

**Central Administrative Tribunal, Lucknow Bench, Lucknow**  
**CCP No. 41/2011 in Original Application No.236/2010**

This the <sup>th</sup>12 day of April, 2013

**Hon'ble Sri D.C. Lakha, Member (A)**  
**Hon'ble Sri Navneet Kumar, Member (J)**

Smt. Arunima Dubey a/a 51 years w/o Sri S.K. Dubey r/o 58, Gandhi  
Gram, Harjinder Nagar, Kanpur

Applicant

By Advocate: Sri V.K. Srivastava

Versus

1. Sri Avinash Dixit, Commissioner, Kendriya Vidyalaya  
Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg,  
New Delhi-16.
2. Sri A.K. Bajpai, Dy. Commissioner, Kendriya Vidyalaya  
Sangathan, Regional Office, Sector J, Aliganj, Lucknow.

Respondents

By Advocate: Sri A.Moin for Sri R.Singh

**(Reserved on 4.4.2013)**

**ORDER**

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


The present Contempt Petition has been preferred by the applicant feeling aggrieved for non-compliance of order passed by the Tribunal dated 12.7.2011 passed in O.A. No. 236/2010 while deciding the present O.A. along with O.A. No. 233/2010, 234/2010, 235/2010, this Tribunal passed the following orders:-

20. Finally,, therefore, we are not inclined to interfere with the amendment made in the transfer guidelines which was well within the powers of the institution i.e. K.V.S. as already mentioned. The learned counsel for the applicants also fairly conceded on this point during the course of arguments. The only blemish, we have found is in respect of implementation of these guidelines retrospectively. As already discussed that in the amendment guidelines itself, in the opening paragraph, it is clearly mentioned that the earlier transfer guidelines dated 14.3.2006 have been amended with immediate effect. The law is also settled on this point that no retrospective effect can be given to any provisions so as to impair or take away an existing right unless those provisions either expressly or by necessary implication direct that it should have any retrospective effect. Concededly, no where it is

mentioned in these amended provisions that it would have retrospective effect. Whether any provision has retrospective effect or not, primarily depends upon its language and its construction from which the intention has to be ascertained. The intent is ascertained either by express provision or by necessary implication which are lacking here. Therefore, these O.As. are partly allowed to the extent that the amended transfer guidelines have been wrongly implemented with retrospective effect in an arbitrary manner, impairing and taking away the existing rights of the applicants. The remaining reliefs are declined. The respondents are required to implement the amended guidelines prospectively and in furtherance thereof, they are directed to make a fresh exercise in respect of transfer of all the applicants and then to pass appropriate orders, if any. It is also desirable that such an exercise, may be concluded within a period of forty five days from today so that the confusion if any may come to an end and the students may not suffer in their studies.

2. The learned counsel appearing on behalf of the applicant submitted that after the said orders were passed, the respondents were required to implement the amended guidelines prospectively and in furtherance thereof, they were directed to make a fresh exercise in respect of transfer of all the applicants and then to pass appropriate orders. The learned counsel for the applicant pointed out that the existing transfer guidelines were effective from 14.3.2006. It is also pointed out that the O.P. No.2 has made the amendments in the transfer guide-lines dated 14.3.2006 on 12.4.2010 and further in pursuance of the amendment dated 12.4.2010, specific order dated 3.11.2010 was passed in pursuance of the amendment. The applicant has pointed out that despite his repeated reminders, respondents have not done anything as such he has preferred this contempt petition.

3. The learned counsel for respondents filed counter affidavit/ compliance report as well as the Supplementary Counter Affidavit on behalf of the respondent No.2 and pointed out that a new transfer policy dated 3.11.2010 was formulated w.e.f. 1.4.2011 and following the new transfer policy, the transfer order dated 3.6.2011 were issued transferring the applicant to Kendriya Vidyalaya, Fatehgarh. This Transfer order was issued by following the new transfer policy



dated 3.11.2010 which was never challenged by the applicant before this Hon'ble Tribunal, as such no fault can be found in the Transfer order dated 3.6.2011. It is also pointed out by the respondents that present applicant is working at Fatehpur. The learned counsel for respondents also filed the transfer order dated 3.6.2011 as well as the transfer policy dated 3.11.2010 contained in Annexure No.SCA-1 and SCA-2. The learned counsel for respondents has also pointed out that as per the direction of the Tribunal, the respondents were required to implement the amended guidelines prospectively and to make a fresh exercise in respect of transfer of the applicant and to pass appropriate orders, if any and in pursuance of the new transfer policy, the transfer order dated 3.6.2011 was passed and the transfer policy dated 3.11.2010 is different from the earlier transfer policy dated 12.4.2010.

