

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH  
LUCKNOW**

**C. C. P. No.26/2011  
In  
Original Application No. 481/2002**

Order Reserved on 19.5.2014.

Order Pronounced on 27/05/2014

**HON'BLE MR. NAVNEET KUMAR MEMBER (J)**  
**HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

Mrs. Anindita Mukherjee, aged about 48 years, wife of Col. R. K. Mukherjee, P-2/78-B, Satwari Officers Enclave, Near Military Officers Gate, Jammu Cantt.

**Applicant**

**By Advocate Sri Som Kartik.**

**Versus**

1. Mr. Avinash Dikshit Working as Commissioner, Kendriya Vidyalaya Sangathan, 18, Institution Area, Shaheed Jeet Singh Marg, New Delhi-110016.
2. Mr. P.K. Koul, Assistant Commissioner Kendriya Vidyalaya Sangathan, Jammu Region, Govt. Hospital Road, Gandhi Nagar, Jammu-18004.
3. Sunita Lunnai Principal, Kendriya Vidyalaya No. 3 P.O. Naraingarh, New Amritsar Cantt. (Amritsar-Attari Road), New Cantt. Amritsar-143106.

**Respondents**

**By Advocate Sri Rajendra Singh.**

**ORDER**

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Contempt Petition is preferred by the applicant for non-compliance of the order dated 2.12.2010 passed in O.A. No. 481 of 2002 whereby, the Tribunal has been pleased to observe as under:-

**"Therefore, in vide of the above, this O.A. stands allowed reiterating the same direction to the respondents that in the event an order is passed by them to post the applicant as per the administrative exigencies applicant shall join there and the order passed in departmental appeal would be implemented. The intervening period in question till the applicant joins duty would be regulated in such a manner that this may not cause any break in the qualifying service of the applicant for the purposes of seniority and pensionary benefits. No orders as to costs."**

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2. The learned counsel for the applicant pointed out that the order of the Tribunal was duly communicated upon the respondents and despite that they have not obeyed the directions and not complied the order passed by the Tribunal. As such, notices were issued to all the respondents.

3. After notice was issued to the respondents, the respondents filed the counter affidavit and also filed the supplementary compliance report and through which, it is indicated by the respondents that vide order dated 25.4.2013, that the place of posting of the applicant has been changed from Kendriya Vidyalaya, No. I Udhampur to Kendriya Vidyalaya, Ballyganj, Kolkata (W.B) and also indicated that the said order was passed subject to final out come of the Writ Petition No. 1289 (S/B) of 2011. It is also indicated by the respondents that after the order passed by the Tribunal, the Additional Commissioner(Admn.) KVS has passed an order dated 14.8.2012 reinstating the applicant as PRT in KVS and posted her at KV No. I Udhampur without prejudice to the interest of KVS.

4. The learned counsel for the applicant has filed the objections to the compliance report and indicated this fact that though the applicant was permitted to joint , but she has not been paid salary and no decision is taken in regard to the intervening period from 2001 till applicant joined her duties, even in the order dated 27.1.2014, the respondents have passed any orders in this regard.

5. Heard the learned counsel for the parties and perused the record.

6. The bare perusal of the order shows that the respondents were directed to pass an order to post the applicant as per administrative exigencies and the applicant was also directed that she will join there. Apart from this, the respondents were also directed that the intervening period in question till the applicant joined her duties would be regulated in such a manner that may not cause any break in the qualifying service of applicant



for the purposes of seniority and pensionary benefits. There is no order in regard to payment of any salary to be paid to the applicant. Undisputedly, the respondents allowed the applicant to join through their order dated 14.8.2012 and the applicant has also joined on 31.7.2013. Apart from this, through order dated 27.1.2014, the respondents have also indicated as under:-

**"2. Whereas, the treatment for the intervening period from the date Smt. Anindita Mukherjee, PRT was removed from service till the date she joined on reinstatement at K.V. Ballyganj, Kolkata (W.B.) i.e. from 16.3.2001 to 30.7.2013 was not recorded in the aid order dated 14.8.2012.**

**3. Whereas, the order dated 14.8.2012 has been re-examined in light of Government of India decision No. (3) (I) below Rule-54(b) of FR wherein clarification has been issued for application of Rule FRs-54,54-A & 54-B, as under:**

**"If no order is passed directing the period of absence be treated as duty for any specified purpose, the period of absence should be treated as 'non duty'. In such even, the past service (i.e.) service rendered before dismissal, removal, compulsory retirement or suspension will not be forfeited."**

7. As observed by the Hon'ble Apex Court in the case **J.S.**

**Parihar Vs. Ganpat Duggar and others AIR 1997 Supreme Court**

**113**, the Apex Court has held as under:-

**"The question then is whether the Division Bench was right in setting aside the direction issued by the learned Single Judge to redraw the seniority list. It is contended by Mr S.K. Jain, the learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three Benches, the learned Judge cannot come to a conclusion whether or not the respondent had willfully or deliberately disobeyed the orders of the Court as defined under Section 2(b) of the Act. Therefore, the learned Single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2-7-1991. Subsequently promotions came to be made. The question is whether seniority list is open to review in the contempt proceedings to find out whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial**

review. But that cannot be considered to be the willful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act."

In the case of **Lalit Mathur Vs. L. Maheswara Rao (2000) 10**

**SCC 285**, the Hon'ble Supreme Court held as under:-

"The High Court in the writ petition had issued a direction for the consideration of the respondent's representation by the State Government. This direction was carried out by the State Government which had considered and thereafter rejected the representation on merits. Instead of challenging that order in a fresh writ petition under Article 226, the respondent took recourse to contempt proceedings which did not lie as the order had already been complied with by the State Government which had considered the representation and rejected it on merits."

8. Apart from this, the learned counsel for the respondents also relied upon a decision rendered by the Hon'ble Apex Court in the case of **Chhotu Ram Vs. Urvashi Gulati and another reported in AIR 2001 SC 3468**. The Hon'ble Apex Court has observed as under:-

"Court directed for considering the case of the applicant for promotion. The case of the petitioner was duly considered but his claim for promotion was rejected and in that event, since the case of the applicant was considered as such, the contempt proceedings cannot be proceeded as there is no violation of any direction issued by the Court."

9. As observed by the Hon'ble Apex Court in the case of **Prithawi Nath Ram Vs. State of Jharkhand and Others (2004) 7 SCC 261**, the Hon'ble Apex Court has been pleased to observe as under:

"If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach to the Court that passed the order or invoke jurisdiction of the Appellate Court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong the order has to be obeyed. Flouting an order of the Court would render the party liable for contempt. While dealing with an application for contempt the Court cannot traverse beyond the order, non-compliance of which is alleged. In other words, it cannot say what should not have

been done or what should have been done. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible.

10. The bare perusal of the order clearly shows that the order passed by the Tribunal has been fully complied with.

11. Considering the observations of the Hon'ble Apex Court and factual position of the case, the contempt petition is dismissed.

The notices issued stand discharged. No order as to costs

*J. Chandra*

(Ms. Jayati Chandra)  
Member (A)

*U.R. Agrawal*  
(Navneet Kumar)  
Member (J)

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