

Manakram and Ors Vs. State and Ors

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Court : Rajasthan Jodhpur

Decided On : Apr-17-2015

Appellant : Manakram and Ors

Respondent : State and Ors

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR :

ORDER

: S.B.CIVIL CONTEMPT PETITION No.528/2013 Manakram & ORS.versus C.S.Rajan & ORS.Date of Order :: 17.4.2015 PRESENT HON'BLE Mr.JUSTICE ARUN BHANSALI Mr.Bharat Devasi, for the petitioner/s.

Mr.S.S.Rathore, for the respondent/s.

----- BY THE COURT: This contempt petition under Section 12 of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India has been filed by the petitioners alleging willful disobedience of the order dated 3.5.2013 passed by this Court in SBCWP No.3989/2013.

The petitioners filed SBCWP No.3989/2013 seeking a direction against the respondents for issuance and counter signing of the experience certificate for the period of service rendered by them i.e.for the period 17.4.2010 to 18.4.2013 (03 years and 01 day) or upto last date of completion of the contractual period and award of 30 bonus marks in the head of experience as per norms prescribed in the

advertisement for the post of LDC.

When the writ petition came up before this Court, a Co.ordinate Bench by its order dated 3.5.2013, based on another order dated 18.4.2013, ordered as under:- 2
Heard learned counsel for the parties.

On 18.04.2013, the co-ordinate Bench of this Court passed the following order :-
Learned counsel for the petitioners submits that although he has worked as computer operator with machine on contract basis in 'NAREAGA' scheme at Panchayat Samiti, Jaitaran but the competent authority while issuing experience certificate has reckoned his services with effect from 19.4.2010.

The petitioners may submit requisite documents before the authorities to show the date of joining and thereupon the respondents are directed to verify the documents and issue correct certificate about the experience to the petitioners. The petitioners are at liberty to submit the amended experience certificate before the competent authority.

It is expected from the competent authority to consider the same for the purpose of adjudging merit and suitability of the petitioners.

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In pursuance of above order, now experience certificate Annex.7 has been issued on 18.04.2013 which is placed on record alongwith application.

Learned counsel for the petitioner submits that still petitioner is working on the post of Computer Operator on contract basis at Panchayat Samiti, Jaitaran and admittedly, he was engaged on 17.04.10 which is evident from Annex.10 experience certificate issued by respondents on 18.04.2013, therefore, the said certificate should be certificate for 3 years and 1 days because petitioner is performing duties on contract basis since 17.04.2010.

In view of above, this writ petition is disposed of with direction to the respondent no.4 to issue fresh certificate of experience in favour of petitioner within a period of seven days after considering circular (Annex.6) dated 15.04.2013 filed alongwith

writ petition and thereafter, it is expected from the competent authority to consider the same for the purpose of adjudging the merit and suitability of petitioner as ordered by this Court on 18.04.2013.

It appears that after passing of the order dated 3.5.2013, the petitioners were issued amended experience certificate dated 9.5.2013 by the Additional Chief Executive Officer, Zila Parishad, Pali wherein they were issued experience certificate for the period 17.4.2010 to 18.4.2013 after deducting period for which the petitioners remained on leave without pay resulting in the petitioners failing to get certificate of experience of 3 years period or more.

The petitioners filed S.B.Civil Writ Misc.

Application No.83/2013 seeking to raise grievance about deduction of the 3 period during which the petitioners remained on leave without pay.

On the application filed by the petitioners the following order dated 21.5.2013 was passed by the Bench which passed order dated 3.5.2013, which reads as under:-
Heard learned counsel for the applicant upon application.

Admittedly, the writ petition was allowed vide order dated 3.5.2013 and in pursuance of the directions issued by the Court, the certificate has already been issued by the respondents, which is placed on record as Annexure-A/2.

In this application, the applicant is seeking further direction in the writ petition, which is already decided.

In my opinion, this application is totally based upon presumption of the petitioner that correction is required in the order.

In fact, if the petitioner is having any grievance with regard to certificate then he is required to file separate writ petition or he can file contempt petition, if any contravention is made by the respondents.

Hence, the application is hereby rejected.

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The co-ordinate Bench was of the opinion that if the petitioners have any grievance with regard to certificate then they are required to file separate writ petition or contempt petition, if any contravention is made by the respondents.

Whereafter, it appears that the petitioners filed SBCWP No.8162/2013 challenging the certificates date 9.5.2013.

When the writ petition came up before the Co-ordinate Bench of this Court, which had passed the earlier orders dated 3.5.2013, 21.5.2013, the following order dated 16.7.2013 was passed permitting the petitioners to withdraw the writ petition with liberty to file contempt petition :- Learned counsel for the petitioner wants to withdraw this writ petition with liberty to file contempt petition for non-compliance of the order passed by this Court in SBCWP No.3989/2013 decided on 3.5.2013.

He is permitted to do so.

Hence, this writ petition is hereby dismissed as withdrawn with liberty sought for.

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It is submitted by learned counsel for the petitioners that this Court by its order dated 3.5.2013 noticed that the 4 petitioners had sought grant of certificate of 03 years and 01 day as the petitioners were performing duties on contract basis since 17.4.2010 and disposed of the writ petition with the direction to the respondent to issue fresh certificate of experience after considering circular Annex.-6 dated 15.4.2013 and the competent authority was directed to consider the same for the purpose of adjudging the merit or the suitability of the petitioners as ordered by the Court while relying on judgment dated 18.4.2013; circular dated 15.4.2013 (Annex.6 with the writ petition).which was directed to be considered by this Court provided that as the last date for application has been extended from 23.3.2013 to 18.4.2013, the contractual employees may be granted experience certificate for the extended period.

