

Central Administrative Tribunal
Principal Bench
New Delhi

M.A.No.1970/2013
in
O.A.No.2816/2009

Order Reserved on: 09.12.2015
Order pronounced on 21.12.2015

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri P. K. Basu, Member (A)

Sh. Jai Prakash Sharma
S/o Sh. Ram Kishan
R/o Village & P.O. Surehara
Delhi. Applicant

(By Advocate: Shri R.P.Parashar)

Versus

Sh. Devinder Singh
The then Principal
Presently posted at Deputy Education Officer
South West-B, Zone-21, Najafgarh
New Delhi – 110 043. Respondent

(By Advocate: Sh. K.M.Singh)

O R D E R (on MA)

By V. Ajay Kumar, Member (J):

The applicant, who retired on 31.07.2009, while working as TGT in Government Boys Senior Secondary School, Nazafgarh, New Delhi,

filed the present MA under Section 340 read with Section 195 of Cr.PC for commission of perjury, by seeking the following relief(s):

"Prayer:

It is, therefore, most respectfully prayed that the respondent/accused person may be summoned, tried, and punished for the commission of perjury or in alternative this Hon'ble Court may be pleased to mark this application/complaint to the concerned M.M. for further proceeding against the accused person, under Section 340 R/w 195 Cr. P.C., in the interest of justice."

2. Heard Shri R.P.Parashar, the learned counsel for the applicant and Shri K.M.Singh, the learned counsel for the respondents and carefully perused the pleadings on record.
3. The applicant filed OA No.2816/2009 questioning the order dated 11.09.2009 of the respondents whereunder the applicant's claim for reemployment was rejected as the work and conduct report issued by the Principal is not satisfactory.
4. This Tribunal, after hearing both sides, by its Order dated 15.02.2010 dismissed the OA, by observing as under:

"19. We are of the considered opinion that the report of the applicants work and conduct came mainly from the Principal who initiated it in advance in view of Para-2 of Annexure A-3 and took into account various aspects such as ACRS, actual class room situation, discipline, the class results etc. The decision to decline reemployment was taken by the competent authority in accordance with the prescribed procedure. As observed by the Honble Supreme Court in Ekta Shakti Foundation Vs. Govt. of NCT of Delhi, AIR 2006 SC 2609, the Court is not an appellate authority while exercising power of judicial review over administrative action. In assessing the propriety of the same the Court will not ordinarily interfere if a possible view is taken by the administration. As such, in the facts and circumstances of the case we do not find sufficient grounds to intervene on behalf of the applicant. The O.A. is dismissed. No costs."

5. The Hon'ble High Court of Delhi by its Order dated 06.09.2010 disposed of the WP(C) No.3060/2010, by setting aside the Order dated

15.02.2010 in OA No.2816/2009 and by restoring the same for decision on merits. Accordingly, the OA No.2816/2009 was reheard and was disposed of by an Order dated 12.01.2011 by observing as under:

"12. Earlier, we have held that the question of giving re-employment lies within the domain of the executive authorities. Therefore, the Competent Authority, namely, Respondent No.3 is directed to take the observations made in the preceding paragraphs into consideration and decide the issue of eligibility of the applicant afresh for re-employment within a period of two weeks from the date of supply of a copy of this order. It is, however, made clear that the applicant will not be entitled to any salary for the period he has not worked on re-employment. The O.A. is disposed of as above. No costs."

6. In pursuance of the aforesaid order, the applicant was granted re-employment with effect from 31.01.2011.

7. The Review Application No.70/2011 filed by the applicant against the order dated 12.01.2011 in OA 2816/2009 was dismissed. The WP (C) No.4074/2011, also filed by the applicant was disposed of by holding that if the applicant worked for any period, after his retirement, he is entitled to the payments for the said period. The applicant filed CP No.800/2012 in OA No.2816/2009 which was closed on 16.05.2013, with liberty to the applicant to approach the appropriate forum for redressal of his grievance in accordance with law. Thereafter, the applicant preferred the present MA.

8. The applicant in OA 2816/2009, filed the present MA against the sole respondent-i.e., Shri Devender Singh, the then Principal of the School and presently posted as Deputy Education Officer contending that the respondent in the MA, who was the 4th Respondent in OA

No.2816/2009, with a mala fide intention deposed false hood against to the record by filing an additional affidavit in the OA. According to the applicant, the under-mentioned para of the additional affidavit filed by the applicant in OA No.2816/2009 is false:

"Sh. J.P.Sharma's Past record if seen from the verification of his Services in the service book shows that he was transferred every year after 01.11.2004 to 31.07.2009, the date of his retirement. He has been transferred 7 times in last 6 years i.e. from (01.11.2004 to 31.07.2009) it shows that no Principal was satisfied by his work and conduct hence either he was transferred or he himself got transferred. The Principal GNSSS No.2, Najafgarh, New Delhi, had never graded him 'Good' hence no questions of him to be biased or having a grudge against the applicant. The Principal only perform his duty by giving his remarks and it was the competent authority to issue order of re-employment."

9. It is the case of the applicant that the facts stated in the aforesaid para are not correct and against to the record and because of this false statement of the respondents, this Tribunal came to a wrong conclusion while disposing of the main OA.

