

**Central Administrative Tribunal
Madras Bench**

CP/310/00084/2017 in OA/310/01155/2015 & MA/310/00871/2017

Dated the 14th day of November Two Thousand Nineteen

P R E S E N T

Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)

E.Saravanamoorthy,
S/o M.S.Ekambaram,
Mechanic,
Sub Centre-Central Footwear Training Institute(CFTI),
Ambur 635 802,
Vellore District. .. Applicant in CA & OA & Respondent in MA

By Advocate **M/s.G.Sankaran**

Vs.

1. Shri Surrendranath Tripathi,
Union of India, rep. by
Special Secretary & Development
Commissioner (MSME) & Chairman,
Central Footwear Training Institute(CFTI),
M/o Micro, Small & Medium Enterprises,
7th Floor, Nirman Vhavan,
New Delhi.
2. Shri K.Murali,
Director,
MSME-Technology Development Centre,
Central Footwear Training Institute(CFTI),
No.65/1, GST Road, Guindy,
Chennai 600 032. .. Respondents in CA & OA & Applicant in MA

By Advocte **Mr.S.M.Deenadayalan**

ORDER

Pronounced by Hon'ble Mr.P.Madhavan, Member(J)

This Contempt Application has been filed by the applicant in OA 1155/2015 against the respondents alleging wilful disobedience of the order passed by this Tribunal in OA 1155/2015 dated 20.12.2016.

2. Earlier the applicant had filed OA 518/13 against recovery of pay sought by the respondents and he obtained an interim stay of recovery as per order dt. 09.4.13. Thereafter, the 2nd respondent by order dt. 22.10.12 had transferred the applicant from Chennai to Ambur and the applicant gave representations to get his transfer cancelled. As there was no response from the respondents, the applicant filed another OA 979/13 against the order of transfer.

3. Since the applicant approached the Tribunal against the order of recovery and obtained interim relief, as a measure of retaliation, the 2nd respondent issued impugned order dt. 05.8.15 terminating the services of the applicant unilaterally without giving any reason. Hence he had filed OA 1155/15. This Tribunal disposed off the OA by order dated 20.12.2016 as follows:-

“....In the backdrop, the applicant succeeds. The impugned order is, therefore, set aside. The respondents are directed to reinstate the applicant into service and make all payments due to the applicant within a period of two months from the date of receipt of a copy of the order.....”

4. When the matter is taken up, learned counsel for the applicant submits that on receipt of copy of the above said order he approached the Director, MSME-Technology Development Centre (R2 herein) on 24.1.17 seeking reinstatement and

employment. He also gave a representation for the same as Annexure A5. But the respondents stated to him that the Tribunal had granted 2 months' time for granting the relief and it can be considered only in the meantime. Thereafter, the applicant has issued a Lawyer Notice on 27.3.17 stating the facts and demanding the immediate implementation of the order passed in the above said OA dated 20.12.16. Since the respondents had not implemented the order, he filed CA 84/17 on 13.7.17.

5. On issuing notice, the respondents appeared and filed a counter affidavit. According to the respondents, they have not committed any contempt as alleged in the CP. It is also submitted that the facts stated in the CA are false and misleading. According to the respondents, they had given a reply to the lawyer notice on 03.5.17 informing that they had filed WP 5937/17. The Hon'ble High Court in WMP 6346/17 in WP 5937/17 has granted a stay of the order passed by the Tribunal in OA 1155/15 dt. 20.12.16 on 10.3.17 (Annexure RI). The counsel for the applicant had filed Memo of Appearance before the Hon'ble High Court on 16.6.17 and the counsel was very much aware of the WP and this is a deliberate action done by the applicant in order to pressurise the respondents in this case. There is malafide intention in filing this CA.

6. The counsel for the respondents has also filed MA 871/17 alleging false statement in para-4 of the CP and seeking action against the CA applicant under Section 340 Cr.P.C. read with 195(i)(b) Cr.P.C. The CA applicant filed a reply statement to the MA mainly stating that eventhough the respondents had issued a reply notice, the fact filing WP and the details of WP filed are conspicuously absent

in it. According to the CA applicant, the WP notice was sent to the office address of the respondents themselves and he did not get the notice properly. He came to understand the filing of the case against him in the Hon'ble High Court and he conducted an enquiry in the High Court regarding the same and he got the number and details from the High Court and entered appearance there. He was not given copies of the petition filed before the High Court and he got the same only on 31.7.17. There is no merit in the contention put forward by the respondents that the CA applicant had malicious or malafide intention in filing the CA. Actually the applicant was not given the details of the WP filed.

