
(2014) 05 DEL CK 0001

In the Delhi High Court

Case No : W.P. (C) 1973/2012 and C.M. No. 4253 of 2012

Jawahar Singh Tomar

APPELLANT

Vs

Director of Education

RESPONDENT

Date of Decision : 21-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 211 DLT 377

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Indrani Ghosh, Advocate for the Appellant; Ruchi Sindhwani and Bandana Shukla, Advocate for the Respondent

Final Decision : Allowed

Judgement

Rajiv Shakdher, J.—This writ petition involves an issue which falls within a narrow compass. The petitioner, who in the normal course, retired from service on 30.6.2010 sought re-employment under notification dated 29.1.2007 which on the face of it applied to teachers. The matter was agitated in this Court, whereupon the Court, in the case of Sushma Nayar Vs. Managing Committee, Delhi Public School and Others, decided the issue in favour of those Vice-Principals/Principals, who were claiming parity with the teachers, for the purpose of reemployment.

1.1 This was a judgment of the Single Judge, which was carried in appeal to the Division Bench. The Division Bench dismissed the appeal vide its judgment dated 17.7.2009, passed in LPA No. 415/2009. As a matter of fact, the matter came up for consideration in another writ petition being: W.P. (C) 5808/2010, titled MCD v. Giri Raj Sharma and Ors. wherein, once again, a learned Single Judge of this Court vide judgment dated 23.11.2010 took the same line as was taken in Sushma Nayar's case. Therefore, the issue in a sense, was resolved as far back as on 17.7.2009, in so far as this Court was concerned, and if, not then certainly by 23.11.2010.

1.2 Since, the respondent's chose to ignore the decisions of this Court, the petitioner filed a writ petition under Article 226 of the Constitution. The said writ petition, was numbered as: W.P.(C) 4017/2010.

1.3 The principal prayer in the said writ petition was that, the petitioner should be re-employed for a period of two years i.e., till he reaches the age of 62 years.

1.4 On this writ petition, on the very first date, i.e., 4.6.2010, a Single Judge of this Court injuncted the respondents from appointing a teacher to the post held by the petitioner, till the next date of hearing. The interim order went on to say that the concerned school would retain the services of the petitioner. Unfortunately, for the petitioner, the interim direction issued by this Court was not adhered to.

1.5 As a matter of fact, the official respondent i.e., Director of Education assailed the order of the Single Judge dated 4.6.2010 by way of an appeal, which was numbered as: LPA 614/2010. The appeal, however, was disposed of by the Division Bench vide order dated 27.8.2010, with the following operative directions:

"...In view of the aforesaid while not expressing any opinion on the merits of the contentions urged before us, we grant liberty to the learned Counsel for the appellants to file an application for modification of the order passed by the learned Single Judge. Till the matter is finalised, the proceedings forming the subject matter of Contempt Petition No. 445/2010 shall be kept in abeyance..."

1.6 As would be evident from the operative part of the order of the Division Bench extracted above, the official respondents were given liberty to move for modification in the writ petition pending before the learned Single Judge, and till such time, final orders were passed in the writ petition, proceedings in the contempt petition, which was taken out by the petitioner in the interregnum, were to be kept in abeyance. As indicated in the aforesaid extract of the Division Bench, the contempt petition was numbered as: Contempt Petition 445/2010.

1.7 The petitioner, it appears, had made representations to the respondents herein. These are dated 1.7.2010, 2.7.2010, 3.7.2010 and 5.7.2010.

1.8 Finally, the writ petition, bearing No. W.P.(C) 4017/2010, came to be heard and, was consequently disposed of by the learned Single Judge vide order dated 23.12.2011. It may be pertinent to note that during the pendency of the writ petition, an application had been moved by the petitioner, being: C.M. No. 5582/2011. In this application, there were two prayers made by the petitioner. First, that order dated 4.6.2010 be implemented. Second, that the respondents be directed to pay the petitioner (I would assume) the usual pay and allowances from 1.7.2010 till the date the application was moved. This application was moved, I am told (though no date is discernible from the record), on 19.4.2011.

1.9 Continuing with the narrative, the operative directions of the learned Single Judge, which are contained in the order dated 23.12.2011, required the

respondents to extend the benefit of the notification dated 29.1.2007 of reemployment for a period of two years subject to the terms and conditions set out in the notification. The action in this behalf was required to be taken by the respondents within one month.

There is no dispute that the respondents, as a matter of fact, passed order in favour of the petitioner granting him the benefit of the notification dated 29.1.2007, only on 23.2.2012, a date beyond the period of one month granted by the Court in its final judgment dated 23.12.2011.

2. It is this order which agitates the petitioner. The agitation is not with regard to the re-employment, which is granted to the petitioner, the grievance essentially, as indicated above, is qua denial of payment of remuneration for the period 1.7.2010 till 22.2.2012 i.e., a date before he resumed duties as a Vice-Principal.

3. Ms. Ghosh, who appears for the petitioner says that the petitioner is entitled to remuneration for this period in entirety as the respondents failed to comply with the directions of this Court dated 4.6.2010 despite the fact that the said order was not varied.

3.1 I am informed by Ms. Ghosh that though an application was moved by the official respondent, being: CM No. 11676/2010 for modification, no orders were passed on the said application. Ms. Ghosh further submits that since, the petitioner, was available for performing duties as a Vice-Principal, he should be paid the requisite dues in entirety.

