
(2011) 03 AHC CK 0171

In the Allahabad High Court

Case No : Contempt Application (Civil) No. 5084 of 2010

Dharmendra Kumar Sharma and Others

APPELLANT

Vs

Shri. Udai Raj

RESPONDENT

Date of Decision : 30-03-2011

Acts Referred:

Citation : (2011) 03 AHC CK 0171

Hon'ble Judges : Sanjay Misra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sanjay Misra, J.—Heard Sri Arvind Srivastava, learned Counsel for the applicant and Sri K.R. Singh, learned Standing Counsel for the opposite party.

2. Counter and rejoinder affidavits have been exchanged. The contempt is alleged of the judgment dated 24.08.2009 passed in Civil Misc. Writ Petition No. 68269 of 2006 (Dharmendra Kumar Sharma and Ors. v. State of Uttar Pradesh and Anr.) alongwith Civil Misc. Writ Petition No. 36497 of 2006 (Sunil Kumar Sharma and Anr. v. State of U.P. and Anr.). This contempt petition has been brought by the Petitioners of both the above referred writ petitions.

3. Learned Counsel for the applicant has submitted that after the order dated 24.08.2009 had been passed issuing directions to the District Inspector of Schools, Mirzapur, to consider the case of the Petitioners for granting financial approval afresh the order dated 22.03.2010 had been passed granting financial approval. Under such order the District Inspector of Schools approved the appointment of the Petitioners as Class-IV employee in Sri Gandhi Vidyalaya Inter College, Kachwa, District Mirzapur.

4. It appears from the record that the order dated 22.03.2010 passed by the District Inspector of Schools was challenged by one Sri R.K. Chaubey in Writ Petition No. 41029 of 2010 wherein an interim order dated 26.07.2010 was passed directing that the applicant herein, who were Respondents No. 7 to 12 in

that writ petition shall be continued to be paid their salary but the source of salary would be personal assets of the District Inspector of Schools and not to be the public exchequer.

5. The aforesaid order dated 26.07.2010 also recites that the approval granted by the District Inspector of Schools to the applicants herein, who were Respondents No. 7 to 12 in that writ petition was without examining the legal position as explained by the Court in the case of "Principal, Adarsh Inter College v. State of Uttar Pradesh and Ors. 2010 (1) ADJ 403 which has since been affirmed with the dismissal of the Special Appeal by the Division Bench being Special Appeal No. 1851 of 2009 (Principal, Adarsh Inter College, Umri, Bijnor v. State of U.P. and Ors.) decided on 03.12.2009.

6. After the order dated 26.07.2010 it appears that the District Inspector of Schools has passed another order dated 29.07.2010 whereby he has recalled his order dated 22.03.2010 (Annexure No. 8 to the contempt petition). A perusal of the order indicates that the reason for withdrawal of his approval granted on 22.03.2010 was the order dated 07.08.2009 passed in Writ Petition No. 39969 of 2009 Adarsh Inter College v. State of Uttar Pradesh and Ors.).

7. Learned Counsel has referred to the order dated 07.08.2009 filed alongwith the counter affidavit to state that when the provisions of Group-D Posts Rules, 1986 have been made applicable for appointment of Class-IV posts in Intermediate Colleges then when the procedure prescribed has not been applied in selection by the Principal, no mandamus for considering such appointment is required to be issued by the Writ Court. It also appears that the said judgment dated 07.08.2009 was approved in Special Appeal No. 1851 of 2009 and hence the District Inspector of Schools appears to have followed the said decision when he passed the order dated 29.07.2010 by recalling the approval dated 22.03.2010.

8. At this stage, the contempt was brought before this Court. Learned Counsel for the applicant has referred to the judgment dated 09.12.2010 passed in Special Appeal No. 970 of 2010 (Rajeev Kumar v. State of Uttar Pradesh and Ors.) alongwith other special appeals and states that the judgment dated 07.08.2009 in the case of Principal, Adarsh Inter College, which was affirmed in Special Appeal No. 1851 of 2009 was considered by the Court and it was held not to be good law. He, therefore, states that the order dated 29.07.2010 whereby the District Inspector of Schools has withdrawn his earlier approval is not in accordance with law and is a clear case of the contempt.

9. Having considered the submission of learned Counsel for the parties, it will be seen that when the order dated 29.07.2010 was passed by the District Inspector of Schools recalling his earlier approval dated 22.03.2010 the law as had been laid down in the case of the Principal, Adarsh Inter College on 07.08.2009 as approved in Special Appeal No. 1851 of 2009 was applicable and it appears from the order dated 29.07.2010 that the District Inspector of Schools found that the

order of approval dated 22.03.2010 requires to be recalled for that reason.

