

Central Administrative Tribunal
Principal Bench

C.P. No. 275/2003

In

RA No. 133/2002

In

OA No. 2923/2001

New Delhi this the 20th day of October, 2003

Hon'ble Shri Shanker Raju, Member (J)

Hon'ble Shri R.K. Uppadhyaya, Member A)

1. Mrs. Abha Bhardwaj
W/o Dr. R. Bhardwaj
R/o A-2/25, Shri Agrasen Apartments
Plot No.10, Sector-7, Dwarka
New Delhi.
2. Smt. Madhu Sharma
W/o Shri R.K. Sharma,
R/o M-38, New Mahavir Nagar,
New Delhi.
3. Smt. Kanta Vohra,
W/o Shri Davender Vohra
R/o 109/b Ramesh Nagar
New Delhi.
4. Smt. Rekha Pathak
W/o Shri C.D. Pathak
R/o 44, Laxmi Apartments,
Sector-9, Rohini,
Delhi.
5. Smt. Rajni Sati
W/o Shri G.S. Sati
R/o B-549, Sector-9
Kendriya Vihar, Noida
6. Smt. Renu Saxena,
W/o Sh. A.K. Saxena,
R/o C-77, East of Kailash,
New Delhi.
7. Ms. Tajinder Kaur,
D/o Sardar Narayan Singh,
R/o DA/99/C, Hari Nagar.
8. Smt. Usha Rani Sharma,
W/o Sh. V.B. Sharma,
R/o 28, Plot B-5,
Deluxe Apartments,
Vasundhara Enclave,
Delhi.
9. Bharat Bhushan,
R/o 99-B, Ramesh Nagar,
New Delhi.

-Applicants

(By Advocate Shri M.K. Bhardwaj)

-Versus-

1. Sh. H.M. Caire,
Commissioner,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-16.

2. Sh. S. Modawal,
Assistant Commissioner,
Delhi Region.

-Respondents

(By Advocate Shri S. Rajappa)

O R D E R

By Mr. Shanker Raju, Member (J):

By way of the present CP, applicants allege wilful and contumacious disobedience of Tribunal's order dated 19.7.2002 in RA-133/2002, wherein the status quo granted during the pendency of OA-2923/2001 has been ordered to be maintained.

2. Before we proceed to examine the present Contempt Petition, brief relevant facts are necessary to be highlighted. Order dated 9.8.2000 in pursuance of policy decision of KVS to transfer 23 Yoga Teachers who were found in excess of the strength was upheld in OA-1943/2001. Review against the aforesaid order was also turned down.

2. A Division Bench of this Tribunal in OA-1584/2000, by an order dated 15.5.2001 in respect of three Yoga Teachers (Vivekanandini Jain and Others) quashed the order of transfer dated 9.8.2000. However, by a Single Bench in OA-1728/2000 by order dated 29.5.2001 transfer order dated 9.8.2000 in Arun Kumar Vashisth's case was upheld.

3. To end the controversy CWP 7351/2000 filed before the High Court of Delhi was upheld on 25.7.2001.

4. MA filed on 1.2.2001 in CWP 7351/2000 to recall the order was dismissed.

5. On 7.9.2001, the Board of Governors of the KVS took a decision to reject the Baldev Mahajan Committee's Report and in compliance of the directions of High Court accorded 50% of salary for the disputed period to the Teachers.

6. By an order dated 20.9.2001 Teachers have been asked to report for duty at their respective places where they have been originally transferred.

7. In one of the OAs filed by four Teachers transfer was upheld vide order dated 29.11.2001. Aggrieved by this order CWP-7711/2001 filed before the High Court was rejected on 16.1.2002.

8. Relying upon the Division Bench's order dated 29.11.2001 this Court dismissed OA-2923/2001 confirming the order passed by the Tribunal on 29.11.2001. Applicants in this OA were relieved.

9. Applicants 2-9 in the OA filed OA No.305/2002 challenging the relieving order dated 30.1.2002.

10. By an order dated 13.2.2002 with a direction that the Teachers shall not be relieved till 31.3.2002 which was later on modified by another order dated 8.3.2002 that they shall stand relieved w.e.f. 16.5.2002.

11. Respondent No.10 challenged the relieving order in OA-426/2002 and by an order dated 6.3.2002 with a direction that applicant would stand relieved on 1.4.2002 the same was disposed of.

12. KVS challenged the order dated 6.3.2002 before the High Court in CWP No.2074/2002 and the High Court by its order dated 11.4.2002 disposed of the Petition as the time granted vide order dated 6.3.2002 by the Tribunal had already been expired.

13. Applicant filed Writ Petition No.1966/2002 challenging the order dated 29.1.2002 passed by the Tribunal. However, High Court has observed that if an application for review is filed with condonation of delay the same would be disposed of in accordance with law.