10. The respondent vide reply dated 16.01.2014, opposed the MA by raising the following grounds:

- a) The present MA is barred by delay and latches. The alleged additional affidavit dated 26.11.2010 was filed, after serving an advance copy on the applicant's counsel Shri H.S.Sharma on 30.11.2010 in OA No.2816/2009. The applicant filed the present MA on 23.07.2013, i.e., after lapse of more than two and half years.
- b) The present MA is an abuse of process of law. The applicant filed Civil Suit No.36/2012 on 29.02.2012 before the District Judge, North District, Tishazari Courts, Delhi for

recovery of Rs.15,55,186/- towards damages and permanent and mandatory injunction, basing on the same facts, i.e., alleged false additional affidavit filed by the respondent. Since the said suit which was filed on the same set of facts, before filing of the present MA, is pending adjudication, the present MA is not maintainable. The applicant cannot pursue two remedies simultaneously before two different legal forums. Hence, the present MA, which is subsequent to the Suit, is liable to be dismissed.

c) On merits, the respondent in his reply (dated 16.01.2014) submitted as under:

"4. It is pertinent to mention here that in the said Additional Affidavit dated 26.11.2010 and the Respondent no.4, has has clearly written as follows on the basis of official records entered in the applicant's service book:-

"Sh. J.P.Sharma's Past record if seen from the verification of his Services in the service book shows that he was transferred every year after 01.11.2004 to 31.07.2009, the date of his retirement. He has been transferred 7 times in last 16 years i.e. from (01.11.2004 to 31.07.2009) it shows that no Principal was satisfied by his work and conduct hence either he was transferred or he himself got transferred. The Principal GNSSS No.2, Najafgarh, New Delhi, had never graded him 'Good' hence no questions of him to be biased or having a grudge against the applicant. The Principal only perform his duty by giving his remarks and it was the competent authority to issue order of re-employment." (Emphasis Supplied)

It clearly shows that this statement has been written, after the verification of his services in the service book, which shows that the different schools have verified his services, from 01.11.2004 to 31.07.2009 and the applicant has been transferred seven occasions during this period. The copy of computer generated transfer orders and subsequent joining orders are annexed herewith as Annexure R-2 Colly. Hence, no false affidavit has been filed, therefore, the present MA may be dismissed with costs."

11. In view of the above referred rival contentions, the applicant was directed to file the certified copy of the Suit. Accordingly, he filed the certified copies of CS No.136/2012 and the issues framed thereunder. The main crux of the contention of the applicant is that though he was not transferred seven times between 01.11.2004 to 31.07.2009, but the respondent in his affidavit falsely stated that he was transferred seven times during the said period. Per contra, the respondent submits that after the verification of the service book of the applicant from 01.11.2004 to 31.07.2009, supported by the computer generated transfer orders and subsequent joining orders which were enclosed as Annexure R2 (Colly.), it was stated in the affidavit that the applicant was transferred seven times during the said period and hence, the allegation is incorrect and unsustainable.

12. Even, according to the applicant, the alleged perjury was committed when the additional affidavit dated 26.11.2010 was filed in OA No.2816/2009. But the applicant not raised the said issue before its disposal, i.e., on 12.01.2011. It is also not forthcoming whether he raised the said issue in the Review Application No.70/2011 and also in WP(C) No.4074/2011, both filed against the Order dated 12.01.2011 in OA NO.2816/2009.

13. Further, it is not in dispute that the applicant even before filing the present MA, filed CS No.136/2012, and para No.20 of the said Suit reads as under:

"20. That the Defendant No.4 had filed a false additional affidavit before the Hon'ble Court of CAT

contending therein that the plaintiff had been transferred from one school to another 7 times due to his non satisfactory work and conduct knowing the same as false and not based on the service record. The service record of the plaintiff reflects the factum of pay adjustments for about 4 times and the Defendant No.4 with the malafide intention put the said pay adjustment as transfers before the Hon'ble CAT by way of his affidavit filed by him knowing the same as false and hence committed an offence of forgery with the plaintiff and perjury of document with the Hon'ble Court of CAT and hence he is liable to be prosecuted and punished U/s 467/468/471/193 of IPC r/w Sec.340 Cr.P.C. (The copy of additional affidavit of the Defendant No.4 is annexed as Annexure-Q.) and (The copy of the services record regarding pay adjustments is annexed as Annexure-R.)"

14. Para No.18 of the said Suit reads as under:

"18. That being the public servant Defendant No.4 had manufactured an incorrect document with deliberate intention to cause injury to the plaintiff in such way that the Defendants No.2 and 3 refused to give re-employment to the plaintiff admitting the said false and framed document with regard to result satisfactory to average on the basis of false result of 46% instead of 76% for the current Academic Session. Hence, he committed an offence U/s 167 IPC and hence caused monetary loss to the plaintiff to the tune of Rs.15,55,186/- . The break-up of the same is as under:-

1.	Damages	7,05,186/-
2.	Mental Agony	5,00,000/-
3.	Physical exertion	2,00,000/-
4.	Legal Expenses	1,00,000/-
5.	Misc.	50,000/-
Total		15,55,186/-

15. A perusal of the above paras of the Suit clearly indicate that the applicant filed the same claiming damages from the respondent basing on the alleged perjury of document filed in the OA. Unless, it is proved that the respondent committed perjury, no relief can be granted either in the Suit or in this MA. That can be done only after conducting a detailed trial adducing oral and documentary evidence. Since the Suit is filed earlier to the MA, though for a different purpose, in our view, the ends of justice would be met, if the MA is disposed of, without going into the merits of the same, leaving it open to the applicant to

invoke the remedies, in accordance with law, after the disposal of the Suit (CS No.136/2012). Accordingly, the MA is disposed of. No costs.

(P. K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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