10. It is only subsequently that in Special Appeal No. 970 of 2010 decided on 09.12.2010 the law laid down in the case of Principal, Adarsh Inter College by the judgment dated 07.08.2009 as affirmed in Special Appeal No. 1851 of 2009 was considered and it was held as quoted here under:

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Accordingly, while deciding the case of Principal, Adarsh Inter College, Umari, Bijnore v. State of U.P. and others, 2010 (1) ESC 653 (All), the learned Judge held that the judgment in the case of Smt. Shikha (supra) had not taken notice of the aforesaid legal position including the communication dated 11.5.2001, and the powers so conferred on the State Government under Sub-section (4) of Section 9, therefore, the conclusion therein was not binding.

The said decision of the learned single Judge, therefore, held the communication dated 11.5.2001 to be a Government Order and the consequential communication dated 1.6.2001 issued by the Director of Education to be a valid Circular. The aforesaid decision in the case of Principal, Adarsh Inter College (supra) became subject matter of Special Appeal No. 1851 of 2009 and the Division Bench also proceeded on the same presumption that the powers conferred on the State Government were wide enough to introduce such provisions and upheld the judgment of the learned single Judge and explained away the decision in the case of Smt. Shikha (supra).

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In view of the conclusions drawn herein above that the communication dated 11.5.2001 is not a Government Order u/s 9 (4) of the 1921 Act, the premise on which the two Division Bench judgments namely Principal, Adarsh Inter College, Umari, Bijnore (supra) and the Division Bench pronouncement in the reference answered on 17.9.2010 in Writ Petition No. 1199 of 2003, Jawahar Lal and Anr. (supra) falls through. The said judgments, therefore, have proceeded on a wrong assumption about the status of the communication dated 11.5.2001 mistaking it to be a Government Order which was only a letter and had never been issued in exercise of the powers u/s 9 (4) of the 1921 Act. In fact, the delegator i.e. the State never exercised its powers as admitted before this Court. It was a simple inter-departmental communication and not even an executive instruction so as to have any binding force of law. The said decisions, therefore, have laid down a proposition which has no binding effect in law.

We are constrained to say that this was on account of the incorrect position of the status of the communication dated 11.5.2001 projected before this Court in the said two cases, and also before the learned single Judges in all other such cases that have been referred to herein above and were approved by the Division Benches. On the contrary the learned single Judge in the case of Smt. Shikha (supra) had rightly appreciated the controversy in correct perspective which was

sought to be distinguished later on the strength of the aforesaid communication dated 11.5.2001 in the case of Principal, Adarsh Inter College, Umari, Bijnor, 2010 (1) ADJ 403. Needless to say that the aforesaid bureaucratic sloppiness was sought to be covered up by an intelligible draft before this Court in the decisions referred to herein above that led to the passing of the judgments on an absolutely wrong premise. A committed paper work of the Secretariat without the law having been amended was kept a complete secret from this Court and a simple matter was got complicated at the hands of the bureaucracy. In other words since the communications sent to this Court were official, they were treated to be un-contestable and an illusion was created either based on misunderstanding or an attempt to some how the other cover up the entire issue. The communications were written carefully without giving the correct information to the reader and at the same time protecting its author.

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Accordingly, all the judgments of the learned single Judges, which are contrary to the opinion expressed herein, stand overruled. The judgments of the two Division Benches in the case of Principal, Adarsh Inter College (supra) and Jawahar Lal and Ors. (supra) stand accordingly explained. The Appeals are allowed.

11. Consequently, on that date i.e. 29.07.2010 the District Inspector of Schools was following the law as laid down in the order dated 07.08.2009 as affirmed in Special Appeal No. 1851 of 2009.

12. According to learned Counsel, since the judgment dated 09.12.2010 has come subsequently in Special Appeal No. 970 of 2010 the order dated 29.07.2010 of the District Inspector of Schools is patently illegal. If it is illegal, it cannot be decided on merits in this contempt proceedings.

13. When the order was passed it was not in violation of the directions issued by the Writ Court. In fact it was in accordance with the judgment dated 07.08.2009 of the Writ Court as affirmed in Special Appeal No. 1851 of 2009. Consequently, contempt is not made out against the opposite party. However, in case, the applicant so desires it is always open for him to challenge the legality of the order dated 29.07.2010 passed by the District Inspector of Schools in view of the subsequent judgment dated 09.12.2010 passed in Special Appeal No. 970 of 2010 referred to above.

14. The contempt petition is accordingly dismissed. Notices issued are discharged. No order is passed as to costs.