
(1997) 04 CAL CK 0012
In the Calcutta High Court
Case No : CO. No. 8672 (W) of 1995

Namita Sengupta

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 02-04-1997

Acts Referred:

Contempt of Courts Act, 1971 — Section 2

Citation : (1997) CriLJ 2839

Hon'ble Judges : Satyabrata Sinha, J

Bench : Single Bench

Advocate : Supradip Roy, for the Appellant; T. Dutta, for the Respondent

Final Decision : Dismissed

Judgement

Satyabrata Sinha, J.—The petitioner filed a writ application in this Court being CO. No. 8672(W) of 1995 claiming, inter alia, the following reliefs : --

(a) A writ in the nature of Mandamus commanding the respondents, each of them, their men, agents and subordinates to act strictly in accordance with law and the respondent authorities be further directed to place the petitioner in terms of the medical advice either at the Institute of Psychiatry Out patient Department, Calcutta or at the S.S.K.M. Hospital where there is little possibility of exertion keeping in view that the petitioner is suffering from heart trouble and the salary and other allowance of the petitioner month by month since the month of January, 1995 be given to the petitioner without any further delay;

(b) A writ in the nature of Certiorari commanding the respondent to certify and transmit the records relating to the cases before this Hon"ble Court so that conscionable justice can be administered;

(c) A writ in the nature of Prohibition prohibiting the respondents authorities from taking any steps and/or further steps against the petitioner till the disposal of the application.

2. The said writ application was disposed of by a letter dated 14-6-1995 in terms of the following order: --

Having heard the learned counsel for the parties, I am of the opinion that the Deputy-Director of Health Services, Nursing, Government of West Bengal, may consider the representation of the petitioner as contained in annexure "C to the writ application sympathetically and pass an appropriate order upon taking into consideration of the facts and circumstances of the matter including the administrative exigencies and upon giving an opportunity of hearing to the petitioner.

It will be proper if the said authority pass an appropriate order on the aforementioned representation of the petitioner at an early date and preferably within a period of two weeks from the date of communication of this order.

The petitioner may file a copy of the writ application before the said authority within three days from date.

There cannot be any doubt that if any admitted dues have not been paid to the petitioner, the same shall also be paid to the petitioner at an early date.

Liberty is given to the learned counsels for the petitioner to take down the gist of this order and communicate the same to the concerned respondent.

The writ application is disposed of with the aforementioned observations.

3. For alleged violation of the said order the petitioner has filed this application under the Contempt of Courts Act.

4. This Court by an order dated 15-3-1996 directed the alleged contemnor to show-cause as to why a proceeding under the Contempt of Courts Act shall not be initiated against her. Pursuant to the said notice, the contemnor has filed an affidavit on 14-10-1996 stating inter alia : --

(1) The petitioner has been released from her post from Bhowanipore Relief Mental Hospital but she did not resume her duty at S.S.K.M. Hospital immediately and continued to remain absent.

(2) She received her salary for the month of January, 1995 on 7-2-1995 but as the petitioner had been complaining that she had not been allowed to join her duty on 13-2-1995, the Directorate of Health Service, Nursing expressly directed her to resume duty as would appear from the endorsement in the office order dated 6-2-1995 as contained in Annexure "A" but dispute the same she did not join her duties at S.S.K.M. Hospital and had been falsely complaining that she had not been allowed to join her duties.

(3) She had served an Advocate's notice upon Deputy Director, Health Service (Nursing) on 23-2-1995. On 1-3-1995 she filed an application stating that she had not been able to join her duties on the ground her sickness and prayed for sanction of her medical expenses. But she had not been allowed to resumes her

duties between 29-1 -1995 and 28-2-1995 as therewith no medical certificate was annexed. She also withdrew the Advocate's notice served by her. Although, she resumed her duty on 1 -3-1995 but again she had been absenting from 7-3-1995 whereafter by a letter dated 9-3-1995 she communicated her inability to join her duties. Three reminders were sent to her on 27-5-1995, 22-6-1995 and 5-7-1995 and asking her to join her duties and in the meantime she filed the aforementioned writ application.

5. Upon receipt of a copy of this Court's order, the deponent considered the representation upon giving the petitioner an opportunity of hearing. She also submitted a written statement whereafter an order was passed on 4-8-95 a copy whereof is contained in Annexure "G" to the affidavit.

6. The deponent of the said affidavit stated that the said order could not be passed either the period fixed by the Court as she had joined the post of Deputy Directorate, Health Service (Nursing) only on 26-5-1995. As regard payment of salary a detailed statement had been made in para 8 of the said affidavit and it has been stated that the petitioner cannot be paid salary for the month of February unless her absence from duties is regularised upon passing an order on an appropriate leave application which is required to be filed by the petitioner.

