अवमानना याचिकाओं से संबंधित न्यायदृष्टांत

(1) रिट न्यायालय द्वारा दिये गये याचिकाकर्ता के "अभ्यावेदन को निराकृत करने" संबंधी निर्णयों के विरूद्ध दायर की जानी वाली अवमानना याचिकाओं में प्रतिरक्षण :-

माननीय उच्च न्यायालय द्वारा अपने समक्ष दायर की जाने वाली रिट पिटीशनस/रिव्यू पिटीशन/रिट अपील आदि में पारित निर्णयों में याचिकाकर्ता कर्मचारी द्वारा सक्षम प्राधिकारी अथवा प्रतिवादी विशेष को पूर्व से प्रस्तुत किये गये अभ्यावेदन अथवा निर्णय के उपरांत निर्णय सहित प्रस्तुत किये जाने वाले अभ्यावेदन को निर्धारित समयावधि में विचारोपरांत विधिनुसार निराकृत करने के आदेश दिये जाते हैं। अनेकों मामलों में माननीय न्यायालय द्वारा याचिकाकर्ता कर्मचारी के अभ्यावेदन को किसी न्यायालयीन निर्णय के प्रकाश में भी निराकृत करने के आदेश पारित किये जाते हैं।

यह देखने में आया है कि ऐसे प्रकरणों में अभ्यावेदन का निराकरण कर दिये जाने के उपरांत भी याचिकाकर्ता कर्मचारी द्वारा अवमानना याचिका दायर की जाती है तथा अवमानना मामले की सुनवाई के दौरान उसके द्वारा अवमानना न्यायालय के समक्ष अभ्यावेदन का निराकरण सही तरीके से अथवा उसके पक्ष में नहीं किये जाने का पक्ष प्रस्तुत किया जाता है।

माननीय उच्चतम न्यायालय द्वारा प्रतिपादित न्याय दृष्टांत में यह अभिनिर्धारित किया गया है कि ऐसे मामलों में याचिकाकर्ता कर्मचारी यदि निराकरण से असंतुष्ट है तो वह माननीय उच्च न्यायालय के समक्ष अपना नया रिट प्रकरण दायर कर सकता है किन्तु ऐसे मामलों में अवमानना न्यायालय में मेरिट के आधार पर विचार करने की स्थिति नहीं बनती है।

माननीय उच्चतम न्यायालय द्वारा प्रतिपादित निम्न न्याय दृष्टांत प्रमुख है :-

A. The Hon'ble Supreme Court in the case of Lalith Mathur versus L. Maheswara Rao reported in 2000 (10) SCC 285 has held as under: -

4. The High Court in the writ petition had issued a direction for the consideration of the respondent's representation by the State Government. This direction was carried out by the State Government which had considered and thereafter rejected the representation on merits. Instead of challenging that order in a fresh writ petition under Article 226, the respondent took recourse to contempt proceedings which did not lie as the order had already been complied with by the State Government which had considered the representation and rejected it on merits.

B. The Hon'ble Supreme Court in A.P. Verma, Principal Secretary vs U.P. Laboratory Technicians 1998 (3) AWC 2264,

12. ....The only direction issued in the writ petition was to decide the representation by a reasoned order which has been done. If the reasons given in the decision are not very elaborate or convincing, it would not mean that there has been a deliberate disobedience of the order passed by this Court and it will not be a ground to hold them guilty of having committed contempt of court. ....

(5)

(2) रिट न्यायालय द्वारा दिये गये याचिकाकर्ता के "दावों पर विचार कर निर्णय लेने" **(Consider & decide the Claims) संबंधी निर्णयों के विरूद्ध दायर की जाने वाली अवमानना याचिकाओं में प्रतिरक्षण :–**

माननीय उच्च न्यायालय द्वारा अनेकों प्रकरण में याचिकाकर्ता द्वारा प्रस्तुत किये गये दावे पर विचार कर एक निर्धारित समयावधि के भीतर निर्णय लेने के आदेश पारित किये जाते हैं। ऐसे सभी मामलों में विभागीय प्राधिकारियों का कर्त्तव्य है कि वे समय–सीमा के भीतर ही ऐसे मामलों में चाहे गये स्वत्वों की पात्रता के निर्धारण के संबंध में आदेश जारी करें।

यह पाया गया है कि विभाग द्वारा याचिकाकर्ता के प्रकरण पर विचार कर एक विस्तृत स्पीकिंग आदेश जारी किये जाने के उपरांत भी याचिकाकर्ता द्वारा उक्त स्पीकिंग आदेश के सही नहीं होने या जानबूझकर उसके दावों को निरस्त करने संबंधी तथ्यों को अवमानना याचिका दायर कर अवमानना न्यायालय के समक्ष उठाया जाता है तथा अवमानना न्यायालय द्वारा भी विभाग द्वारा जारी किये गये "स्वत्व निर्धारण आदेश" के सही/गलत होने पर विचार किया जाता है।

माननीय उच्चतम न्यायालय द्वारा इस प्रकृति के मामलों में भी अपने न्याय दृष्टांतों के माध्यम से यह अभिनिर्धारित किया गया है कि यदि किसी प्रकरण पर प्रचलित नियम/प्रकियाओं और माननीय उच्चतम न्यायालय द्वारा निर्धारित विधियों के अनुसार विचार कर **"स्वत्व निर्धारण आदेश"** जारी किया गया है तो ऐसे मामलों में न्यायालय की अवमानना की स्थिति नहीं होगी । माननीय उच्चतम न्यायालय ने यह भी कहा है कि किसी प्राधिकारी द्वारा अपनी उत्कृष्ट समझ एवं बुद्धिमत्ता के आधार पर किये गये किसी निर्धारण को माननीय न्यायालय द्वारा पारित आदेश की जानबूझकर अथवा मनमानें तरीके से अवहेलना नहीं मानी जानी चाहिये तथा अवमानना अधिनियम के अनुसार अवमानना न्यायालय को यह शक्ति भी प्राप्त नहीं है कि वह प्राधिकारी द्वारा जारी किये गये आदेश की शुद्धता (Correctness) का परिक्षण करें। माननीय उच्चतम न्यायालय द्वारा पारित न्याय दृष्टांत निम्नानुसार हैः–

C. The Hon'ble Supreme Court in the case of Chhotu Ram versus Urvashi Gultati and another reported in 2001 (7) SCC 530 has held as under :-

..................This Court by reason of the order dated 8th October, 1999 did not issue a mandate but issued a direction for consideration only. In the event however, the matter being not considered or in the event consideration was effected in a manner to whittle down the claim of the petitioner, initiation of the proceedings cannot but be said to be justified. But in the event, however, contextual facts depict that the consideration was effected in accordance with the normal rules, practice and procedure and upon such consideration, no promotion could be offered to the petitioner, question of there being any act of contempt would not arise.............

....

....

In view of the position and facts detailed in the forgoing paras as well as personal hearing granted to the petitioner the petitioner's claim for promotion on the basis that he was qualified on 1.1.80 as per order of the Hon'ble Apex Court has been considered and he does not find

place in promotion zone to the rank of Sub Divisional Officer and his claim does not hold good and is therefore rejected.

D. The Hon'ble Supreme Court in Anil Kumar Shahi & Ors vs Ram Sevak & Anr:, 2008 (14) SCC 115

.... When the Court directs the authority to consider a matter in accordance with law, it means that the matter should be considered to the best of understanding by the authority and, therefore, a mere error of judgment with regard to the legal position cannot constitute contempt of court. There is no willful disobedience if best efforts are made to comply with the court order.

..................In other words, while exercising its power under the Act, it is not open to the court to pass an order, which will materially add to or alter the order for alleged disobedience of which contempt jurisdiction was invoked. When the Court directs the authority to consider a matter in accordance with law, it means that the matter should be considered to the best of understanding by the authority and, therefore, a mere error of judgment with regard to the legal position cannot constitute contempt of court. There is no willful disobedience if best efforts are made to comply with the order.

(3) यदि रिट न्यायालय द्वारा पारित निर्णय के विरूद्ध विभाग द्वारा प्रचलित अधिनियमों/नियमों/परिपत्रों अथवा पूर्व उपलब्ध माननीय उच्चतम न्यायालय के न्यायालयीन निर्णयों के आधार पर कोई स्पीकिंग आदेश जारी किया गया है, तो ऐसे मामलों में दायर होने वाली अवमानना याचिकाओं में प्रतिरक्षण :–

माननीय उच्चतम न्यायालय द्वारा अपने निर्णयों में यह भी अभिनिर्धारित किया गया है कि यदि माननीय उच्च न्यायालय द्वारा पारित किसी बाध्यकारी आदेश के परिपालन में समक्ष प्राधिकारी द्वारा कोई आदेश प्रचलित अधिनियमों/नियमों, न्यायालयीन निर्णयों अथवा न्याय दृष्टांतों के आधार पर पारित किया जाता है तो ऐसा आदेश याचिकाकर्ता कर्मचारी के लिये एक नये Cause of action की तरह कार्य करेगा तथा वह ऐसे आदेश के विरूद्ध पुनः रिट न्यायालय के समक्ष अपने पक्ष को रखने के लिये नई रिट पिटीशन दायर कर सकता है। ऐसे मामलों को भी किसी रिट न्यायालय के आदेश की जानबूझकर अवहेलना नहीं माना जाना चाहिये, । माननीय उच्चतम न्यायालय द्वारा अभिनिर्धारित न्यायदृष्टांत निम्नानुसार है:–

E. The Hon'ble Supreme Court in the case of J.S. Parihar versus Ganpat Duggar and others reported in 1996 (6) SCC 291 has held as under: -

.... whether seniority list is open to review in the contempt proceedings to find out, whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the willful violation of the order. After re-exercising the judicial review in contempt proceedings, afresh direction by the

learned single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. ....

F. The Hon'ble Supreme Court in the case of Manish Gupta and others versus Gurudas Roy reported in 1995 (3) SCC 559 has held as under :-

"21. We do not propose to go into the question of interpretation of Rule 55(4) of the Rules. But, at the same time, we cannot say that there is no merit in the submission of Shri Sanghi that in view of the proviso to Rule 55(4) the respondent cannot claim the fixation of his basic pay on the same level as the basic pay drawn by Hrishikesh Roy. In our view the appellants could reasonably proceed on the basis that in view of the proviso contained in Rule 55(4) of the Rules the pay of the respondent cannot be fixed at the same level as that of Hrishikesh Roy and, therefore, in fixing the basic pay of the respondent it cannot be said that the appellants had wilfully and deliberately disobeyed the directions given by the Appellate Bench in its order dated 20.09.1989. On that view of the matter the learned Judges of the High Court were, in our opinion, not justified in holding the appellants guilty of contempt of court for not complying with the directions of the Appellate Bench regarding fixation of basic pay of the respondent. If the respondent feels that the re fixation of his pay has not been made in accordance with the relevant rules he may, if so advised, pursue the remedy available to him in law for enforcing his rights."

G.The Hon'ble Supreme Court in the case of Niaz Mohammad and others versus State of Haryana and others reported in 1994 (6) SCC 332 has held as under :-

9. Section 2(b) of the Contempt of Court Act, 1971 (hereinafter referred to as 'the Act') defines "Civil Contempt" to mean "wilful disobedience to any judgment, decree, direction, order, writ, or other process of a court...". Where the contempt consists in failure to comply with or carry out an order of the court made in favour of the party, it is a civil contempt. The person or persons in whose favour such order or direction has been made can move the Court for initiating proceeding for contempt against the alleged contemnor, with a view to enforce the right flowing from the order or direction in question. But such a proceeding is not like an execution proceeding under CPC. The party in whose favour an order has been passed, is entitled to the benefit of such order. The Court while considering the issue as to whether the alleged contemnor should be punished for not having complied and carried out the direction of the Court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the Act while defining civil contempt, have said that it must be wilful disobedience to any judgment, decree, direction, order, writ or other process of a court. Before a contemnor is punished for noncompliance of the direction of a court the Court must not only be satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was wilful and intentional. The Civil Court while executing a decree against the judgment debtor is not concerned and bothered whether the disobedience to any judgment, or decree, was wilful. Once a decree has been passed it is the duty of the court to execute the decree whatever may be consequences thereof. But while examining the

grievance of the person who has invoked the jurisdiction of the Court to initiate the proceeding for contempt for disobedience of its order, before any such contemnor is held guilty and punished, the Court has to record a finding that such disobedience was wilful and intentional.

(4) अवमानना न्यायालय का अधिकार क्षेत्र मात्र उस प्रकरण विशेष में जिसमें रिट न्यायालय द्वारा पारित आदेश का पालन नहीं होना बताया गया है, तक ही सीमित है। अवमानना न्यायालय उक्त निर्णय में ना तो कोई अरिक्ति निर्देश जोड़ सकता है और ना ही किसी निर्देश को हटा सकता है :–

माननीय उच्चतम न्यायालय द्वारा यह भी अधिनिर्धारित किया गया है कि अवमानना न्यायालय रिट न्यायालय के द्वारा दिये गये निर्णय के सही/गलत होने पर विचार नहीं कर सकता, ना ही कोई अतिरिक्त निर्देश दे सकता है और ना ही कोई दिये गये निर्देश को समाप्त कर सकता है। यह सब कार्यवाही रिट न्यायालय के ऊपर का न्यायालय ही कर सकता है। माननीय उच्चतम न्यायालय द्वारा इस संबंध में पारित न्याय दृष्टांत निम्नानुसार है:–

H. The Hon'ble Supreme Court in the case of Director of Education, Uttaranchal and others versus Ved Prakash Joshi and others reported in 2005 (6) SCC 98 has held as under :-

While dealing with an application for contempt, the Court is really concerned with the question whether the earlier decision which has received its finality had been complied with or not. It would not be permissible for a Court to examine the correctness of the earlier decision which had not been assailed and to take the view different than what was taken in the earlier decision.....................

