

(2018) 12 RAJ CK 0263

In the Rajasthan High Court

Case No : Civil Miscellaneous Application No. 160, 161 Of 2016, Civil Contempt
Petition No. 833 Of 2014

Shashi Kumar Sharma And Ors

APPELLANT

Vs

Shri Rajeev Mehrishi And Ors

RESPONDENT

Date of Decision : 06-12-2018

Acts Referred:

Rajasthan Non-Government Educational Institutions Act, 1989 — Section 7(1)
Contempt Of Courts Act, 1971 — Section 2(b), 12, 18

Citation : (2018) 12 RAJ CK 0263

Hon'ble Judges : Munishwar Nath Bhandari, J;Prakash Gupta, J

Bench : Division Bench

Advocate : Sarthak Rastogi, Hemant Sharma, Ashish Sharma, Rajendra Prasad,
Ashutosh Yadav, JM Saxena

Final Decision : Dismissed

Judgement

The misc applications (No.809/2014 and 160/2016) are listed to seek revival of the DB Contempt Petition (No.809/2014 and 101/2015 respectively) and consequently to punish the contemnors for non-compliance of the order dated 16.4.2013.

The contempt petition (No.833/2014) has been filed with a prayer to punish the respondents contemnors for noncompliance of the order dated 16.4.2013 and for making its compliance.

Learned counsel for the applicants submits that the Division Bench of this court decided a batch of writ petitions including DB Civil Writ Petition No.1834/2012 vide its order dated 16.4.2013 where a challenge was made to the amendment in section 7(1) of the Rajasthan Non-Government Educational Institutions Act, 1989 (for short 'the Act of 1989') and the Rules made thereunder. The challenge to the communication dated 13.12.2011, 27.12.2011, 28.12.2011, 29.12.2011 was also made and interfered by the Division Bench apart from the order dated 3.1.2012 and 4.1.2012 passed by Rajasthan Mahila Vidyalaya, Udaipur. The

background of the case has been given by learned counsel for the applicants.

It is stated that amendments in the Act of 1989 and the Rules made thereunder were brought while simultaneously bringing Rajasthan Voluntary Rural Education Service Rules, 2010 (for short 'the Rules of 2010'). The Rules of 2010 gave option to the teaching and non-teaching staff of the aided educational institutions to seek appointment in the government service. In pursuance of the Rules of 2010, many teaching and non-teaching staff opted for their appointment leaving others who did not opt or were not appointed under the Rules of 2010.

The State Government refused to allow grant in aid to those who did not opt for their appointment under the Rules of 2010. The writ petition No.1834/2012 was filed to challenge the amendment in the Act of 1989 and the Rules of 2010 apart from the circulars/ orders of the State Government to deny grant in aid. The Division Bench allowed the writ petition vide its judgment dated 16.4.2013 with following directions -

"However, the action of the Government in withdrawing the grant, so far as it relates to the posts in which the teaching and nonteaching staff of the Non-Government aided educational institutions are still continuing, is adjudged to be illegal and ultravires of the Act, 1989. The impugned communications dt.13.12.2011, 27.12.2011, 28.12.2011, 29.12.2011 and those of the institutions dt.3.1.2012 and 4.1.2012, stand interfered with to this extent. The State respondents are hereby directed to undertake an exercise in association with the management of the concerned non-Government Educational Institutions hitherto receiving the grant under the Act, 1989 to work out the category and extent of grant in aid, as would be essential to secure the service conditions of such existing teaching and non-teaching staff as contemplated by the enactment and release the same. It is made clear that this direction would be strictly confined to the existing teaching and non-teaching staff of such institutions as on date and the benefit thereof would not be extended to those, who have meanwhile opted for the Government service under the Rules, 2010 and also to the posts so abandoned, and to which, if in the meantime, any induction has been made on the terms and conditions ascribed by the management of the concerned institutions.

The petitions are allowed only to the extent indicated hereinabove. All other pleas are answered accordingly."

The compliance of the order quoted above was not made thus applicant herein preferred a contempt petition bearing No.821/2014. It was decided vide order dated 17.3.2015. The Division Bench found that normal rule is that educational institutions should first pay the salary to their staff and thereupon to seek reimbursement. It was found that aforesaid procedure will result in hardship to the teachers thus, as an exception, direction was given that as soon as educational institution raise bills and make a demand for payment of the government share towards grant in aid, State Government shall, without insisting

upon making the payment to the employee before raising their claim, will make the payment on the undertaking by the institution that it will pay the arrears of salaries and allowances to the teachers within fifteen days. The Division Bench made it clear that it is an exception that the order has been passed going contrary to the normal rule. Since actual payment was yet to be made, a liberty was given to the applicant to make an application in case the order passed in the contempt petition is not complied with.

It is submitted that several misc. applications were filed in view of the liberty given in the first contempt petition.

