
(2020) 01 JH CK 0128

In the Jharkhand High Court

Case No : Cont. Case (Civil) No. 771 Of 2019

Ranjeet Das And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 10-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2020) 01 JH CK 0128

Hon'ble Judges : Shree Chandrashekhar, J

Bench : Single Bench

Advocate : Piyush Chitresh, Rishikesh Giri

Judgement

1. On 06.12.2019, the following order was passed by this Court:

This contempt case has been filed for initiating a proceeding under the Contempt of Courts Act, 1971 against the contemnors for their

willful violation of the order dated 25.07.2018 passed in W.P.(S) No. 5158 of 2017 and batch cases. In paragraph no. 9 of the order dated

25.07.2018, the writ Court has ordered as under:

â??On account of illegal termination of the petitioners from service, in my opinion, they cannot be denied benefits of continuity in service.

On their reinstatement in service they shall be deemed to be continuing in service with effect from their initial date of appointment and whole

of this period shall be included in their service. On payment of salary to the petitioners for the period during which they have been kept out

of service, contention raised is that atleast 25% back-wages may be granted to the petitioners. On admitted facts, an inference that the

petitioners have been prevented from discharging their duty can be justifiably

drawn from the date of decision in the aforesaid Letters

Patent Appeals. After 11.05.2018 when the order passed in W.P.(S) No. 6031 of 2015 and W.P.(S) No. 173 of 2016 was set-aside by the

Hon'ble Division Bench, the petitioners were entitled for reinstatement in service and accordingly, it is ordered that they are entitled for

salary between 12.05.2018 till they are actually reinstated in service.â??

This contempt case was listed on 27.09.2019. On that day, the learned counsel for the petitioner referred to the undertaking tendered by the

contemnors in Contempt Case (Civil) Nos. 781 of 2018 and 789 of 2018 to show that accepting the undertaking tendered by the opposite

parties-contemnors, the contempt cases were disposed of.

Now, in the present proceeding, a show-cause reply has been filed by the Principal Secretary, School Education and Literacy Department.

In this affidavit it is stated that the order passed by the writ Court has been complied substantially and only that part of the order by which

back-wage to the tune of 25% has been granted to the petitioners has been challenged in L.P.A No. 793 of 2018.

Mr. Rishikesh Giri, the learned State counsel submits that the previous contempt cases were disposed of vide order dated 15.02.2019,

however, before that L.P.A No. 793 of 2018 was already filed on 22.12.2018, but, this fact was not brought to the notice of the writ Court.

Mr. Piyush Chitresh, the learned counsel for the petitioner submits that L.P.A No. 793 of 2018 which was filed in December, 2018 has

remained in defects for a considerable time and no step was taken by the State of Jharkhand for hearing of L.P.A No. 793 of 2018,

however, Mr. Rishikesh Giri, the learned State counsel submits that the defects pointed out by the Registry have now been removed and, in

fact, the Letters Patent Appeal was posted for hearing on 02.12.2019 and now it is posted for hearing on 09.12.2019.

Post this matter on 13.12.2019.

2. Thereafter, it was brought to the notice of the Court that the Letters Patent Appeal preferred by the State was dismissed by a Division Bench of

this Court.

3. On 13.12.2019, the following order was passed by this Court:

The learned counsel for the petitioners submits that on 10.12.2019 the Letters Patent Appeal filed by the State has been dismissed.

Mr. Rishikesh Giri, the learned State counsel seeks adjournment for filing affidavit in compliance of the order of this Court.

It needs no reiteration that this is second round of the contempt proceeding; the first contempt case filed by the petitioner was disposed of on the basis of the undertaking filed by the State.

Post the matter on 10.01.2020.

4. There is no affidavit filed by the contemnor.

5. To recapitulate, on 27.09.2019, the following order was passed by this Court:

The petitioners have filed this contempt petition seeking initiation of a proceeding under the Contempt of Courts Act, 1971 against the

contemnors for willful and intentional violation of the order dated 25.07.2018 passed in W.P(S)No.5158 of 2017 and batch cases and for

willfully flouting and not honouring their undertaking tendered before this Court in the proceeding of the Contempt Case (Civil) No.781 of

2018 and Contempt Case (Civil) No.789 of 2018 which were disposed of accepting the undertaking tendered by the opposite parties-contemnors.

2. The controversy which was ignited on account of termination of Para Teachers who were allegedly wrongly appointed under non-Para

Teacher category was set at rest by a decision of the Hon'ble Division Bench of this Court in L.P.A No.186 of 2017 and L.P.A No.191 of 2017.

