

(1999) 02 DEL CK 0065

In the Delhi High Court

Case No : CCP321/97, CWP2485/98, CCP 322/97, CCP 323/97, CM 8405/98 IN CWP 2481/98, CCP 326/97, CWP 2482/98, CCP 327/97, CWP 2484/98, CCP 294/97, CWP 2483/98, CCP 293/97, CCP 292/97, CM 7409A/97 IN CWP 247/97, CWP 4904/97, WP1540/96 AND CM 7930/97 IN CWP 1704 OF 1996

Parvesh Sharma and Others

APPELLANT

Vs

Sankalita Mudgil and Others

RESPONDENT

Date of Decision : 26-02-1999

Acts Referred:

Citation : (1999) 5 AD 471 : (1999) 78 DLT 683

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. K.C. Mittal and Mr. N.M. Popli, for the Appellant; Mr. Rajiv Nayar and Mr. Kamal Mehta, for the Respondent

Judgement

K. Ramamoorthy, J.—The above contempt petitions and the writ petitions arise out of the order dated 29.7.1997 passed by this Court. The petitioners claim in the writ petitions that they were unjustifiably non-employed and their salaries were not paid by the respondents in the writ petitions. When the matter came up for disposal, the parties had come to an amicable settlement and recording the same this Court passed the following order:

"Rule.

Heard the Counsel for the parties and perused the record. Since the question involved in all the writ petitions is same, Therefore, these are disposed of by one order.

Mr. Rajiv Nayar, senior Advocate, appearing for respondents 3 & 4 states that he has instructions from the Managing Committee of the school i.e. respondents 3 & 4 to give proposals to the petitioners for their acceptance, namely; (1) Petitioners can take compensation in full and final settlement of all their claims.

That they will not claim reinstatement. This be treated as golden hand shake. Alternatively (2) the Management is prepared to reinstate the petitioners w.e.f. 1st August, 1997 provided they do not claim any wages for the intervening period when they were not working in the school.

Mr. R.K. Kapoor after consulting the petitioners stated at the Bar that the petitioners accept the second proposal given by respondents 3 & 4.

He further states that the petitioners are willing to join their duties in the school w.e.f. 1st August, 1997. They would not claim wages for the intervening period, provided after reinstatement full salary month by month is paid to them and it be paid by cross cheques.

Mr. Rajiv Nayyar, Senior Advocate, appearing for the respondents 3 & 4 states that Management had been paying full salary to the petitioners and would pay full salary to them as admissible under the law, Management will allow them to resume the work w.e.f. 1st August, 1997 and the salary shall be paid by cross cheques.

In view of the compromise arrived at by the parties whereby respondents 3 and 4 have accepted to take back all the petitioners w.e.f. 1st August, 1997 and the petitioners are prepared to give up their claim for back wages for the intervening period, directions are accordingly issued to respondents 3 and 4 to allow the petitioners to resume duty w.e.f. 1st August, 1997. The petitioners at the same time of resuming the duty would give in writing that they accept the second offer of the respondents and would not claim back wages. Those of the petitioners who are willing to give in writing they should be allowed to resume duties on 1st August, 1997. Petitioner shall be paid their salaries as permissible under the law by cross cheques. It is further clarified that for the purpose of selection grade, seniority and promotion, the intervening period would be counted towards service and for no other purpose.

It is expected that petitioners will work diligently and sincerely henceforth and it is also hoped that the Management will not create any hurdle for the petitioners.

With these observations, the above petitions stand disposed. Orders be taken dusty to both the parties."

2. Complaining that the above order had not been complied with, CCP. 321/97 was filed by Mrs. Parvesh Sharma praying for the following reliefs:

"(i) By issuing notice initiate the contempt proceedings against the contemnors for wilfully disobeying of the order dated 29 July, 1997;

(ii) after hearing both the parties punish the contemnors in accordance with law; and

(iii) pass any further order/orders as may be deemed fit and proper in the circumstances of this case."

There are three respondents in the Contempt Petition. Mrs. Parvesh Sharma has filed Writ Petition No. 2485/98 praying for the following reliefs:

"It is Therefore, prayed that this Hon"ble Court may be pleased to issue writ in the nature of mandamus directing the respondents 4 to 5 to assign duties and allow the petitioner to discharge duties as teacher regularly any obstruction and hindrance.