..................The Court exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the Court passing the judgment or order. Right or wrong the order has to be obeyed. Flouting an order of the Court would render the party liable for contempt. While dealing with an application for contempt the Court cannot traverse beyond the order, non-compliance of which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible..............

I. The Hon'ble Supreme Court in Civil Appeal 1066 of 2000 Union Of India And Ors vs Subedar Devassy Pv decided on 10 January, 2006 has held as under :-

If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach the court that passed the order or invoke jurisdiction of the appellate court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong, the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. While dealing with an

application for contempt the court cannot traverse beyond the order, non-compliance with which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible.

J. The Hon'ble Supreme Court in K.G. Derasari v. Union of India, [2001] 10 SCC 496 has held as under :-

7. Having considered the rival submissions at the bar, we have no hesitation to come to the conclusion that the Tribunal was not entitled to in a contempt proceeding, to consider the legality of its earlier order which has reached finality not being assailed or annulled by a competent forum. If the Tribunal has not looked into any previous decision of this Court which is the law of the land and by which it was bound, the remedy available to the aggrieved person was to file an application for review. Admittedly, no review application was filed before the Tribunal. In an application for contempt, the Tribunal was only concerned with the question whether the earlier decision has reached its finality and whether the same has been complied with or not. It would not be permissible for a Tribunal or Court to examine the correctness of the earlier decision which has not been assailed, and reverse its earlier decision. In that view of the matter, the impugned order cannot be sustained, the same being beyond the powers and jurisdiction of the Tribunal in a contempt proceeding.

(5) यदि रिट न्यायालय के निर्णय को ऊपर के न्यायालयों में समय रहते चुनौती दी गई है, तो अवमानना की स्थिति निर्मित नहीं होगी :–

माननीय उच्चतम न्यायालय द्वारा यह भी निर्धारित किया गया है कि यदि किसी रिट न्यायालय द्वारा कोई निर्णय पारित किया गया है तथा उस निर्णय को ऊपर के न्यायालय में चुनौती दी गई है तथा वह वहाँ विचाराधीन बना हुआ है तो न्यायालय की अवमानना की स्थिति उत्पन्न नहीं होगी क्योंकि निर्णय के सही होने का फैसला अंतिम रूप से नहीं हुआ है। माननीय उच्चतम न्यायालय द्वारा पारित न्याय दृष्टांत निम्नानुसार है:–

K. The Hon'ble Supreme Court in the case of Mrityunjoy Das and another versus Sayed Hasibur Rahaman and others reported in 2002 (3) SCC 739 has held as under :-

.... Incidentally, since the appeal is pending in this Court for adjudication, and since the matter under consideration have no bearing on such adjudication so far as the merits of the dispute are concerned, we are not expressing any opinion in the matter neither we are required to express opinion thereon, excepting however, recording that probabilities of the situation may also warrant a finding, in favour of the interpretation of the applicant. The doubt persists and as such in any event the respondents being the alleged condemners are entitled to have the benefit or advantage of such a doubt having regard to the nature of the proceeding as noticed herein before more fully.

(6) अवमानना याचिका समाप्त हो जाने के बाद याचिकाकर्ता द्वारा की जाने वाली कार्यवाही का विकल्प :—

माननीय उच्चतम न्यायालय द्वारा यह भी अभिनिर्धारित किया गया है कि माननीय न्यायालय को अवमानना याचिका समाप्त हो जाने के बाद याचिकाकर्ता के पास यह विकल्प उपलब्ध है कि वह संविधान के अनुच्छेद 136 के तहत माननीय उच्चतम न्यायालय के समक्ष एस.एल.पी. दायर करें। माननीय उच्चतम न्यायालय द्वारा पारित न्याय दृष्टांत निम्नानुसार है:—

L. The Hon'ble Supreme Court in State of Maharashtra vs Mahboob S. Allibhoy & Anr 1996 SCC (4) 411

It is well known that contempt proceeding is not a dispute between two parties, the proceeding is primarily between the court and the person who is alleged to have committed the contempt of court. The person who informs the court or brings to the notice of the court that anyone has committed the contempt of such court is not in the position of a prosecutor, he is simply assisting the court so that the dignity and the majesty of the court is maintained and upheld. It is for the court, which initiates the proceeding to decide whether the person against whom such proceeding has been initiated should be punished or discharged taking into consideration the facts and circumstances of the particular case. ....

....

....

But even if no appeal is maintainable on behalf of the person at whose instance a proceeding for contempt had been initiated and later dropped or whose petition for initiating contempt proceedings has been dismissed, is not without any remedy. In appropriate cases be can invoke the jurisdiction of this Court under Article 136 of the Constitution and this Court on being satisfied that it was a fit case where proceeding for contempt should have been initiated, can set aside the order passed by the High Court. In suitable cases, this Court has to exercise its jurisdiction under Article 136 of the Constitution in the larger interest of the administration of Justice.

(7) माननीय उच्चतम न्यायालय द्वारा अभिनिर्धारित किया गया है कि माननीय उच्च न्यायालय को निर्धारित समय—सीमा के पश्चात दायर होने वाले सिविल कंटेंप्ट केसेस को इस मैकेनिकल कारण से स्वीकार नहीं करना चाहिये कि पूर्व में रिट न्यायालय द्वारा पारित न्यायालययीन निर्णय का पालन नहीं होना, याचिकाकर्ता के मामले में "Continuous wrong" की श्रेणी में आता है:—

माननीय उच्चतम न्यायालय द्वारा एस.एल.पी. (सिविल) कमांक 19748—19749/2022 में पारित निर्णय दिनांक 22 जुलाई 2024 में यह अभिनिर्धारित किया गया है कि "Contempt of Court Act 1971 के सेक्शन 20 के अनुसार किसी भी मामले में कन्टेम्प्ट की कार्यवाही जिस

दिन से कन्टेम्ट होना प्रारम्भ हुआ है, उससे अधिकतम 01 वर्ष की अवधि के भीतर ही प्रारम्भ की जा सकती है '' का पालन किया जाना चाहिए तथा याचिकाकर्ता द्वारा प्रस्तुत किये गये इन तथ्यों के आधार पर कि न्यायालयीन निर्णय का पालन नही होने के कारण उसके साथ **"Continuous wrong"** हो रहा है, को स्वीकार नहीं किया जाना चाहिए। निर्णय निम्नानुसार है :—

41. In Pallav Sheth (supra), a three-Judge Bench of this Court had the occasion to consider whether the view taken by a two-Judge Bench in Om Prakash Jaiswal v. D.K. Mittal (2000) 3 SCC 171 was correct. In Om Prakash Jaiswal (supra), the Bench had taken the view that filing of an application or petition for initiating proceedings for contempt does not amount to initiation of proceedings by the court and initiation under section 20 of the Act can only be said to have occurred when the court forms the prima facie opinion that contempt has been committed and issues notice to the contemner to show cause why he should not be punished. Such view did not find favour with the Bench in Pallav Sheth (supra). It was observed that a provision like section 20 has to be interpreted having regard to the realities of the situation, and that, too narrow a view of section 20 had been taken in Om Prakash Jaiswal (supra) which did not seem to be warranted; theview taken would not only cause hardship but would perpetrate injustice. Relevant passages from the decision in Pallav Sheth (supra) read thus:

> "39. ... When the judicial procedure requires an application being filed either before the court or consent being sought by a person from the Advocate-General or a Law Officer, it must logically follow that proceedings for contempt are initiated when the applications are made.
>
> 40. In other words, the beginning of the action prescribed for taking cognizance of criminal contempt under Section 15 would be initiating the proceedings for contempt and the subsequent action taken thereon of refusal or issuance of a notice or punishment thereafter are only steps following or succeeding such initiation. Similarly, in the case of a civil contempt, filing of an application drawing the attention of the court is necessary for further steps to be taken under the Contempt of Courts Act, 1971.
>
> 41. One of the principles underlying the law of limitation is that a litigant must act diligently and not sleep over its rights. In this background such an interpretation should be placed on Section 20 of the Act which does not lead to an anomalous result causing hardship to the party who may have acted with utmost diligence and because of the inaction on the part of the court, a contemner cannot be made to suffer. Interpreting the section in the manner canvassed by Mr Venugopal would mean that the court would be rendered powerless to punish even though it may be fully convinced of the blatant nature of the contempt having been committed and the same having been brought to the notice of the court soon after the committal of the contempt and within the period of one year of the same. Section 20, therefore, has to be

> construed in a manner which would avoid such an anomaly and hardship both as regards the litigants as also by placing a pointless fetter on the part of the court to punish for its contempt. An interpretation of Section 20, like the one canvassed by the appellant, which would render the constitutional power of the courts nugatory in taking action for contempt even in cases of gross contempt, successfully hidden for a period of one year by practising fraud by the contemner would render Section 20 as liable to be regarded as being in conflict with Article 129 and/or Article 215. Such a rigid interpretation must therefore be avoided.
>
> 42. ... if the filing of an application before the subordinate court or the High Court, making of a reference by a subordinate court on its own motion or the filing of an application before an Advocate-General for permission to initiate contempt proceedings is regarded as initiation n by the court for the purposes of Section 20, then such an interpretation would not impinge on or stultify the power of the High Court to punish for contempt which power, dehors the Contempt of Courts Act, 1971 is enshrined in Article 215 of the Constitution. Such an interpretation of Section 20 would harmonise that section with the powers of the courts to punish for contempt which is recognised by the Constitution.
>
> 43. ***
>
> 44. Action for contempt is divisible into two categories, namely, that initiated suo motu by the court and that instituted otherwise than on the court's own motion. The mode of initiation in each case would necessarily be different. While in the case of suo motu proceedings, it is the court itself which must initiate by issuing a notice, in the other cases initiation can only be by a party filing an application. In our opinion, therefore, the proper construction to be placed on Section 20 must be that action must be initiated, either by filing of an application or by the court issuing notice suo motu, within a period of one year from the date on which the contempt is alleged to have been committed."

42. Interpretation of section 20 of the Act, which formed the crux of the discussion in Pallav Sheth (supra), has the marginal note 'limitation for actions for contempt'. Section 20 ordains that:

> "20. No court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed."

43. The vires of section 20 of the Act has been upheld by Division Benches of the High Court of Andhra Pradesh, High Court of Karnataka and the High Court at Calcutta in Advocate General v. A.V. Koteswara

Rao 1984 Cri. LJ. 1171 , High Court of Karnataka v. Y.K. Subanna1989 SCC OnLine Kar 404 and Arthur Branwell & Company Ltd. v. Indian Fibres Ltd. 1993 (2) CLJ 182, respectively.

44. In upholding the vires of section 20, the High Court of Karnataka in Y.K Subbanna (supra) traced the legislative history of section 20 of the Act. It is considered profitable to read the relevant passages therefrom, which are as follows:

> "79. The Act for the first time, by enacting Section 20, introduced a period of limitation. The Sanyal Committee examined the question as to whether any period of limitation should be prescribed in respect of contempt proceedings and observed in Paragraph 8 of Chapter X of its Report, as under: '
>
> > 8. Limitation:— Contempt procedures are of a summary nature and promptness is the essence of such proceedings. Any delay should be fatal to such proceedings, though there may be exceptional cases when the delay may have to be over looked but such cases should be very rare indeed. From this point of view we considered whether it is either necessary or desirable to specify a period of limitation in respect of contempt proceedings. The period, if it is to be fixed by statute, will necessarily have to be very short and provision may also have to be made for condoning delay in suitable cases. We feel that on the whole instead of making any hard The period, if it is to be fixed by statute, will necessarily have to be very short and provision may also have to be made for condoning delay in suitable cases. and fast rule on the subject the matter may continue to be governed by the discretion of the Courts as hithertofore.'
>
> 80. The Joint Select Committee of Parliament on Contempt of Court (Bhargava Committee) after examining the Report of Sanyal Committee on the question of limitation, thought that the contempt procedures by their very nature should be initiated and dealt with as early as possible and considered it necessary and desirable that period of limitation should be specified in respect of actions for contempt and, therefore, laid down in the new clause (Clause 20) a period of one year at the expiration of which no proceedings for contempt should be initiated. The reasons given by the Joint Select Committee for introducing Clause 20 in the Bill, as reported by it are these:
>
> > 'The Committee are of the opinion that contempt procedures by their very nature should be initiated and dealt with as early as possible. It was brought to the notice of the Committee that in some cases contempt proceedings have been initiated long after the alleged contempt had taken place. The Committee therefore consider it

necessary and desirable that a period of limitation should be specified in respect of actions for contempt and have accordingly laid down in the new clause a period of one year at the expiration of which no proceedings for contempt should be initiated.'

