

(2019) 04 J&K CK 0075

In the Jammu And Kashmir High Court

Case No : Contempt Petition (CPSW) No.99000001 Of 2016, 458 Of 2018

Robkar

APPELLANT

Vs

Shri Tripuri Sarvan & Ors

RESPONDENT

Date of Decision : 30-04-2019

Acts Referred:

Citation : (2019) 04 J&K CK 0075

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Z. A. Shah, A. Hanan, Q. R. Shamas

Judgement

1. The facts of the instant case, which lie in a narrow compass, are that the petitioners, after working as Casual Workers in the respondent Corporation were disengaged sometime in the year 2004. On being disengaged by the respondents, the petitioners approached this Court through the medium of writ petition bearing SWP No.140/2012, which writ petition came to be disposed of by this Court vide order 3rd of February, 2012 with a direction to the respondents to accord consideration to their re-engagement in accordance with rules. The respondents, in compliance of the directions of this Court, constituted a committee to verify the factual position. The committee so constituted, on consideration of the matter, opined that the petitioners deserve to be given preference over others whenever an exercise is undertaken by the respondents to engage Casual Workers in the Kendra. This report of the Committee was made basis of the consideration order No. SWP-140/2012/MAL/LC/(TVS)5301 dated 7th March, 2012, whereby it was ordered as under:

"Whereas, a writ petition SWP-140/2012 filed by Mohammad Akbar Lone & 36 Others v. UOI & Others before the High Court of J&K, Srinagar for engagement/booking as casual at DDK, Srinagar.

Whereas Hon'ble Court Srinagar, vide their judgment dated 03-02-2012 passed the following directions in the above petition.

"Writ petition is disposed of with a direction to the respondents to accord consideration to the petitioners' case for re-engagement in accordance with rules.

Disposed of alongwith connected CMP(s)."

Whereas in compliance of the Hon'ble Court Order, the head of Office, DDK, Srinagar considered it proper to constitute a committee to go into the details and verify the factual position.

The members of the committee after going through the records found that 143 persons are already working on assignment basis upto maximum of 10 days in a month basis as per our requirement. The committee felt that presently there is no need to engage any more person. The persons who have approached the Hon'ble Court be given preference over others whenever there is any further need at this Kendra.

The Competent authority after considering the direction passed by the Hon'ble High Court in above titled writ petition, as also considered the report of committee formulated in this regard, accepted the recommendation of the committee and accordingly decided not to accede to the request of the applicants for engagement as casual as of now. However, as and when any need arises the applicants will be informed accordingly."

2. The petitioners, being aggrieved of the aforesaid consideration order issued by the respondents, challenged the same through the medium of another writ petition bearing SWP No.892/2012. The petitioners pleaded that the order aforesaid was made oblivious to guidelines governing the engagement of Casual Workers. It was also argued by the petitioners that the respondents, after consideration was accorded to the petitioners claim, have engaged as many as 130 Casual Workers. By judgment dated 28th of May, 2013, the said writ petition came to be disposed of by this Court, operative portion whereof reads as under:

"In totality of the circumstances, the petition is disposed of with a direction to the respondents to accord fresh consideration to petitioners case having regard in particular to (i) policy guidelines framed by the CEO (ii) that in terms of the order impugned, petitioners were to be given preference as and when exercise was undertaken to engage Casual Workers (iii) that the respondents after order impugned in the petition have engaged as many as 130 Casual Workers in disregard to the report of the Committee and consequent order.

The respondents shall do well to re-consider the matter and pass order warranted in the facts and circumstances of the case, within eight weeks from the date of receipt of this order. Disposed of."

3. When the respondents did not consider the case of the petitioners, as directed by this Court, the petitioners filed contempt petition bearing CPSW No.458/2013. In the said contempt petition, by order dated 26th of August, 2016, this Court, while observing non-compliance of the directions of the Court, directed as under:

"Mr Atta Mohammad, Upper Division Clerk, appeared on behalf of the respondents and produced compliance report, which is taken on record.

The respondents have failed to comply with the Court orders in view of the mandate of order dated 5th of August, 2016.

