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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

C.P. No. 73/2001

AND

O A No. 1624/2000

New Delhi: this the 17 day of JULY, 2001

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. Smt. Abha Bhardwaj,
W/o Dr. R. Bhardwaj,
R/o D-1/8,
ODU Hospital Residential Complex,
Hari Nagar,
New Delhi-64.
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 Devender Vohra,
R/o 109/B, Ramesh Nagar,
New Delhi.
4. Smt. Rekha Pathak,
W/o Shri G. D. Pathak,
R/o 46, Laxmi Apartments,
Sector 9, Rohini,
Delhi.
5. Smt. Rajni Sati,
W/o Shri C. S. Sati,
R/o B-549, Sector 5,
Kendriya Vihar,
Noida.
6. Smt. Renu Saxena,
W/o Shri A. K. Saxena,
R/o C-77/60, East of Kailash,
New Delhi.
7. Ms. Tajinder Kaur,
D/o Sardar Narayan Singh,
R/o DA/99/C, Hari Nagar,
New Delhi.
8. Smt. Usha Rani Sharma,
W/o Shri V. B. Sharma,
R/o 28, plot B-5,
Deluxe Apartments,
Vasundhara Enclave,
Delhi.
9. Bharat Bhushan,
S/o Late Shri A. G. Lalkhera,
R/o 99-B, Ramesh Nagar,
Delhi.

.....Applicants.

(By Advocate: Shri B. B. Raval)



Versus

Shri H.M. Caire,
Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jee Singh Marg,
New Delhi -16

.....Respondent.

(By Advocate: Shri S. Rajjapa)

ORDER

S.R. Adige, VC(A):

Heard both sides on C.P.No.73/2001 alleging contumacious non-compliance of the Tribunal's interim order dated 30.8.2000 in OA No.1624/2000.

2. Applicants had filed OA No.1624/2000 on 25.8.2000 seeking quashing of the impugned transfer order of Yoga Teachers dated 9.8.2000 (Annexure-A1 in the OA) by which they and others had been transferred to different places. An interim direction was also sought to stay the operation of the transfer order till the disposal of the OA.

3. The OA came up before a Single Bench on 30.8.2000. After preliminary hearing, notices were ordered to be issued on the OA returnable in two weeks and meanwhile ^{by} an ex parte interim direction, the operation of the impugned order dated 9.8.2000 was stayed till further orders.

4. Applicants had earlier filed CP No.408/2000 making identical allegations against respondents, namely contumacious non compliance of the Tribunal's interim order dated 30.8.2000 in OA No.1624/2000. It was applicants' contention in that CP that pursuant to the aforesaid interim orders dated 30.8.2000 what was required of respondent (Commissioner, Kendriya Vidyalaya Sangathan) was that he should have instructed the

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Principals of the concerned schools not to implement the transfer order, and allow the teachers to continue working in the respective schools, and where they had already been relieved, to take them back. This contention was considered by this very Bench in its order dated 10.11.2000 and was rejected. The C.P. was itself dismissed in limine in the absence of any such specific direction contained in the interim order dated 9.8.2000.

5. In our aforesaid order dated 10.11.2000 it had also been noticed that the above mentioned interim orders dated 9.8.2000 had not been extended beyond 22.9.2000. Meanwhile respondents had filed MA No.2198/2000 seeking vacation of the interim orders dated 30.8.2000. After hearing both parties on that MA, this Bench in its order dated 22.11.2000 noticed that the interim orders dated 30.8.2000 had not been extended beyond 22.9.2000, and no good grounds were advanced to warrant issue of interim orders afresh.

6. Against that order dated 22.11.2000 applicants approached the Delhi High Court through CMP No.11307/2000 in CWP No.7351/2000. The Delhi High Court by its order dated 5.12.2000 directed issue of notice to respondents to show cause why rule nisi be not issued returnable on 19.2.2001 and meanwhile directed that the interim order of the Tribunal dated 30.8.2000 would continue to remain operative subject to any order which may be passed by the Tribunal on merits in the interim application or in the main application.

7. We have heard applicants' counsel Shri Rawal and respondents' counsel Shri Rajappa on the CP.

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8. As in the earlier CP No. 408/2000, so also in the present one, it is applicants' contention that consequent to the fact that the stay order dated 30.8.2000 continues to remain operative, respondents are required to take applicants back on duty, and by not doing so they have committed contempt of court.