81. This is the legislative history of Section 20."

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52. Therefore, it would be correct to state that the court's power when dealing with the question of contempt, in a sense, is discretionary. It cannot be gainsaid that even in cases where disobedience of the order of the court is not disputed, the court may also accept a defence, if raised, of impossibility to comply with an order and come to the conclusion that since it is impossible to enforce its order, action to punish may not be initiated. That apart, refusal may be justified by grave concerns of public policy. Much would depend on the facts and circumstances of the case, the nature of the contempt under enquiry, etc., which would enable the court to exercise its discretion either way. However, to demonstrate his bona fide, the contemnor ought to bring any valid defence for his disability to comply with the court's direction to its notice without wasting any time. Whatever be the position before it, nothing stands in the way of the high court from passing an order to ensure that nothing impedes the course of justice.

53. Reverting to the point of limitation, even in case of a petition disclosing facts constituting contempt, which is civil in nature, the petitioner cannot choose a time convenient to him to approach the Court. The statute refers to a specific time limit of one year from the date of alleged contempt for proceedings to be initiated; meaning thereby, as laid down in Pallav Sheth (supra), that the action should be brought within a year, and not beyond, irrespective of when the proceedings to punish for contempt are actually initiated by the high court.

54. An action for contempt - though instituted through a petition or an application – is essentially in the nature of original proceedings, as held by this Court in High Court of Judicature at Allahabad v. Raj Kishore Yadav (1997) 3 SCC 11 a fortiori, a prayer for condonation of delay in presenting the petition/application alleging contempt would not be maintainable. The express negative phraseology used in section 20 of the Act, as a legislative injunction, places a fetter on the court's power to initiate proceedings for contempt unless the petition/application is presented within the time-frame stipulated therein. However, since section 20 also uses the expression "date on which the contempt is alleged to be committed" as the starting point of the period of one year to be counted for reckoning whether the petition/application has been presented within the stipulated period, the high courts ought to be wary of crafty and skilful drafting of petitions/applications to overcome the delay in presentation thereof.

55. The Act, which is a special law on the subject of contempt, does not expressly or by necessary implication exclude the applicability of sections 4 to 24 of the 1963 Act. This Court, in State of West Bengal v. Kartick Chandra Das (1996) 5 SCC 342 has held that in terms of section 29(2) of the 1963 Act,

provisions contained in section 5 of the 1963 Act can be called in aid by a party who seeks condonation of delay in presentation of an appeal under section 19(1) of the Act. Similarly, in exceptional cases, provisions like sections 12, 14, 17, 22, etc. of the 1963 Act could be invoked to seek exemption from the law of limitation, which is distinct from condonation of delay. In an appropriate case, it would be open to the party who has not petitioned the court within the period of one year, as stipulated in section 20 of the Act, to seek exemption from the law of limitation in line with the principle flowing from Order VII Rule 6, CPC [Grounds of exemption from limitation law. - Where the suit is instituted after the expiration of the period prescribed by the law limitation, the plaint shall show the ground upon which exemption from such law is claimed: Provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.], by showing the ground upon which such exemption is claimed. We have no hesitation to hold that in a case where a civil contempt is alleged by a party by referring to a "continuing wrong/breach/offence" and such allegation prima facie satisfies the court, the action for contempt is not liable to be nipped in the bud merely on the ground of it being presented beyond the period of one year as in section 20 of the Act. Applicability of the principle underlying Order VII Rule 6, CPC for granting exemption would only be just and proper having regard to the object and purpose for which the jurisdiction to punish for contempt is exercised by the courts if, of course, the court is satisfied that benefit of such an exemption ought to be extended in a given case. At the same time, it must be remembered that the court cannot grant exemption from limitation on equitable consideration or on the ground of hardship Inspiration in this regard may be drawn from the decision of the Privy Council in Maqbul Ahmad v. Onkar Pratap Narain Singh AIR 1935 PC 85. However, as observed earlier, contempt proceedings being in the nature of original proceedings, akin to a suit, application of section 5 of the 1963 Act to seek condonation of delay is excluded.

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61. The appellant has asserted before us that the contempt action was time barred in view of the fact that limitation for initiation of contempt action commenced on 04th May, 2009, i.e., when the two-month period stipulated by rule 21 expired and ended on 03rd May, 2010, i.e., in accordance with section 20 of the Act. However, the first respondent has contended that the contempt petition was not barred by limitation since the act of the appellant in not implementing the direction for effecting mutation was in the nature of a continuing wrong.

62. The date on which service of the order dated 05th March, 2009 disposing of the writ petition was effected on the appellant is not stated anywhere in the contempt petition by the first respondent. No such date is also reflected in the representations that the first respondent claims to have made on 11th May, 2009, 12th September, 2009, 22nd October, 2010, 16th August, 2012 and 05th February, 2014. It is also not seen from the appellant's counter affidavit that he pleaded non-service of such order. We are, thus, inclined to the view that the appellant had notice aliunde of the order dated 05th March, 2009. Proceeding on the premise that the order must have been served immediately after the same was passed by the Single Judge and in the light of rule 21 of the Writ Rules, the appellant had 2 (two)

months' time from receipt of the order dated 05th March, 2009, i.e., say till the end of May, 2009 to implement the direction. The appellant failed to effect mutation, as directed, within the aforesaid time-frame and was, thus, in breach of the said order dated 05th March, 2009, say from June, 2009. There does not appear to be any explanation proffered in the contempt petition worthy of consideration as to why the contempt petition was delayed and not presented within the period of a year of commission of the breach when it first occurred, i.e., at least by the end of May, 2010.

63. The learned Single Judge deciding the contempt petition, *vide* order dated 04th October, 2017, was impressed by the arguments advanced by the first respondent and while holding that there has been a continuing wrong and also that the appellant is in contempt, allowed the contempt petition.

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71. First, it is trite that the court cannot traverse beyond the pleadings and make out a case which was never pleaded, such principle having originated from the fundamental legal maxim *secundum allegata et probate*, i.e., the court will arrive at its decision on the basis of the claims and proof led by the parties. The assertion of the contumacious conduct being in the nature of a "continuing wrong/breach/offence" is factual and has to be borne from the pleadings on record. Law is, again, well-settled that when a point is not traceable in the pleas set out either in a plaint or a written statement, findings rendered on such point by the court would be unsustainable as that would amount to an altogether new case being made out for the party. Absent such pleading of there being a "continuing wrong/breach/offence", the finding returned by the Single Judge, since affirmed by the Division Bench (review), cannot be sustained in law.

72. Even if a point of "continuing wrong/breach/offence" is traceable in the pleadings, the court ought not to accept it mechanically; particularly, in entertaining an action for contempt, which is quasi-criminal in nature, the court should be slow and circumspect and be fully satisfied that there has indeed been a "continuing wrong/breach/offence".

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76. This Court too, as far back as in 1958, with reference to the Limitation Act of 1908, discussed in ***Balkrishna Savalram Pujari v. Shree Dnyaneshwar Maharaj Sansthan***[51] what would constitute a continuingwrong. The relevant passage reads thus:

> "20. *** s. 23 refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that s. 23 can be invoked.*** As soon as the decree was passed and the appellants weredispossessed in execution proceedings, their rights had been completely injured, and though their dispossession continued, it cannot be said that the trustees were committing wrongful acts or acts of tort from moment to

moment so as to give the appellants a cause of action de die in diem. We think there can be no doubt that where the wrongful act complained of amounts to ouster, the resulting injury to the right is complete at the date of the ouster and so there would be no scope for the application of s. 23 in such a case.***"

77. The decision of this Court in ***Balkrishna Savalram Pujari*** (supra) was endorsed by this Court in ***M. iddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das***52 wherein, while concluding that the ouster of shebaitship was a single incident and did not constitute a continuing wrong, this Court further observed as follows: "343. The submission of *** is based on the principle of continuing wrong as a defence to the plea of limitation. In assessing the submission, a distinction must be made between the source of a legal injury and the effect of the injury. The source of a legal injury is founded in a breach of an obligation. A ontinuing wrong arises where there is an obligation imposed by law, agreement or otherwise to continue to act or to desist from acting in a particular manner. The breach of such an obligation extends beyond a single completed act or omission. The breach is of a continuing nature, giving rise to a legal injury which assumes the nature of a continuing wrong. For a continuing wrong to arise, there must in the first place be a wrong which is actionable because in the absence of a wrong, there can be no continuing wrong. It is when there is a wrong that a further line of enquiry of whether there is a continuing wrong would arise. Without a wrong there cannot be a continuing wrong. A wrong postulates a breach of an obligation imposed on an individual, where positive or negative, to act or desist from acting in a particular manner. The obligation on one individual finds a corresponding reflection of a right which inheres in another. A continuing wrong postulates a breach of a continuing duty or a breach of an obligation which is of a continuing nature. ...... Hence, in evaluating whether there is a continuing wrong within the meaning of Section 23, the mere fact that the effect of the injury caused has continued, is not sufficient to constitute it as a continuing wrong. For instance, when the wrong is complete as a result of the act or omission which is complained of, no continuing wrong arises even though the effect or damage that is sustained may ensure in the future. What makes a wrong, a wrong of a continuing nature is the breach of a duty which has not ceased but which continues to subsist. The breach of such a duty creates a continuing wrong and hence a defence to a plea of limitation."

78. The order on the writ petition directed the appellant to effect mutation in the revenue records in favour of the first respondent, in accordance with the final decree. The direction for mutation having been issued on 05th March, 2009, the appellant had a period of 2 (two) months therefrom to effect such mutation, as stipulated by the Writ Rules, which we shall assume the appellant failed or neglected to comply without just reason. From 04th May, 2009, i.e., the starting point for the limitation period for initiation of contempt action to commence, till 10th February, 2014, i.e., the date of the filing of the contempt petition, the appellant failed to effect mutation, as ordered by the Single Judge. Could it be said that every day thereafter that the appellant did not effect mutation gave rise to a fresh cause of action so as to constitute a "continuing wrong/breach/offence"? To our minds, the answer is a clear and unequivocal 'NO'. Upon application of the test laid down by this Court in ***Balkrishna Savalram Pujari*** (supra) and ***M. Siddiq*** (supra), it is evident that when, by 04th May, 2009, the appellant failed to implement the direction of the High Court, the act of disobedience was complete as on that date itself. Every day thenceforth, the name of the first respondent continued to be absent from the revenue records but such absence could not be characterised as the injury or wrongful act itself; it was merely the damage which flowed from the standalone act of breach committed by the appellant – that of not effecting the mutation. The injury was not repetitive or in other words, did not arise *de die in diem*, but rather, it was the effect of the injury which continued till the date the first respondent presented the contempt petition on 10th February, 2014.

79. Having held that the nature of breach or offence committed by the appellant was not in the nature of a "continuing wrong/breach/offence", the bar of limitation was rightly pressed by the Division Bench (original) to halt the claim of the first respondent at the threshold itself, since the period of limitation to initiate the contempt action ended at least by May end of 2010. The decision of the Division Bench (original) in dismissing the first respondent's contempt petition as time-barred was unexceptionable and the Division Bench (review) acted illegally in reversing the same assuming the jurisdiction to review hich, on facts and in the circumstances, was not available to be exercised.

(8) Contempt Of Court Act 1971 की प्रति संलग्न है।

(9) माननीय उच्च न्यायालय द्वारा अवमानना याचिकाओं में पारित कुछ निर्णय संलग्न है।

The Hon'ble Supreme Court in the case of LalithMathur versus L. Maheswara Rao reported in 2000 (10) SCC 285 has held as under :-

Order.

1. Leave granted.

2. The respondent was an employee of A.P. State Cooperative Rice Federation which was wound up and he ceased to be an employee of that Federation. He filed a writ petition in the High Court seeking reliefs, inter-alia, that his representation for absorption in alternative government service may be directed to be considered by the State Government. The writ petition was allowed and the direction was issued to the State Government to consider and dispose of the representation. Pursuant to that direction, the State Government considered the representation and rejected the claim of the respondent for absorption in government service. The respondent, instead of challenging the order by which his representation was rejected in a fresh writ petition, file a contempt petition in which he relied upon a judgment of the High Court in Writ Petition No.22230 of 1997 and batch decided on 15.10.1997, and the High Court too, relying upon that decision, observed in the impugned judgment as under:

> "The stand taken in the impugned order dated 15.04.1998 which has been reiterated in the counter affidavit filed on behalf of the respondents is that in view of Ordinance 4 of 1997 which was subsequently replaced by Act 14 of 1997 and the consequential order cancelling GOMs No. 329, Agriculture and Cooperation (Coop.I) Department dated 22.05.1993, the petitioner is not entitled to absorption in any government departments/organisations as sought for by him. I am afraid, it is not open to the respondents to take that stand in view of the order dated 05.12.1997 passed in the earlier Contempt Case No.1357 of 1997 where the said stand of the respondents was specifically considered and rejected by this Court and the 2nd respondent was directed to reconsider the case of the petitioner for absorption. That apart, Section 4 of Ordinance 4 of 1997 specifically provides that "Nothing in this Ordinance shall disentitle any such employee to the benefits of any scheme of rehabilitation under the relevant orders issued by the Government from time to time'. Similarly, the order of status quo passed by the Hon'ble Supreme Court in SLPs (C) Nos. 1222-23 of 1998 does not in any way come in the way of absorption of the petitioner herein pursuant to the directions granted by this Court in WP No. 10208 of 1993 as well as in CC No.1357 of 1997. Admittedly, as many as 40 co-employees of the petitioner were already absorbed in other organisations and departments and one Satyanarayana who was a junior to the petitioner is also being continued in service by implementing the orders passed by the authority under the Shops and Establishments Act. Under these circumstances, I do not see why the petitioner herein should be denied the
> Same consideration.
>
> For the aforesaid reasons this contempt case is disposed of directing the respondent to absorb the petitioner in any suitable post in any government department or public undertaking within three months from the date of receipt of a copy of this order."

