
(2021) 08 J&K CK 0010

In the Jammu And Kashmir High Court

Case No : CCP No. 01 Of 2020 In CPSW No. 380 Of 2018

Robkar

APPELLANT

Vs

Rigzin Sampheal, Commissioner-Secretary

RESPONDENT

Date of Decision : 10-08-2021

Acts Referred:

Citation : (2021) 08 J&K CK 0010

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Jahangir Iqbal Ganai, Sheikh Umar, T.M. Shamsi, Shah Aamir

Judgement

Ali Mohammad Magrey, J

In terms of order passed on 27th of April, 2021, Mr B.K. Singh, Principal Secretary to Government, School Education Department has filed the

compliance report, perusal whereof reveals that the officer has reiterated the stand taken in the earlier statement of facts, which is considered by this

Court on 27th of April, 2021, with one addition that the matter is now taken up with the Finance Department. Order passed on 11th of December,

2020 being relevant is taken note of;

On 19th of October, 2020, when the matter came up for consideration, this Court observed as under:

Despite a series of orders passed by this Court from time to time directing the respondents to implement the directions passed by the Court, no

compliance is reported by the respondents till date.

Mr N. H. Shah, the learned Senior Additional Advocate General, submits that reportedly the Department has filed Special Leave Petition (SLP)

against the judgment of the Division Bench which is pending before the Honâ??

ble Supreme Court and, as such, consideration in the instant contempt petition needs to be deferred.

The aforesaid submission was also made by the learned Senior Additional Advocate General as back as 29th of January, 2020, but no such restraint order or proceeding pending before the Honâ??ble Supreme Court has been placed on record by the respondents to bring home that argument.

In the above backdrop, there is no other option left for the Court but to frame rule against the respondents. Accordingly, let the Registry issue rule

against the respondents in the contempt petition to show cause as to why they shall not be punished for violation of directions passed by the Court.

Besides, as reported, a new incumbent has been posted as Commissioner/ Secretary to Government, School Education Department, therefore, it shall

be in the fitness of things to simultaneously array the present incumbent-Commissioner/ Secretary to Government, School Education Department, as a

party respondent to the contempt petition, but before doing so, the Court feels it necessary to apprise the said new incumbent about the status of the

case and, thus, the Registry shall, in the first instance, forthwith send a copy of the contempt petition as well as all the orders passed therein, in Virtual

form, to the present incumbent-Commissioner/ Secretary to Government, School Education Department, so as to enable the said Officer to file

compliance before the Court by the next date of hearing.

List on 20th of November, 2020.

Copy of this order be provided to Mr N. H. Shah, the learned Senior Additional Advocate General, under the seal and signatures of the Bench

Secretary of this Court, today itself.â??

In pursuance of the aforesaid order of this Court, the Registry has issued show cause notice to (i) Shri Rigzin Sampheal, Commissioner/ Secretary to

Government, School Education Department, Civil Secretariat, Srinagar/ Jammu; (ii) Dr Ghulam Nabi Itoo, Director, School Education, Kashmir/

Srinagar; (iii) Dr Naseer Ahmad, Chief Education Officer, Anantnag; and (iv) Shri Mohammad Ibrahim Magrey, the then Zonal Education Planning

Officer, Achabal.

All the aforesaid respondents have filed reply to the show cause notice, except for Shri Mohammad Ibrahim Magrey, the then Zonal Education

Planning Officer, who is personally present in Court and seeks some time to explain his position.

In the reply to show cause notice so filed, the same contentions have been raised by the respondents which stand already dealt with by the Court on

previous hearings. It is thus, evident that the respondents are not only consuming the time of the Court, but also delaying implementation of the

judgment rendered by this Court on 12th of February, 2015 passed in SWP No.2542/2012. It needs, must, be said that thereafter, on 20th of

November, 2020, Shri B. P. Singh, the present Commissioner/ Secretary, School Education Department, was also incorporated as a party respondent

in the Contempt petition with a view to facilitate the implementation of the judgment passed by this Court, subject matter of the Contempt petition,

however, that too has not yielded any fruitful results.

In view of the above, let all the aforesaid Officers, viz. (i) Shri B. P. Singh, present Commissioner/ Secretary to Government, School Education

Department; (ii) Shri Rigzin Sampheal, the then Commissioner/ Secretary to Government, School Education Department; (iii) Dr Ghulam Nabi Itoo,

Director, School Education, Kashmir; (iv) Dr Naseer Ahmad, Chief Education Officer, Anantnag; and (v) Shri Mohammad Ibrahim Magrey, the then

Zonal Education Planning Officer, Achabal, besides filing compliance, remain personally present before the Court on the next date of hearing to

explain their position through Virtual mode.

List on 28th of December, 2020 in the â??Daily Supplementary Cause Listâ??.

Registry to forthwith convey the order to all the aforesaid Officers, copy whereof shall also be provided to Mr N. H. Shah, learned Senior Additional

Advocate General, under the seal and signatures of the Bench Secretary of this Court.

Order passed on 27th of April, 2021, also being relevant is taken note of;

Affidavit/ Response has been filed by Mr Shah Aamir, AAG, on behalf of Administrative Secretary, School Education Department in compliance to

order dated 08.03.2021, wherein the officer has simply referred to the case details and ultimately prayed that proceedings be dropped.

There is evident exclusion of the implementation of the judgment that has earned finality, in the affidavit. The response appears to be aimed at to

hoodwink the court to frustrate the proceedings of the case dating as back as to

the year 2006 when the petitioners have approached this court for redressal of their grievances. The unfortunate state of affairs could be imagined from the averments of the affidavit/ response of the officer itself

which does not detail out the narration of the events but in essence is reflecting the agony of the petitioners from the word go.

The only issue that appears to have worked as a barrier in the case of petitioners is the objection filed to their tentative select list by few individuals

who claimed to have been dropped from the consideration zone despite having applied for the post in question within the stipulated time. This objection,

as taken note of in the affidavit also, has been reported by the Committee, constituted by the Chief Education Officer, Anantnag vide no.

CEO/A/IMW/37594-95/15 dated 23.03.2015 for looking into the issue, to be fishy. This was so reported in the year 2015 by the committee but the

respondents continued as per their own whims and caprice and multiplied the issue manifold that fogged the basic issue involved resulting in depriving

the petitioners of their due despite having earned a judgment of the highest court of the Union Territory in their favour.

The respondents are now projecting the closure of the ReT scheme as a handicap, however, they need to be reminded that the petitioners are before

this court since the year 2006, therefore, the said plea is unacceptable in view of peculiar facts and circumstances of the case.

In the above background before the court finds it absolutely unavoidable to adopt coercive measures against the respondents for seeking

implementation of the judgment, two weeks last and final opportunity is granted to respondents for filing the compliance.

List on 12th May, 2021, in the supplementary cause list.â??

Needless to mention that the Court is seeking implementation of a judgment passed on 12th of February, 2015 in writ petition bearing SWP No.

2542/2012, which has become final. Despite framing rule against the respondents, there is no convincing compliance/statement of facts filed to

consider the matter for passing appropriate orders, therefore, there is no scope but to proceed in the matter and take the Robkar to its logical

conclusion, as such, all the respondents are directed to appear in person before the Court on the next date of hearing to face the contempt and the

petitioners are directed to identify the evidence for establishing their case.

The appearing counsel for the respondents undertake to cause the appearance of the respondents before the Court on the next date of hearing.

List on 25th of August, 2021 in the Daily Supplementary Cause List. Copy of this order be provided to the learned appearing counsel for the

respondents under the seal and signature of Bench Secretary of this Court.