3.2 It is also Ms. Ghosh's contention that the contempt petition was withdrawn on the same date when, final judgment was passed by the learned Single Judge on 23.12.2011, only for the reason that it was hoped that respondents would pay the salary for the period in issue.

3.3 Ms. Ghosh, the learned Counsel for the petitioner, in support of her contentions, has relied upon the judgment dated 8.4.2013 passed in W.P. (C) 2677/2012, titled: Govt. of NCT of Delhi and Ors. V. Mithlesh Swamy.

4. Ms. Sindhvani, the learned Counsel for the respondents, on the other hand, says that the petitioner would be entitled to remuneration only from the date when he assumed charge of his office i.e., 23.12.2012. Ms. Sindhvani further says that delay, if any, was from 23.1.2012 till 23.2.2012. In support of her contention, Ms. Sindhvani has relied upon Fundamental Rule 17 which, broadly, indicates that remuneration would be paid to an employee only from the date he/she assumes charge of his/her office. It is also Ms. Sindhvani's contention that since, an application was moved by the petitioner, being: C.M. No. 5582/2011, in which one of the reliefs sought was for, payment of salary, for the period commencing from 1.7.2010, this issue cannot be raised by way of a fresh writ petition as, it would be barred by principles analogous to constructive res judicata.

4.1 Ms. Sindhvani in support of her contentions, relied upon a judgment of the

Division Bench dated 29.3.2012, passed in W.P. (C) 6450/2011, titled: Directorate of Education and Ors. v. Ajit Kumar.

5. I have heard the learned Counsel for the parties. What clearly emerges from the record is that despite an interim order of this Court dated 4.6.2010, the respondents chose not to comply with the said order. Though liberty was granted by the Division Bench in LPA No. 614/2010, vide its order dated 27.8.2010 to move the learned Single Judge for modification, respondent No. 1 apart from filing the application did very little to press the application.

5.1 I may also note that despite the Single Judge, vide his final judgment dated 23.12.2011, directing the respondents to extend the benefits of the notification dated 29.1.2007, in terms thereof within a period of one month, the needful was done, only on 23.2.2012.

5.2 Therefore, these facts, as rightly contended by Ms. Ghosh, bring the case within the situation envisaged in paragraph 19 of the judgment of the Division Bench of this Court in the case of Mithlesh Swamy. There was, in a sense, disobedience of the order of this Court dated 4.6.2010.

5.3 Ms. Sindhwani's reliance on Fundamental Rule 17, in my view, does not help the cause of the respondents as what is implied in the said rule is that no impediments are put in the way of an employee in assuming charge. It cannot be said that the petitioner was not inclined to assume the charge as he had taken recourse to all possible lawful measures to gain re-employment. The respondents, as a matter of fact, cocked-a-shook at the Court by failing to due deference to the order. The application for modification was moved, it appears as a mere formality. The record placed before me does not reflect that requisite steps were taken to seek modification. It cannot be but emphasized that an order of the Court requires scrupulous adherence unless it is varied. This principle extends even to those orders which are without jurisdiction. This Court time and again has said that unless the Court varies its order, a party before the Court cannot suo motu decide whether or not it will comply, with the order. [see FAO(OS) 206/2012, decided on 17.5.2012 titled: Krishnadevi Malchand Kamathia and Others Vs. Bombay Environmental Action Group and Others,].

5.4 That brings me to the last contention raised by Ms. Sindhwani that the present petition is not maintainable as the relief, which was sought for, by way of an interlocutory application, was not granted by the learned Single Judge in his final judgment dated 23.12.2011. The principle analogous to constructive res judicata were invoked. In my view, at first blush, the proposition seems attractive, but on a closer scrutiny, I am not inclined to accept it. The reason is this; admittedly the scope of the writ petition, being: W.P.(C) 4017/2011 was really confined to re-employment in terms of notification dated 29.1.2007. The application moved by the petitioner was as a matter of fact, really in frustration. The application was, in a sense, beyond the scope of writ petition. Therefore the same could not have triggered the principle of constructive res judicata.

Therefore, as indicated above, I am inclined to accept this contention.

6. The question now is, as to what relief, if any, ought to be given to the petitioner. In Mithlesh Swami's case, the Court granted full back wages whereas in Ajit Kumar's case, a judgment relied upon by Ms. Sindhwani, back wages were not granted. In peculiar facts of this case, where respondents have refused to comply with the orders of this Court, I am not inclined to apply the directions issued by the Division Bench of this Court in Mithlesh Swami's case. A close scrutiny of the ratio of the judgment in Ajit Kumar's case would show that in that case, the Tribunal had granted three months' time to comply with its direction, which was complied with by the respondents. Therefore, on those facts and circumstances, the Division Bench in Ajit Kumar's case declined to grant back wages.

7. Having regard to the above, the writ petition is allowed. The respondents will pay the remuneration to the petitioner for the period 1.7.2010 to 22.2.2012 after making due adjustments, if any, of the amounts paid towards pension for the same period, on an undertaking being filed with them, that he was not gainfully employed during this period. The petition is accordingly disposed of.

7.1 I must also note that the amount involved in the present case is only a sum of Rs. 2 lakh. The cost involved in adjudication in this Court is far more, but that does not deride from the principle, which has been enunciated in the judgment rendered in the case of Mithlesh Swami.

7.2 Needless to say, the respondents will comply with the directions issued herein as expeditiously as possible though, not later than four weeks from today.

With the aforesaid directions in place, the captioned petition and the pending application are disposed of.