

(2023) 10 OHC CK 0038
In the Orissa High Court
Case No : CONTC No.4543 Of 2023

Ranjan Kumar Giri

APPELLANT

Vs

Bishnupada Sethi, I.A.S. & Ors

RESPONDENT

Date of Decision : 10-10-2023

Acts Referred:

Contempt of Courts Act, 1971 — Section 12

Citation : (2023) 10 OHC CK 0038

Hon'ble Judges : Biraja Prasanna Satapathy, J

Bench : Single Bench

Advocate : Swapnil Roy, S.K. Samal

Final Decision : Disposed Of

Judgement

Biraja Prasanna Satapathy, J.

1. This Contempt Petition has been filed challenging non-compliance of order dtd.15.12.2022 and subsequent order passed by this Court on 06.04.2023 in CONTC No. 2225 of 2023.

2. It is the case of the Petitioner that when his claim for appointment under the provisions of Rehabilitation Assistance Scheme was rejected vide order dtd.24.11.2021 relying on the provisions contained under OCS (R.A.) Rules, 2020, Petitioner challenging the said order approached this Court in W.P.(C) No. 17871 of 2022. This Court while taking up the matter on 15.12.2022 disposed of the writ petition with a direction on the Opp. Parties to consider the case of the Petitioner in the light of the Judgment passed by the Hon'ble Apex Court in the case of Malayanada Sethi Vs. State of Odisha (Civil Appeal No. 4103 of 2022) disposed of on 20.05.2022. This Court passed the said order on the concession given by the learned State Counsel.

2.1. However, when the said order was not complied with within the time stipulated by this Court, Petitioner filed CONTC No. 2225 of 2023. This Court vide order dtd.06.04.2023 while disposing the said Contempt Petition, allowed further

one month time to comply the order passed by this Court on 15.12.2022. On the face of such further extension of time, when the order was not complied with, the present Contempt Petition was filed.

3. This Court on 21.07.2023 directed the learned State Counsel to obtain instruction on the matter and fixed the matter to 21.08.2023. On 24.08.2023 & 25.09.2023 considering the request made by the learned State Counsel the matter was adjourned pending compliance of order dtd.21.07.2023. When this Court took up the matter on 25.09.2023 when a request was once again made by the learned State Counsel to allow further time, this Court accordingly directed for personal appearance of Opp. Party Nos. 1 & 2 on 26.09.2023.

3.1. On 26.09.2023 when the matter was taken up a prayer was made that the Opp. Party No. 1 is not in a position to appear before this Court and he will appear tomorrow (27.09.2023). But on 26.09.2023 Opp. Party No. 2 duly appeared in Person and filed an affidavit inter alia taking a stand that the case of the Petitioner is not covered by the decision of the Hon'ble Apex Court in the case of Malayananda Sethi in view of the 3 Bench decision of the Hon'ble Apex Court in the case of N.C. Santosh Vs. State of Karnataka. It is also contended by the Opp. Party No. 2 that the order passed by this Court on 15.12.2022 is under challenge before this Court in Writ Appeal No. 1701 of 2023. It is also contended that due to pendency of the Writ Appeal No. 1701 of 2023 it has become difficult to give effect to the order passed by this Court on 15.12.2022.

3.2. However, pursuant to the order passed by this Court on 26.09.2023 Opp. Party Nos. 1 & 2 appeared before this Court on 27.09.2023 and Opp. Party No. 1 filed an affidavit. In Para 5 of the show-cause affidavit a stand was taken that this Court in Writ Appeal No. 1701 of 2023 has allowed further four (4) months time for compliance of the order dtd.15.12.2022 vide order dtd.26.09.2023. The order passed by this Court on 26.09.2023 in Writ Appeal No. 1701 of 2023 was also produced before this Court and the said order reads as follows:-

"2. Heard Mr.M.K.Khuntia, learned Addl. Government Advocate appearing for the State-appellant.

3. It is apparent that this appeal is barred by limitation as there is a delay of 191 days in filing the appeal. But Mr. M.K.Khuntia, learned Addl. Government Advocate has submitted that a batch of Writ Appeals being W.A. No.810 of 2021 (State of Odisha and others v. Bindusagar Samantaray and others) have been disposed of by the order dated 25.09.2023 with certain observations. Mr. Khuntia, learned Addl. Government Advocate has fairly submitted that in the similar terms, this appeal can also be disposed of.

