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CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH
KOLKATA

CPC 350/00263/2015
(In O.A.350/01138/2014)

Date of Order : 17.03.2016

Present : Hon'ble Mr Justice Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms Jaya Das Gupta, Administrative Member

Prasanta Mukherjee.

-Vs-

Prof. Anil D. Sahasrabudhe, Chairman, AICTE & Ors.

For the petitioner : Mr I. Mitra, Counsel

For the respondents : None

Date of Hearing : 07.03.2016

Date of Order :

ORDER

JUSTICE V. C. GUPTA, JM:

This is an application for contempt alleged to have been committed by respondents against the order passed by this Tribunal at the interim stage of the proceeding, which runs as under :

"Heard both.

2. The Officer of Respondent No.7 is present and prays time to file their statement in this regard through advocate. Meanwhile the Id. counsel for the applicant produced a communication dated 11.06.2013 sent by the Additional Secretary, Ministry of Human Resource Development, Department of Higher Education, New Delhi to the Director General, Institute of Applied Manpower Research, Delhi, which is extracted hereunder for ready reference:-

"I would like to draw your kind attention towards your letter dated 15.05.2013, wherein you have furnished a status note of NISTECHR scheme. The ministry has examined and furnishes clarification against point No.02 and point No.03 are as follow:-

For point No.02:- For the payment of the outstanding salary amount of the staff of erstwhile NTMIS Scheme. It has already been directed to AICTE vide Point No.2(VI) of the letter of even no. dated 06.05.2013 that the AICTE shall pay the outstanding amount as applicable. Hence, MHRD is not in favour to draw any amount from NISTECHR funds for the payment of dues on accounts of salaries of erstwhile NTMIS staff. However, if the staff of erstwhile NTMIS scheme will be engaged in the new scheme NISTECHR, then the payment could

6/2

be made from the NISTECHR funds for the period, they are working in this new scheme only.

For Point No.03:- IAMR is advised to engage the recommended staff of erstwhile NTMIS Scheme by the Bhat Committee in the new Scheme NISTECHR till they are Re-deployed/Adjusted in the respective Nodal Centres as decided in the meeting held on 22nd January, 2013."

The ld. counsel for the applicant would pray for an interim order for the said relief.

2. We are of the view that if there is no other contrary proof to this, AICTE shall comply with it within a period of two months. List on 05.10.2015.

3. Plain copy of this order be given to ld. counsel for the parties."

2. Three contempt applications were entertained as 3 different O.As contain the similar order at the interim stage. These applications relate to applicants Aranya Basu Roy, Anupam Bagchi and Prasant Mukherjee. The present contempt matter is related to applicant Prasant Mukherjee.

3. On perusal of the aforesaid order reveals that the same has been passed on the basis of a communication sent by Additional Secretary, Ministry of Human Resource Development (MHRD) to Director General, Institute of Applied Manpower Research (IMAR), Delhi. This correspondence reveals that AICTE shall pay the outstanding amount to the staff of NTMIS Scheme. A clarification was made in this correspondence that the Ministry is not in favour to draw any amount from NISTECHR fund for the payment of dues and on account of the salary for erstwhile NTMIS staff. But if the staff of erstwhile NTMIS Scheme would be engaged in new Scheme NISTECHR then only the payment could be made from NISTECHR fund for the period the staff worked in new Scheme. The correspondence further reveals that IAMR is advised to engage the recommended staff of erstwhile NTMIS Scheme by the Bhat Committee in the new Scheme NISTECHR till they are re-deployed/adjusted in the respective Nodal Centres as decided in the meeting held on 22nd January, 2013. In terms of the aforesaid communication the Tribunal at the ad-interim stage held that in view of the fact that no other contrary proof to this correspondence the arrears/outstanding amount as applicable AICTE shall pay within a period of 2 months. The order reveals that there is a positive direction to AICTE to pay the outstanding amount as applicable. The record reveals that AICTE in compliance with the aforesaid order made the payment of outstanding dues to Aranya Basu Roy and Anupam Bagchi, the applicants

102

in two other C.Ps. Thereafter, by consent of the parties the notice of contempt was withdrawn.

However, no payment was made to Prasanta Mukherjee.

4. The record however reveals that a supplementary affidavit has been filed by the applicant to demonstrate that the funds has been released by the Government for making the payment of the outstanding dues to AICTE and the respondents wilfully are not making the payment to Prasanta Mukherjee. In reply to the same an affidavit has been filed by one Shashikant P. Borkar, Advisor, AICTE. It was mentioned therein that the order of the Tribunal dated 16.12.2015 has already been complied with in respect of Aranya Basu Roy and Anupam Bagchi by sanctioning an amount of Rs.15,90,959/- to the Registrar, NIT (NTMIS) Nodal Centre, Durgapur vide Demand Draft dated 16.2.2016. The claim of the applicant Prasanta Mukherjee was disowned (by AICTE) on the ground that he has not been appointed on the sanctioned post of PA but he was appointed as a Clerk cum Typist and as the post of Clerk cum Typist was not sanctioned by the Govt. of India and Nodal Centres were given authority to make appointment on the sanctioned post and there is no right to Legal Advisory Committee of the NTMIS that the post of PA be converted to Clerk cum Typist. As such the amount of his arrears of salary cannot be paid to Prasanta Mukherjee.

