

Central Administrative Tribunal
Principal Bench: New Delhi

CP No.142/2017

in
OA No.4650/2014

Reserved on: 09.11.2017
Pronounced on: 17.11.2017

Hon'ble Mrs. Jasmine Ahmed, Member (J)
Hon'ble Mr. Uday Kumar Varma, Member (A)

Praveen Sharma, Aged about 36 years,
S/o Sh. C.B. Sharma,
R/o E-412, Street No.8,
Hardev Puri, Shahdara,
Delhi – 110 093. ...Petitioner

(By Advocate: Ms. Priyanka Bhardwaj for Sh. M.K. Bhardwaj)

Versus

1. Sh. M.M. Kutty,
Chief Secretary, Govt. of NCT of Delhi,
New Secretariat, IP Estate,
New Delhi.
2. Sh. Ashim Chand Verma,
Secretary,
Delhi Subordinate Services Selection Board,
FC-18, Institutional Area,
Karkardoom Complex, New Delhi.
3. Sh. P.K. Gupta,
Commissioner,
North Delhi Municipal Corporation,
Civil Centre, New Delhi.
4. Sh. Puneet Kumar Goel,
Commissioner,
South Delhi Municipal Corporation,
Civil Centre, New Delhi.
5. Sh. Mohanjeet Singh,
East Delhi Municipal Corporation,
Civil Centre, New Delhi. ...Respondents

(By Advocates: Ms. Rashmi Chopra for R-1
Sh. K.M. Singh for R-2
Sh. R.K. Jain for R-4
Ms. Punam Singh for R-5)

O R D E R

By Hon'ble Uday Kumar Varma, Member (A):

The instant Contempt Petition has been filed by the applicant alleging willful disobedience of the Tribunal's order dated 12.09.2016 passed in OA No.4650/2016 by the respondents, which was allowed in the following terms:-

"5. In view of the facts noted above and judgments of Hon'ble High Court, we allow this OA and direct the respondents to appoint the applicant as Teacher Primary if he is otherwise eligible, from the date his junior was appointed and grant him notional benefit of seniority and pay fixation from that date. However, it is made clear that salary etc. will be payable from the date he joins. There shall be no order as to costs."

2. The petitioner alleges that despite the clear order of the Tribunal directing the respondents to appoint him as Teacher Primary from the date his juniors were appointed and grant him notional benefit of seniority and pay fixation, the respondents have willfully and deliberately violated the same by not appointing him as Teacher Primary by taking other factor i.e. 'being overage' into consideration just to defeat his legitimate claim by passing the impugned order dated 03.05.2017.

3. The respondents have filed their respective counter affidavits. The respondent no.1 has stated that the role of Govt. of NCT in recruitment matters is restricted to only framing of recruitment rules for various posts in Municipal Corporations and has no role in recruitment to the post of

Teacher Primary or any other post for that matter. Hence, the respondent no.1 is not proper party to the present CP.

4. The respondent no.4 has also stated that after trifurcation of erstwhile MCD, the Education Department, South DMC has been entrusted with the work of recruitment of teachers for all the three corporations. South DMC forwards the requisition to DSSSB for filling up the vacant posts of teacher primary of all the three corporations and the DSSSB selects the candidates, recommends for their appointment and sends the dossiers of the selected candidates to South DMC, who completes the further formalities required for making appointments. Hence, it is submitted on behalf of respondent no.4 that it, being a user department, is not the necessary party.

5. The respondent no.2 has filed the compliance report on 25.05.2017 enclosing therewith order dated 03.05.2017 in compliance of the Tribunal's order dated 12.09.2016. Perusal of the said order reveals the contention that the case of the applicant has been reconsidered thoroughly and found him unfit for appointment to the post of Teacher Primary on the ground that he was overage. It is also mentioned in the compliance report that the petitioner had completed 11 months service in UP Government as on the cut-off date, whereas 3 years continuous government

service is required for claiming age relaxation under the category of 'government service'. Thus, the petitioner does not have the requisite service entailing him to claim that he is entitled for the age relaxation.

6. Learned counsel for the respondent vehemently argued that the applicant has rightly been refused offer of appointment strictly in compliance of the Tribunal's order according to which he was to be given appointment if he was otherwise eligible. Learned counsel further submits that though petitioner's not possessing Hindi as a subject in the secondary level was not to be taken into consideration for rejection of appointment, the respondents have passed the order dated 03.05.2017 strictly in accordance with the Tribunal's order taking cognizance of the words 'if otherwise eligible' into account and, therefore, no willful and deliberate disobedience whatsoever can be attributed to them.

7. We have carefully gone through the pleadings of the case as also the cases relied upon the parties. We have also patiently heard the arguments so advanced by the learned counsel for the parties.