3. The brief facts of the cases in W.P (S) No.5158 of 2017 and batch cases are briefly recorded in paragraph nos.5, 6 and 7 of the order

dated 25.07.2018, which are extracted below for a better appreciation of the controversy on the conduct of the contemnors:

5. Before legality of the orders by which the petitioners have been terminated from service is examined, it would be necessary to record few

facts. Pursuant to the advertisements inviting applications for appointment on the post of Inter-trained Assistant Teachers and Inter-trained

Urdu Teachers, the petitioners submitted their applications for appointment under non-Para Teacher category. They all at that time were

working as Para Teachers in different schools. These petitioners have been appointed on different dates and it is stated that on verification

of the records when it was found that being Para Teachers they were not eligible for appointment under 50% seats reserved for the

applicants under the non-Para Teacher category, they were terminated from service. It appears that a decision was taken to reinstate some

of the petitioners, particularly petitioners in W.P.(S) No.5158 of 2017, in service and initiate a departmental proceeding against them on the

allegation that they have been wrongly appointed under non-Para Teacher category. The order impugned by the petitioners in W.P.(S)

No.5158 of 2017, however, reveals that subsequently departmental proceeding against them was dispensed with and on the basis of order

passed by the learned Single Judge in W.P.(S) No.6031 of 2015 and W.P.(S) No.173 of 2016 they have again been terminated from service.

6. The learned State counsel has contended that once 50% of the total advertised seats were reserved for Para Teacher category, the

applicants who at the time of submission of application were working as Para Teachers were not eligible to apply and get appointed under

non-Para Teacher category.

7. This precisely was the argument advanced on behalf of the respondents in L.P.A. No. 186 of 2017 and L.P.A.No.199 of 2017. However,

this argument did not find favour with the Hon'ble Division Bench and by an order dated 11.05.2018 the Letters Patent Appeals have been

allowed. The Hon'ble Division Bench has held that under the rules or in the advertisement there is no stipulation under which an applicant

working as Para Teacher is not eligible to seek appointment under the general category. Even otherwise also such a stipulation would have

been contrary to the constitutional mandate under Article 14 and 16 of the Constitution of India. An applicant who is otherwise eligible, may

be he is a reserved category candidate, cannot be denied appointment under general category vacancy.

4. At this stage, this needs to be recorded that it was not for the first time that a decision was rendered by this Court rather there are several

orders passed by this Court; writ Courts as well as the Letters Patent Courts, and several contempt petitions were filed by the writ petitioners

seeking initiation of a proceeding under the Contempt of Courts Act, 1971 alleging willful and intentional breach of the writ Court's order,

however, this Court finds that a solution has yet not been evolved by the department. Every individual case is taken up by the department

separately though the issues involved are same and similar. Such approach of the department is, without doubt, against the litigation policy

of the State. Decision rendered by the Hon'ble Division Bench of this Court, if not challenged or challenged but without success, are the law

of the land within the State of Jharkhand. All authorities including the Courts are under a duty to follow the law laid down by this Court,

faithfully and religiously.

5. From the facts disclosed in this contempt petition, I gathered that a prima-facie case for initiating a proceeding under the Contempt of

Courts Act, 1971 has been made out.

6. Issue notice to the Principal Secretary, Human Resources Development Department, Government of Jharkhand-Contemnor No.2.

7. Post the matter on 08.11.2019.

8. Let a copy of the order be sent to the Chief Secretary, Government of Jharkhand, Jharkhand, for information and necessary step to be

taken by him.

9. Let a copy of the order be given to the learned State counsel.

6. The records would reveal that pursuant to the order dated 27.09.2019 a notice dated 22.10.2019 was sent by the Registry of this Court requiring the

contemnor-Secretary to remain physically present in the Court. He has neither appeared in the Court nor has he filed an application seeking exemption

from personal appearance.

7. In the above facts, it is appropriate that aailable warrant of arrest be issued against the contemnor-Principal Secretary, Department of Human

Resources, Government of Jharkhand to ensure his presence in the Court, however, at this moment exercising judicial restraint I am inclined to grant

him one opportunity and, accordingly, he is directed to remain physically present in the Court on the next date of hearing. On that day, he shall produce

the original records pertaining to this case.

8. Post this matter on 17.01.2020.

9. Let a copy of the order be sent to the Chief Secretary, Government of Jharkhand and the Principal Secretary, Department of Human Resources, Government of Jharkhand.