5. Learned counsel for the applicant pointed out and tried to demonstrate on record that AICTE sanctioned the amount against the bills for payment of salary to Prasanta Mukherjee and now it cannot deny the payment under the order which ought to have been complied with.

6. It is well settled principle of law that mere disobedience of the order does not constitute contempt unless it is shown that the same is a wilful disobedience. It is also worth notice that during the course of pendency of contempt application none of the parties could be allowed to challenge the validity and legality of the order on any ground whatsoever, even though it may be an interim order. It is also well settled that while exercising the jurisdiction of contempt under the Contempt of Court Act the Courts cannot direct to the parties for doing any act except to look into the matter with this angle, where the disobedience is bonafide or wilful.

Q 62

7. It is also well settled that if it is *prima facie* established that there is a wilful disobedience of the order by an act or omission, words or conduct of the contemner the contemner has to be tried for committing wilful contempt. We forfeited our view with the decision of the Apex Court in **Dinesh Kumar Gupta vs United India Insurance Company Limited and Others, (2010) 12 SCC 770.**

8. Now it is necessary to determine first, whether disobedience of not making payment of arrear/outstanding of salary of applicant Prasanta Mukherjee in terms of the order passed by this Tribunal is a mere disobedience or wilful act of the authorities of the AICTE respondents. Our attention has been drawn towards reply filed on behalf of the respondents No.3, 4 & 5 in O.A in this regard. The reply filed by those respondents are on records of the OA, which is attached with the C.P file. It has been stated by the applicant that perusal of para 5(iv), 7, 10, 12 and 14 reveal that the stand of AICTE was not to withhold but to release outstanding salary till 31.03.2013, i.e. the date of continuance of the project. Hence AICTE could not change the stand in Contempt Proceeding regarding the salary of the applicant. The salary of the applicant upto 31.3.2013 has been released based on 5th Central Pay Commission report as there is no project sanctioned beyond 01.04.2013. It has been categorically stated that salary of the applicant and other staff has been released to Nodal Centre Durgapur. The applicant is not entitled to any salary w.e.f. 01.04.2013. It has been argued that the stand taken in the C.P that applicant has not been appointed against the sanctioned post, *prima facie* amounts to wilful disobedience of the order. Our attention has also been drawn towards the sanction order on the basis of which money was released by AICTE.

9. We have discussed the above mentioned facts only to ascertain whether the alleged action of the respondents amounts to wilful disobedience or not ?

10. Having considered all the facts and circumstances of the case, we are of the firm view that there is a *prima facie* case of wilful disobedience of the order.

11. The learned counsel for the respondents has drawn our attention towards the judgment of the Apex Court reported in **(1996) 6 SCC 291, J.S.Parihar vs. Ganpat Duggar and Others,** and



on the basis of para 6 of the report it has been submitted that the proceeding of contempt of Court should have been dropped because during the contempt proceedings the Court came to the conclusion that there is a controversy in this regard and this Court cannot issue further direction. He further submits that the amount of two persons have already been paid. Controversy regarding the payment to the applicant Prasanta Mukherjee remains and his entitlement cannot be decided in the contempt petition, as such the proceeding ought to have been dropped for the reasons stated hereinabove.

12. We are in full agreement with the law propounded by the Apex Court but we are not going to decide the issue of payment of salary to the applicant in present contempt proceeding. We simply take certain facts into consideration to ascertain whether the denial of the contemner to make the payment of outstanding dues of the salary to Prasanta Mukherjee is bonafide or wilful act.

13. In view of the above mentioned discussion it is prima facie established that respondents wilfully disobeyed and violated the order passed by this Tribunal and as such liable to be tried in accordance with provisions of Contempt of Courts Act.

14. In view of the above, we are of the view that the decision cited by learned counsel for the respondents is not extend any help.

15. Hence respondent No.1 Anil D. Sahasrabudh, Chairman, AICTE is directed to appear in person on 9.5.2016 at 10-30 A.M. in the Court to frame charge under Section 12 of Contempt of Court Act for which notice be issued against him for appearance on 09.05.2016 through Commissioner of Police, Delhi.

List on 9.5.2016 for further order along with O.A.1138/2014.

(Jaya Das Gupta)
Administrative Member

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(Justice V.C.Gupta)
Judicial Member

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17/5/16