(B) In the nature of Prohibition prohibiting the respondents 4 and 5 from causing any obstruction in the ingress and egress of the petitioner and in discharge of the duties as a Teacher in the School.

(C) Direct the respondents 1, 2 and 3 to ensure proper compliance of the Order and Direction of this Hon"ble Court in this regard.

(D) Direct the respondents 4 and 5 to pay all the arrears of salary not paid so far and quash the impugned memos issued to the petitioner annexed herewith."

3. Mrs. Urmila Sharma has filed CCP 322/97 impleading three respondents. The facts are the same as in CCP 321/97.

4. Mrs. Vibha Bhatnagar has filed CCP 323/97 claiming the following relief:

"(i). By issuing notice initiate the contempt proceedings against the contemnors for wilfully disobeying of the order dated 29 July, 1997;

(ii). after hearing both the parties punish the contemnors in accordance with law; and

(iii). pass any further order/orders as may be deemed fit and proper in the circumstances of this case."

She has also filed C.W.P. 2481/98. The facts are the same and need not be related.

5. Mrs. Supriti Saxena has filed CCP 326/97. She has also come forward with the same grievances. She has filed C.W.P. 2482/98 claiming the following reliefs:

"It is, Therefore, prayed that this Hon"ble Court may be pleased to issue writ in the nature of mandamus directing the respondents 4 and 5 to assign duties and allow the petitioner to discharge duties as teacher regularly without any obstruction and hindrance.

(B) In the nature of Prohibition prohibiting the respondents 4 and 5 from causing any obstruction in the ingress and egress of the petitioner and in discharge of the duties as a Teacher in the School.

(C) Direct the respondents 1, 2 and 3 to ensure proper compliance of the Order and Direction of this Hon"ble Court in this regard.

(D) Direct the respondents 4 and 5 to pay all the arrears of salary not paid so far and quash the impugned memos issued to the petitioner annexed herewith."

6. Mr. M.K. Padam has filed CCP 327/97. He has also filed CWP 2484/98 praying for the following reliefs:

"It is, Therefore, prayed that this Hon''ble Court may be pleased to issue writ in the nature of mandamus directing the respondents 4 to 5 to assign duties and allow the petitioner to discharge duties as teacher regularly without any obstruction and hindrance.

(B) In the nature of Prohibition prohibiting the respondents 4 and 5 from causing any obstruction in the ingress and egress of the petitioner and in discharge of the duties as a Teacher in the School.

(C) Direct the respondents 1, 2 and 3 to ensure proper compliance of the Order and Direction of this Hon''ble Court in this regard.

(D) Direct the respondents 4 and 5 to pay all the arrears of salary not paid so far and quash the impugned memos issued to the petitioner annexed herewith."

7. Mrs. Neelam Mago has filed CCP 294/97 impleading Mrs. Kanta Kumari alone as the respondent.

8. Mrs. Kusum Mehta has filed C.W.P. 2483/98 claiming the following reliefs:

"It is, Therefore, prayed that this Hon''ble Court may be pleased to issue writ in the nature of mandamus directing the respondents 4 to 5 to assign duties and allow the petitioner to discharge duties as teacher regularly without any obstruction and hindrance.

(B) In the nature of Prohibition prohibiting the Respondents 4 and 5 from causing any obstruction in the ingress and egress of the petitioner and in discharge of the duties as a Teacher in the School.

(C) Direct the Respondents 1, 2 and 3 to ensure proper compliance of the Order and Direction of this Hon''ble Court in this regard.

(D) Direct the Respondents 4 and 5 to pay all the arrears of salary not paid so far and quash the impugned memos issued to the petitioner annexed herewith."

9. Mrs. Savdesh Bawa has filed CCP 293/97 impleading Mrs. Kanta Kumari alone as the respondent.

10. It is not necessary to set out the facts mentioned in the CCPs and the writ petitions in detail because the point involved in all the petitions lies in a very narrow compass. The case of the petitioners is that the respondents had failed to give effect to the order passed by this Court on 29.7.1997 and , Therefore, they are guilty of contempt of an order passed by this Court and on that basis the respondents should be dealt with for violating the order passed by this Court. The case of the respondents is that even though some of the petitioners in the writ petitions before this Court were not employees under the Management of respondents 2 and 3, the respondents had agreed to take all the writ petitioners back in service and pay them salaries and the respondents had paid salaries to

the petitioners in the writ petitions filed earlier. The grievance of the petitioners is that the respondents are not giving them work and they are not giving them Time Table and they are not giving them salary as per the Vth Pay Commission. The petitioners would state that no doubt payments were made by the respondents but the payments were not made in accordance with the scales of pay fixed for the teachers and salary has not been paid in accordance with the pay fixed by the Vth Pay Commission.

