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(2007) 67 ALR 377 : (2007) 25 LCD 340

ALLAHABAD HIGH COURT (LUCKNOW BENCH)

ASHWANI KUMAR SRIVASTAVA AND OTHERS — Appellant

Vs.

SRI ATUL KUMAR GUPTA — Respondent

(Before : Shri Narayan Shukla, J)

Criminal Miscellaneous Case No.1364 (C) of 2004

Decided on : 13-12-2006

A. Contempt of Court — Non-payment of salary despite court order — Dispute regarding continued employment and voluntary retirement scheme (VRS) — Petitioners claimed they continued to work and were not paid salary as ordered — Respondents claimed petitioners opted for VRS and salary was paid up to VRS date — Court's original order stipulated salary payment if petitioners were actually discharging duties and their services were not terminated — Evidence showed some petitioners withdrew VRS options but were declared surplus and received VRS benefits — Salary paid to some petitioners until March 2005 and to one until his VRS date (July 2005) — Challenge to VRS on merits not permissible in contempt jurisdiction — Respondents found not to have committed contempt as their actions, as evidenced, did not amount to willful disobedience — Petitioners granted liberty to challenge VRS and related actions on merits before a competent court. (Paras 2, 3, 4, 5, 6)

JUDGMENT

Shri Narayan Shukla, J.—Heard Mr. R.B. Srivastava, learned Counsel for the petitioners and Mr. Sudeep Seth, learned counsel for the respondents.

2. By means of order dated 8th January, 2004 passed in writ petition No.38 (SS) of 2004 this Court held that the petitioners of this case are also entitled to get salary if they are

actually discharging their duties and if their services have not been terminated so far by the opposite party No.4. Therefore, the petitioners in this writ petition, shall also be given the benefit of the order in other writ petitions pending before the Division Bench on the same terms as has been directed by the Division Bench in other writ petitions as contained in Annexure Nos.7 and 8 to the writ petition till further order of this Court.

3. The petitioners submit that till date the petitioners are working but they have not been paid salary despite the aforesaid order passed by this Court. Accordingly the respondents have committed contempt of this Court.

4. A counter affidavit has been filed on behalf of the respondents wherein the petitioners' working has been disputed and it has been submitted that all four persons had given their options for Voluntary Retirement Scheme but subsequently Shri Ashwani Kumar Srivastava, Shri R.K. Dixit and Shri M.K. Dixit have withdrawn their options for voluntary retirement. However, the State Government through its order dated 1st July, 2005 had sent the benefits of voluntary retirement of all the four petitioners declaring them to be surplus employees. Subsequently through letters dated 2nd August, 2005 the petitioners 1, 3 and 4 expressed their desire not to take the voluntary retirement and wish to continue in the institute. Since the petitioner No.2 had taken voluntary retirement he was relieved from service vide order dated 31st July, 2005. It has been further submitted that the petitioners have been paid their salary with effect from July 1997 to March, 2005 in the month of September, 2005 the salary has been paid to the petitioner Nos.1, 3 and 4 and with effect from April, 2005 to 31.7.2005 it has been paid to the petitioner No.2 i.e. till the date of voluntary retirement of petitioner No.2. Alongwith supplementary counter affidavit filed on behalf of opposite party No.4 they have filed a chart containing the names of employees who had given the options for voluntary retirement scheme benefits showing their salary dues. The petitioner Nos.1, 4 and 3 are placed at Sl. No.31, 34 and 45 respectively thus from which it is apparent that from the date of providing the benefit of Voluntary Retirement Scheme they have been given the benefit.

5. The petitioner has tried to challenge the same on merit, which is not permissible under the contempt jurisdiction in light of the decision of Hon'ble Supreme Court rendered in the case of Lalith Mathur v. L. Maheswara Rao, (2000) 10 SCC 285.

6. From perusal of the actions taken by the respondents in the matter as is evident from the record I am satisfied that they have not committed contempt of this Court on their part and accordingly I hereby discharge the notices issued to them and dismiss the contempt petition. However, it will be open to the petitioner to challenge the same on merit before the Court of competent jurisdiction, if the petitioners feel aggrieved with the action of the respondents.

(Petition dismissed)
