

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 21st day of April 2004.

Contempt Application no. 200 of 2002
in
Original Application no. 1121 of 2001.

Hon'ble Maj Gen K K Srivastava, Member-A
Hon'ble Mr. A K Bhatnagar, Member-J

Smt. Ansuiya Pathak,
W/o Sri V.M. Pathak,
R/o Anil Niwas, House no. 106/67,
Ram Bagh,
ALLAHABAD.

... Applicant

By Adv : Sri S. Mandhyan

V E R S U S

1. Satish Kukreja,
Assistant Commissioner (LR),
Kendriya Vidyalaya Sangthan,
Sector-J, Aliganj,
LUCKNOW.

2. Sri N.K. Roy, Principal, Kendriya Vidyalaya, Bamrauli,
ALLAHABAD.

... Respondents

By Adv : Sri D.P. Singh
Sri N.P. Singh
Sri A. Sthalekar

O R D E R

Maj Gen K K Srivastava, Member-A.

This contempt application has been filed for punishing the respondents for wilful disobedience of the order of this Tribunal dated 15.02.2002 passed in OA no. 1121 of 2001 in so far as it relates to the payment of salary.

2. Sri S. Mandhyan, learned counsel for the applicant submitted that as per the order of this Tribunal dated 15.02.2002, the applicant shall be deemed to have been working at Allahabad and, therefore, she is entitled to

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get the salary for the period till she joined her post at Jawahar Nagar, Sitamani, Bihar. Learned counsel for the applicant also submitted that the respondent's counsel sought for and was granted six weeks time to comply with the order of this Tribunal dated 15.02.2002. Therefore, once the undertaking was given by the respondents, they cannot retrace ^{from} ~~their~~ commitment by just paying only Rs. 18,428/- specially when the pay of the applicant is more than 10,000/- per month. The applicant is entitled for the salary from 21.06.2001 to 10.04.2002.

3. Sri A. Sthalekar, learned counsel for the respondents opposing the claim of the applicant submitted that there was no such commitment except that the learned counsel for the applicant sought for time on 04.11.2003 to comply with the order, as per rules. In any case any commitment contrary to law is no commitment.

4. Learned counsel for the respondents further submitted that as per law no payment is to be made to the applicant for not having performed ^{her} ~~her~~ duties. Besides, the stay order granted by the Hon'ble Allahabad High Court was stayed by the Hon'ble Supreme Court and the applicant joined in Bihar only after the SLP was dismissed.

5. Heard learned counsel for the parties, considered their submissions and perused records.

6. In order to appreciate the controversy it would be relevant to refer to the various dates and events. The

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order of transfer was issued on 22.06.2001 and the applicant was relieved on 29.06.2001. No stay order was granted by this Tribunal and the OA was disposed of by order dated 27.07.2001 with direction to the respondents to consider and decide the applicant's representation. The competent authority decided the representation by order dated 01.10.2001, by which the representation of the applicant was rejected.

7. The applicant filed another OA no. 1121 of 2001 challenging the order of transfer. This Tribunal did not give any interim relief by way of interim order. The applicant filed Writ Petition no. 32798 of 2001 before the Hon'ble Allahabad High Court. The Hon'ble Allahabad High Court, vide order dated 05.11.2001 (Ann 2) stayed the transfer order and disposed of the writ Petition with direction to this Tribunal to decide the OA expeditiously. The respondents filed SLP no. 2927 of 2002 before Hon'ble Supreme Court. The Hon'ble Supreme Court vide order dated 18.02.2002 stayed the order of Hon'ble High Court dated 05.11.2001. However, in the meantime this Tribunal decided the OA by order dated 15.02.2002. The applicant filed another writ Petition no. 18304 of 2002 in the Hon'ble Allahabad High Court, challenging the Tribunal's order dated 15.02.2002 regarding transfer of the applicant from Allahabad to Jawahar Nagar, Sitamoni. It would be pertinent to record here that the learned counsel for the applicant submitted that the writ Petition no. 18304 of 2002 was filed in the Hon'ble Allahabad High Court in regard to the transfer order of the applicant and not regarding the salary which was to be paid to the applicant. The respondents filed SLP no. 2929/02 which was disposed of by Hon'ble Supreme Court by order dated 08.04.2002 and was dismissed as infructuous, as the OA 1121/01 had been finally


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disposed of by this Tribunal.

