

(2008) 06 CAL CK 0040
In the Calcutta High Court
Case No : W.P.C.T. No. 704 of 2007

Director General, Prasar Bharati (Broadcasting Corporation of India) and Another APPELLANT

Vs

Dilip Roy and Others RESPONDENT

Date of Decision : 25-06-2008

Acts Referred:

Citation : (2008) 119 FLR 611 : (2009) 1 LLJ 855

Hon'ble Judges : Prasenjit Mandal, J;Kalyan Jyoti Sengupta, J

Bench : Division Bench

Advocate : Dinesh Chandra Roy and Sanajit Ghosh, for the Appellant;P.K. Das, Debjani Sengupta and Prosenjit Saha, for the Respondent

Judgement

Kalyan Jyoti Sengupta and Prasenjit Mandal, JJ.—This application is against an order passed in exercise of the contempt jurisdiction by the learned Central Administrative Tribunal in C.P.C. 10 of 2006 in connection with O.A. 652/2004. Mr. Das, learned senior counsel for the respondents has not questioned the maintainability of the application, therefore, we make it clear that without going into the question of maintainability we shall examine the matter on merit. The fact of the case is as follows:

The respondents herein made an application, being O.A. 652/2004, before the learned Tribunal praying for grant of temporary status by regularization as if they were working as Casual Production Assistants in the Doordarshan Kendra, Kolkata. The said application was heard extensively and upon hearing, learned Tribunal disposed of the same by passing an order dated November 16, 2005. The relevant ordering portion of the said order is quoted hereunder:

8. In order to do justice to the applicants we feel ends of justice would be met if following directions are given to the respondents:

It there are 14 vacancies of Production Assistants with the respondents they shall, consider absorbing the applicants against those vacancies as per the

prevalent recruitment rules of All India Radio (Doordarshan) by giving them relaxation of age for the number of years they have been working with the respondents provided they -fulfill all other eligibility criteria as mentioned in the prevalent recruitment rules of All India Radio. This shall be done within a period of 4 months from the date of receipt of a copy of this order. In case vacancies are not available with the respondents and they still need the services of Production Assistants, they shall continue to engage the applicants as Production Assistants till regular appointments are made as per the; Recruitment Rules. The applicants shall not be replaced by a new set of casual Production Assistants. Of course if any of the applicants indulges in misconduct of serious nature, it would be open to the respondents to take action against such of the applicant in accordance with law. Respondents shall also take up the matter with the higher authorities to see how interest of these applicants can be protected and how their services can be regularized. We are not giving any direction to the respondents to frame another scheme as it is for the Government to take up these issues and decide them as a policy matter looking at the welfare of the casual employees whose services are being utilized for years together by them.

2. The aforesaid judgment and order was sought to be challenged belatedly by filing a writ application in this Court on or about November 22, 2007 by an application, being W.P.C.T. 707/2007. The said application was dismissed in limine recording that the aforesaid order has been accepted. However, this order was not carried out so contempt application was filed by which the impugned judgment and order was passed.

3. Mr. Roy, learned Counsel for the applicants, submits that learned Tribunal had no jurisdiction to pass the impugned order by giving fresh direction and particularly when speaking order was passed pursuant to the order dated November 16, 2005. He further argued, in a contempt jurisdiction, by setting aside the speaking order, direction to reconsider the matter should not have been given. Since it was a fresh cause of action, it could have been challenged by filing fresh application. Mr. Roy has drawn our attention to the speaking order as well as the order passed by the learned Tribunal on November 16, 2005. In support of his contention, Mr. Roy has relied on the decisions K.G. Derasari and Another Vs. Union of India (UOI) and Others, , J. Parihar Vs. Ganpat Duggar and others, , 2002 CriLJ 1814 and Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd., .

4. Mr. Das, learned senior counsel appearing for the respondent, opposing this application, contends that the learned Tribunal, on fact, found that there has been no compliance, either apparently or in real sense, of the order passed on the November 16, 2005. He submits, learned Tribunal consciously directed the respondent authorities to consider absorption in the existing vacancies relaxing age bar and the respondent authorities instead of considering possibilities of absorption again decided the issue of regularization which was not possible, as had been held by the learned Tribunal earlier. Nothing was done to consider the

absorption. The aforesaid judgment and order dated November 16, 2005 has reached its finality on dismissal of their application vide order dated November 22, 2007 by this Court.

5. Before we go into the merit of the matter, we must discuss the judgment K.G. Derasari and Anr. v. Union of India and Ors. (2001) 10 SCC 96 : 2000 II LLJ 1572 wherein it has been held by the Apex Court that the Tribunal cannot re-open earlier order which has reached its finality as it was beyond the jurisdiction of the Tribunal in I a contempt proceedings. Similar view was taken in the other decisions as well except the last two decisions cited and noted above by us.

6. We have no doubt in our mind, the aforesaid principle can hardly be disputed by anyone but applicability of the same will depend upon the facts and circumstances of each case. The last two cases, being (1998) 8 SCC 408 and Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd., , are not at all applicable in this case. The principle laid down in these two cases might have been applicable had the order dated November 16, 2005 been challenged before us. The said order, at present, has reached its finality because of dismissal of the application impugning the same order, by this Court. Therefore, the order of the learned Tribunal, passed on November 16,2005 is now holding the field irrespective of position of law.

7. Next question is whether the learned Tribunal has exceeded its jurisdiction while passing the impugned order on the contempt" application.

8. It is true, as rightly submitted by Mr. Roy, that once a speaking order is passed, it cannot be set aside or questioned in a contempt jurisdiction and it could have been challenged by filing a fresh writ application. The whole question is whether the speaking order has been passed in terms of the direction of the learned Tribunal or not. Learned Tribunal, on fact," found the authority concerned has not decided the matter in terms of the order dated November 16, 2005 while passing the speaking order.

9. Mr. Roy has challenged the aforesaid fact finding saying the speaking order has been passed in terms of the direction of the learned Tribunal. Therefore, we are to examine what exactly the Tribunal wanted and what has been done by the authority concerned.

10. Learned Tribunal, in no uncertain term, has said that the case of absorption of the candidates, and not regularization, has to be considered relaxing age bar. We find from the speaking order, alleged to have been passed in compliance of the order of the learned Tribunal, that the authority concerned has decided the question of regularization. We find that on earlier occasion the case of regularization was refuted by the Department as regularization was simply not possible. Such fact was brought to the notice of the learned Tribunal and prayer for absorption, as against existing vacancies, was made. Learned Tribunal, keeping in mind that regularization was not possible, directed absorption against the existing vacancies relaxing age bar. Unfortunately, no attempt was made to

consider the question of absorption against the vacancies relaxing age bar. Therefore, finding, arrived at by the learned Tribunal, is absolutely correct and this has been explained by the learned Tribunal in paragraph 13 of its judgment.

11. Mr. Roy then says, the later portion of the judgment and order of the learned Tribunal regarding regularization is creating trouble and confusion. We therefore, modify the order of the learned Tribunal directing the Department concerned to comply with the order of the learned Tribunal passed on the November 16, 2005; meaning thereby, the question of absorption has to be considered as against the existing fourteen vacancies so long the order of the Tribunal is subsisting and remaining valid.

12. We, therefore, do not propose to pass any further order except that has been stated above.

The application stands disposed of. There will be no order as to costs.