4. Learned counsel for respondents has also filed Supple.CA on behalf of respondent No.1 and the contents as stated earlier were reiterated and also submitted that the strict compliance of the Tribunal's order dated 12.7.2011 has already been made by the respondents and case of the applicant was considered and subsequently the applicant was transferred vide order dated 3.6.2011 as such, no further compliance is required to be made and the respondents have fully complied with the orders of the Tribunal and if the applicant is aggrieved by the said order, he may challenge the same before appropriate forum by way of filing a fresh O.A.

5. Learned counsel appearing on behalf of the applicant filed their Rejoinder Reply to the Counter Reply as well as to the other documents and reiterated the averments made in the CCP.

6. Heard the learned counsel for parties and perused the pleadings on record carefully.

7. Admittedly, the applicant who was initially transferred on the basis of some guide-lines issued by the respondents, the applicant along with 4 other were transferred by common order dated 17.5.2010 and the amendment made in the transfer policy vide order dated 12.4.2010 issued by O.P. No.2. The Tribunal after considering the averments made by the learned counsel for the applicants passed a final order on 12.7.2011 whereby it was pointed out that in respect of the applicants, respondents are required to implement the amended guidelines prospectively and in furtherance thereof, they are directed to make a fresh exercise in respect of transfer of all the applicants and then to pass appropriate orders, if any. in pursuance thereof, the respondents passed a transfer order transferring the applicant to Kendriya Vidyalaya, Fatehgarh and this order was passed by the respondents on 3.6.2011 in terms of para 9 and 11 (1) of the latest transfer guidelines which inter-alia provide to create a vacancy so as to accommodate the persons who are having highest Transfer counts subject to not being below C-1. The said transfer order came to be issued following the policy of displacement counts dated 3.11.2010. Since the applicant has not challenged the new transfer policy dated 3.11.2010, hence the transfer order dated 3.6.2011 was passed and the subsequent transfer policy dated 3.11.2010 is absolutely different from the policy dated 12.4.2010 in as much as in the Earlier policy, the stay/posting of a teacher in a particular school prior to break of 3 years was to be ignored while the service rendered prior to break of less than 3 years may be taken into account to determine the displacement counts in terms of clause b(1) of the transfer policy dated 3.11.2010. The scope of contempt is limited and the Tribunal/ courts cannot re-appreciate the evidence in the contempt proceedings.

8. In view of the facts, the question which arises for consideration in the instant contempt petition is that if, in compliance of an order passed by the Tribunal/Court, the authorities have considered the case of the applicant and came to the conclusion on the basis of reasoning given therein that the applicant was further transferred or a decision is taken, whether the contempt petition filed by the applicant is maintainable or not on the ground that such action is not in accordance with the directions given by the Tribunal as per the version of the applicant. The answer to the above question lies in the following judgments passed by the Hon'ble Apex Court:-

In the case of **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 wilfully 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 wilful 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."**

Further in the case of **Ashok Kumar Pandey Vs. Ashok**

**Kumar Singh ,D.I.O.S.,Ballia and others 2003 (5) AWC 4393** this

Court has held as under:-

**"The D.I.O.S. considered the report and the matter of appointment of the applicant in great detail. He observed in the previous writ petition the applicant claimed his appointment under Section 18 of the U.P. Secondary Education Service Commission Act, 1982. However, in the second writ petition, he claimed his appointment under Removal of Difficulties II Order. Both these matters were considered and it was held that the appointment is not according to the rules either under Section 18 of the U.P. Secondary Education Service Commission Act, 1982, or under Removal of Difficulties Order (Second). therefore, the appointment was disapproved. It is further contended that previous approval in compliance of the order passed in the writ petition was passed by the Sub-Divisional Magistrate, who was holding the charge of D.I.O.S. without considering the provisions of the Act.**

