

[2022 LiveLaw \(SC\) 68](#)

IN THE SUPREME COURT OF INDIA

A.M. KHANWILKAR; J, DINESH MAHESHWARI; J, C.T. RAVIKUMAR; J.

Special Leave to Appeal (C) No(s). 19731- 19732/2017; 17-01-2022

KRISHAN LAL & ORS. VERSUS VINI MAHAJAN SECRETARY & ANR.

Constitution of India, 1950; Article 226 - High Court cannot issue direction to the State to form a new policy.

(Arising out of impugned final judgment and order dated 28-03-2017 in CMA No. 22892/2016 17-10-2016 in COCP No. 2086/2015 passed by the High Court Of Punjab & Haryana At Chandigarh)

For Petitioner(s) Mr. G.S. Bal. Senior Advocate Mr. Kuldip Singh Advocate. Mr. Tilak Raj Pasi. Adv Mr. Satyapal Khushal Chand Pasi, AOR

For Respondent(s) Mr. D.S. Patwalia ,AG for Punjab Mr. Sehaj Bir Singh, DAG for Punjab Ms. Ranjeeta Rohatgi, AOR Mr. Karan Bharihoke, AOR

ORDER

Heard learned counsel for the parties.

These petitions emanate from the order passed by the High Court rejecting the contempt petition filed by the petitioner(s) in relation to non-compliance of the direction given in order dated 27.08.2014 passed by the High Court for the States of Punjab and Haryana at Chandigarh in CWP No. 1842 of 2005(O&M) and connected cases.

The High Court in the impugned judgment has taken a view that it is not a case for initiating the contempt action, in as much as there is no intentional noncompliance by the Department of the observations made in the order dated 27.08.2014.

The grievance of the petitioner(s), however, is that the direction given by the High Court vide order dated 27.08.2014, has not been complied in its letter and spirit. In that, the petitioners were entitled for the same relief as granted in case of Dr. Naresh Kumar Kataria in CWP No. 23138 of 2010 decided on 05.01.2012, and it was imperative for the Department to extend benefit on notional basis to the petitioner(s) and similarly situated persons. The stand taken by the department, on other hand, is that the relief given to Dr. Naresh Kumar Kataria is on the basis of applicable policy of the concerned Department, namely, Animal Husbandry Department. Whereas, the claim of the petitioner(s) has been processed as per the policy of the respondent-Department which is a different Department, namely, Health Department.

It is not in dispute that the second part of the direction given by the learned Single Judge vide order dated 27.08.2014 has already been acted upon by the parties. In terms of second part of the stated order dated 27.08.2014, the petitioner(s) had made representation to the Department which, in turn has been considered and rejected by the Department. If the petitioners are aggrieved by that decision, are free to pursue substantive proceedings to assail that rejection, which can be considered on its own merits in the concerned proceedings.

The fact remains that the first part of the direction contained in order dated

27.08.2014, is creating some confusion.

As a matter of fact, it would have been appropriate for the High Court, while disposing of the writ petition vide order dated 27.08.2014, to analyse both pleas, including as to whether identical relief can be given to the petitioner(s) herein as given to Dr. Naresh Kumar Kataria, who happened to be employee of another Department, namely, Animal Husbandry Department. That analysis has not been done in the order dated 27.08.2014.

To do substantial justice to the parties, we deem it appropriate to relegate the parties for reconsideration of the writ petition(s), which came to be disposed of vide order dated 27.08.2014, and to explain the correct position in respect of the first part of the direction contained therein. In that, whether it is a case for granting identical relief as given to Dr. Naresh Kumar Kataria or relief which may be similar in nature which can be given to the petitioner(s) herein under the policy of the Health Department.

It is well-settled that the High Court cannot issue direction to the State to form a new policy. The matter ought to be analysed on its own merits in accordance with law.

Accordingly, we dispose of these petitions by relegating the parties before the High Court for reconsideration of the first part of the order dated 27.08.2014, which was subject matter of the contempt petition, to give quietus to the entire controversy between the parties.

Needless to observe that if any relief has already been given to the petitioner(s) on the basis of second part of the order dated 27.08.2014 or otherwise, that shall continue to operate and shall not be withdrawn by the Health Department.

Besides this, nothing more is required to be observed in this order.

The parties may appear before the High Court for reconsideration of the first part of the order dated 27.08.2014, on 14.02.2022. The High Court may decide the matter remitted in terms of this order, expeditiously.

All contentions available to both sides are left open, to be decided uninfluenced by the observations made in the order dated 27.08.2014 with regard to the first part of the direction.

Pending applications, if any, stand disposed of.