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Rule in
Separate
sheet

CPAN 997 of 2018
in
W.P. 19999(W) of 2018
(Mamtaj Begum & Anr. Vs. Abdur Rouf)

Mr. Kamalesh Bhattacharyya
Mr. Ekramul Bari
Mr. Khairul Alam **For the Petitioners**

Mrs. Sudeshna Das Mazumder
.... **For the State**

Mr. Prosenjit Mukherjee
Ms. Madhurima Sarkar
.... **For the Madrasah Service
Commission**

This is an application for Rule in contempt. By an order dated October 5, 2018 I had passed *inter alia*, the following interim order:-

“The matter was mentioned on the ground of urgency with oral notice given to the other side (Prosenjit Mukherjee) on the ground that the counselling to take place on Saturday October 6, 2018. Mr. Mukherjee appearing for the respondent no.3 submits that the vacancies in respect of which the empanelled candidates have expressed their unwillingness are all for the male category whereas the writ petitioners are unfortunately female.

Mr. Mukherjee is not quite sure on which date counselling will take place because during this short time he could not take instructions.

Be that as it may, purely as an interim measure since according to my reading of the Rule a lady who is otherwise qualified is entitled to participate for vacancies categorized for female/male as also co-educational, I allow the writ petitioners to appear in the counselling without prejudice to the respective rights and contentions and without creating any equity. The result of such counselling and/or effect thereto shall not be published without the leave of the Court for a period of two weeks after the reopening after the long vacation.”

At paragraphs ‘16’, ‘17’ and ‘18’ of the application for Rule in contempt the petitioners have stated as follows:

“16. That your petitioners state that by a letter dated 05.10.2018 addressed to the Chairman, West Bengal Madrasah Service Commission by the Learned Advocate of the petitioners thereby the gist of the order dated 05.10.2018 passed by His Lordship the Hon’ble Justice Protik Prakash Banerjee in the aforesaid writ application was communicated with a request to allow the petitioners to appear in the counselling scheduled to be held on 06/10. 2018.

A copy of the said letter dated 05.10.2018 is annexed hereto and marked as “Annexure P-2”.

17. That your petitioners state that the your petitioners on 06.10.2018 duly present at Molulana Abul Kalam Azad Bhavan, Blok DD-45, Sector I, Salt Lake City, Kolkata – 700 064 and handed over the copy of the letter of the Learned Advocate dated 05.10. 2018

thereby communicated the gist of the order passed by His Lordship the Hon'ble Justice Protik Prakash Banerjee on 05.10.2018 in the aforesaid writ application and met the Chairman of the said Madrasah service Commission by showing copy of the letter written by the Learned Advocate of the petitioners with gist of the order datd 05.10.2018 of Hon'ble High Court, Calcutta since today is fixed for counselling and prayed for allowing them to app-ear in the counselling. That after going through the said order the Chairman became annoyed to us and toll "who advised you to go to High Court as no one get serviced from High Court and only for the purpose of taking money from you buy the Learned Advocate you have been assured to get service but on mere assurance of the Learned Advocate you will not get any service." That your petitioners repeatedly requested the Chairman that since High Court passed an order thereby allowing the petitioners to appear before the Counselling, kindly allow us to appear before the counselling in terms of the said order and in reply to the same the Chairman told that since both of you got lesser marks than the non selected candidates, you will not get any service. I did not rely upon the order passed by the Hon'ble Court. You will not get any service if you anything to do, you may do so. That your petitioners further requested to accept the letter but he refused to accept the same and your petitioners were not allowed to appear before the Counselling.

A copy of the plain copy of order dated 05.10.2018 which was communicated on 09.10.2018 through Registered Post with A/D is annexed hereto and marked with Annexure- "P-3".

18. that your petitioners state that inspite of the same though the order passed by the Hon'ble High Court was within the knowledge of the contemnor but in spite of the same the Chairman willfully and deliberately did not allow your petitioners to appear before the counselling held on 06.10.2018.”

The contents of the above paragraphs have been affirmed as true to knowledge of the petitioners in terms of Rules 27 and 28 of Chapter IV Part 2 of the Rules. As of today there is nothing which allows me to disbelieve such statements on oath. Accordingly, Rule do issue, as prayed for, against the alleged contemnor which is returnable on February 22, 2019.

On such date it shall be considered whether or not the conduct of the alleged contemnor entitles him to be allowed to depart without compliance. Needless to mention he shall be entitled to the assistance of the learned advocate of his choice. This is one of those rare cases where not only the sword of contempt should be drawn, but an interim order be passed to ensure that the writ petition which is still pending does not become infructuous. Since the writ petitioners were not allowed to appear for counseling which was said to have been held on October 6, 2018 it is not known whether any appointment has been made in terms thereof. In case there is even one appointment which is yet to be made or approved confirmed, the same shall not be made until the disposal of the present application. If appointments have already been made as on date and the alleged contemnor made it impossible that the order of the Court is complied with then he shall attend the Court along

with his tooth brush and other personal belongings after the learned Deputy Sheriff is directed to be present at that time.

Let a copy of this application be served upon the learned advocate for the alleged contemnor in the meantime.

So far as the writ petition is concerned, Mr. Mukherjee, learned counsel appearing for the Madrasah Service Commission shall be entitled to file affidavit in opposition to the writ petition and the State of West Bengal which has been served with a copy of the writ petition shall also be entitled to file affidavit in opposition within a period of four weeks from date. Reply thereto, if any be filed within three weeks from date.

The matter shall appear on February 22, 2018.

(Protik Prakash Banerjee, J.)