14. On 19.7.2002 Review Application was entertained by the Tribunal and status quo has been maintained which existed during the pendency of OA-2923/2002.

15. KVS challenged the decision of the Tribunal dated 19.7.2002 in CWP No.565/2002 and by an order dated 11.9.2002 the High Court observed that the Tribunal would consider the Review Application as well as application moved by the KVS for vacating the interim order on the next date of hearing and till then unless a final order is passed either on RA or on application for vacation of the interim order Tribunal shall not proceed with the application of applicants, i.e., unofficial applicants therein for enforcement of the order.

16. In a Writ Petition No.1595/2002 filed by KVS challenging the order dated 13.2.2002 passed by the Tribunal in OA-305/2002 with the consent of both the parties as the time for relieving, i.e., 16.5.2002 had expired as nothing survives, petition was declared infructuous, without prejudice to the rights of the parties to take up appropriate proceedings in accordance with law.

17. The Tribunal passed an order on condonation of delay in filing RA on 14.11.2002 condoned the delay. CWP-7618/2002 was filed before the High Court against the order. By an order dated 3.12.2002 notices have been issued and the order was confirmed on 7.1.2003 by issuing Rule DB.

18. Applicants moved CP-503/2003 in OA-305/2002 and by an order dated 22.1.2003 as applicants had been paid salary till 16.5.2002 CP was dismissed.

19. As applicants had not joined the transferred place CP-21/2002 in OA-305/2002 filed by respondents KVS was dismissed on 2.4.2003 with the direction that as the stay was automatically vacated on 16.5.2002 KVS could have taken the steps to relieve the Teachers.

20. In pursuance of order dated 2.4.2003 in CP-21/2003 show cause notices dated 21.5.2003 under Article 81 (d) of the Education Code of KVS was issued to applicants proposing loss of lien on account of unauthorized absence without sanction of leave after 16.5.2002.

L

21. MA-1240/2003 filed in RA-133/2002 applicants have sought stay of the above orders, where directions have been issued on 29.5.2003 entertained MA and passed an order directing the KVS not to pass any order on the show cause notices. As RA was directed not to be given consideration vide High Court's order dated 3.12.2002 the aforesaid was pointed out to the Tribunal. In the aforesaid MA applicants have taken a plea that the matter is coming up for hearing before the High Court, i.e., CWP No.7618/2000 on 1.8.2003 but was not listed. The Tribunal vide their order dated 2.8.2003 directed that if no decision is resorted in CMs the respondents are free to take action after 2.8.2003 against applicants in pursuance of the notification under Article 81 (d).

22. In this backdrop the contention put-forth by Sh. M.K. Bhardwaj, learned counsel for applicants is that since the Tribunal has granted the status quo in RA on 19.7.2002 which has not been vacated by the High Court. the same still operates and as respondents have not allowed applicants to join as per status quo in the OA-2923/2001 at Delhi not at the transferred place despite applicants are ready to join, a wilful and contumacious disobedience of the orders has taken place, which as a consequence would require respondents to withdraw the notices and where the orders have been issued under Article 81 (d) to withdraw the same and to release the salary and other consequential benefits to applicants.

23. On the other hand, respondents in their reply vehemently opposed the contentions and Sh. Rajappa, learned counsel for respondents contends that the orders passed by the High Court on 11.9.2002 clearly directed that no enforcement proceedings could be entertained by the Tribunal for compliance of the orders passed on 19.7.2002. As the RA now has been placed in CWP-7618/2002 and the Rule DB has been issued this Court has no jurisdiction to entertain the grievance of applicants. Moreover, it is the contention of Sh. Rajappa that in pursuance of show cause notices applicants No.2,3,8 and 9 have already been removed. In so far as applicant No.4 is concerned, on filing a CM before the High Court liberty was given to allow her to retire voluntarily. Applicant No.9 who had filed contempt was disposed of by directing grant of salary.

24. In so far as challenge in SLP the orders passed in CWP-7618/2002 is concerned, as there is no stay the orders passed in the aforesaid petition before the High Court is still in vogue.

25. Learned counsel for the respondents relying upon the decision of the Apex Court in **T. Sudhakar Prasad v. Govt. of A.P. & Others**, (2001) 1 SCC 516 contends that there is no wilful or contumacious disobedience on their part as the enforcement of order dated 19.7.2002 has been stayed by the High Court it cannot be said that they had avoided compliance.

26. It is further stated that applicant are abusing the process of law as the matter is contentious regarding their removal under Article 81 (d) of the Code ibid and the show cause notices issued to applicants cannot be gone into in a CP, which would amount to enlarging the scope of the CP and a fresh cause of action is not permissible to be agitated by way of CP.