7. During the course of hearing, a question arose as to whether the letter dated 4-8-1995 was a forged and fabricated document or not inasmuch as from another document it appeared that the petitioner had been asked to appear before the said authority on 11-12-1995 at 11.00 a.m.

8. Mr. Dutta, learned counsel appearing on behalf of the contemner submitted that the petitioner had been allowed to join her duties on 3-1-1997. It was submitted that if she files an application for leave together with medical certificate, the same could be considered and an appropriate order thereupon would be passed in accordance with law.

9. By reason of the said order on 17-1-1997 the contemnor was permitted to file a re-joinder to the affidavit-in-reply filed by the petitioner as to how and under what circumstances, the petitioner has been asked to appear before the concerned authorities on 11-12-1995 for hearing in terms of the Courts order; although an order rejecting her representation had already been passed on 4-8-1995. The said order was passed in view of the allegation that the order dated 4-8-1995 was a forged and fabricated one.

10. On 28-2-1997, the matter was heard in part and the learned counsels were requested to file their written submissions and list of dates. A written submission together with the list of dates had been filed by the alleged contemnor and an affidavit has also been filed by her.

11. In that affidavit it has been stated that despite the aforementioned order dated 4-8-1995 as the petitioner had been absenting from duties but despite the same was complaining that she had not been allowed to join her duties and her

salary was not being paid, the Deputy Director, Health Services sent a Radiogram message to the petitioner which is to the following effects :--

On Communication from Advocate Dipendranath Bose, High Court, Calcutta regarding opportunity for a hearing as per Hon'ble High Courts Order dated 23-11-1995 in respect of her complaint (.) She is directed to be present personally at the Office Chamber of the undersign on 11-12-1995 at 11 a.m. positively for a patience hearing along with all relevant documents(.).

12. Pursuant thereto a hearing was given to the petitioner on 11-12-1995 but the petitioner refused to sign the minutes of the meeting. It appears that on 29-1-1997, the petitioner has filed an application for grant of leave pursuant to the order of the Court dated 17-1-1997. She, in the said application, stated that her absence from 8-3-1994 to 5-6-1995 be treated as urgent leave for personal reasons and so far as the from 5-6-1995 to 31-12-1996 is concerned; because pendency of the writ petition and thereafter the contempt case the said period may be treated as on duty. The petitioner in terms of the said letter dated 29-1-1997 asked for payment of salary and other benefits from February, 1995 to December, 1996. According to the alleged contemnor she is not entitled to the said benefit, unless the leave is sanctioned in accordance with rules. Pendency of this writ application, according to the alleged contemnor is no ground to pay her salary.

13. Mr. S. Ray, learned counsel appearing on behalf of the petitioner submitted that the alleged contemnor is guilty of gross contempt of this Court for violation of this Court order and thus she should be adequately punished and even the apology offered by her should not be accepted.

14. Reliance in this connection has been placed on the The Secretary, Hailkandi Bar Association Vs. State of Assam and Another, and Delhi Development Authority Vs. Skipper Construction Company (P) Ltd. and another,

15. "Civil Contempt" has been defined in Section 2(b) of the Contempt of Courts Act which reads thus: --

Civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court.

Thus, before a Rule is issued, the Court must be prima facie satisfied that the alleged contemnors is guilty of a wilful and deliberate violation of the Courts order.

16. In the instant case the contemnor has filed an affidavit to show that the order of this Court has been complied with in view of the order dated 4-8-1995 passed by the alleged contemnor.

17. It has to be borne in mind that the only direction issued by this Court was to consider the petitioner's representation. This Court in a contempt proceeding,

therefore, is not concerned as to whether the representation of the petitioner has been allowed or rejected. If the petitioner is aggrieved by such an order she may file appropriate application before appropriate forum.

18. This Court has considered the matter in great details and passed orders from time to time; only for the purpose of satisfying itself as to; whether the alleged contemnor had fabricated certain documents or not? In view of the fact as has been noticed hereinbefore, there cannot be any doubt whatsoever that the alleged contemnor is not guilty of manufacturing any document. Although she had not been able to pass an order within a time fixed by this Court, sufficient reason has been assigned in support thereto. It is, therefore, not a case where this Court should issue any rule or punish the alleged contemnor, particularly in view of the fact that in a contempt proceeding, this Court cannot go into a disputed question of fact. The decisions cited by the learned counsel for the petitioner have no application to the fact of the matter. It is well known that each decision must be read with keeping in view the fact of that case.

19. However, I have no doubt in my mind that the alleged contemnor shall consider the petitioner application for grant of leave, in the event, she fulfils the conditions therefore.

20. This application is therefore, dismissed with the aforementioned observations. There will be no order as to costs.