4. Accordingly this appeal stands disposed of.

5. We reiterate that the case of the respondent No.1 shall be considered in the manner as recorded in State of Odisha and others v. Bindusagar Samantaray and others within a period of four months from today.

6. The personal appearance as directed by this Court stand dispensed with.”

3.3. It is found from order dtd.26.09.2023 that Writ Appeal No. 1701 of 2023 has been disposed of in the light of the order passed by this Court in Writ Appeal No. 810 of 2021 and batch vide Judgment dtd.25.09.2023. The order passed by this court in its Judgment dtd.25.09.2023 under Para 11 reads as follows:-

“11. Having appreciated the submissions of the learned counsel for the parties, we find that all these writ appeals can be disposed of in terms of the direction as issued in Suchitra Bal (supra), but with some explanations in respect of certain aspects which are not categorically dealt in Suchitra Bal (supra).

We direct the appellants to consider the case of the petitioner-respondent under the old scheme called Orissa Civil Services Rehabilitation Assistance Rules 1990. We make it abundantly clear that those applications which do come within the parameters of that scheme, will be considered for rehabilitation appointments. However, notwithstanding the above observation, on humane consideration and on consideration of the distress condition, the State Government may provide rehabilitation appointment to the distressed families of the employees, who died in harness but this is left in the absolute discretion of the State Government.

So far as question relating to the aided government institutions or the block grant institutions is concerned it appears that the cases of rehabilitation will be covered by the Government policy as framed by the General Administration & Public Grievance Department vide their circular dated 14.10.1998, as referred above.

So far as the objection as raised by the learned counsel for the appellants that some of the applications have been filed after the new Rule came into force, in this regard, nothing more is required to be explained. The scheme under the old Rules itself contains the rule of limitation and hence, all applications are to be filed within a period of one year from the date of death. If any application is filed even after new Rules came into force, that was not barred by limitation if filed within one year. But those applications are to be considered under the old Rules. Applications filed within one year from the date of death, have to be considered as valid. We lay emphasis that consideration for rehabilitation assistance has to be made on the date of death, not on the date of consideration. In this regard, we are governed by the law, as laid down in Malayananda Sethi (supra).

We direct the appellants to consider the cases of the petitioner-respondents within the period of four months from today. For that, the State shall form a Special Committee for consideration of the cases of the writ petitioners-respondents in order to assist the authorities to issue the rehabilitation appointments. We make it further clear that this Court will not extend the stipulated time. Keeping that in view State Government shall expedite the process of the formation of committee. The cases of rehabilitation appointments are to be considered with empathy and hence the rigid technicalities are not germane. Before parting with the records, we direct the respondent-petitioners

to extend all out cooperation to the State Government so that their appointments can be considered at earliest.

The appellants shall not persuade the writ petitioners-respondents to file fresh applications under the new Rules.

With the aforesaid observation, the impugned judgment/order stands modified to the extent as indicated above.

In the result, the appeals are disposed of. No order as to costs.”

4. Opp. Party No. 1 who is present in Person accordingly contended that since this Court in Writ Appeal No. 1701 of 2023 has allowed further four (4) months time for compliance of order dtd.15.12.2022 so passed in W.P.(C) No. 17871 of 2022, appropriate order be passed in the present Contempt Petition.

5. Mr. Roy, learned counsel for the Petitioner contended that even though this Court in Writ Appeal No. 1701 of 2023 has allowed further four (4) months time for compliance of the order in question, but the claim of the present Petitioner is not covered by the Judgment passed by this Court in the case of Bindusagar Samantaray Vs. State of Odisha & Ors., which was challenged by the State in Writ Appeal No. 810 of 2021. It is however contended that in view of the order passed by this Court on 26.09.2023 in Writ Appeal No. 1701 of 2023, Opp. Parties be directed to comply the order dtd.15.12.2022 within the time stipulated by this Court on 26.09.2023.

6. Having heard learned counsel appearing for the Parties and considering the submissions made and the order passed by this Court on 26.09.2023 in Writ Appeal No. 1701 of 2023, this Court dispose of the Contempt Petition with the direction that the order dtd.15.12.2022 be complied with within the time stipulated by this Court in its order dtd.26.09.2023 in Writ Appeal No. 1701 of 2023.

7. The Contempt Petition is accordingly disposed of.

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