7. We have heard both sides and carefully perused the pleadings and reply statement presented before us. We have carefully gone through the submissions in the CA and we find that the order passed by this Tribunal in OA 1155/15 is challenged by the respondents before the High Court by filing WP 5937/17. It has also come out that the respondents has filed a petition for stay in WMP 6346/17 in WP 5937/17 and the Hon'ble High Court has granted a stay of the order passed by this Tribunal. So, at present there is no ground for proceeding with the CA. So, there is no scope for proceeding with the CA till a decision is arrived at in the WP.

8. As regards MA 871/17, we have carefully gone through the averments in the CA as well as the MA filed by the CA respondents and the reply filed by the CA applicant to the said MA. On a perusal of the reply notice issued by the CA respondents which is produced as Annexure R3, it can be seen that there is no specific mention of the filing of the WP and there is no details given by the counsel to

inform the applicant that they are filing WP against the order of the Tribunal. It is also seen that the CA respondents had not given a proper reply to the representation given by the CA applicant dt. 24.1.17 (Annexure A5) for joining duty. The CA respondents could have given a reply to the applicant stating that they are intending to file a WP against the order of this Tribunal and they could have avoided the filing of the CA. Owing to the above circumstances, we feel that there is no deliberate intention on the part of the CP applicant to mislead the Tribunal or to say that the CA was filed with malafide intention. So, we do not find any merit in the MA. The applicant in the MA had cited the decision of the Hon'ble Supreme Court in *Sanjeev Kumar Mittal v. State* wherein it was held that -

“A. Indian Penal Code, 1860, Section 191 – Criminal Procedure Code, 1973, Section 340 – If a statement or averment in a pleading is false, it falls within the definition of offence under Section 191 of the Code – Not necessary that a person should have appeared in the witness box – Offence stands committed and completed by the filing of such pleading.

B. Criminal procedure Code, 1973, Section 340(1) – Preliminary Inquiry – Preliminary inquiry in the second part of Section 340 is not mandatory – Use of the words 'if any is clearly indicative – This is so because situations can be such where there is strong suspicion, but there is not sufficient evidence to return a finding (although still prima facie) that it appears to have been committed – There can be cases where there is sufficient material on record to return such a finding – In the former case, preliminary inquiry is necessary, in the latter case, it is not.”

9. We have gone through the MA filed for proceeding against CA applicant under Section 340 Cr.P.C. and we are unable to find any sufficient material to form a prima facie inference that the CA applicant has committed any offence under Section 340

Cr.P.C. So, the above decision has no direct application in this case and we hereby dismiss the MA.

10. As regards the CA filed by the OA applicant, the respondents has challenged the order of the Tribunal in OA 1155/15 dt. 20.12.2016 in WP 5937/17 and the said WP was disposed off by the Hon'ble High Court on 27.11.18 setting aside the order passed by this Tribunal and remanding the case for fresh consideration. So, nothing survives in this Contempt Petition. So, CP is treated as closed. Notices of contempt, if any, are discharged.

(T.Jacob)
Member(A)

14.11.2019

(P.Madhavan)
Member(J)

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Annexures referred to by the applicant in CP 84/17:

Annexure A1: Order of appointment of the petitioner dt. 30.12.1999.

Annexure A2: Impugned order of termination issued by 2nd respondent dt. 05.8.15.

Annexure A3: Original Application in OA 1155/15 dt. Aug.2015.

Annexure A4: Final Orders passed in OA 1155/15 dt. 20.12.16.

Annexure A5: Representation submitted by the applicant to the 2nd respondent dt. 24.1.17.

Annexure A6: Advocate Notice with postal receipt dt. 27.3.17.

Annexures with reply statement:

Annexure RI: Stay Order of the Hon'ble High Court dt. 10.3.17

Annexure RII: Legal Notice sent by the counsel for applicant dt. 27.3.17.

Annexure RIII: Reply Legal Notice sent by the counsel for respondents dt. 03.5.17.

Annexure RIV: High Court cause list dt. 16.6.17.