First such misc. application was decided vide order dated 13.4.2016. In view of the above, liberty given to make an application got exhausted. It was on the assurance that grant in aid would be disbursed as and when becomes due. The obvious consequence was to disburse it in favour of the educational institution/s so that it is paid to the teaching and non-teaching staff thereupon.

The applicant, however, maintained another application to seek a direction for payment of salary. This court, vide its order dated 11.7.2016, made an observation that the State Government should make compliance of the order in all similar matters without compelling the petitioners to file contempt petition. The direction therein was complied and it is admitted by the applicant-petitioner that due payment has been made till the year 2016. This application has been filed for the subsequent period.

The applications have been contested by the side opposite. It is submitted that misc applications are not maintainable once liberty given by the court in the first contempt petition was exhausted. The subsequent applications are not maintainable and otherwise the prayer made in the applications goes beyond the judgment of this court dated 16.4.2013. A direction has not been given to make payment of the salaries to the teaching and non-teaching staff directly by the government. This court, while hearing the contempt petitions, should not give direction beyond what has been given in the main petition.

A reference of the judgment of the Apex Court in the case of "JS Parihar versus Ganpat Duggar & ors", (1996) 6 SCC 291 has been given. Therein, it was held that section 12 of the Contempt of Courts Act, 1971, does not permit the Judge to consider the matter on merits and issue directions.

The directions given by this court have already been quoted. The prayer made in these applications goes beyond the directions given by this court in its judgment dated 16.4.2013.

The court earlier entertained misc application when the reference of the judgment of the Apex Court in the case of JS Parihar (supra) was not given. If any dispute exists between the teaching/ non-teaching staff and the educational institutions regarding nonpayment of salary or allowances, remedy lies before the Rajasthan Non-Government Educational Tribunal and not in the shape of the

contempt petition. Where no direction in the judgment exist for payment of salary to the teachers by the government. Even as per the Grant in Aid Rules, salary has to be paid first by the management and then to seek reimbursement. The court, while entertaining the contempt petition and even in writ petition, should not make directions contrary to the statutory provisions. The applications may thus be dismissed as the compliance of the judgment, once made, cannot be sought in perpetuation for future years without specific directions for it.

We find substance in the arguments of learned counsel for the respondents. The Apex Court, while deciding the case of JS Parihar (*supra*), made it clear that while hearing the contempt petition, the court should not give further directions in the matter while exercising jurisdiction under section 12 of the Act of 1971. Para 6 of the said judgment is quoted hereunder for ready reference -

"6.The question then is whether the Division Bench was right in setting aside the direction issued by the learned single Judge to redraw the seniority list. It is contended by Mr. S.K. Jain, learned Counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three Benches, the learned Judge cannot come to a conclusion whether or not the respondent had wilfully or deliberately disobeyed the orders of the Court as defined under Section 2(b) of the Act. Therefore, the learned single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2.7.1991 Subsequently promotions came to be made. The question is whether seniority list is open to review in the contempt proceedings to find out, whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the willful violation of the order. After re-exercising the judicial review in contempt proceedings, afresh direction by the learned single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the single Judge, the Division Bench corrected the mistake committed by the learned single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned single Judge when the matter was already seized of the Division Bench."

In view of the judgment referred to above and in the light of the facts of these

cases, we do not find any reason to entertain the misc applications to revive the contempt petitions once it was disposed of after hearing the misc applications pursuant to the liberty given in the first contempt petition. The contempt petition cannot be revived every time alleging that compliance has not been made for the period subsequent to the judgment of the court. The applicants have remedy before the Rajasthan Non-government Educational Tribunal thus while dismissing the misc applications, liberty is given to take appropriate remedy to seek the benefits as admissible.

So far as contempt petition is concerned, we do not find a direction for payment of salary to the petitioner. The operative part of the judgment has been quoted earlier. The direction therein to the State Government was to undertake an exercise in association with management of concerned non-government educational institutions receiving grant in aid under the Act of 1989. It is to workout the category and the extent of the grant in aid. The direction therein was to strictly confine to existing teaching and non-teaching staff of such institutions. The direction aforesaid was given after interference in the communication as well as the order issued by the State Government/ institutions while holding the amendment in the Act of 1989 to be unconstitutional.

The direction of the nature sought in the contempt petition does not exist. We are not inclined to enlarge the scope of the direction while hearing the contempt petition. It would otherwise be contrary to the judgment of the Apex Court in the case of JS Parihar (*supra*).

Accordingly, contempt petition is dismissed with liberty to the petitioner to avail the remedy, as is available if the salary or any amount has not been paid by the management. It is, however, made clear that if the institution/s have not been provided grant in aid despite directions of the Division Bench, they would be at liberty to file a contempt petition or take recourse, as is available with them.

A copy of this order be placed in each connected file.