3. The above will show that the High Court has directed the State Government to absorb the respondent against a suitable post either in a government department or in any public sector undertaking. This order, in our opinion, is wholly without jurisdiction and could not have been made in proceedings under the Contempt of Courts Act or Article 215 of the constitution.

4. The High Court in the writ petition had issued a direction for the consideration of the respondent's representation by the State Government. This direction was carried out by the State Government which had considered and thereafter rejected the representation on merits. Instead of challenging that order in a fresh writ petition under Article 226, the respondent took recourse to contempt proceedings which did not lie as the order had already been complied with by the State Government which had considered the representation and and rejected it on merit.

5. For the reasons stated above, the appeal is allowed, the impugned judgment of the High dated 10.08.1998 is set aside and the contempt petition filed by the respondent is dismissed. We, however, make it clear that it will be open to the respondent to challenge the order by which his representation was dismissed on merits, in such proceedings, as he may be advised. There shall be no order as to costs."

A.P. Verma, Principal Secretary, ... vs U.P. Laboratory Technicians ... on 9 October, 1998

Equivalent citations: 1998(3)AWC2264, (1998)3UPLBEC2333

Author: G.P. Mathur

Bench: D.P. Mohapatra, G.P. Mathur

JUDGMENT

G.P. Mathur, J.

1. This contempt appeal has been preferred against the judgment and order dated 29.5.1997 of a learned single Judge in Civil Misc. Contempt Petition No. 955 of 1993. In the contempt petition Smt. Sumita Khandpal. Principal Secretary, Medical Health and Family Welfare and Dr. P. D. P Mathur Director General, Medical Health and Family Welfare were arrayed as opposite parties. In April, 1997, Smt. Sumita Khandpal was transferred and Sri A. P. Verma took over as Principal Secretary, Medical Health and Family Welfare. Dr. P. D. P. Mathur retired soon after filing of the contempt petition and Dr. H. C. Vaish was officiating as Director General. Medical Health and Family Welfare at the time of filing of the appeal. Therefore, the present appeal has been filed by Sri A. P. Verma and Dr. H. C. Vaish and not by those who were arrayed as opposite parties in the contempt petition.

2. U. P. Laboratory Technicians Association and two others filed Civil Misc. Writ Petition No. 8345 of 1989 against State of U. P. through Secretary, Medical Health and Family Welfare. U. P., Lucknow, Director General, Medical Health and Family Welfare and Director, Medical and Health Services with a prayer that a writ of mandamus be issued directing the respondents to give the same salary to the petitioners which is being paid to Laboratory Assistants. The writ petition was allowed by the judgment and order dated 3.2.1993 and the operative portion of the order reads as follows :

> "In the circumstances of the case, the petition is allowed and I direct that the Laboratory Technicians will get the same pay scale as that of Laboratory Assistants, within two months.
>
> Sri B. P. Srivastava, learned counsel for the petitioner has submitted that Senior Laboratory Technicians should get higher pay than that of Laboratory Technicians. In the present case, I have only held that the Laboratory Technicians should be given the same pay as the Laboratory Assistants. If the Senior Laboratory Technicians are wanting higher pay then they should make a representation to this effect giving details of the nature of duties they are performing and how these duties are more arduous than those of Laboratory Assistants. If such a representation is made within

a month the same shall be decided within two months thereafter by a reasoned order.

The petition is allowed. No order as to cost."

The writ petitioners, namely, U. P. Laboratory Technicians Association and others filed Civil Misc. Contempt Petition No. 955 of 1993 under Sections 10 and 12 of the Contempt of Courts Act, 1971 (hereinafter referred to as the Act) praying that this Court may initiate contempt proceedings against the opposite parties for having wilfully flouted the Judgment and order dated 3.2.1993 passed in Civil Misc. Writ Petition No. 8345 of 1989 and to suitably punish them for the same. Notice was issued to the opposite parties to show cause why they should not be punished for having committed contempt of court. The opposite parties filed counter-affidavits. After hearing counsel for the parties, the learned single Judge passed the impugned order dated 29.5.1997 against which the present Special Appeal has been filed. In order to appreciate the controversy raised in the appeal, It is necessary to reproduce certain portions of the impugned order of the learned single Judge which are as under:

> "I will take up the second direction first. This Court directed the Senior Laboratory Technicians to make representation for higher pay scale within a month and the said representation was to be decided within two months. The Court did not specifically direct that the Senior Laboratory Technicians should be given better pay scale than that of the Laboratory Assistants. The Court only directed the respondents to decide the representation by a reasoned order. The representation has now been decided on 16.11.1994. A copy of the decision has been filed as Annexure-CA-3 to the supplementary counter-affidavit of Sri V. K. Srivastava, Section Officer, dated 17.11.1994.
>
> It is fantastic that the supplementary counter-affidavit was filed on 17.11.1994 and the decision was given on the representation only one day earlier, i.e., on 16.11.1994. It appears that this is only just to satisfy the stomach of the decision by putting something therein. The decision given by respondent No. 1 is in Hindi which if translated in English is that so far as the question of giving higher pay scale to the Senior Laboratory Technicians is concerned, it is hereby informed that the present pay scale of Senior Laboratory Technicians is Rs. 1,400-2,300 which is higher than that of the Laboratory Technicians whose present pay scale is Rs. 1,320-2,040. Therefore, there is no question of giving any more higher pay scale to the Senior Laboratory Technicians. Consequently, the representation dated 27.2.1993 is hereby rejected.
>
> What this Court desired was that the Senior Laboratory Technicians should make a representation for higher pay scale indicating therein the nature of duties they were performing and also how their duties were more arduous than that of the Laboratory Assistants. In other words, the position of the Senior Laboratory Assistants was to be compared with the position of the Laboratory Assistants, but the decision shows that the respondent No. 1 in a hot haste manner compared the pay scale of Senior

Laboratory Technicians with that of the Laboratory Technicians. The respondent No. 1 did not advert to the duties assigned to the Senior Laboratory Technicians and the Laboratory Assistants and whether the duties of the Senior Laboratory Technicians are more arduous than that of the Laboratory Assistants and by a cryptic order rejected the representation of the petitioners. In my view, the order passed by respondent No. 1 is not in conformity with the direction issued by this Court.....In view of what has been enumerated above, it is manifest that the order of this Court has not at all been complied with.

As regards the first direction, it is stated that the said direction too has been complied with, but a bare perusal of the order dated 16.11.1994 shows that there was only notional compliance and nothing else. The respondent No. 1 has included the personal pay in the pay scale of Laboratory Technicians and in this way equated the Laboratory Technicians with the Laboratory Assistants in the matter of pay scale. The direction issued by this Court in respect of Laboratory Technicians is crystal clear and there is no ambiguity in it. It was specifically directed that the Laboratory Technicians will get the same pay scale as that of the Laboratory Assistants, but the respondent No. 1 has calculated the personal pay also in the pay scale of the Laboratory Technicians. Personal pay is personal pay and cannot be said to be a part of the pay scale. Therefore, the first part of the direction was also not complied with.

....

....

In view of what has been discussed above, I find that respondent No. I has done mud-washing and nothing else. In my view, this is no compliance of the order passed by this Court. However, an effort has been made to show that the Government Orders have been issued in compliance of the order passed by this Court dated 3.2.93 but that is only an eye-wash. I do not want to punish the respondents at this stage but depart only with a note of sorrow and with the remark that the karta of the family should not be vindictive against-his family members and should try to provide them justice as far as possible. Justice can be done every where and the administrative officer should not think that their work is only of administrative nature. In the matter like the present one, they also exercise quasi-judicial function and while deciding a representation, they should act as a Judge.

Accordingly, the respondents are again directed to comply with the order of this Court dated 3.2.1993 in its letter and spirit. The matter has been clarified to a great extent although the order of the Court dated 3.2.1993 is specific and clear.

List this petition on 17.9.1997 for further orders. If the order dated 3.2.1993 is not complied with, respondents should appear in person in this Court on the date fixed."

Sri Ashok Khare, learned counsel for the respondents in this appeal (writ petitioners and applicants in the contempt petition) has vehemently urged that the learned single Judge had not imposed any punishment and has merely called upon the appellants to comply with the judgment and order dated 3.2.1993 of the writ petition and, therefore, the present appeal is not maintainable under Section 19 of the Contempt of Courts Act or even under Chapter VIII. Rule 5 of the High Court Rules. In support of his submission, he has placed reliance on Secretary State Social Welfare Advisory Board v. Shail Bala Saxena, 1996 ALJ 1998 ; Raseed Ahmad Khan v. Tej Narain, 1997 AWC 1540 : Sheo Charan v. Nawal 1997 AWC 1909 and Ved Prakash Kapoor v. Kamala Prasad Rai, 1997 AWC 1953. Sri Yatindra Singh, learned Addl. Advocate General has, on the other hand, urged that the appeal is maintainable under Section 19 of the Act in view of the law laid down in Pursottam Das v. B. S. Dhillon. AIR 1978 SC 1014 ; Vijay Krishna Goswami v. Suresh Chandra Jain, 1994 AWC 82 and Somesh Sachdeo v. Baldeo Raj. 1989 ALJ 928. He has further submitted that the order of the learned single Judge is ajudgment and consequently, the appeal is maintainable under Chapter VIII, Rule 5 of the Rules of the Court, in accordance with the view taken in J. S. Parthar v. Ganpati Duggal, 1997 SC 113 ; Bihar State Electricity Board v. Manmohan Prasad, 1990 BLT 69 and Ashok Raivu. Ashok Arora 1996 CWN 673.

3. An appeal is the "right of entering a superior court and invoking its aid and inter-position to redress an error of the Court below" and it is a creature of Stature (See Dayawati v. Inderjeet, AIR 1966 SC 1423 and Sita Ram v. State of U. P., AIR 1979 SC 745). Section 19 of the Act lays down that an appeal shall He as of right from any order or decision of the High Court in exercise of its jurisdiction to punish for contempt. In Barada Kanta Misra v. Justice Gati Krishna Misra, AIR 1974 SC 2255. It was held as follow :

> ".....It is only when the Court decides to take action and Initiates a proceedings for contempt that it assumes jurisdiction to punish for contempt. The exercise of the jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt whether suo motu or on a motion or a reference..... Where the Court rejects a motion or a reference and declines to initiate a proceeding for contempt, it refuses to assume or exercise jurisdiction to punish for contempt and such a decision cannot be regarded as a decision in the exercise of its jurisdiction to punish for contempt. Such a decision would not, therefore, fall within the opening words of Section 19(1) and no appeal would lie against it as of right under that provision."

The same view was taken in Pursottam Dass v. B. S. Dhillan, AIR 1978 SC 1014. In D. N. Taneja v. Bhajan Lal, 1998 SCC (Cri) 546, it was reiterated that the right of appeal is available under sub-section (1) of Section 19 only against any decision or order of a High Court in the exercise of its jurisdiction to punish for contempt. In Pursottom Das Goel (supra), it was observed :

> "In our considered judgment an order merely initiating the proceeding without anything further does not decide anything against the alleged contemnor and cannot be appealed against as a matter of right under Section 19. In a given case special leave may be granted under Article 136 of the Constitution from an order initiating the proceedings but that is entirely different."

Similar view was again expressed in Union of India v. Mario Cabral, AIR 1982 SC 691. Interlocutory orders pertaining purely to the procedure of the Court has been held to be not appealable under Section 19 in Barada Kanta Misra v. Orissa High Court, AIR 1976 SC 1206 ; Pursottam Das v. B. S. Dhillan. AIR 1978 SC 1014 ; Somesh Sachdeo v. Baldeo Raj, 1989 ALJ 928 and Rasheed Ahmad Khan v.Tej Narain, 1997 AWC 1540.

4. The language of Section 19 shows that an appeal shall lie as of right from any order or decision of High Court in the exercise of jurisdiction to punish for contempt. The words "any order or decision in the exercise of its Jurisdiction to punish" have been used in contradistinction from the word "punishment" and they have to be given full meaning. If the Legislature intended to restrict the appeal only against the order of punishment, a different phraseology would have been used. It may be noticed that in Sections 374 and 377, Cr. P.C., the words used are "persons convicted on a trial". An appeal would, therefore, be maintainable not only against a specific order of punishment but also against an order or decision which has been rendered in exercise of Jurisdiction to punish. This position will be clear from the following observation in Barada Kanta Misra v. Orissa High Court, AIR 1976 SC 1206:

> ".....Only those orders or decision in which some point is decided or finding is given in the exercise of jurisdiction by the High Court to be punished for contempt are appealable under Section 19 of the Contempt of Courts Act, 1971."

