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CM No. 6450/CII of 2016 in/and COCP No. 791 of 2015

Sunil Kumar vs Vijay Vardhan and others

Present: Mr. Jagbir Malik, Advocate, for the petitioner.
Mr. Lokesh Sinhal, Additional Advocate General, Haryana.
Mr. H. N. Mehtani, Advocate, for respondent no.3.

The present contempt petition was filed alleging violation of the orders dated 10.2.2014 and 3.12.2014 passed by this Court in CWP No. 22685 of 2011 – Rakesh Kumar vs State of Haryana and others.

Notice in the contempt was issued on 1.4.2015. Considering the conduct of the respondents, this Court passed a detailed order on 16.2.2016, which is extracted below:-

“A Civil Writ Petition bearing no. 22865 (sic 22685) of 2011 was filed in this Court challenging the action of the Govt. of Haryana by which Guest Lecturers were being engaged in different colleges of Haryana and appointments extended thereafter every year without filling up the posts on regular basis.

During the course of writ proceedings, the Court on 20.1.2014 issued directions to the Haryana Public Service Commission (hereinafter referred to as 'HPSC') to file an affidavit giving the time schedule within which the process of selection to the post of Assistant Professors would be completed. An affidavit was then filed by I.C.Sangwan, Secretary, HPSC to state that advertisement no. 7 had been published in newspapers on 24.1.2014 for filling up 1396 posts of Assistant Professors on temporary basis. It was further stated that 7 to 8 months would be required to complete the process.

It was in view of the aforesaid affidavit that the Court passed the following orders:-

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“Direction accordingly is issued to the Haryana Public Service Commission, Panchkula – respondent no.3 to make the recommendations by 15.11.2014. Respondent – State shall thereafter proceed to complete the process of appointment on the posts, where the candidates would be recommended by 31.12.2014.”

The HPSC then made an application for extension of time to complete the process which was granted till 15.2.2015. In the meantime, State Govt. issued directions to HPSC to keep all the selections on hold.

Confronted with this situation, HPSC filed a civil miscellaneous application bearing no. 13537 CWP of 2014 in the aforesaid writ petition bringing to the notice of this Court the State Govt.'s directive to keep the process on hold. The Court passed the following orders to observe that the communication of the State putting the process on hold would not be applicable to the directions which have been issued by this Court and attained finality. For the purposes of reference, relevant portion of the said orders is extracted herebelow:-

“Counsel for the Commission, at this stage, has made reference to the communication dated 28.08.2014 (Annexure RR-3) where it has been stated that the process regarding appointment/recruitment be put on hold with immediate effect till further orders.

This communication obviously will not be applicable to the directions, which have been issued by this Court and have attained finality and, therefore, the parties to the writ petition would be bound by the same.”

Despite the above, the process was not completed,

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leading to the filing of instant contempt petition where HPSC has now responded to say that after the State Govt.'s communication directing them to put the process on hold which was negated by this Court, advertisement itself was withdrawn on 27.1.2015 (Annexure P-7). One day thereafter i.e 28.1.2015 all processes of selection which were underway were withdrawn by the State Govt. by revoking the requisition sent to the HPSC. The HPSC then communicated with the State Govt. urging them to permit it to carry out the process in view of the contempt petition which was pending before this Court. The State in turn refused to grant a go-ahead to the HPSC. However, a fresh requisition was sent to the HPSC intending to fill up 1932 posts of Assistant Professors (college cadre) which was also withdrawn. Subsequently, another requisition was sent to fill up 1647 posts on 3.2.2016 which has been reflected in the advertisement appearing in the press today i.e 16.2.2016.

Learned counsel for the HPSC, Sh. Mehtani states that there has been no disobedience of the orders of the writ Court. They were helpless in the wake of the State Govt. withdrawing the requisition. He further states that their bona fides cannot be questioned since HPSC has been writing repeatedly to the State Govt. to permit it to carry out the process.

There would have been some justification to accept the plea of the learned counsel for the HPSC but for the fact that once the Court had clearly held in its order dated 3.12.2014 that the communication of the State would not have any implication for the process which had been directed to be completed by the writ Court, the HPSC had no occasion to succumb to the dictates of the State Govt.

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The State Govt. in turn also had no authority to scuttle the process which was mandated by the writ Court to be completed on the affidavit filed by not less than a person who is Secretary of the HPSC. Evidently, both the HPSC and the State Govt. had subverted the orders of the writ Court by a conscious attempt.