8. The Hon'ble High Court passed the interim order dated 07.05.2002 (Ann 3) in writ Petition no. 18304 of 2002 and stayed the operation of the transfer order dated 22.06.2001. The respondents challenged the interim order of the Hon'ble Allahabad High Court dated 07.05.2002 by filing SLP no. 13045 of 2002 and the Hon'ble Supreme Court vide order dated 29.07.2002 stayed the interim order of Hon'ble High Court dated 07.05.2002 and finally decided the Civil Appeal no. 6459 of 2002 arising out of SLP (C) no. 13045 of 2002 by order dated 30.09.2002. The Hon'ble Supreme Court allowed the appeal and set aside the order of Hon'ble High Court.

9. From the above, we would like to record that it was for the first time that the order of this Tribunal dated 22.06.2001 was stayed by the Hon'ble High Court vide order dated 05.11.2001. Since the Hon'ble Supreme Court vide order dated 18.2.2002 (Ann SA1) stayed the order of Hon'ble High Court dated 05.11.2001, it is beyond doubt that no interim order existed as the order of Hon'ble High Court merged with the order of Hon'ble Supreme Court. Again the Hon'ble High Court passed another interim order dated 7.5.2002 staying the transfer order dated 22.6.2001. This too was stayed by Hon'ble Supreme Court by order dated 29.7.2002 (Ann CA1). In these facts of the matter, it is quite clear that there was no stay operating in regard to the transfer order dated 22.6.2001. The pleas of the applicants counsel that the respondents never challenged the order of this Tribunal about the salary, theory of merger will not be applicable and ^{the second} the part of the order dated 15.2.2002 about salary by Tribunal continues, has no substance.

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10. We find substance in the submission of learned counsel for the respondents that the stay order dated 05.11.2001 of Hon'ble High Court was stayed by the Hon'ble Supreme Court and the Hon'ble Supreme Court found no merit in the case and, therefore, all the orders of Hon'ble High Court merged into the order of the Apex Court. In view of the above there is no justification for the applicant for remaining away from duty. Admittedly, the applicant did not preform duties after she was relieved on 29.06.2001. We would like to quote the relevant paras of the order of Hon'ble Supreme Court dated 30.09.2002:-

"Merely because the respondent is a lady teacher does not mean that for administrative reasons orders of transfer cannot be passed. We would expected a teacher to show some sense of responsibility. But the fact remains that there is none as far as the respondent is concerned. As we have already mentioned, orders of transfer were passed on 22nd June, 2001 and on 7th May, 2002 the High Court stayed the transfer. This order of the High Court was stayed by this Court on 29th July 2002. Till date, the respondent has not joined the new station to which she has been transferred. We see no reason to interfere with the order of transfer. It is only a government organisation which can tolerate non-implementation of its order."

For the aforesaid reason this appeal is allowed and the order of the High Court is set aside."

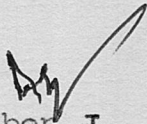
11. For the above, it is clear that their Lordships of Hon'ble Supreme Court did not appreciate the non-implementation of the orders by the applicant. However, the respondents in compliance of the order of this Tribunal dated 15.2.2002 paid a sum of Rs. 18,428/- to the applicant vide DD No. 280730 dated 07.06.2002 for the period from 15.2.2002

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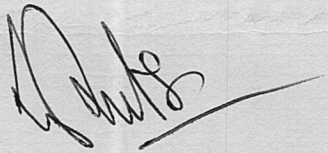
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i.e. the date when the OA no. 1121 of 2001 was decided till the date the representation of the applicant was decided, which in our opinion is more than sufficient as the applicant has been paid the above amount for non working.

12. In view of the aforesaid, we are satisfied that no case of contempt is made out. Contempt petition is accordingly dismissed. Notices issued are discharged.



Member J



Member A

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