11. In Writ Petition No. 2481/98 notice was ordered by this Court on 20.5.1998. On the very first date respondents 4 to 6 were represented by Mr. Kamal Mehta. Mrs. Anupam Chandra had entered appearance on behalf of respondents 1 to 3. On 10.8.1998 when the matter was taken up Mr. Rajiv Nayar, the learned Senior Counsel for respondents 4 to 6 submitted that respondents 4 to 6 had no objection to the relief being granted to the petitioner. Respondents 1 to 3 had not filed any counter but yet respondents 4 to 6 had agreed to the reliefs being granted to the petitioner. To that extent, the writ petition was allowed. The order reads as under:

"The learned Senior Counsel for respondents 4 to 6 Mr. Rajiv Nayar, states that the respondents 4 to 6 have no objection prayed for in the writ petition being allowed. In view of this, it is not necessary to go into the other facts adumbrated by Mr. K.C. Mittal, the learned Counsel for the Petitioner. The writ petition is allowed.

Respondents 4 & 5 are restrained from causing any obstruction in attending the school and taking classes. Respondents 1 to 3 are directed to ensure that the directions issued by this Court are complied with. Respondents 4 & 5 to pay all the arrears of salary payable to the petitioner for the period from August, 1997 to end of March, 1998, subject to the decision of this Court in a writ petition filed by the petitioner claiming the pay scale as per the Vth Pay Commission.

The Management Committee of the School is at liberty to take any disciplinary action against the petitioner, if it is so advised in accordance with law.

There shall be no orders as to costs.

Dasti."

This Court did not intend to issue any writ against respondents 1 to

3. This has to be made clear now and that is why I have adverted to it. On 17.8.1998 the petitioner filed C.M. 8405/98 praying for the following reliefs:

"It is, Therefore, in the facts and circumstances of this case that this Hon''ble Court may be pleased to modify the Order dated 10.8.1998 specifically directing the respondent school to:

(A) pay salary for the months of April, 1998 to July, 1998 and also future salary for each month to be paid by 7th of next month;

(B) issue orders assigning duties regularly, by issuing time table, assigning specific classes to the applicant to teach in addition to the directions already given in order dated 10th August, 1998, forthwith;

(C) direct respondents 1 to 3 to ensure compliance of the order of this Hon''ble Court forthwith;

(D) direct that disciplinary action on the basis of the alleged charges contained in the charge sheet dated 22.7.98 issued during the pendency of the present writ petition cannot be proceeded with and the respondents are shall not be able to take any disciplinary action against the applicant on the basis of these charges."

The enquiry commenced by the Management against the teachers was stayed by this Court. The necessary facts to be noted are; (1) the Management of the School had taken back the petitioners in service; (2) some payments have been made to the teachers and the teachers are not satisfied with the payments made and the claim is more; (3) the Management had taken disciplinary action against teachers.

12. Some of the teachers, who have filed contempt petitions, have also filed writ petitions seeking relief against the Government and the Education Authorities.

13. The scope of the contempt petitions is very limited, Mr. Rajiv Nayar, the learned Senior Counsel for the Management submitted that relating to teachers Mrs. Priti Sareen (CCP 292/97) and Mr. H.S. Rana (CWP 247/96) they were not on the rolls of the school. Mr. Rana was employed for remedial classes by the Society, who was running the School and had nothing to do with the respondents Management. Mrs.Sareen was working in Navdeep Montessori School and nothing to do with the present Management represented by respondents 2 and 3.According to Mr. Rajiv Nayar, the learned Senior Counsel for the respondents it is not open to these two petitioners to seek to enforce the order dated 29.7.1997. According to Mr. Rajiv Nayar, the learned Senior Counsel, now the Navdeep Montessori School is closed and thus the jural relationship of master and servant has come to an end and the remedial classes have also been discontinued and the services of these two teachers are not required. According to the learned Senior Counsel Mr. Rajiv Nayar these two things had happened subsequent to the other passed by this Court on 29.7.1997 and the cause of action are entirely different. If these two teachers feel aggrieved by the action of the Management they have the remedy under the Act and approach the School Tribunal u/s 8(3) of Delhi School Education Act, 1973.