27. In the rejoinder, Sh. M.K. Bhardwaj, reiterated his earlier contentions and stated that the directions in CWP-5652/2002 shall not be considered as a vacation of status quo granted on 19.7.2002. What has been ordered and observed by the High Court is that unless a final order is passed in review or application for vacating the interim order the Tribunal shall not proceed with application of applicants for enforcement of the order but the status quo has not been interfered with, and as status quo is still in vogue applicants cannot be punished for remaining absent and for not joining the transferred place.

28. We have carefully considered the rival contentions of the parties and perused the material on record. The Apex Court in T. Sudhakar Prasad's case (supra) observed as under:

"22. Contempt jurisdiction is exercised for the purpose of upholding the majesty of law and dignity of the judicial system as also of the courts and Tribunals entrusted with the task of administering delivery of justice. Power of contempt has often been invoked, as a step in that direction, for enforcing compliance with orders of courts and punishing for lapses in the matter of compliance. The majesty of judicial institution is to be ensured so that it may not be lowered and the functional utility of the constitutional edifice is preserved from being rendered ineffective. The proceedings for contempt of court cannot be used merely for

L

executing the decree of the court. However, with a view to preserving the flow of the stream of justice in its unsullied form and in unstinted purity wilful defiance with the mandate of the court is treated to be contemptuous. Availability of jurisdiction to punish for contempt provides efficacy to functioning of the judicial forum and enables the enforcement of the orders on account of its deterrent effect on avoidance. Viewed from this angle the validity of Section 17 of the Act is protected not only sub-clause (b) of clause (2) of Article 323-A but also by sub-clause (g) thereof".

29. In **J.S. Parihar v. Ganpat Duggar**, 1996 (9) SCC 608, Apex Court has held that contempt proceedings cannot be resorted to deal with a fresh cause of action or a contentious matter. This has been re-iterated. In **Union of India v. R. Swaminathan**, JT 1997 (7) SC 690. It was held in **K.G. Derasarai v. Union of India**, 2002 SCC (L&S) 756 that in a contempt original order passed cannot be reviewed. In **Suresh Chander Poddar v. Dhani Ram**, 2002 (1) SCSLJ 150 Apex Court has held that power of contempt should be exercised sparingly only in deserving cases. It is the foremost consideration that the directions are complied with. This should not be used as a punitive measure to punish the concerned.

30. It is settled principle of law that any action taken bonafidely without any intention to disobey the direction and on a wrong interpretation would not constitute contempt.

31. Having regard to the aforesaid, on liberty by the High Court RA-133/2002 filed by applicants on 19.7.2002 status quo has been granted which has been in effect during the pendency of the OA and was directed to be

maintained. However, in CWP-5652/2002 the aforesaid order was challenged before the High Court where the following observations have been made:

"The learned Tribunal should consider the desirability of hearing out the parties on the next date fixed and dispose of the matter on that date.

It goes without saying that the parties herein would be entitled to raise all contentions raised in the writ petition and in the counter affidavit herein.

We hope and trust that unless a final order is passed either on the review application or in the application for vacating interim order, if any, the learned Tribunal shall not proceed with the application of the unofficial respondents herein for enforcement of the order.

With the aforementioned observations and directions, this writ petition is disposed of".

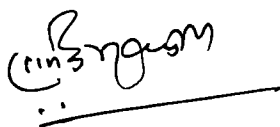
32. The Writ Petition challenging the RA, has already been made Rule DB.

33. If one has regard to the above, as the review has not been finally disposed of and the Tribunal is precluded from proceeding with an application of the unofficial respondents for enforcement of the order dated 17.9.2002 by way of contempt petition what has been prayed is enforcement of the aforesaid order, which cannot be gone into in the CP.

34. Moreover, in so far as show cause notices issued and orders passed under Article 81 (d) of KVS Code are concerned, as the same constitute a fresh cause of action this cannot be gone into in the present CP. The matter is contentious and complicated. Whether applicants have to be retained at Delhi or to join their transferred place and in absence of complying with the direction to

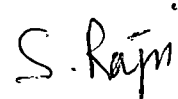
face consequences in accordance with rules is to be determined in accordance with rules and instructions and law on the subject. It is also on record that even after the extended period of relieving they had not reported to the transferred place and have been paid the entire dues till that date their CMS for clarification have been withdrawn. We have not expressed our opinion on merits pertaining to Article 81 (d) of the KVS Code and the action taken by the respondents thereto.

35. In the light of the above, when the matter is pending before the High Court, no petition for enforcement can be agitated in view of the fact that a proceeding for contempt cannot be used merely for executing the decree of the Court. Giving liberty to applicants to raise the pleas of Article 81 (d) of KVS Code and their removal in a separate proceedings in accordance with law, if so advised, we do not find any merit in the present CP, which is accordingly dismissed. Notices issued are discharged.



(R.K. Upadhyaya)
Member (A)

'San.'



(Shanker Raju)
Member (J)