

State of U. P. and Others

Vs

M. V. Siddiqui

Civil Appeal No. 277 (N) of 1970

(V.D. Tulzapurkar, D.A. Desai JJ)

22.11.1979

JUDGMENT

TULZAPURKAR, J. –

1. A queer order has been made by the High Court on a contempt application made by the respondent against the appellants in that though it found (in our view wrongly) that the appellants had defied the order of the court no action need be taken against them and it merely observed that now that the legal position had been clarified the appellants would not persist in taking any action against the respondent in the manner they had done but if they did they would render themselves liable for contempt in future. The High Court also made observations that it was a matter of deep regret that the appellants should have behaved like a private citizen which they ought not to have done. In our view, the finding is unsustainable and the observations uncalled for.
2. The respondent was working as a Senior Research Professor in the State Institute of Education in the year 1968, he having been promoted to Provincial Education Service and having opted for the teaching branch of the service. On January 3, 1968, the Director of Education (appellant 2) passed an order reverting the respondent and posting him as Deputy Inspector, Urdu Medium Schools, Allahabad region, in the Subordinate Education service. It appears this order was passed by the Director of Education by way of implementing an earlier order of reversion dated May 19, 1967 passed by the State Government (appellant 1) reverting him from the U.P. Education Service to the Subordinate Service. The respondent filed a suit for quashing the order dated January 3, 1968 and for a permanent injunction against the reversion and on April 2, 1968, he obtained an interim injunction restraining the appellants from giving effect to the order of reversion dated January 3, 1968 and directing that the respondent should be kept on the teaching side presumably in the U.P. Education Service. The suit was fixed for hearing on October 11, 1968 but on the previous day after obtaining the consent of the respondent's counsel the District Government Counsel made an application for an adjournment of the suit. On October 14, 1968 as both parties and their counsel were absent the suit was dismissed and the application for adjournment was also dismissed. On October 14, 1968 the respondent moved an application for restoration of his suit but no order was passed thereon. It appears that the Directorate of Education was informed about the dismissal of the suit that had taken place on October 11, 1968 and thinking that as the suit had been dismissed the interim injunction had also come to an end the Director felt that he was free to act and on October 15, 1968 he passed an order reverting the respondent and asking him to go over to the reverted post. On October 16, 1968 that order was served on the respondent but he left the office without giving an application for leave. In the meantime appellant 3, the Principal of the Institute, asked some other officer to take charge of the respondent's post. Respondent thereupon moved the court on October 17, 1968 for setting aside the order dated October 15, 1968 on which the court merely passed an

order directing the maintenance of status quo. On October 18, 1968 respondent showed the court's order dated October 17, 1968 appellant 3 and desired appellant 3 to take him back but appellant 3 told him that the order of the court only required maintenance of the status quo and since the order of the Director of Education had served on him and he had already open relieved of the post he could and he allowed to take over charge of his post. The order of the court did and give any direction for reinstatement of the respondent but merely directed the maintenance of status quo presumably as on October 17, 1968. On these facts an application was made by the respondent for contempt of court in the High Court and the High Court as stated above took the view that the appellant had defied the court's order but after making certain observations felt that no action be taken against the appellants.

3. In the above circumstances, it is clear to us that after the suit was dismissed on October 11, 1968 there was no injunction operating in favour of the respondent and against the appellants. It is true that an application for restoration of the suit had been made by the respondent on October 14, 1968 but no order had been made by the court till October 17, 1968 and in the meantime on October 15, 1968 action was taken against the respondent by serving a fresh order on him and he was also relieved of his charge. There was no material brought on record to show that the appellants had been apprised of the circumstances in which the suit came to be dismissed. In the absence of any material bringing home knowledge to the appellants about the manner in which the suit came to be dismissed it would be difficult to take the view that the government had acted in haste or that it wanted to take advantage of the fact that the interim injunction had lapsed. On October 16, 1968 when when the respondent was relieved of his post there was no injunction operating against the appellants not had the respondent obtained any order from the court on his application for restoration of his suit but it was only on October 17, 1968 that an order was passed by the court directing the status quo to be maintained. The status quo which obtained then was that the respondent had already been relieved of his charge and we feel that in the absence of an order from the court directing the respondent being put back to his earlier position no contempt can be said to have been committed by the government or its officers.

4. It appears that the High Court proceeded to consider the question whether the order passed by the Director of Education on 15, 1968 and served on the respondent on October 16, 1968 was legal or not and it has taken the view that that order was illegal and an invalid one. In the first place, the legality or otherwise of that order dated October 15, 1968 was strictly not relevant to the question of contempt. Such an order, whether legal or otherwise, could issue when no injunction was operating. Besides, that order was not the order by which the respondent had been reverted. It was by way of implementation of the original order of reversion dated May 19, 1967 that he was directed to had over the charge. We are satisfied that at the time when the appellants took the action against the respondent in directing him to be posted as the Deputy Inspector, Urdu Medium Schools in the Subordinate Education Service there was no order of a civil court obtaining in the field and consequently, there can be no contempt being committed by the appellants.

5. In the result the appeal is allowed; the High Court's finding is quashed and the High Court's observations against the government that it had acted like a private citizen are expunged. No order as to costs.

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