Similar view was taken in Purshottam Das v. B. S. Dhillon (supra) where in para 3 it was observed as follows :

> "......No appeal can He as a matter of right from any kind of order made by the High Court in the proceeding for contempt. The proceeding is initiated under Section 17 by issuance of a notice. Thereafter, there may be many interlocutory orders passed in the said proceeding by the High Court. It could not be the intention of the Legislature to provide for an appeal to this Court as a matter of right from each and every such order made by the High Court. The order or the decision must be such that it decides some bone of contention raised before the High Court affecting the right of the party aggrieved."

In Somesh Sachdev v. Baldev Raj, 1989 ALJ 928, the Court while considering the question as to when an order can be said to be such which is appealable under Section 19, observed as follows in para 9 of the report :

> ".....It is neither possible nor advisable to make an exhaustive list of the type of orders which may be appealable to this Court under Section 19. If the Court on being asked by the contemner to drop the proceeding on the ground of its being barred under Section 20 of the Act declines to do so, it may well be that an appeal may lie under Section 19(1) as some orders even though made at some Intermediate stage in the proceeding may be appealable."

In Viay Krishna Goswami v. Suresh Chandra Jain. 1994 AWC 82, a Division Bench considering the same question observed is under :

> "......From the above, it would be seen that an appeal lies from a 'decision' as well as from an 'order'. Decision. In our opinion, would be final decision of the contempt application. When a separate word 'order' has been used in the same clause, it would appear that it refers to something other than final judgment. Accordingly, we are of the opinion that an appeal is maintainable even against an order, which does not finally dispose of the contempt proceedings. However, every order passed in the contempt proceedings is not appealable under the above provision. Only that order is appealable which is passed in the exercise of Jurisdiction to punish for contempt:"

In this case, the order of the learned single Judge, holding a person guilty of contempt of court was held to be appealable under Section 19 even though no sentence had been awarded.

5. A conspectus of the authorities referred to above would show that there is no absolute bar of an appeal against an order passed at an intermediate stage. It will depend upon the nature of the contention raised and the manner in which the same has been disposed of by the Court. In case a contention which goes to the very root of jurisdiction is raised and the same is turned down or the order or decision is such which decides some bone of contention affecting the rights of the parties aggrieved, an appeal would be maintainable under Section 19(1) of the Act.

6. The question whether an appeal is maintainable under Chapter VIII, Rule 5 of the Rules of the Court at the instance of a party whose application for initiation of contempt proceeding has been dismissed and the Court declines to issue notice under Section 17 of the Act to those who are alleged to have committed contempt of Court, has been examined in considerable detail by a Division Bench in Sheo Charan v. Nawal and others, 1997 AWC 1909, and it was held as follows :

> "..... By Section 19, the Act has created a right of appeal from an order or decision of the Court imposing punishment for contempt. There is no provision for appeal under the Act against the decision discharging the notice of contempt and/or dismissing the contempt petition. When statute provides for appeal and also lays down the order/decisions against which such an appeal can be filed, the Legislature's intention is that appeal against all other orders is barred. As Section 19 has provided for appeal against an order or decision imposing punishment for contempt, the right to file an appeal against all other orders has been taken away by the statute. The result is that the appeal against a decision, rejecting the contempt petition is not maintainable under Rule 5 of Chapter VIII also."

In Shantha V. Pai v. Basant Builders, 1991 Cr.LJ 3026, a Division Bench of Madras High Court speaking through Dr. A. S. Anand, C.J. (as his Lordship then was) has held that no appeal is maintainable under clause 15 of Letters Patent against an order refusing to initiate proceedings for contempt of court. We are in respectful agreement with the view taken in the aforesaid decisions that no appeal is maintainable under Chapter VIII, Rule 5 of the Rules of the Court against any

order passed in proceedings under Contempt of Courts Act as it is a self-contained Code and it also provides for a remedy of appeal under Section 19 though only against specified type of orders or decisions.

7. As the preamble shows, the Contempt of Courts Act, 1971, has been enacted to define and limit the powers of certain Courts in punishing contempts of courts and to regulate their procedure in relation thereto. The scheme of the Act would show that it provides for the procedure for proceeding against such persons who are alleged to have committed contempt of courts and for awarding punishment to them. While exercising Jurisdiction under the Act, the High Court may either discharge an accused or award punishment to him. The Act does not contemplate of either making a declaration or issuing a direction regarding merits of the claim of the parties. The power of a Court to pass orders is circumscribed by the jurisdiction conferred upon it under the Act under which it is deciding a lis or is proceeding against the parties before it. A civil court while trying a civil suit for cancellation of a document on the ground of forgery after arriving at a conclusion on the basis of evidence adduced that the document is forged, can only pass a decree for cancellation of the document but cannot convict or sentence the person who is involved in commission of the forgery. A criminal court while trying a person accused of having prepared a forged document can only record a finding of conviction and impose a sentence, but cannot pass a decree for cancellation of the document. In Raja Soap Factory v. S. P. ShantharaJ, AIR 1965 SC 1449, a suit which was otherwise cognizable by a District Court was instituted in the High Court and an order of temporary injunction was passed. In appeal, the Apex Court set aside the order with the following observation :

> ".....But if the learned Judge, as reported in the summary of the Judgment was of the opinion that the High Court is competent to assume to itself Jurisdiction which it does not otherwise possess, merely because an "extraordinary situation" has arisen, with respect to the learned Judge, we are unable to approve of that view. By "jurisdiction" is meant the extent of the power which is conferred upon the Court by its Constitution to try a proceeding ; its exercise cannot be enlarged because what the learned Judge calls an extraordinary situation "requires" the Court to exercise it."

In A. R. Antulay v. R. S. Naik, AIR 1988 SC 1531, the Apex Court while reviewing its earlier decision of transferring a case under Section 5 of the Prevention of Corruption Act against Shri Antulay to the High Court made the following observation :

> "The Supreme Court, by its directions, could not confer jurisdiction on the High Court to try any case when it did not possess such jurisdiction under the scheme of the 1952 Act."

While dealing with a matter under the Contempt of Courts Act, the Apex Court in D. N. Taneja v. Bhajan Led, 1988 (3) SCC 26, observed as follows in para 10 of the report:

> "There can be no doubt that whenever a Court, tribunal or authority is vested with a jurisdiction to decide a matter, such jurisdiction can be exercised in deciding the matter in favour or against a person. For example, a civil court is conferred with the

jurisdiction to decide a suit ; the civil court will have undoubtedly the Jurisdiction to decree the suit or dismiss the same. But when a Court is conferred with the power or jurisdiction to act in a particular manner, the exercise of Jurisdiction or the power will involve the acting in that particular manner and in no other. Article 215 confers jurisdiction or power on the High Court to punish for contempt. The High Court can exercise its jurisdiction only by punishing for contempt."

In J. S. Parihar v. Ganpati Duggal. AIR 1997 SC 113, a single Judge of the High Court while hearing a petition under Contempt of Courts Act issued a direction to redraw a seniority list and with regard to this direction, the Apex Court made the following observation :

> "................In other words, the learned single Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings- It would not be permissible under Section 12 of the Contempt of Courts Act...................."

Thus there can be no doubt that in any proceeding initiated under the Contempt of Courts Act, the High Court can either punish or discharge the alleged contemner and in doing so, it can pass all such ancillary orders which are necessary for exercise of such power but it cannot issue any directions or orders regarding the main dispute or controversy between the parties which has led to the filing of writ petition by either of the parties. However, if any order or direction is made by the Court concerning the merit of the controversy or dispute between the parties, or for implementation of any judgment or order, it will be de hors the provision of Contempt of Courts Act and they can only be deemed to have been issued in exercise of power conferred by Article 226 of the Constitution. Such direction would, therefore, be amenable to an appeal under Chapter VIII, Rule 5 of the Rules of the Court as they are not issued in exercise of any power conferred by the Act. The view which we are taking finds support from J. S. Parihar v. Ganpati Duggal (supra) where the correctness of the order passed by the Division Bench, which set aside the order passed by the learned single Judge to redraw the seniority list, was assailed on the ground that no appeal was maintainable as no order has been passed imposing punishment. The order of the Division Bench was affirmed on the round that it had exercised power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the single Judge.

8. Under the impugned order, learned single Judge has recorded a clear finding that the directions issued in the writ petition had not been complied with but he did not want to punish the appellants at this stage. He has issued a further direction to the appellants to comply with the order passed in the writ petition in its letter and spirit. In view of what we have held above, this appeal is maintainable under-Section 19 of the Act against the finding regarding non-compliance of the order which amounts to a 'civil contempt' within the meaning of Section 2(a) of the Act. The appeal will also be maintainable under Chapter VIII, Rule 5 of the Rules of the Court against the directions issued in the impugned order which are regarding the merit of the claim made by the respondents in the writ petition.

9. The judgment of the writ petition dated 3.2.1993 shows that a direction was issued that the Laboratory Technicians will get the same pay scale as that of Laboratory Assistants and further if the

Senior Laboratory Technicians want a higher pay, they should make a representation which shall be decided within two months by a reasoned order. Sri Yatindra Singh, learned Addl. Advocate General has submitted that there has been no wilful disobedience of the directions issued in the writ petition and the same had been complied with and the view to the contrary taken by the learned single Judge that the appellants have committed contempt of court is not correct. The facts which emerge out of the affidavits filed by, the parties show that in the State four different systems of Medicines, namely. Allopathic, Ayurvedic, Unani and Homoeopathic are recognised and there are separate colleges imparting education in these systems. Initially only one department of the State Government was dealing with all the aforesaid systems of Medicines. Subsequently a bifurcation was made into two departments. The Allopathic system is dealt with by the department of Medical and Family Welfare.. The department of Medical Education deals with all kind of medical education as well as service matters of persons employed in Ayurvedic. Unani and Homoeopathic system of medicines. There are separate Secretaries for both the departments. There is a post of Laboratory Technician in the Allopathic system of medicines. There is also a promotional post of Senior Laboratory Technicians, recruitment to which is made from amongst Laboratory Technicians on the basis of seniority subject to rejection of unfit. The pay scale of Laboratory Technicians was fixed at Rs. 400-615 and that of Senior Laboratory Technicians at Rs. 515-860 w.e.f. 1.7.1979. In Ayurvedic and Unani system of medicines, there is a post of Laboratory Assistant/ Technicals Assistant. They were granted the pay scale of Rs. 400-615 by the G.O. dated 12.5.1987. These persons, namely, Laboratory Assistant/Technical Assistant (Ayurvedlc and Unani System) filed Writ Petition No. 5497 of 1987 claiming parity in pay scale with Modellers who were employed in State Ayurvedic and Unani Hospitals and also with Senior Laboratory Technician (Allopathic system). The writ petition was allowed on 21.1.1988 and by the order dated 3.2.1989, their pay scale was increased to Rs. 515-860. On the recommendation of Fourth Pay Commission, the Central Government enhanced the pay scale of its employees and a corresponding demand was made by the employees of the State Government. The State Government constituted an Equivalence Committee and according to its report, Laboratory Assistant/Technical Assistant (Ayurvedlc and Unani System) were held entitled to the scale of Rs. 1,320-2,040 and a Senior Laboratory Technician (Allopathic System) to the pay scale of Rs. 1.400-2,300. However, in view of the decision dated 21.1.1989 in Writ Petition No. 5497 of 1987, the Laboratory Assistant/Technical Assistant (Ayurvedic and Unani System) were entitled to pay scale of Senior Laboratory Technician (Allopathic System). Such persons were given the personal pay scale of Rs. 1,400-2,300 but the pay scale of regular cadre of Laboratory Assistant/Technical Assistant (Ayurvedic and Unani System) was fixed at Rs. 1,320-2,040. The Laboratory Technicians (Allopathic System) were initially in a grade which was higher than the grade of Laboratory Assistant/Technical Assistant (Ayurvedic and Unani System) but by the G.O. dated 12.5.1987, the latter had been put in the same pay scale. It was in these circumstances that Laboratory Technicians (Allopathic System) filed Writ Petition No. 8354 of 1989 which was allowed on 3.2.1993 and a direction was issued which has been quoted in the earlier part of the judgment.

10. The State Government then issued two orders one on 6.9.1994 and the other on 19.9.1994. By the first order, Laboratory Technicians were granted the pay scale of Rs. 515-860 w.e.f. 18.7.1981 and by the second order, they were granted personal pay scale of Rs. 1,400-2,300. though the scale of the post was fixed at Rs. 1,320-2,040. It was further provided that the personal pay scale of Rs. 1,400-2.300 would be given to only those employees who were given the benefit of the pay scale of

Rs. 515-860 by the order dated 6.9.1994. After issuance of the aforesaid Government Order, the Laboratory Technicians (Allopathic System) have been put in the same scale of pay as that of Laboratory Assistant/Technical Assistant (Ayurvedic and Unani System) in accordance with the direction issued by the judgment and order dated 3.2.1993 in Writ Petition No. 8345 of 1989. Of course, there has been delay on the part of the State Government in not passing appropriate order within the time fixed in the Judgment. The explanation offered is that the State Government filed special leave petition against the Judgment and order dated 3.2.1993 in the Supreme Court and after its dismissal on 29.3.1994, the necessary Government Orders were issued. There does not appear to be a very long delay subsequent to the decision of the Supreme Court in issuing the Government Orders. Granting of a higher pay scale to a large number of persons involves a heavy financial burden which requires thorough examination by the finance and other concerning departments. In the circumstances of the case, the delay has been properly explained. Thus, the direction issued in the writ petition for granting same pay scale to Laboratory Technicians (Allopathic System) as that of Laboratory Assistant/Technical Assistant (Ayurvedic and Unani System) has been complied with. It is stated in para 10 of the affidavit filed in the appeal that benefit of revised pay scale has also given to all the Laboratory Technicians (Allopathic System) who are working in Institutes and Centres other than Government hospitals. Thus, it cannot be held that the appellants have committed any wilful disobedience of the judgment rendered in the writ petition.

