

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU

C.P No. 61/11/2020
In
O.A. No. 61/111/2020

This the 24th day of November, 2020

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)
HON'BLE MR. ANAND MATHUR, MEMBER (A)

Arjun SinghApplicant

(Advocate: Mr. Nitin Bhasin)

Versus

Talat Parvez Rohella & othersRespondents

(Advocate: Mr. Rajesh Thappa, DAG)

O R D E R

DELIVERED BY HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

1. Applicant in the present petition seeks initiation of contempt proceedings against respondents No. 1 to 4 for alleged disobedience/violation of the order dated 30.06.2020 passed by this Tribunal in O.A. No. 61/111/2020 titled Arjun Singh v/s Union Territory

of J&K and ors and thereby committing contempt under Section 12 of the Contempt of Courts Act, 1971 (for short “the Act”).

2. Applicant had filed an O.A. averring therein that he was appointed on posts as detailed in the application for the academic session 2019-20 in Jammu Division by respondent No. 4. It is the case of applicant that are adhoc/contractual employees and as per the settled law he cannot be replaced by adhoc/contractual employees but despite the settled law, respondent No. 4 has issued advertisement notice for engagement of teaching faculty in Government Degree College of Jammu Division and therefore the applicant is liable to be disengaged and replaced by adhoc/contractual employees. Hence the present O.A. wherein the applicant seeks the following reliefs:

- “i) To quash clause (b) of section 3 of the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010 being ultra vires to the constitution of India as the same excludes the applicants from the benefit of regularization under the Act, by issuance of writ of certiorari.
- ii) To quash Government Order No. 88-(JK)-HE of 2020 dated 17.02.2020 by virtue of which the terms and conditions under which the applicants were appointed in tune with the policy of Government earlier in point of time are being changed/modified to the detriment of the applicants, by issuance of writ of certiorari.

- iii) To direct the respondents to regularize the services of the applicants against the posts held by them in accordance with the provisions of the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010 with further direction to the respondents to grant relaxation, if any, required in respect of age or qualification of the applicants, by issuance of writ of mandamus;
- iv) To direct the respondents to allow the applicants to continue their services on the posts of Lecturer/Teaching Assistant in their respective colleges in terms of their latest engagement orders and not to replace or substitute them with similar arrangement, contractual or academic till such time their services are regularized by the department, by issuance of writ of mandamus.
- v) To direct the respondents to pay the salary, grade and increments equivalent to the post of Assistant Professor on the principle of equal pay for equal work, by issuance of writ of mandamus.
- vi) to quash the periodical breaks in the services of the applicants and to declare/treat their services to be continuous for the purposes of seeking benefit of regularization in terms of the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010.
- vii) Any other relief which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case".

3. It is the case of applicant that in the said O.A., the Tribunal issued interim direction dated 30.06.2020 and which order is still continuing in force. The interim order reads as under:

“Heard both counsels.

Admit.

Issue notice to the respondents.

Mr. Amit Gupta, AAG accepts notice on behalf of the respondents.

Learned counsel for the applicants argued that his case is identical to that of SWP No. 2842/2018 wherein the Hon'ble High Court was pleased to issue interim directions in favour of the applicants.

Looking to the argument of the learned counsel for the applicants that the matter is similar in nature, learned DAG would file counter affidavit within four weeks. Thereafter applicants will file rejoinder affidavit within two weeks. Meanwhile, the applicants, if in position as on date, shall not be replaced by similar arrangements, ad-hoc or temporary, till the next date of hearing.

It is made clear that in case rejoinder is not filed by the applicants within stipulated time, interim order would not be extended beyond the next date.

Put up file for final arguments on 19.08.2020.

The State would give equal treatment to all citizens of UP of J&K in all respects”.

4. In the present petition, applicant aver that despite the order of interim relief being in knowledge of the respondents, they have deliberately and intentionally violated the said order. It is the case of the applicants that despite the order of interim relief protecting the status of the applicant, respondents willfully violated the order dated 30.06.2020 and therefore made the request that:

“Initiate contempt proceedings against the respondents for wilful and intentional disobedience/non-compliance of the order dated 30.06.2020 passed by this Hon’ble Tribunal in O.A. No. 61/111/2020 titled Arjun Singh and Ors. Vs. Union Territory of J&K and ors.”

5. In the present application, applicant has averred that: -

“12. That now the respondents have started harassing and pressurizing the petitioner to withdraw the OA pending before this Hon’ble Tribunal and to join the college as per the decision of the respondents by ignoring the court order. The respondents have openly told the petitioner that if he does not withdraw the OA and file an undertaking that his engagement is in pursuance of guidelines of 27.02.2020 and shall take effect from the assignment of class work and he has not obtained status quo from Hon’ble CAT, he will not be considered for the session 2020-21 and his vacancy will be offered to other candidates, which is totally unfair and unjust on the part of the respondents besides being

contemptuous and violates the rights of the petitioner to avail their legal remedies before this Hon'ble Tribunal".

