wherein the only reason given is that no salary bill was submitted by the Principal to the authorised controller and forwarded to the deponent. But he has not stated as to what action he took to ensure compliance of Court's order. Under the Payment of Salary Act, the opposite party No. 1 could have passed an order of single operation. Further, it is not denied that an official of the office of District Inspector of Schools himself was functioning as Authorised Controller carrying on the work of committee of

management, therefore, he himself could have submitted the salary and got it passed. In my view, inaction of the opposite party No. 1 constitutes civil contempt.

11. The opposite party No. 2, Principal of the institution has only stated that due to sheer misapprehension the order was not complied with. A perusal of the order dated 15.2.2001 and 7.5.2001, shows that it was a clear order which was not capable to more than one interpretation. Thus, reason given appears to be a device set up as a defence where none was available. As such, opposite party No. 2 is also guilty of wilful and deliberate violation of the positive order of the writ court. However, learned counsel for the opposite parties has relied upon the ratio of the Apex Court rendered in the case of S.C. Poddar v. Dhani Ram, (2002) 1 SCC 766. The Apex Court in the aforesaid case has laid down that if the order has been complied with even though after receipt of notices of contempt, the Courts should show judicial grace and let the matter end there. Recently a Division Bench of our High Court in the case of Kunwar Narendra Narayan Singh v. Visheshwar Mathur, C.A. No. 8 of 2003, decided on 9.9.2003, has held that 'this Court has got tremendous power, but the beauty lies in not exercising this power.....In fact by showing humility and self restrained this Court enhance its prestige and dignity among the public.'

12. Even though both the opposite parties are guilty of committing contempt of this Court under Section 12 of the Contempt of Courts Act, but on the facts and circumstances of this case, no punishment is required except to warn both the opposite parties not to treat the order of the writ court in a casual and perfunctory manner and whenever an order directs a certain thing to be done, or restrained, due promptitude should be shown. They are further warned not to create any hindrance in the normal functioning of the applicant.

13. In view of the discussions hereinabove, no further orders are required in these proceedings. Notices are discharged. Petition is rejected and consigned to record.