11. Regarding the other direction issued in the Judgment and order dated 3.2.1993, it is not in dispute that the representation made by Senior Laboratory Technicians on 27.2.1993 has been disposed of by the Government on 16.11.1994. No doubt, there has been a delay but the fact remains that the representation has been decided by a reasoned order. Thus, except for the time period fixed in the judgment, the second direction issued therein has also been complied with.

12. The learned single Judge held that while disposing of the representation, the Special Secretary Medical Health and Family Welfare did not advert to the duties assigned to the Senior Laboratory Technicians and the Laboratory Assistants and also whether the duties of former were more arduous than that of the latter. He has further held that the order was not in conformity with the directions issued by the Court. In the order dated 16.11.1994 by which the representation was rejected, it has been observed that the present scale of pay of Senior Laboratory Technicians was Rs. 1,400-2,300 which was higher than the pay scale of Rs. 1,320-2,040 which was admissible to the Laboratory Technicians and, therefore, there was no justification for giving them still higher pay scale. The only direction issued in the writ petition was to decide the representation by a reasoned order which has been done. If the reasons given in the decision are not very elaborate or convincing, it would not mean that there has been a deliberate disobedience of the order passed by this Court and it will not be a ground to hold them guilty of having committed contempt of court The view taken by the learned single Judge that the first part of the direction issued in the judgment and order dated 3.2.1993 has not been complied with, with respects, does not appear to be correct. The Laboratory Technicians (Allopathic) claimed parity with Laboratory Assistants (Ayurvedic and Unani) and after passing of the Government Orders dated 6.9.1994 and 19.9.1994 both the categories of employees are getting the same pay scales. We are, therefore, of the considered view that on the material placed on record, the opposite parties in the contempt petition cannot be held to have committed deliberate disobedience of the judgment and order dated 3.2.1993 in Writ Petition No. 8345 of 1989 and they

cannot be held to have committed contempt of court which may Justify any action against them.

13. For the reasons mentioned above, the appeal is allowed and the impugned Judgment and order dated 29.5.1997 of the teamed Single Judge is set aside.

20 7 (C)

Chhotu Ram vs Urvashi Gulati & Anr on 24 August, 2001

Equivalent citations: AIR 2001 SUPREME COURT 3468, 2001 AIR SCW 3208, (2001) 4 ALLMR 250 (SC), (2001) 7 JT 45 (SC), 2001 (7) SCC 530, (2002) 1 LAB LN 40, 2001 (4) ALL MR 250, 2001 (5) SCALE 479, 2001 (7) JT 45, (2001) 5 SCALE 479, (2001) 91 FACLR 954, (2001) 3 SCT 1142, (2002) 1 RECCRIR 179, (2001) 6 SUPREME 401, 2001 SCC (L&S) 1196

Bench: U.C.Banerjee, A.P.Misra

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            CASE NO.:
Contempt Petition (civil) 297  of  2000
Appeal (civil)  5889     of  1999



PETITIONER:
CHHOTU RAM

        Vs.

RESPONDENT:
URVASHI GULATI & ANR.

DATE OF JUDGMENT:        24/08/2001

BENCH:
U.C.Banerjee, A.P.Misra



JUDGMENT:
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BANERJEE,J.

The introduction of the Contempt of Courts Act, 1971 in the statute book has been for the purposes of securing a feeling of confidence of the people in general and for due and proper administration of justice in the country. It is a powerful weapon in the hands of the law courts by reason wherefor the exercise of jurisdiction must be with due care and caution and for larger interest.

As regards, the burden and standard of proof, the common legal phraseology "he who asserts must prove" has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the 'standard of proof,' be it noted that a proceeding under the extra-ordinary jurisdiction of the Court in terms of the provisions of the Contempt of Courts Act is quasi criminal, and as such, the standard of proof required is that of a criminal proceeding and the

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breach shall have to be established beyond all reasonable doubt. Lord Denning [in Re Bramblevale 1969 (3) All ER 1062] lends concurrence to the aforesaid and the same reads as below:

> "A contempt of court is an offence of a criminal character. A man may be sent to prison for it,. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond all reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him. But there must be some other evidence.... Where there are two equally consistent possibilities open to the Court, it is not right to hold that the offence is proved beyond reasonable doubt."

Before adverting to the factual score, one further decision may be of some consequence and as such the same is noticed at this juncture only. The decision being that of VG. Nigam [V.G. Nigam & Ors. Vs. Kedar Nath Gupta & Anr. (1992) 4 SCC 697] wherein in the similar vein this Court also stated that it would be too hazardous to sentence in exercise of contempt jurisdiction on mere probabilities. This Court went on to record that the willful conduct is a primary and basic ingredient of such an offence. Adverting to the facts of the matter under consideration, it appears that the issue of applicant/complainant's eligibility for promotion in the year 1980 was finally settled by this Court in CA No.5889 of 1999 dated 8th October, 1999 wherein this Court allowed the appeal with the observations as below:

> "It is true that Rule 9 of the Haryana Service of Engineers Class II (Public Works Department, Irrigation Branch) Rules says that the cut-off date will be the Ist of January of the concerned year and here the cut-off date will be 1.1.1980. In a situation, where a person takes an examination before the cut-off date and the result is declared after the cut-off date the above said administrative order dated 23.7.1973 clarifies as to what is to be done. In our view the said clarification is not in conflict with the statutory rules, in as much as it only states that where by the date on which the Departmental Promotion Committee meets, the result is also declared, may be subsequent to the cut-off date, the person must be considered to be eligible with reference to the date of the examination if the examination had been conducted before the cut-off date. We do not therefore, see any conflict between the clarification dated 23.7.1973 and the statutory rules. Giving effect to the above said clarification, it must beheld that the appellant was qualified as on September, 1980 when the DPC met. We therefore, order that the case of the appellant be considered on the basis that he was qualified by the cut-off date, 1.1.1980. If he is considered fit for promotion as in September, 1980, he shall be given the necessary promotion and other consequential benefits. In case the Department feels that any other persons are likely tobe affected in the seniority it will be open to the Department to give notice to those candidates before finalizing the case of the appellant. The appeal is allowed. However, in the circumstances, there shall be no order as to costs."

It is this order which is said to be under deliberate violation and since respondent No.2 knowingly prepared an incorrect ranking list just to exclude the appellant/complainant and to deny his due promotion as per the orders of the Court. Learned counsel, appearing in support of the petition in no uncertain terms contended that by the change of eligibility criteria from the date of examination to the date of declaration of the result the name of Shri RP Kumar and Shri RK Dagar were shifted to the year 1980 and the name of Sh. JP Gupta and that of the petitioner were placed in the year 1981. It has been further contended that the Government's instructions as contained in the memorandum dated 23rd July, 1973 if read with the order of this Court the name of Shri RP Kumar and Shri RK Dagar ought to have been shifted to the year 1979 and the name of Sh. JP Gupta and that of the petitioner at serial Nos. 4 and 5 respectively. As a matter of fact representations were also made in the same vein wherein it has further been stated:-

> "Further this has been admitted by Shri Dhani Ram, under Secretary, on behalf of Government of Haryana that the order dated 15.1.1984 were issued by taking criteria of eligibility from the date of completion of exam. Thus my name stands at serial no.5 in the Ranking List for the year 1980 if the list 1978-1980 are prepared by taking the criteria of eligibility from the date of Exam. as per Hon'ble Supreme Court directions and according to Govt. instructions dated 23.7.73."

Briefly stated the petitioner's grievance is based on the factum of non-consideration of the petitioner's case or if considered not properly so considered on the basis that the petitioner was qualified by the cut-off date (1.1.1980). Be it noted however, that this Court as noticed above directed in the event the petitioner is fit for promotion as in September, 1980, he should be given the necessary promotion with all consequential benefits. Mr. Mahabir Singh, learned counsel, appearing for the respondents however, firstly, very strongly contended that question of there being any act or conduct contemptuous in nature in the matter under consideration cannot arise. The conduct in order to come within the purview of the statutory provisions must be willful and deliberate and in the contextual facts, question of there being any willful and deliberate act does not and cannot arise. There is not even a whisper even in the petition of contempt as regards willful neglect to comply with the order of the Court. The language of the statute being a requirement in order to bring home the charge of contempt shall have to be complied with in its observance rather than in breach and in the absence of which, the same cannot be termed to be an act of contempt and resultantly therefore the application must fail. The submission of Mr. Mahabir Singh appears to be of some significance. The proceeding in the Contempt of Courts Act being quasi-criminal in nature and the burden being in the nature of criminal prosecution, namely to prove beyond reasonable doubt as noticed above, requirements of the statute thus has a pivotal role to play. On merits as well Mr. Mahabir Singh contended that the petitioner is confusing the issue by treating the direction as a mandate for his promotion: whereas this Court had directed the respondents to consider the promotion by treating the petitioner to be qualified on the cut-off date on 1.1.1980. There was no mandate as such to offer promotion to the petitioner. Incidentally, the petitioner's case was duly considered but since the latter was not found eligible and fit for promotion for reasons noticed as below, no promotion could be offered to the petitioner. Promotion was to be offered only however, upon compliance with certain eligibility criteria. This Court by reason of the order dated 8th October, 1999 did not issue a mandate but issued a direction for consideration only. In the event

however, the matter being not considered or in the event consideration was effected in a manner to whittle down the claim of the petitioner, initiation of the proceedings cannot but be said to be justified. But in the event, however, contextual facts depict that the consideration was effected in accordance with the normal rules, practice and procedure and upon such consideration, no promotion could be offered to the petitioner, question of there being any act of contempt would not arise. It is on this score, the order of the Governor dated 20th November, 2000 stands as a significant piece of evidence. The relevant extract whereof is noticed herein below:-

> "Now the name of the appellant has been considered in the ranking list of the year 1980 considering him eligible as on 1.1.80 and the ranking list has been redrawn as per the directions of the Apex Court. The names have been reproduced above. A personal hearing has also been granted to Sh. Chhotu Ram on 8.6.2000.
>
> In this regard the matter has been thrashed out and examined in detail. The name of Sh. Chhotu Ram does not find place in promotion zone, on the basis of inclusion of his name in the ranking list as on 1.1.80 prepared as per directions of the Hon'ble Apex Court dated 8.10.99. There were 5 (five) vacancies for promotion in the source of AMIE/BE in the year 1980 and there is no dispute regarding number of vacancies.

The officers promoted in the year 1980, S/Sh. BS Sethi, KR Chopra, RP Kumar, SK Sodhi, RK Dagar beside Sh JP Gupta promoted in 1981 for want of vacancy in 1980 are senior to the appellant Sh. Chhotu Ram. The ranking list from the year 1971 to 1991 were prepared after inviting objections of the concerned officers in view of the directions of the Apex Court dated 20.9.91. These lists were also approved by the Haryana Public Service Commission as stipulated/contemplated under Rule-9 of HSE Class-II Rules, 1970. Hence, version of Sh. Chhotu Ram that both these officers namely Sh. RP Kumar and RK Dagar be shifted from 1980 to 1979, cannot be considered. Actually both the officers were promoted in the year 1980 on ad hoc basis and later on they were promoted on regular basis vide order dated 30.11.92. The plea of Sh. Chhotu Ram that a post was kept reserved for him in the order dated 15.1.84 is also not in accordance with the rules as this order stands superseded vide order No.8/94/83-3IE, dated 30.11.92. Moreover the ranking list on the basis of which promotion order dated 15.1.84 was issued were not in accordance with the rules as observed by the Hon'ble Apex Court. So, this order of dated 15.1.84 cannot be considered a valid document in support of claim of the petitioner. So far his eligibility for promotion to the rank of Sub Divisional Officer in 1980 is concerned, he has earned only 3 good ACRs out of 8 ACRs. Thus he earned less than 50% Good ACRs and therefore, he is not eligible/fit for promotion as Sub-Divisional Officer.

In view of the position and facts detailed in the forgoing paras as well as personal hearing granted to the petitioner the petitioner's claim for promotion on the basis that he was qualified on 1.1.80 as per order of the Hon'ble Apex Court has been considered and he does not find place in promotion zone to the rank of Sub-

Divisional Officer and his claim does not hold good and is therefore rejected."

On the wake of the recordings as above, and having duly considered the submissions of the parties and on proper reading of the order of this Court dated 8th October, 1999 we do not feel inclined to record any concurrence with the submissions of the learned Advocate in support of the petition. The petition has no merit. The petition therefore fails and is dismissed without however any order as to costs.