6. In the objection, respondents have averred that engagement of applicant was purely contractual as such, no right accrued to applicant to file the O.A. The Government, as per order dated 17.02.2020 issued guidelines for the engagement of candidates on academic arrangement basis in Government Degree Colleges for the session 2020-21 and the applicants participated in the selection process. Having accepted their employment for the session 2019-2020, applicants cannot turn around and challenge the new guidelines of session 2020-21. Respondents in their Statement of Facts have specifically averred that:

"Such teachers on academic arrangement are purely engaged as per the actual requirement of the individual Degree Colleges. However, subject wise merit lists of all the applicants are prepared through a process which starts with publication of an advertisement through the print media. Presently the process is governed and conducted under the provision of Govt. Order No. 88 of 2020 dated 17.02.2020. The petitioner despite obtaining Court Orders applied in pursuance of Advertisements made by the Higher Educational Department, Cluster University Jammu and Govt. College for Women Parade, Jammu. Mr. Arjun Singh on the basis of merit is figured at serial No. 26 in Jammu Division

Colleges, Serial No. 24 in Cluster University Jammu and serial No. 20 in Govt. College for Women Parade, Jammu.

Mr. Arjun Singh (petitioner) is given consent for engagement as per merit in Govt. SPMR College Jammu, in academic session 2020-21. However, he has not joined till date".

7. We have heard and considered the arguments of the learned counsels for the parties and gone through the material on record more specifically the reply filed by the respondents.

8. It is settled provision that when a respondent does not admit that he/she has committed contempt, the Tribunal may, if it is satisfied that there is a prima facie case, proceed to frame the charge or drop the proceedings and discharge the respondent, if it is satisfied that there is no prima facie case, or that it is not expedient to proceed (Rule 13 of The Contempt of Courts (C.A.T.) Rules, 1992.

9. Relying on Quantum Securities Pvt. Ltd. v/s New Delhi Television Ltd., 2015 (10) SCC 602, learned counsel for respondents raised a preliminary objections that while hearing the proceedings in contempt proceedings against interim orders, the Hon'ble Apex Court has held that till the rights of the parties are determined it is not proper to probe into the facts and record finding on any issue arising out of collateral proceedings.

10. In the case of Quantum Securities Pvt. Ltd. (supra), the matter in issue pertained to a civil suit/proceedings, the Hon'ble Apex Court held that till the rights etc of the parties are still not decided on merits, it is not proper for the Hon'ble Apex Court to probe into the facts and record any finding on any of the issues arising out of collateral proceedings.

11. We may refer to Dr. H. Phunindre Singh & Ors. Vs. K.K. Sethi & Anr., (1998) 8 SCC 640, wherein the Hon'ble Apex Court held that

"In our view, in the facts of the case, particularly when the order passed by the learned Single Judge of the High Court was not stayed by the Division Bench, the contempt petition should have been disposed of on merits instead of adjourning the same till disposal of the appeal, so that question of deliberate violation of the subsisting order of the Court is considered and enforceability of the Court's order is not permitted to be diluted."

12. In the present case, the limited question to be adjudicated is whether the respondents committed contempt by violating order dated 30.06.2020 passed by this Tribunal, therefore, we are of the view that the preliminary objection raised by the respondents cannot be accepted.

13. Learned counsels for the parties while arguing the matter reiterated the facts pleaded by them in their pleadings.

14. It was argued by learned counsel for respondents that no prima facie case of violating the order of the Tribunal by his client has been made out by the material placed on record and that the respondents have followed the policy framed by the Government and placed reliance on order dated 15.05.2019 passed by Hon'ble High Court in case of Tajamul Islam v/s State of J&K, and order dated 19.04.2019 passed by Hon'ble High Court in Gurjeet Singh v/s State of J&K.

15. On the other hand, learned counsel for the applicants argued that one contractual employee cannot be replaced by another contractual employee on more or less the same terms. It is argued that the ratio of the judgment of the Hon'ble Supreme Court in the case of State of Haryana Vs. Piara Singh, (1992) 4 SCC 118 has been approved by the Hon'ble Apex Court in the case of Secretary, State of Karnataka Vs. Umadevi & Ors. (2006) 4 SCC 1. The judgment in the case of Piara Singh and Ors. (supra) is referred to in paras 23 to 25 of the judgment in the case of Umadevi (supra). However, in para 26, the Constitution Bench in the case of Umadevi (supra) only disagreed with that direction

of Piara Singh and Ors.'s case (supra) which requires regularization of ad hoc or temporary or casual employee. In para 25 of the judgment in the case of Umadevi (supra), para 46 of the Piara Singh and Ors.'s case (supra) is referred to and which para 46 states that an ad hoc or temporary employee should not be replaced by any other ad hoc or temporary employee and such an employee can only be replaced by a regularly selected employee and which is to avoid any arbitrary action on the part of the appointing authority.

16. As per the pleadings of the parties in the present contempt application, it is apparent that the applicant has been engaged in the academic session 2020-21. As per the respondents, the applicant Arjun Singh despite being engaged for the academic session 2020-21 has not joined this post till date. However, the stand taken by the applicant is that the respondents have informed him that if he does not withdraw the OA and file an undertaking that his engagement is in pursuance of guidelines of 17.2.2020 he will not be considered for the session 2020-21 and his vacancy will be offered to other candidates.

17. There is nothing on record to show that the respondents inform the applicant to withdraw the OA otherwise he will not be considered for session 2020-21.

18. As per the material on record, we are of the opinion that prima facie no case of disobedience of the order dated 30.06.2020 and consequently contempt of order of this Tribunal by the respondents is not made out. Accordingly, the contempt application is dismissed. Notices are discharged. However, in interest of justice we would direct the respondents to permit the applicant to join his place of posting as per his engagement order. Applicant would be at liberty to file the undertaking because this undertaking cannot be in derogation of the settled law that an adhoc employee cannot be replaced by another adhoc employee.

(Anand Mathur)

Member (A)

(Rakesh Sagar Jain)

Member (J)

Manish/-