Registry to frame Rule against the Incharge Director, Doordarshan Kender, Srinagar Shri Prakash Veer.

Copy of this order to served on Mr. Prakash Veer, Incharge Director, Doordarshan Kender, Srinagar. He shall appear in person before the Court on next date. He shall file reply to the Rule framed against him.

List in the week commencing from 19th of September, 2016."

4. Heard the learned counsel for the parties, perused the record and considered the matter.

5. During the pendency of this ROB KAR and the contempt petition, the respondent-Director General of Prasar Bharti, New Delhi filed a review petition seeking review of the order dated 28th of May, 2014 passed by this Court in SWP No.892/2012 alongwith COD No.220/2016. The COD application alongwith the review petition was dismissed by this Court on 28th of September, 2018.

6. It needs must be said that in contempt petition No. 458/2013, by order dated 5th of August, 2016, the Court directed that before ordering for framing Rule and asking the respondents to show cause as to why they shall not be punished for committing contempt of the Court, one more opportunity is granted to implement the Court judgment and re-engage the petitioners. The fresh compliance be filed before the next date. Against the order dated 5th of August, 2013, the respondents filed an appeal (being LPASW No.185/2016) before the Division Bench, which, vide order dated 31st of July, 2017, came to be disposed of by providing as under:

"We have heard the learned counsel for the parties at length.

After considering the entire matter, we are of the view that this appeal can be disposed of by directing that the expression "and re-engage the petitioners" appearing in the impugned order dated 05.08.2013 should be deleted. The contempt petition shall be decided by the learned single judge on merits in accordance with law."

7. Thereafter, in terms of order dated 30th of January, 2019, this Court directed the Director General, Doordarshan Kendra, Srinagar, to file compliance of order passed on 11th of December, 2018 within ten days, failing which he shall appear in person before the Court of the next date of hearing. The respondents filed the compliance of order dated 12th of February, 2019, stating therein that the order of this Court dated 28th of May, 2013 passed in SWP No.892/2012 read with order dated 31st of July, 2017, passed by the Division Bench in LPASW No.185/2016 directing the respondents to consider the matter afresh and pass

orders warranted in the facts and circumstances of the case has been complied by the respondents, which consideration has resulted in issuance of order No. F.19/24/2012- S.IIA/Vol.II/92-94/1456 dated 13th of November, 2018 (attached as Annexure-R1 with the compliance report).

8. A perusal of the order dated 13th of November, 2018, brings it to fore that the Director General, Doordarshan, in compliance of the directions of this Court, has reconsidered the matter afresh and directed the Head of Office, Srinagar, to re-engage the applicants, as and when the functional need arises at DDK, Srinagar. In the said order, the respondents have categorically observed that there is no requirement of manpower as on date and that as and when the functional need arises at DDK, Srinagar, the petitioners will be re-engaged.

9. Admittedly, in terms of the order out of which the instant contempt proceedings arise, the respondents were directed to accord fresh consideration to the case of the petitioners having regard to the policy guidelines framed by the CEO; preferential treatment to the petitioners as and when exercise was undertaken to engage Casual Workers; and engagement of Casual Workers in disregard to the report of the Committee. In the consideration order dated 13th of November, 2018, the respondents have replied all the observations made by the Court and have adopted a categorical stand that there is no requirement of further manpower and that, as and when an exercise is conducted to engage the Casual Workers, the petitioners will be given preference. The respondents have, in terms of the directions of the Court, considered the case of the petitioners by issuing the consideration order dated 13th of November, 2018, meaning thereby that they have not violated the Court directions.

The scope of the contempt Court is to only see as to whether or not the concerned authority has complied with the directions of the Court, of which contempt is alleged. In the instant case, the respondents have considered the case of the petitioners by giving plausible explanation on the issues raised by the Court. It being so, the rule framed against the respondent in terms of order dated 26th of August, 2016 shall stand dropped and the contempt proceedings closed with liberty to the petitioners to challenge the consideration order, if aggrieved, in appropriate proceedings.