Anil Kumar Shahi & Ors vs Ram Sevak & Anr on 24 July, 2008

Equivalent citations: AIRONLINE 2008 SC 142, (2008) 6 SERV LR 375, 2008 (14) SCC 115, (2009) 2 SERV LJ 297, (2008) 3 SCT 641

Author: Lokeshwar Singh Panta

Bench: Lokeshwar Singh Panta, S. B. Sinha

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION (C) No. 91 OF 2006
IN
CIVIL APPEAL NO.1124 OF 2000

Anil Kumar Shahi & Ors. ..... Petitioners

Versus

Prof. Ram Sevak Yadav & Ors. ..... Respondents

WITH

CONTEMPT PETITION (C) No. 162 OF 2007
IN CONTEMPT PETITION (C) No. 91 OF 2006
IN
CIVIL APPEAL NO.1124 OF 2000

JUDGMENT

Lokeshwar Singh Panta, J.

Contempt Petition (C) 91 of 2006 This is a petition under Article 129 of the Constitution of India read with Section 2(b) of the Contempt of Courts Act, 1971 preferred by Anil Kumar Shahi, Ghanshyam Singh, Davendra Singh and Raj Narain Lal, petitioners herein, inter alia praying for the following reliefs:-

"(a) initiate contempt proceedings against the contemnors for their willful disobedience and uphold the majesty of this Hon'ble Court;

and/or

(b) direct the respondents to disclose the marks obtained by the petitioner as well as cut-off marks beyond which the candidates were called for interview; and/or

(c) quash order dated 7.4.2006 passed by the respondent no. 2 which is in contravention of the order dated 7.3.2006 passed by this Hon'ble Court; and/or

(d) direct the respondents that if the candidates are found to have obtained equal to or more than cut-off marks, then to call the candidates for interview and recommend the candidates; and/or

(e) direct the respondents/U.P. Government that thereafter to appoint the candidates in order of their post of preference as was submitted by the candidates during the mains examination; and/or

(f) pass such other or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the present case."

Briefly stated, the facts giving rise to the filing of the present petition are as under:-

> The petitioners and other candidates had appeared in the preliminary and main examinations for the year 1997 conducted by the Uttar Pradesh Public Service Commission [`the UPPSC'] for the posts of Principal, Government Inter College (Boys and Girls) and Senior Lecturer in District Education and Training Institutes along with other posts in the State of U.P. and a combined State/Upper Subordinate Services. A group of candidates appearing for various posts for the years 1996 and 1997 filed writ petitions before the High Court of Judicature at Allahabad.
>
> The High Court in the case of Tulsi Ram and Ors. v. State of U. P. & Ors. [Writ Petition NO.40849 of 1977] while dealing with the case of 1996 batch was pleased to decide the issue with regard to the eligibility criteria. Aggrieved thereby, a number of special leave petitions were preferred by the candidates before this Court.
>
> The writ petition filed by the petitioners for the posts of Principals and Senior Lecturers was dismissed by the High Court with a short order which reads as under:-
>
> "The facts of the case are covered by the judgment of this Court in Tulsi Ram and others vs. State of U.P. & Others in Writ Petition No. 40849 of 1997 decided on 13.5.98.
>
> The writ petition is disposed of on same condition and direction as in aforesaid judgment."

The judgment in Tulsi Ram's case (supra) was challenged before this Court in a group of matters. By an order made on 10.01.2001 in Civil Appeal Nos. 961-962/1999, Civil Appeal No. 1124 of 2000 filed by the present petitioners, was delinked from the said group of matters.

In Civil Appeal Nos. 961-962/1999, titled Mohd. Altaf & Ors. v. Public Service Commission & Anr. this Court decided the question of law that was raised in the aforesaid case of Tulsi Ram. The controversy in Tulsi Ram`s case centered round the interpretation of the eligibility criteria for holding the posts. The eligibility criteria as advertised/notified read as under:

> "(3) For the Post of Principal, Government Inter College (Boys/Girls) and Senior Lecturer in District Education and Training Institute - (1) Post Graduate degree from a recognised university or any degree equivalent thereto recognised by the Government. (2) L.T. Diploma from Education Department of U.P. or B.T. or B.Ed. or any other degree of University equivalent thereto. (3) At least three years' of teaching experience as head of any Senior Secondary or normal School or three years experience of or normal School or three years experience of teaching Intermediate or higher classes or in C.T. or L.T. Training Post Graduate College as lecturer."

It was the case of the petitioners before the High Court that experience contemplated by the above-said eligibility criteria No. 3 was not restricted to teaching in Government schools, while the UP Public Service Commission was of the view that the teaching experience could be counted only if it was in a Government School. This controversy was resolved and settled finally by this Court in Mohd. Altaf's case (supra) by holding that the Lecturers having three years teaching experience in CT/LT colleges in Training Colleges were also eligible, since the Rules nowhere prescribed that teaching experience should be that of a teacher in Government College or aided or unaided Government College or institution. Further, it was observed that teaching experience may be from any Higher Secondary School or High School or from an institute having Intermediate or Higher Classes. Having laid down the law, the UPPSC was directed to implement and carry out the directions of the High Court and prepare a list of eligible teachers for being appointed to the post advertised within a stipulated period. After the list was prepared in accordance with the directions given by this Court on March 14, 2001, the appeals came up for hearing and disposed of by a final order made on 20th February, 2002 and in the concluding paragraph of the order, it is said:-

> "Lastly, it is clarified that the directions issued by this Court on 10.1.2001 as well as today would be implemented in favour of all the eligible candidates."

It was observed in the order dated 10.01.2001:-

> "The aforesaid direction is to be considered in the light of the discussion in the judgment, which specifically provides that if the teachers who have been substantively appointed in accordance with the provisions of the Act and the Regulations framed thereunder are not paid the salary from the public treasury as those institutions were not given maintenance grant/grant-in-aid it cannot be blamed for the lapse on the part of the State Government and such teacher cannot be excluded for being considered to be appointed. The learned counsel for the parties have pointed that most of the matters filed by the teachers are with regard to this clause. It is their contention that if this direction as explained in the body of this judgment stands implemented most of the matters may not survive."

The petitioners thereafter made an application, IA No. 4 of 2003 before this Court placing on record the various orders passed in Mohd. Altaf's case with a prayer that their appeals be also allowed in terms of the orders of this Court dated 10.01.2001 and 20.02.2002 made in C.A. Nos. 961-962/1999 and for consequential directions as prayed for by them. While opposing the prayer made in IA No. 4, the UPPSC filed a counter affidavit in which they have raised a fresh issue that the petitioners were not included in the list of successful candidates because they had failed to qualify the written examination and, therefore, there was no occasion at all to call the unqualified candidates for interview. This stand, however, has been denied by the petitioners in the rejoinder affidavit, wherein it is pointed out that the UPPSC had wrongly included the names of the candidates in the select list, who were originally not even notified in the Official Gazette Notification. Having heard the learned counsel for the parties, this Court on March 07, 2006 held:-

> "In our view, it is not open to the respondents to raise a fresh controversy on facts before this Court for the first time. We are informed, and it is not disputed before us, that the respondents did not file a counter affidavit before the High Court opposing the averments made in the writ petition, nor have they done so before us. The new case sought to be set out, about the appellants not having been qualified in the main examination, appears for the first time in reply to IA 4. Since there has been no investigation of facts in this case, we decline to entertain this controversy. In the result, the appeal is allowed to the extent of directing the respondents to implement the orders in Mohd Altaf dated 10.01.2001 and 20.2.2002 (C.A. Nos. 961- 962/1999) and apply the same eligibility criteria as decided by this Court in the aforesaid orders to the case of the appellants. If it is the case of the respondents that the appellants did not qualify in the main examination and, therefore, they were not called for the interview, it is open to the respondents to pass appropriate orders giving the reason as to why the case of the appellants has not been considered and disclose the marks obtained by them as well as cut-off marks beyond which the candidates were called for interview. It will be equally open to the appellants to challenge such an order, if passed by the UPPSC.
>
> The learned counsel appearing for the UPPSC states that they have already filed a list of candidates whose cases had been considered pursuant to the direction of this Court. As indicated earlier, this controversy being raised for the first time before this Court, we decline to go into it and leave it open.
>
> Since the matter has been considerably delayed, the respondents are directed to pass appropriate orders and communicate them to the appellants within a period of four weeks from today.
>
> The appeal is accordingly allowed with no order as to costs."

It appears from the record that in compliance with the above-extracted order of this Court, the contesting respondents took some decision, which according to the petitioners, is manifestly in violation of the tenor and spirit of the order of this Court. In this petition, it is stated that the

respondents for the first time in their Office Order dated 7.4 2006 took a different stand, which reads as under:-

> "Because during the relevant time according to experience contemplated by the eligibility criterion No. 3 as set by the Commission, the petitioners were found ineligible, therefore they were not called for interview and in view of the observations made by Hon'ble Supreme Court in order dated 20.2.2002, the order dated 10.1.2000 and 20.2.2002 are applicable to those candidates who had appeared in the interview. Therefore in the expressed situation, it has been decided by the Hon'ble Commission that in view of the order dated 20.2.2002 passed by the Hon'ble Supreme Court it is impossible to call the candidates for interview."

It is further stated that in view of the above stand of the respondents, it is clear that the respondents are guilty of wilful and deliberate contempt of this Court as they are time and again changing stands, so as to misguide this Court and are not disclosing the marks obtained by the petitioners, as well as cut- off marks beyond which the candidates were called for interview despite unambiguous directions passed by this Court. It is also stated that this is not the first time when the respondents are deliberately flouting and circumventing the orders passed by this Court. This Court in its earlier judgment dated 28.11.2001 passed in the case of Mohd. Altaf (supra) while dealing with similar situation was pleased to record and observe as under:-

> "....It appears that the UPPSC is interested in suppressing some facts from the court as well as from the candidates who appeared in the examinations for some ulterior purpose. From a constitutional functionary like Public Service Commissions much higher standards are expected not only by the Courts but also by the Public at large. If there is a mal- administrations at the level of Public Service Commissions there would be rampant favoritism in making appointments to the service of the state. Despite our various orders making abundantly clear, today also the affidavit which is filed on behalf of the UPPSC is not complete and contains half truth. ..... In our view, this is an absurd stand because it is the duty of the Public Service Commissions to declare on the Notice Board result indicating marks with all other relevant details. In such examinations transparency is expected and results cannot be kept secret.... Here also the UPPSC wants to play with the court. .... The Chairman and the Secretary of the UPPSC are directed to deposits with the registry cost of 10,000/- each for wasting the court time. Such costs shall be paid by the concerned personally and not by the Commission."

It is further the case of the petitioners that the conduct of the contending respondents speaks of bias and mala fides on their part and they on one pretext or the other have tried to exclude the petitioners from their lawful claim of appointment.

The contempt petition was listed before this Court on 8.5.2006 when this Court passed the following order:-

"Issue notice returnable in the month of July, 2006.

Mr. Shail Kumar Dwivedi, the learned counsel, appears and accepts notice for U.P. Public Service Commission.

Personal presence of respondent Nos. 1 and 2 is dispensed with for the time being."

The matter came up before this Court on number of dates and for one reason or the other at the request of the learned counsel for the U.P. Public Service Commission and the State of U.P., the matter continued to be adjourned from time to time. On 9.3.2007, this Court directed the respondent-U.P. Public Service Commission to bring on record the documents showing recommendations by it. Thereafter, it was on November 14, 2007 that this Court passed the following order:-

"Put up this matter on 16.11.2007 for further hearing at 1.30 p.m. On that day the Secretary of the Education Department, State of U.P. as also the Secretary of the U.P. Public Service Commission shall personally remain present in the Court with all requisite files. In the first half, the said documents would be given to the learned counsel for the petitioners for inspection.

A chart showing the vacancy position as obtaining in the years 1996, 1997, 1999 shall be separately prepared. A Chart shall also be prepared showing the filling up of the vacancies in respect of those years separately including the fact as to whether any of those posts have been filled up from amongst the reserved category candidates.

It will further be shown as to how and in what manner the State in spite of order of this Court, directed the vacancies to be carried forward despite the fact that recommendations were made for filling up the vacancies by the Commission.

The list of 443 candidates in whose favour the recommendations have been made shall be produced before this Court."

Contempt Petition No. 162 of 2007:

In this petition, the petitioners inter alia pray for the following reliefs:-

"(a) initiate contempt proceedings against the contemnors for their willful disobedience and uphold the majesty of this Hon'ble Court; and/or

(b) direct the respondents to recommend the names of the petitioners in terms of the order dated 9.3.2007; and/or

(c) direct the respondents/U.P. Government that thereafter to appoint the candidates in order of their post of preference as was submitted by the candidates during the

mains examination; and/or

> (d) pass such other or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the present case."

On 16.11.2007, an application for exemption from personal appearance of Dr. (Prof.) Ram Sewak Yadav, Chairman of U.P. Public Service Commission and Dr. J.B. Sinha, Secretary U.P. Public Service Commission, was allowed. The matter was ordered to be listed on 10th December, 2007 at 1:30 p.m. and in the meantime the State of UP was asked to allow the learned counsel for the petitioners as also the petitioners to inspect the record which was produced before this Court on that day. When the matter was called for hearing on 8.2.2008, this Court made the following order:-

> "Mr. Colin Gonsalves, learned senior counsel handed over chart to us showing the discrepancies as obtaining in the records maintained by the State of Uttar Pradesh and UPPSC.
>
> Mr. H.N. Salve, learned counsel prays for some time to respond to the said Chart. Mr. Shrish Kumar Misra, learned counsel also joins Mr. Salve, learned counsel in making the said prayer.
>
> List of 443 candidates for the 1997 batch, as directed, be furnished to Mr. Colin Gonsalves.
>
> Issue notice on the application for intervention/direction.
>
> Personal appearance of the alleged contemnors is dispensed with till further orders.
>
> Put up after two weeks."