**Therefore, the direction of this Court has been complied with. If the applicant is aggrieved by the order of the D.I.O.S. deciding the matter and is of the view that the decision is not correct, he may challenge the same in the appropriate writ or in other proper proceedings. There is no ground to proceed with the contempt. The petition for contempt is accordingly dismissed."**

In the case of **Brahma Deo Tiwari Vs. Alok Tandon,**

**District Magistrate, Allahabad 2004 (1) AWC 543** this Court has

held as under:-

**" As already noted hereinabove, this contempt petition has been filed alleging violation of the order of the writ court dated 10.12.1997 by which the writ court had directed to consider the case of the applicant with regard to his appointment. The contempt court after perusing the order dated 11.7.1997, though had disapproved the decision taken by the opposite party, had directed vide**

order dated 10.12.1997, to reconsider the case of the applicant after taking into consideration different aspect which are mentioned in the order itself. By the order dated 17.12.2002, the opposite party has considered all the aspects mentioned in the order dated 10.12.1997. Counsel for the applicant has urged that the order dated 17.12.2002 is neither legally nor factually correct. It may be so, but it is well settled that the contempt court can neither sit in appeal nor examine the correctness of a resultant order. The Apex Court in Lalith Mathur v. L. Maheshwara Rao, (2000) 10 SCC 285 and J. S. Parihar v. Ganpat Duggar, (1996) 6 SCC 291, has held that correctness of an order passed by a statutory authority on the directions of the writ court cannot be examined under the contempt jurisdiction. No doubt the resultant order may give rise to a fresh cause of action."

In the case of **Shail Raj Kishore , Secretary, Education**

**Basic, U.P. Lucknow and others** 2004 (3) AWC 2444 this court

has held as under:-


"If the applicants feel that the order passed by the opposite party is not in accordance to the intent or desire of the Court or otherwise illegal and arbitrary, the same can only be challenged before the appropriate forum. In various cases, Apex Court has held that the Contempt Court cannot go into the merit of the order. Various grounds raised by the learned for the applicant to submit that the order is bad in law required consideration and adjudication, which can only be done by the appropriate Court and not by this Court."

In the case of **Anil Kumar Shahi (2) Vs. Prof. Ram Sevak**

**Yadav (2008) 14 Supreme Court cases 115**, the Apex Court held

as under:-

"When the Court directs the authority to consider a matter in accordance with law, it means that the matter should be considered to the best of understanding of an authority to whom direction is given, therefore, mere error of judgment with regard to the legal position does not constitute contempt of court. There is no willful disobedience if best efforts are made to comply with the court order."

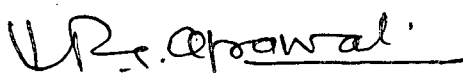
9. Apart from this, the learned counsel for the respondents relied upon on the decision rendered by the Hon'ble Apex Court in the case of **Chhotu Ram Vs. Urvashi Gulati and anothers** reported in AIR 2001 SC 3468. The Hon'ble Apex Court has  observed as under:-

“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.”


The learned counsel for respondents has also relied upon a decision rendered by the Hon'ble Apex Court in the case of **Anil Kumar Shahi and others Vs. Prof. Ram Sevak Yadav and others** reported in (2008) 14 SCC 115 in which the Hon'ble Apex Court has been pleased to observe as under:-

“In other words, while exercising its power under the Act, it is not open to the court to pass an order, which will materially add to or alter the order for alleged disobedience of which contempt jurisdiction was invoked. When the Court directs the authority to consider a matter in accordance with law, it means that the matter should be considered to the best of understanding by the authority and, therefore, a mere error of judgment with regard to the legal position cannot constitute contempt of court. There is no willful disobedience if best efforts are made to comply with the order.”

10. Considering the observations made by the Hon'ble Apex Court and the reasons given therein, if the applicant is feeling aggrieved by the decision taken by the competent authority and is of the view that the same is not in accordance with the directions given by the Tribunal, then he has remedy to challenge the same before the appropriate forum and for the said purpose remedy to him does not lie under the contempt of Court Act. 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.

  
(Navneet Kumar)  
Member (J)

HLS/-

  
(D.C. Lakha)  
Member (A)