

(2015) 08 MAD CK 0122

In the Madras High Court

Case No : Contempt Petition No. 112 of 2015

M. Aaliappan

APPELLANT

Vs

Vinoth Khanna

RESPONDENT

Date of Decision : 12-08-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 25-F

Citation : (2015) 08 MAD CK 0122

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : K. Vasudevan, for the Appellant; N. Inbanathan, G.A., Advocates for the Respondent

Judgement

T.S. Sivagnanam, J—This Contempt Petition has been filed for wilful disobedience of the order and direction in W.P. No. 21186 of 2010, dated 20.01.2015.

2. The petitioner filed the said Writ Petition praying for issuance of a Writ of Mandamus, to direct the respondent/contemnor to include his name in the Statewide seniority list prepared as per G.O. Ms.No. 64, dated 06.03.1999 and G.O. Ms.No. 65, dated 08.03.1999 and to reinstate him with all back wages, continuity of service and other consequential benefits.

3. The petitioner approached this Court by contending that he was directed to work as a Social Forestry Worker under the control of the Additional Block Development Officer, Marakkanam Panchayat Union, Villupuram District during 1982 and worked for nearly 14 years. During 1996, the said authority terminated him from service and the petitioner raised an Industrial dispute before the Labour Court, Cuddalore in I.D. No. 69 of 1997.

4. Before the Labour Court, the Panchayat Union raised a defence stating that the petitioner was neither employed in a permanent capacity or in temporary capacity nor in any existing scheme of Social Forestry Project and the scheme itself has been terminated. The Labour Court by award dated 27.03.2000,

directed reinstatement of the petitioner with continuity of service and backwages.

5. The Additional Block Development Officer, Marakkanam Panchayat Union, challenged the award of the Labour Court by filing Writ Petition in W.P. No. 18261 of 2000, firstly by contending that the petitioner is not their employee, the Social Forestry Scheme was entrusted to the Panchayat Union by the Forest Department for effective implementation and since the scheme itself has been taken over by the Forest Department, there was no scope for the Panchayat Union to continue the services of the petitioner. Further, it was stated that the Panchayat Union being an executing agency of a scheme introduced by the Forest Department, cannot be an employer. The Writ Petition filed by the Panchayat Union was allowed by order dated 17.02.2010, thereby accepting that the Panchayat Union is not the employer of the petitioner. While considering the relief that the petitioner is entitled to, the Court in its order dated 17.02.2010, held as follows:-

8. The Labour Court made hypothetical approach and did not go into the Larger issue as to who should be the employer of the first respondent and on what basis his employment can be continued by the Panchayat Union. In any event, the fact that the Scheme had been entrusted to the Forest Department and the Panchayat Union has no longer control over the scheme, there was no necessity to keep the first respondent in service. Therefore, the only issue that has to be decided was whether it is a case for retrenchment or closure of the Scheme. Then what should be the relief the workman can get.

9. Chapter V-A of the I.D. Act provides for certain compensation and notice pay in cases of retrenchment and closure. The Labour Court found that the conditions precedent under Section 25-F of the I.D. Act was not followed. But at the same time even in such matters if there was an infraction of Section 25-F of the I.D. Act there can be no scope to order reinstatement if the employment was either contractual, temporary or project oriented. In those circumstances, the Labour Court can mould the relief by granting compensation in lieu of reinstatement of the statutory compensation provided under the Act. See: Madhya Pradesh Administration Vs. Tribhuban, (2007) 113 FLR 886 : (2007) 2 LLJ 577 : (2007) 5 SCALE 397 : (2007) 9 SCC 748 : (2008) 1 SCC(L&S) 264 : (2007) 4 SCR 378 : (2007) 1 UJ 640 .

10. In the present case, the approach of the Labour Court in ordering reinstatement that too with backwages and continuity of service cannot be appreciated. At the same time, the workman cannot be left high and dry in such case of sudden non-employment.

11. In the light of the above, the Award of the Labour Court in I.D. No. 69 of 1997, dated 27.03.2000, stands set aside in so far as it directed reinstatement and backwages. However, the first respondent/Workman is entitled to get compensation. Since the Management had already deposited Rs. 16,800/- which is lying with Canara Bank, Tiruvanmiyur Branch, the first respondent/workman is

entitled to withdraw the entire amount including the interest accrued thereunder. The said amount will be considered as full compensation in lieu of reinstatement.

6. Thereafter the petitioner requested the respondent/contemnor to include his name in the Statewide seniority list so as to enable him to be absorbed in the Forest Department. Since the representation was not considered, the petitioner filed Writ Petition in W.P. No. 21186 of 2010. In the said Writ Petition, a counter affidavit was filed by the respondent Department. This Court considered the matter and held that counter affidavit has been filed without taking note of the order passed in the earlier Writ Petition and rejected the counter affidavit. Further, this Court held that the Forest Department cannot take a stand that the petitioner is not part of the Social Forestry Scheme, as long as the order dated 17.02.2010, in W.P. No. 18261 of 2000, remains intact. With the observations, the Writ Petition disposed of, observing that the petitioner's name requires to be included in the Statewide seniority list, if there is no other legal impediment from doing so. The Contempt Petition has been filed complaining that the order has not been complied with. The Contempt Petition was heard on seven occasions and the respondent produced copies of two orders dated 26.02.2015 and 31.03.2015 stating that the order and direction issued by this Court has been complied with.