14. Regarding Mrs. Savdesh Bawa and Mrs. Neelam Mago, Mr. Rajiv Nayar, the learned Senior Counsel submitted that the Fateh Nagar Branch of the School owing to the trouble created by the teachers there was no admission. No parent was willing to take any risk of putting the wards in the school and, Therefore, the Fateh Nagar Branch had to be closed. The Directorate of Education did not approve of the results of the examination declared by the School. There is automatic lapse of recognition of the School w.e.f. 1.4.1998 and the learned

Senior Counsel referred to Rule 55 of the Delhi Education School Rules, 1973.

15. During the pendency of the contempt petitions and the writ petitions just to verify the facts the Education Officer was directed to monitor the situation with reference to the teachers who have come to the School. The Education Officer had watched the action of the Management and the teachers for a period of 30 days and he submitted a report. The teachers and the Management have joined issues on the contents of the report filed by the Education Officer. It is not for this Court to go into disputed questions of facts.

16. In the contempt petitions the only question to be decided is whether the respondents had acted in accordance with the order passed by this Court on 29.7.1997. The contempt petitions are directed against Mrs. Kanta Kumari, Manager of the School. The other respondents are no way responsible for implementing the order passed by this Court.

17. I heard the learned Counsel for the parties at length. The respondent Mrs. Kanta Kumari had not obeyed the order passed by this Court. She had been trying to get round the order passed by this Court by trying to drive the teachers to the wall by not providing them with employment and not maintaining Attendance Register, not giving them proper Time Table, not paying them salaries. A perusal of the record would show that Mrs. Kanta Kumari had gone to the extent of even projecting records as if they were maintained in the normal course of the functioning of the school. The teachers had not been paid their salaries and every time the teachers are filing petitions in this Court for payment of salaries. To the contempt petitions, the Court would expect Mrs. Kanta Kumari to give an account as to how she had acted pursuant to the order passed by this Court. Instead, she had deliberately taken disciplinary action against the teachers without any jurisdiction whatsoever, just to make it appear as if that the teachers were on the wrong and Mrs. Kanta Kumari had been doing everything in accordance with law. The conduct of Mrs. Kanta Kumari has been contumacious and there is willful disobedience of order passed by this Court. When Mrs. Kanta Kumari had agreed to an order being passed by this Court she must be conscious of the consequences and she must have acted in obedience to the direction issued by this Court. She has been trying to justify her action stating that owing to the conduct of the teachers she could not even run the school and there had been lapse of recognition. If there have been any difficulty in running the school, the said Mrs. Kanta Kumari ought to have approached the appropriate Forum to establish her case. It is no answer to the claim of the petitioners that Mrs. Kanta Kumari had not complied with the order passed by this Court, that she was forced to close the school.

18. Having regard to the facts and circumstances, I am clearly of the view that Mrs. Kanta Kumari is guilty of contempt of the order passed by this Court. The Supreme Court in *Asharam M. Jain Vs. A.T. Gupta and Others*, observed that it is the right and interest of the public in the due administration of justice. In *Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and*

Another, :

"Abuse of the process of the Court calculated to hamper the due courses of a judicial proceeding or the orderly administration of justice is a Contempt of Court. It may be that certain minor abuses of the process of the Court may be suitably dealt with as between the parties, by striking out pleading under the provisions of Order 6, Rule 16 or in some other manner. But it may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of justice. The Court has the power to commit for Contempt of Court, not in order to protect the dignity of the Court against insult or injury as the expression 'Contempt of Court' may seem to suggest, but, to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with."

19. The said Mrs. Kanta Kumari had assumed that she can do anything she likes and she is not answerable to this Court and she had been treating the teachers without any qualms of conscience. I do not find any mitigating circumstance and the conduct of Mrs. Kanta Kumari has been far from being act of a prudent ordinary person. I am of the view that a serious note has to be taken and Mrs. Kanta Kumari cannot go unpunished. Accordingly, I commit Mrs. Kanta Kumari for Contempt of Court and sentence her to undergo simple imprisonment for a period of four weeks.

20. In the writ petitions filed in 1998, petitioners had prayed for the same relief as in the earlier writ petitions and , Therefore, they need not again be considered.

21. No further directions are necessary in the contempt petitions and the writ petitions and they all stand disposed of.