

(2016) 01 CAL CK 0079
In the Calcutta High Court

Case No : CC No. 122 of 2015, W.P. No. 601 of 2014 and G.A. No. 2851 of 2015.

Smt. Basanti Gang

APPELLANT

Vs

Debajyoti Boral, The District Inspector of Schools, Secondary
Education (S.E.)

RESPONDENT

Date of Decision : 15-01-2016

Acts Referred:

Constitution of India, 1950 — Article 215

Citation : (2016) 4 AICLR 723 : (2016) 1 CalHCN 293 : (2016) CriLJ 3145

Hon'ble Judges : Biswanath Somadder, J.

Bench : Single Bench

Advocate : Nilanjana Adhya, Advocate, for the Appellant; Sadananda Ganguly and Shamim Ul Bari, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

1. When the contempt application is taken up for consideration, learned Additional Government Pleader representing the State submits that he is being led by the learned Additional Advocate General. He also handover a cheque dated 15th January, 2016 amounting to Rs. 7,81,180/-, which appears to have been issued by the Government of West Bengal, PF Deposit Account at Kolkata, PAO-II in favour of "Savitri Pathshala, HS". The cheque appears to bear two illegible signatures with two rubber stamps affixed at the bottom. One of the rubber stamps read "District Inspector of Schools, Secondary Education, Kolkata". The other rubber stamp, however, is not legible. Learned Additional Government Pleader submits that the amount, as written in the cheque, is being paid in respect of the retiral dues/terminal benefits accrued in favour of the applicant/writ petitioner, pursuant to and in compliance of the order dated 6th February, 2015 passed by this Court in W.P. 601 of 2014.

2. Learned advocate appearing on behalf of the applicant/writ petitioner, however, submits that the entire retiral dues/terminal benefits are yet to be disbursed. According to her, some arrear salary due to her client has not been

paid, till date. This Court, sitting in its Special Contempt Jurisdiction, however, is of the view that consequent upon issuance of cheque dated 15th January, 2016 in favour of "Savitri Pathshala, HS" amounting to Rs. 7,81,180/-, it will be open to her to take further steps in the matter in accordance with law, in respect of the amount not received by the applicant/writ petitioner.

3. Now comes the question of whether the alleged contemnors/respondents are guilty of wilful, deliberate and contumacious violation of the order dated 6th February, 2015 passed in W.P. 601 of 2014. Even a bare perusal of the order dated 6th February, 2015 reveals that there was a mandatory direction upon the concerned District Inspector of Schools, Secondary Education (S.E.) to ensure that all retiral dues/terminal benefits accrued in favour of the writ petitioner were disbursed in her favour within a certain time-frame. At that material point of time, it was the alleged contemnor/respondent no. 1, namely, Debajyoti Borai, who was holding the post of District Inspector of Schools (S.E.), Kolkata. The fact that payment is being made by an instrument dated 15th January, 2016, in respect of an order dated 6th February, 2015, is a palpable demonstration of clear violation of mandatory directions given by a Constitutional Court. The concerned Officer, namely, Debajyoti Borai, who is personally present in Court in answer to the Rule of Contempt, has no answer to offer in defence of his noncompliance of the Court's mandatory directions. At this stage, this Court wonders as to the plausible reasons for the State engaging multiple lawyers to defend him in the instant contempt proceedings. It is his utter negligence which resulted in filing of the present contempt application. It is his utter callousness which has resulted in the State practically having no answer but to concede that there was no justifiable reason for non-compliance. The State, as it appears, has engaged three lawyers including the learned Additional Advocate General, the learned Additional Government Pleader and an Advocate from the State panel to defend Debajyoti Borai in the contempt proceeding. It is evident that Debajyoti Borai has caused immense embarrassment to the State. If the State's exchequer - from where fees of the learned advocates representing the State are paid - is used for the purpose of defending an officer such as Debajyoti Borai, then it will tantamount to gross misuse of public money.

4. An action in contempt is always an action in personam which is why the contempt petition has not been filed against any public authority as entity but against two individuals by name. If an individual's conduct is not justifiable or pardonable, then the State ought not to use precious public resources to defend such an individual in a Contempt proceeding even if that individual is an employee of the State Government and holds some position or authority. The State's protective umbrella cannot be used in favour of its employee whose action of non-compliance of a Court's mandatory directions cannot be defended by the State in a Contempt proceeding.

5. Coming back to the facts of the instant case, upon taking note of the fact that at the very outset, the learned Additional Government Pleader has handed over a

cheque amounting to Rs. 7,81,180/- drawn in favour of "Savitri Pathishala, HS", this Court is inclined to take a lenient view and not initiate further steps to punish Mr. Debajyoti Boral by convicting him under the provisions of the Contempt of Courts Act, 1971, for having contumaciously flouted the order of this Court dated 6th February, 2015.

6. The contempt application is, therefore, disposed of with a direction upon the contemnors/respondents to ensure that the cheque which is addressed in favour of "Savitri Pathshala, HS" is handedover to the school latest by Monday (18.1.2016), so that the amount can be disbursed by the school authorities to the applicant/writ petitioner immediately thereafter. The fees payable to the learned advocates of the State who have been engaged in the instant Contempt proceeding, however, in view of the observations made earlier, shall not be paid out of the public exchequer but shall be deducted from the salary paid by the State to Mr. Debajyoti Boral, who, at the material point of time, was the District Inspector of Schools (S.E.), Kolkata.

7. Let a copy of this order be transmitted forthwith by the Registrar (Original Side) to the Chief Secretary, Government of West Bengal; Principal Secretary, Finance, Government of West Bengal; Principal Secretary, School Education Department, Government of West Bengal and the Judicial Secretary, Government of West Bengal, so that appropriate general administrative order is issued based on the observations made earlier.

8. The contempt application is, accordingly, disposed of upon discharging the Rule of Contempt issued earlier.