9. We have considered these contentions carefully. It is not denied that well before the interim order dated 30.8.2000 was passed, applicants stood relieved to join their new stations. Indeed the fact was not brought to the notice of the Bench when it issued the interim order on 30.8.2000. There is nothing in those orders which require respondents to take back on duty the applicants who already stand relieved to join their new places of posting. In the absence of any such directions contained in order dated 30.8.2000 respondents cannot be said to have committed contempt of court.

10. During the course of hearing Shri Rawal relied upon the Tribunal's order dated 24.11.2000 in OA No. 172 of 2000 in which, in a similar case, respondents were directed to continue that applicant in Delhi until further orders. Shri Rawal contended that in that case also, respondents had failed to take that applicant back on duty in Delhi, and it is only upon CP No. 39/2000 being filed, and respondents namely Commissioner, KVS being summoned in person in case of non-compliance that the aforesaid applicant was taken back. The difference between the interim order passed in OA No. 1728/2000 and the present one is that in the order dated 24.11.2000 in OA No. 1728/2000 there was a specific direction to continue that applicant at Delhi until further orders.

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There is no such direction in the experts interim orders dated 30.8.2000, which merely stays the operation of the transfer order dated 9.8.2000 well after the applicants were relieved to join their new places of posting. In CA No. 5089-5090 of 1998 T. Sadhakar Prasad Vs. State of A.P. & Ors. the Hon'ble Supreme Court has held that the proceedings for Contempt of Court cannot be used merely for executing the decrees of the Court. It is wilful defiance of the courts' mandate that is treated to be contemptuous.

11. In the facts and circumstances of the present case therefore the CP is dismissed. Notices discharged.

12. Coming to OA No. 1624/2000 itself we note that by order dated 20.11.2000 respondents' prayer to treat their MA No. 2198/2000 as their reply to the OA had been allowed, and applicants had been given time to file their rejoinder. However, when during the course of hearing of the CP we urged Shri Rawal to make submissions on the OA as well, Shri Rawal contended that applicants faced difficulty in filing their rejoinder, as MA No. 2198/2000 was not a para-wise reply to the OA and moreover contained several cuttings/overwritings.

13. In this connection we noted that the transfer orders dated 9.8.2000 which has been impugned in the present OA was also impugned in some other OAs and conflicting decisions have been given. Shri Vaidya Nath Jha had filed OA No. 1943/2000 impugning the aforesaid transfer order dated 9.8.2000, which was dismissed by order dated 1.12.2000. We were informed that against

that order dated 1.12.2000 an appeal had been filed in Delhi High Court on which notice was issued. Meanwhile by interim order dated 30.1.2001, the operation of that order dated 1.12.2000 has been stayed.

14. Thereafter Dr. V. Jain & two others had filed OA No. 1584/2000 impugning the same transfer order dated 9.8.2000 which has been allowed by order dated 15.5.2001 (Annexure-CP No. 6) and the transfer qua those applicants have been quashed and set aside.

15. Similarly Shri A.K. Vashith had filed OA No. 1728 of 2000 impugning the aforesaid transfer order dated 9.8.2000 which has been dismissed by order dated 29.5.2001. Shri Rawal contended that the operation of this order had also been stayed by the Delhi High Court. Respondents' counsel was not able to confirm or deny the same.

16. Be that as it may, as there are conflicting decisions by Coordinate Benches in regard to the order dated 9.8.2000 which is impugned in OA No. 1624/2000 and no final decision has been handed down by the Delhi High Court as yet which way as a Coordinate Bench may follow, the same requires to be resolved by a larger Bench.

17. In the result while CP No. 73/2001 is dismissed and notices are discharged, we call upon Registry to place OA No. 1624/2000 before Hon'ble Chairman for constitution of a larger Bench to adjudicate on whether the impugned order dated 9.8.2000 warrants judicial interference or not.

18. Let a copy of this order be placed in case record of OA No. 1624/2000.

A. V. VEDAVALLI
(DR. A. VEDAVALLI)
MEMBER (J)

(S. R. ADIGE)
VICE CHAIRMAN (A)

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