Before this Court proceeds to finalize the culpability and the liability of the respondents it would like to have the response of the officials of the State Govt. in this regard. To be fair to Sh. Mehtani, counsel for the HPSC he has expressed regrets for the lapse.

State Govt. and its officers have huge responsibility to explain to the Court as to why directions were given to the HPSC to stall the process and to withdraw the requisition which had the effect of absolute subversion to the orders of the writ Court. They indeed had the liberty to move the Court appropriately but having not done so and having taken decision to defeat the orders of the Court would invite serious charges of contempt.

Let official respondents file their affidavits to show cause as to why they shall not be held guilty of contempt of Court under the provisions of Contempt of Courts Act.

List again on 30.3.2016.”

Today affidavit of Vijai Vardhan, Additional Chief Secretary to Government of Haryana, Department of Higher Education, Haryana, dated 25/29.3.2016, on behalf of respondent nos. 1 and 2, has been filed in Court, which is taken on record. In para 8 of the affidavit, it is stated that the deponent once again tenders his unconditional and unqualified apology for the delay which has occurred in the appointment of the Assistant Professors, which occurred due to the reasons beyond his control. Meaning thereby, the violation of the directions issued by this Court is admitted.

This Court on 10.2.2014 had directed the Haryana Public Service Commission to make the recommendations by 15.11.2014 and the
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State thereafter was to proceed to complete the process of appointments by 31.12.2014. On an application filed by Haryana Public Service Commission seeking extension of time, the period was extended till 15.2.2015. Argument of Haryana Public Service Commission that the State had directed to keep the process of selection on hold was rejected specifically noticing that the communication will not be applicable to the directions issued by this Court, which had attained finality and the parties were bound by the same.

Despite this order, the requisition sent by the State to the Haryana Public Service Commission was withdrawn. Though fresh advertisement has been issued now, which was published in the newspaper on 16.2.2016, the date on which the matter was taken up last time.

From the facts noticed above and the contents of the affidavit of Vijai Vardhan, Additional Chief Secretary to Government of Haryana-respondent no.1, it is established that the deponent thought it appropriate to follow the letter issued by the Chief Secretary, Haryana, over and above the Court's order and instead of proceeding with the selection, had withdrawn the requisition sent to the Haryana Public Service Commission. If there was any new development, clarification from the Court could be sought, but the deponent considered himself to be bound by the letter issued by the Chief Secretary as against the order passed by this Court. It cannot be imagined that the deponent did not know about sanctity of the Court order. It is evident from the affidavit filed by him where he himself tendered apology for delay in compliance. But the case in hand is not simple in nature in which there is only delay in compliance of the order. It is deliberate non-compliance of the order where the deponent considered himself to be bound by the letter written by the Chief Secretary and not by the Court order. It is nothing else but willful non-compliance of the Court order. Hence, respondent no.1 is held guilty of the contempt of this Court. He shall appear in person in Court on the next date for hearing on the quantum of punishment.

Civil Misc. No. 6450/CII of 2016 is allowed. The accompanying affidavit of Mukesh Kumar Ahuja, Secretary, Haryana Public Service Commission, Panchkula, dated 28.3.2016, is taken on record.

Respondent no.3- Bhupinder Singh has been impleaded as one of the contemnors. He remained posted as Secretary of the Haryana Public Service Commission from 1.12.2014 till 6.5.2015. Despite he being party and his service having been effected, he has not filed any reply/ affidavit to the petition.

Initially directions were issued by this Court on 10.2.2014 to the Secretary of the Haryana Public Service Commission to make recommendations by 15.11.2014 and the State was to complete the process and appoint the selected candidates by 31.12.2014. Civil Misc. No. 13537 of 2014 filed for extension of time was disposed of on 3.12.2014, noticing the statement made by counsel for the Commission that the process of selection shall be completed latest by 15.2.2015 and further declining the prayer of the Commission for withholding the process in view of the communication from the Government. Despite statement made before this Court, the selection was not completed by 15.2.2015, rather it was dropped considering the letter from the Government. There is no explanation available on behalf of respondent no.3. Hence, he is held guilty of committing contempt of this Court. He is directed to appear in person in Court on the next date for hearing on the quantum of punishment.

As far as respondent no.2 is concerned, as was stated before the Court, he was to issue appointment letters after the recommendations are received from the Commission. That stage had not come.

Conduct of the Chief Secretary, Haryana, shall be considered on the next date of hearing.

Adjourned to 11.4.2016.

To be shown in the urgent list.

30.3.2016
vs

(Rajesh Bindal)
Judge