7. It has to be seen as to whether the respondent/contemnor is guilty of contempt of the order passed by this Court in W.P. No. 21186 of 2010, dated 20.01.2015. In the order dated 31.03.2015, the respondent/contemnor has pointed out that the implications or in other words the legal impediments, which would accrue if the relief sought for by the petitioner is granted. The following stand has been taken:-

(1) Thiru. M. Aaliyappan, is not entitled for reinstatement and backwages, in the Panchayat Union where he claimed to have worked and stopped, which was also settled by the Hon"ble High Court, Madras in the issue of Industrial Dispute.

(2) The petitioner is entitled to withdraw the compensation amount of Rs. 16,800/- which was deposited by the Additional Block Development Officer, Marakkanam in the Canara Bank, with interest accrued thereunder.

(3) An amount of Rs. 350/- per month, which should have been remitted to the petitioner from 30.10.2010, if not paid already should be paid from November 2002 till 10.02.2010 by the Additional Block Development Officer, Marakkanam.

8. It has been further stated that the award passed by the Labour Court has been set aside by this Court and the direction issued by the Labour Court for reinstatement has been quashed and the petitioner has received the compensation from the Panchayat Union. Therefore, the respondent has taken a stand that the question of reinstating the petitioner or including him in the seniority list, does not arise. Further, the respondent has referred to the decisions of the Hon"ble Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6

CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 ; State of Rajasthan and Others Vs. Daya Lal and Others, AIR 2011 SC 1193 : (2011) 128 FLR 928 : (2011) 1 JT 457 : (2011) 2 LLJ 193 : (2011) 1 SCALE 408 : (2011) 2 SCC 429 : (2011) 1 SCC(L&S) 340 : (2011) 1 SCR 707 : (2011) AIRSCW 905 : (2011) 1 Supreme 410 ; and Veer Kunwar Singh University Ad hoc Teachers Association and Others Vs. The Bihar State University (C.C.) Service Commission and Others, (2007) 114 FLR 423 : (2007) 8 SCALE 211 : (2009) 17 SCC 184 : (2011) 1 SCC(L&S) 583 : (2007) 8 SCR 396 in support of their stand.

9. The learned counsel appearing for the petitioner submitted that the order dated 31.03.2015, is in blatant violation of the order and direction issued by this Court and the respondent should be punished for committing contempt.

10. In the preceding paragraphs, this Court has referred to the order passed in W.P. No. 18251 of 2000, dated 17.02.2010, and also extracted the relevant paragraph from which it is clear that the Court while setting aside the award of reinstatement directed compensation to be paid, being a sum of Rs. 16,800/- as full compensation in lieu of reinstatement. This court in its order dated 20.01.2014, deprecated the manner in which, counter affidavit has been filed in the Writ Petition, since it did not even refer to the award of the Labour Court or any of the observations made in the earlier Writ Petition and found the counter affidavit to be a mere format, filed in other cases relating to Social Forestry Workers. Therefore, the counter affidavit was rejected and direction was issued for inclusion of the petitioner's name in the Statewide seniority list, if there is no other legal impediment from doing so. The respondent has passed an order on 31.03.2015, pointing out the impediments.

11. The endeavour of the learned counsel appearing for the petitioner is to convince this Court to initiate action for contempt and grant him the full relief without even the petitioner questioning the order dated 31.03.2015 in the manner known to law.

12. When this issue was put to the learned counsel for the respondent, the learned counsel that the petitioner would state that if the petitioner is required to challenge the order dated 31.03.2015, the petitioner would loose faith in the judiciary.

13. It has to be pointed out that the Court cannot go beyond the four corners of the order alleged to have been flouted and supplemental orders cannot be passed. This Court is not inclined to set aside the order dated 31.03.2015 nor would it be right for the Contempt Court to resort to such procedure. This Court while disposing of the Writ Petition directed to pass orders for inclusion in the Statewide seniority list, if there is no other legal impediment from doing so. Whether the legal impediment pointed out by the respondent/contemnors in his order dated 31.03.2015 is correct and valid, cannot be tested in this Contempt

Petition.

14. It has to be seen as to whether the direction was complied with and if the answer to such question is affirmative, then the only course open to the petitioner is to question such an order, if he is aggrieved. The respondent/contemnor has taken a specific stand that in terms of the earlier order passed by this Court in W.P. No. 18261 of 2000, dated 17.02.2010, there is no right for the petitioner to claim for reinstatement and the compensation received by him is in full settlement of the relief of reinstatement. Therefore, the petitioner has to necessarily dislodge this finding, for which purpose he has to necessarily question the order passed by the respondent, dated 31.03.2015.

15. In the light of the above, this Court is not inclined to initiate any action for contempt and accordingly, the Contempt Petition is closed leaving it open to the petitioner to challenge the order dated 31.03.2015 in the manner known to law. No costs.