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Central Administrative Tribunal, Allahabad Bench, Allahabad

CCP No. 330/00185/2017 in O.A. No. 330/01453/2009

Reserved on 16.2.2018

Pronounced on 8.3.2018

Hon'ble Mr. Justice Dinesh Gupta, Member (J)
Hon'ble Mr. Gokul Chandra Pati, Member (A)

Raj Yash Sharma aged about 55 years son of Late S.R. Sharma r/o LIG -15, Ratan Lal Nagar, Kanpur.

Applicant

By Advocate: R.K. Dixit

Versus

1. Sri Dr. V.P. Joy, Central Provident Fund Commissioner, Employees Provident Fund Organisation Bhavishya Ni Dhi Bhawan, 14, Bhi kaji Cama Place, New Delhi -110066.
2. Shri Maruti Bhoyi, Regional Provident Fund Commissioner, Regional Office, Ni Dhi Bhawan, Sarvodaya Nagar, Kanpur.
3. Shri Chandramauli Chakraborty, Additional Central Provident Fund Commissioner/ HRM Employees Provident Fund Organisation, Bhavishya Ni Dhi Bhawan, 14, Bhi kaji Cama Place, New Delhi -110066.
4. Sri Mhonthung Ngulie, Regional Provident Fund Commissioner -1 (Examination) Employees Provident Fund Organisation Bhavishya Ni Dhi Bhawan, 14, Bhi kaji Cama Place, New Delhi -110066.

Respondents

By Advocate: Sri Satyajeeet Mukherji

ORDER

Hon'ble Member Justice Dinesh Gupta, Member (J)

Heard the learned counsel for applicant Sri R.K. Dixit and learned counsel for respondents Sri Sri Satyajeeet Mukherji.

2. The applicant/respondent No. 5 filed this contempt petition against official respondents for non-compliance of order dated 5.10.2017 passed by this Tribunal on stay vacation application. The applicant submitted that O.A. No. 1453/2009 was filed by one Sri R.K. Maheshwari in the year 2009 and Hon'ble Tribunal granted ex parte interim order on 4.12.2009 by which one post was kept vacant for the applicant.

3. A brief summary of the case as given by the applicant/respondent No. 5 is that official respondents issued notification dated 1.9.2009 for only 15 vacancies to be filled up by promotion. The respondent No. 5 appeared in the examination as general category candidate and declared successful. The applicant further submitted that had there not been stay order passed by this Tribunal, the applicant would have been promoted on the post of EO/AAO. The applicant also filed a writ petition in the High Court who directed the Tribunal to decide the stay vacation application at the earliest. Thereafter, Tribunal after hearing both the parties modified the interim order dated 4.12.2009 vide order dated 5.10.2017 and directed the contemnor to promote the applicant.

4. The applicant also served a copy of order dated 5.10.2017 to the respondents. However, the respondents have not taken any action even after vacation of stay order.

5. Notices were issued to the respondents who in turn filed the compliance affidavit in which it is stated that as per applicant/respondent No. 5 contention, the post should be filled up by him because the candidate at Sl. No. 13 Mahesh Kumar Chaudhary who was an SC candidate has already been promoted under the SC category. The respondents further stated that claim of the applicant is absolutely ill-founded

and misconceived because once the vacancy at Sl. No. 13 is released in view of the vacating of stay order, the said vacancy will rightly go to Mahesh Kumar Chaudhary who happens to be a candidate at Sl. No. 13 and in such case, the candidate who is just below Mahesh Kumar Chaudhary in the list of successful candidate of the SC category namely Kuldeep Rai will fill up the vacancy created by Mahesh Kumar Chaudhary. The counsel for respondents further submitted that since the candidate at Sl. No. 13 Mahesh Kumar Chaudhary became successful in the examination as an SC candidate also, hence in order to do justice, he was rightly promoted against the SC category and could not be promoted under general category because the vacancy at Sl. No. 13 was required to be kept vacant. In this view of the matter, the applicant cannot be promoted as the vacancy created in the SC category by promotion of Mahesh Kumar Chaudhary under General Category will be filled by Kuldeep Rai whose name appears just below the name of Mahesh Kumar Chaudhary in the merit list of SC candidate.

6. Heard learned counsel for the applicant Sri R.K. Dixit and learned counsel for respondents Sri Satyajeet Mukherji.

7. The counsel for applicant has reiterated the facts as stated in the contempt petition and stated that respondents in order to deprive the applicant/respondent No. 5 wrongly adjusted Mahesh Kumar Chaudhary as general category list who was already promoted as SC category candidate long back in 2010 and in order to deprive the applicant from promotion, the respondents have given the promotion to another SC candidate who is next below to Mahesh Kumar Chaudhary in SC category.

8. Counsel for respondents have reiterated the facts as stated by him in the compliance affidavit.

9. We are unable to accept the contentions raised by the learned counsel for the applicant.

10. The court while vacating the stay order never contended that against the vacant post, respondent No. 5 should be promoted. On the contrary, the court observed that "Therefore, considering all the submission made by counsel for the parties, we are of the view that the interim order granted on 4.12.2009 deserves to be modified to the extent that respondents may go on to fill the vacant post which was kept reserved by the interim order dated 4.12.2009. However, it is made clear that the said promotion shall be subject to outcome of the present O.A."

11. From perusal of stay vacation order, it is clear that respondents were not directed to promote the respondent No. 5. So far as the promotion of Mahesh Kumar Chaudhary as General category candidate/S.C. category candidate or promotion of Kuldeep Rai next junior to Mahesh Kumar Chaudhary in the merit list of SC candidate or depriving the applicant/respondent No. 5 from promotion is concerned, these issues cannot be adjudicated in contempt jurisdiction. Since the respondents have complied with the order passed by this Tribunal and filled up the vacant post which was kept vacant by stay order. Whether the respondents have taken right decision or wrong decision in compliance of Tribunal's order, this is not the business of contempt court.

12. Since the respondents have complied with the order passed by this Tribunal, contempt petition is dismissed. Notices are discharged. However, the applicant/respondent No. 5 is at liberty to challenge the promotion order of Mahesh Kumar Chaudhary or promotion order of Kuldeep Rai as S.C. candidate by filing a separate O.A.

(GOKUL CHANDRA PATI)
MEMBER (A)

(JUSTICE DINESH GUPTA)

MEMBER (J)

HLS/-

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