8. Having considered the rival contentions of the parties, we are of the considered view that no contempt is made out for the following reasons:-

- (i) First of all the order of the Tribunal was so worded that it was open to the interpretation that the respondents had to consider the case of the applicant for appointment as Teacher (Primary) if he was otherwise eligible. It is possible to interpret this order in a way that while the candidate could not be refused appointment because he did not have Hindi as one of the subjects at secondary level, he still could be disqualified or denied appointment on some other valid and legal grounds.
 - (ii) After having gone through the order passed by the respondents, it is clear that they have, in fact, disregarded their earlier objection about petitioner's not having Hindi as a subject in the secondary level, but have clearly indicated that the applicant is not entitled for appointment being overage. The contention of the respondents that the petitioner is overage was at no point of time disputed or contested by the petitioner. In other words, the petitioner also implicitly accepted that he was overage.
9. The basic ingredient of contempt is that the action of the respondents for disobedience should be willful and

deliberate. The action of the respondents cannot be faulted because they have considered other factors also while deciding the appointment of the petitioner. In our view, such an action is in consonance with the directions given by the Tribunal in its order dated 12.09.2016 passed in the OA. It is a common understanding that the ambit of contempt petition is not universal but restricted. A contempt petition cannot become a ground for adjudicating the matter afresh or re-visiting the order already made. In a contempt petition what is to be meticulously seen is whether the orders passed by the courts against which contempt petition has been brought, are strictly as per the letter and spirit of the orders or not. Our view is also strengthened by the decision of the Hon'ble Supreme Court in **J.S. Parihar vs. Ganpat Duggar & Ors.** [1996 (6) SCC 291), relevant portion whereof reads as under:-

“5. 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, 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. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the single Judge, the Division Bench corrected the mistake committed by the learned single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned single Judge when the matter was already seized of the Division Bench.”

10. Ms. Priyanka Bhardwaj, learned counsel for the petitioner during the course of argument relied upon the decision of Delhi High Court in **Lajwanti vs. P.K. Tripathi & Ors.** [CONT.CAS(C) 690/2011 decided on 07.09.2012] and argued that once the Tribunal has held that the petitioner was to be given appointment, it was not open to the respondents to refuse the same on some other grounds. She extensively relied upon the following portion of the decision, which reads as under:-

“After having heard the learned counsel for the parties, I am of the view that the defence taken by the respondent is rehash of their earlier defence, which was considered by this Court in the previous round i.e. in Contempt Case No.365/2009, on 18th December, 2009. After due deliberation, the Court

came to the conclusion that in case such a plea had been taken in the counter affidavit filed before the Tribunal, then perhaps the respondent was in the right. To this, Mr. Javed, submits that the issue before the Tribunal was not one which pertained to the requirement of having to obtain an OBC certificate from a competent authority prior to the cut-off date. According to the learned counsel, the issue was of equivalence of the registration certificate obtained by petitioner, and therefore, there was no occasion to take up the said defence. According to me, this contention cannot be accepted for the reason that it was not as if the petitioner was not a candidate falling in the OBC category. It was open to respondents to take up the all defences, including that the petitioner was not eligible on the ground that she did not have an OBC certificate from the competent authority, issued prior to the cut-off date, as stipulated in the advertisement.”

It is clear from the above that the Tribunal had given an unconditional and unequivocal direction to the respondents in that case to reconsider the case of the petitioner keeping in mind the fact that the petitioner had obtained OBC Certificate, though after the cut-off date, but there were no ‘ifs and buts’ in this matter nor was there any stipulation nor any liberty given to the respondents to reconsider the case of the petitioner subject to other eligibilities as is the case in the present OA. It may also be noted that the Tribunal, in its order dated 12.09.2016, has not discussed any other aspect raised either by the petitioner or by the respondents with regard to his appointment except the issue of having Hindi as one of the subjects at secondary level. In other words, it may not be inferred from this order that the Tribunal had, after considering all the grounds

taken by the respondents, decided the OA in favour of the petitioner and, therefore, at the time of implementation of the directions the respondents were prohibited from taking any other valid and legal ground to refuse the appointment to the petitioner. Alternatively put, the petitioner argues that the respondents should have disregarded “if otherwise eligible” part of the direction and have gone ahead and given him the appointment. This does not seem to be the correct interpretation of the order and the same, in our view, is not sustainable in law. It is, therefore, clear that the facts and circumstances of the decision in ***Lajwanti vs. P.K. Tripathi & Ors.*** (supra), relied upon by the petitioner, are distinguishable from the facts and circumstance of the case at hand.

11. In view of the above discussion we are of the considered opinion that the respondents have not committed any willful or deliberate disobedience of the directions of the Tribunal contained in order dated 12.09.2016 passed in OA No.4650/2014 and, therefore, the contempt petition is accordingly dismissed. No costs.

(Uday Kumar Varma)
Member (A)

(Jasmine Ahmed)
Member (A)

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