Further vide circular dated 23.2.2012 (Annex.C/5).it was directed that for the period, the contractual employees remained absent from duty on account of boycott, the said period may be adjusted towards casual leave and the period in excess of available casual leave be adjusted towards leave without pay.

It is submitted that the grant of certificate by the respondents deducting the 'period of leave without pay' was contrary to law, inasmuch as, the period of sanctioned leave is required to be counted towards service.

Reliance was placed on judgment of this Court in Smt.

Vishnu Kanwar & 157 Ors.v.State of Raj.

& ORS.: 2009 WLC (Raj.) UC186 It was submitted that the respondents in not issuing certificate in terms of the directions issued by this Court and the law pertaining to the counting of the period of sanctioned leave have willfully disobeyed the orders passed by this Court and 5 therefore, the respondents deserve to be suitably dealt with.

Learned counsel for the respondent submitted that the directions issued by this Court by order dated 3.5.2013 directing issuance of fresh certificate has already been complied with by way of issuance of certificates dated 9.5.2013 and therefore, it cannot be said that the petitioners have disobeyed any of the orders passed by this Court.

It was submitted that prior to issuance of circular dated 15.4.2013, a circular dated 23.2.2012 was issued dealing with the employees, who had remained absent from duty, whereafter another circular dated 26.12.2012 was issued providing for non-inclusion of the period of absence for the purpose of experience and the certificates have been issued strictly in accordance with the circular dated 26.12.2012 and therefore, the experience certificate which has been issued after adjusting all the period of working as well as period of leave and the period when the petitioners remained absent from duty, cannot be questioned.

A further submission has been made that as certificates have been issued in terms of the orders passed by this Court, the validity of said certificates cannot be

examined in the contempt jurisdiction and on that count also, the petition deserves to be dismissed.

I have considered the rival submissions and have perused the material placed on record.

It appears that the petitioners approached this Court by way of filing SBCWP No.3989/2013 seeking grant of experience certificate based on the extended last date of application for appointment to the post of LDCs.

The writ petition was allowed by this Court noting the contention of the petitioners that they were entitled to grant of experience certificate for the period of 03 years and 01 day.

The respondents promptly issued the certificates on 9.4.2013, however, the period of leave without pay was deducted from the period of experience resulting in the petitioners getting experience certificates for the period less than 03 years having implication on entitlement of bonus marks.

The petitioners promptly filed misc.

application in the decided writ petition, which application was dismissed leaving it open for the petitioners to file writ petition or contempt petition.

The petitioners promptly filed SBCWP No.8162/2013, which, it appears was not entertained and was permitted to be withdrawn with liberty to file contempt petition for non-compliance of the order dated 3.5.2013.

Whereafter, the present contempt petition has been filed.

So far as the objection raised by learned counsel for the respondent that the validity of the order dated 9.3.2013 is not open to be examined under the contempt jurisdiction, is concerned, it is true that in normal circumstances, the validity of order cannot be examined while exercising contempt jurisdiction, however, the case in hand presents an extra-ordinary situation wherein the petitioners after grant of relief by this Court by order dated 3.5.2013 and dissatisfied with the compliance of the order have already approached this Court twice by way of filing

misc.

application as well as writ petition, both of which have not been entertained, the
misc.

application having been dismissed and the writ petition permitted to be withdrawn
with liberty to file the contempt petition.

The 7 petitioners cannot be left without any remedy and in case, on examination
this Court comes to the conclusion that the experience certificates dated 9.3.2015
issued by the respondents are not in accordance with law, it cannot be then
contended by the respondents that the contempt jurisdiction cannot be invoked in
such circumstances merely because experience certificates dated 9.3.2013 have
been issued.

A look at the experience certificates filed as Annex.-3 with the contempt petition
reveals that the respondents have deducted the 'period of leave without pay' from
the period of experience.

The notification dated 23.2.2012 issued by the respondents dealing with the period
of absence provided for adjustment of leave towards period of absence towards
available casual leave and grant of leave without pay for the rest of the period.

This Court in the case of Smt.

Vishnu Kanwar (supra) has categorically laid down that if the leave is sanctioned
one, then during that period too the relationship of master and servant is
maintained and the period of availing sanctioned leave, thus, cannot be excluded
from the term of continuous service.

In view thereof, the exclusion of period by the respondents from grant of
experience certificates appears to be contrary to the law laid down by this Court.

Reliance placed by the respondents on the circular dated 26.12.2012 providing for
non-consideration of period of absence for the purpose of experience, reads as
under:- 8.

" The said instruction deals with 'period of absence' and not 8 with a 'period of sanctioned leave' and therefore, the said circular also has no application to the present case.

In view of the discussion here-in-above, it is apparent that the certificates (Annex.3) issued by the respondents are not in accord with the direction dated 3.5.2013 and the law laid down by this Court.

In the facts and circumstances of the case, the respondents are granted three weeks' time to comply with the directions of this Court dated 3.5.2013 in the light of discussion herein-in-before.

If by then, the needful is not done, the Chief Executive Officer, Zila Parishad, Pali shall remain personally present before this Court.

List on 8.5.2015.

(ARUN BHANSALI).J.

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