During the pendency of the contempt petitions, I.A. No. 12 was filed by Mani Ram Singh praying for intervention and making oral submissions in regard to his claim for appointment against the above said post. Notice on this application was issued on 8.2.2008. One application for impleadment in the contempt petitions was filed by Jamna Prasad Gangwar with a prayer to issue direction to the State of U.P. to appoint him and other eligible candidates belonging to the reserved categories of 1996 batch to the posts of Principal of Inter College (Boys/Girls) in the State of U.P. within 15 days and submit its compliance.

In reply to the Contempt Petition) No. 91 of 2006 and I.A. No.12 of 2008, three sets of separate affidavits were filed by the respondents. Prof. Ram Sevak Yadav - respondent No.1 herein, Chairman U.P. Public Service Commission, Allahabad, in his affidavit at the outset, submitted that he has the highest regards for the orders passed by this Court and he has taken necessary action in compliance of the order dated 07.03.2006 passed by this Court in C. A. No. 1124 of 2000. However, in compliance thereto, if there be any kind of discrepancy, bona fide omission or inadvertence in paying due regard to the order of this Court, he submitted his unconditional and unqualified

apology for the same. Further, he submitted that he shall do everything in due compliance of the orders of this Court as may be directed and the Commission being a constitutional body is duty bound to comply with the orders of this Court. He also submitted that he being the Chairman of the Commission has never intended to disobey or to disrespect the orders of this Court or to do anything, which may amount to contempt of the orders of this Court. He submitted that in compliance of the orders of this Court, the petitioners made representation to the Commission and the Commission passed an Office Order on 07.04.2006 on its interpretation of the order dated 20.02.2002 passed by this Court in Civil Appeal Nos. 961-962 of 1999 titled Mohd. Altaf & Ors. v. Public Service Commission & Anr., in which it was ordered that the orders would be applicable to all concerned who appeared in interview on the relevant date. As the petitioners in the present case had not been called for interview till the passing of the order dated 20.02.2002, their case could not be considered. However, after rejection of the representation of the petitioners, the Commission realised that the order dated 20.02.2002 should be made applicable to the petitioners due to their higher marks than the cut-off marks. Accordingly, the Commission took necessary steps by deliberating upon the whole matter in accordance with the orders dated 10.01.2001, 20.02.2002, 28.11.2002, 28.08.2003 and 07.03.2006 passed by this Court. He submitted that in Contempt Petition No.372 of 2002 in Civil Appeal No.962 of 1999, Shamim Khanam v. K. B. Pandey and other connected matters, this Court was pleased to consider the cases of all the candidates who had appeared in the years 1996, 1997 and 1999 Examinations for appointment to the post of Principals in the Government Colleges. The relevant extract of the directions contained in the order dated 05.08.2003 reads as under:-

> "It is ordered that the candidates who had appeared in the year 1996, 1997 and 1999 would be considered for vacancies existing as on 30.06.2003 in accordance with the merit list prepared of all the eligible candidates for the various years."

It is stated that in the said Contempt Petition a clarificatory order dated 28.08.2003 was passed by this Court, which reads as under:-

> "It is further made clear that appointment to these 97 posts would be after earmarking the reserved categories and thereafter on the basis of merit list prepared by the U. P. Public Service Commission for the year 1996 examination. If other vacancies still remain, appointments would be after taking into consideration merit list of 1997 examination and thereafter 1999 examination result."

The first respondent further submitted that having regard to the various orders passed by this Court, the Commission had disclosed the marks to the petitioners and subsequently called them for interview scheduled to be held on 14.07.2006 in the Office of the Commission at Allahabad. All the petitioners appeared before the Interview Board of the Commission. The Commission accordingly revised the Combined Merit List of PCS Examination-1997 for the category of Principals on 14.07.2006 itself. The placement of the petitioners in the aforesaid Combined Merit List has been stated at Sl. Nos. 54, 156, 118 and 104 respectively. The petitioners have been included in the Eligibility List of 1997 along with other candidates. It is submitted that the Commission is not in a position to recommend the candidature of the petitioners to the State Government for the following

reasons:-

> (i) The order dated 28.08.2003 passed by this Hon'ble Court requiring the recommendation against the existing vacancies for the candidates of the 1996 examination first and thereafter for the candidates of 1997 examination.
>
> (ii) The petitioners belong to 1997 examination and in absence of vacancies, their candidature cannot be recommended as directed by this Hon'ble Court vide order dated 28.08.2003.
>
> (iii) The State Govt. vide its letter dated 11.05.2006 addressed to the Commission had already communicated that the State Govt. had decided not to fill up the remaining 45 vacancies on ad-hoc basis. Even if the State Govt. had permitted to fill up the 45 vacancies on ad-hoc basis it would have gone to 70 candidates of 1996 examination in terms of the order passed by this Hon'ble Court on 28.08.2003. Therefore, in any case, it would not be possible to make a recommendation in respect of the petitioners who are eligible candidates of 1997 examination."

Dr. J. B. Sinha, Secretary, UPPSC, filed a separate affidavit in which he pleaded identical statement as stated by the Chairman of the Commission. In rejoinder, the petitioners reiterated the averments made in the Contempt Petition. Dr. J. B. Sinha, Secretary, UPPSC, in his additional affidavit stated that in compliance with the judgment dated 07.03.2006 passed by this Court the petitioners were also placed in the list of eligible Teachers for appointments in the revised list drawn on 14.07.2006. A meeting in this regard was held in the Office of the State Government on 07.03.2007. The State Government has not appointed all the eligible candidates for the examination held in the year 1996. He submitted that no appointment has been made from merit list of eligible candidates for 1997 and 1999 examinations, which had been prepared pursuant to the orders dated 10.01.2001 and 20.02.2002 passed by this Court. He also stated that the Commission vide its letter dated 23.03.2007 addressed to the Secretary, Government of U. P., sent the revised merit list dated 14.07.2006 as well as Notification of the Commission dated 25.07.2006 for taking necessary action at State Government level. He also submitted that there is no willful disobedience to the judgment/orders of this Court and he bow down before the majesty of this Court. He tendered his unconditional apology for any inaction on the part of the Commission or on his part in-person in understanding the true meaning of the judgment of this Court. Copies of the revised combined merit list of the PCS Examination, 1997 (Main) issued on 14.07.2006 for the posts of Principals along with combined merit list of PCS Examination, 1996 (Main) eligible candidates in terms of order of this Court dated 14.08.2003 are placed on record.

Ms. Gayatri Adult, Deputy Director (Services-I), Directorate of Education, Allahabad, in compliance to the order of this Court dated 29.08.2007, filed affidavit on behalf of the State of U. P. and Directorate of Education, Allahabad, (Respondent Nos. 3 &

4) stating therein that 50 posts of Principals, Government of Inter College (Boys and Girls) and 47 posts of Senior Lecturers in District Institutes of Education Training were lying vacant as on

28.08.2003. This Court vide order dated 28.08.2003 was pleased to direct the State of U. P. to fill 52 posts of Principals strictly on the merit list submitted to this Court and regarding remaining 45 posts, it was ordered to leave the same to the State Government to fill them on ad-hoc basis. The Statement Government made appointments of 50 candidates strictly on the basis of merit list. Two posts of reserved category could not be filled as no eligible SC candidates were found. However, the State Government did not make appointments against the 45 remaining posts as there is no provision for making appointment on ad-hoc basis in U. P. Educational (General Educational Cadre) Service Rules, 1992. She submitted that after 27.08.2007, 41 vacancies arose against the posts of Principals on account of promotion of 41 Principals to the post of District Inspector of Schools and out of 41 posts, 35 posts are to be filled against the reserved category candidates selected in the year 1996 and the remaining six to clear the backlog posts, are lying vacant. She submitted that out of 47 newly upgraded posts of Principals in the Colleges, 50% posts of Principals were to be filled by promotion and the remaining 50% by direct recruitment on the basis of the examination conducted by the UPPSC. She submitted that as on 28.10.2007 when this affidavit was filed, there were 29 vacancies of Principals, which are to be filled by direct recruitment and in addition thereto, 3 posts of Senior Lecturers D.I.E.T. are also lying vacant. Further, it is submitted that in the year 1997 the State Government sent requisition for selection of 443 posts of Principals/Senior Lecturers/D.I.E.Ts. and the UPPSC after selecting the candidates, recommended their names for appointment against the required 443 posts. She also submitted that the National Council for Teachers Education has prescribed new educational qualification for appointment to the post of Senior Lecturers for D.I.E.T. and the minimum qualification is M.Ed. which earlier was B.Ed.

In reply to I.A. No. 12 of 2008, Prof. Ram Sevak Yadav, Chairman, UPPSC, Allahabad, submitted that the applicant- Mani Ram Singh is placed at Serial No.75 of the Combined Merit List of PCS Examination, 1996 (Main) eligible candidates. The Commission vide its letter 132/9/E-2/97-98 dated 01.10.2003 had sent recommendation of 52 candidates. Further 2 posts of Scheduled Tribe candidates could not be filled as suitable candidates were not available in any of the recruitment years 1996, 1997 and 1999. Later on, the State Government informed the Commission vide its letter No.315/15-1-08-8(3)/03 dated 05.02.2008 that out of 52 candidates only 46 candidates could get appointment against the posts in question. Four candidates could not join their place of posting, so the State Government decided to fill those four vacancies [2 General + 2 OBC] from the eligibility list of 1996 Examination, which is under consideration of the Commission. He stated that as far as 45 unfilled vacancies are concerned, State Government decided vide its letter No.15/24/97-ka-4-06 dated 11.05.2006 not to fill those vacancies. On similar line, counter affidavit has been filed by Shri Santosh Kumar Srivastava, Secretary, UPPSC, Allahabad. Along with their affidavits, copy of confidential letter dated 01.10.2003 written by Shri Pawan Kumar, Secretary, UPPSC, Lucknow, to the Secretary, Personnel Section-4, Government of U.P., Lucknow, sending recommendations according to the result of 52 vacancies of the post of Principals/Senior Lecturers on the basis of merit list of 120 new eligible candidates of Principal Examination, 1996, in compliance with the orders of this Court dated 28.08.2003 giving details of the division of the vacancies occurred year-wise upto 30.06.2003 and the number of candidates selected in General and Reserved categories.

Mr. Colin Gonsalves, learned Senior Advocate for the petitioners, contended that the Chairman of UPPSC, the Secretary of UPPSC and the Department of Education of the U.P. Government have willfully and deliberately disobeyed the orders dated 07.03.2006 and 09.03.2007 passed by this Court. He submitted that despite the order in Mohd. Altaf's case laying down the eligibility criteria, the respondents intentionally refused to apply the same criteria as decided by this Court in the case of the petitioners herein. This Court vide order dated 07.03.2006 directed that the law laid down in Mohd. Altaf's case would apply in the case of the petitioners as well, but the respondents firstly took the stand that the petitioners have not qualified the written examination and later on, they have admitted that the petitioners had qualified in the written examination, but they had not appeared in the interview. He submitted that at least the respondents have entirely taken a new stand that there existed no vacancies against which the petitioners could be appointed. He has brought to our notice the order dated 28.11.2001 passed by this Court in Civil Appeal Nos.961-962 of 1999 titled Mohd. Altaf & Ors. v. Public Service Commission & Anr. whereunder strictures were passed against UPPSC for acting arbitrarily, for showing "rampant favourtism" for taking an "absurd stand" and for "playing with the court by taking the stand that there are no vacancies." The learned senior counsel has relied upon the statement of the then Education Minister made in the U. P. Legislative Council stating that there were 113 vacancies for the year 1996, 164 vacancies for the year 1997 and 90 vacancies for the year 1999 as on 03.03.2005 as per Annexure R-3 attached with the rejoinder to contend that the stand of the respondents that there are no vacancies available against which the petitioners can be appointed, is absolutely incorrect and in violation of the order of this Court.

In compliance with the order dated 14.11.2007, Mr. Harish N. Salve, learned senior counsel appearing on behalf of the Chairman and the Secretary, UPPSC, has placed before us Chart showing vacancy position as obtaining in the year 1996, 1997 and 1999. The details of 1996, 1997 and 1999 selection for the post of Principals in Government Inter Colleges (Boys and Girls) and for the post of Senior Lecturer in District Education & Training Institutes before 28.08.2003 are given as under:-

> "Break-up for the year 1996, 1997 and 1999 vacancies YEAR VACANCY POSTS SELECTED POSTS CARRY FORWARD POSTS 1996 216 105(104+1) 216-105=111 1997 443 (332 +111) 279(19+124+124+12) 443-279=164 1999 64(General Recruitment 54 64-54=10 1999 164(Special Recruitment) 75 113-75=38 164-51* = 113 51* = Vide High Court order in Writ Petition No. 26986/1998 -

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      selection for 51       posts stayed.
      Hence, selection       for 113 was
      made.
 AFTER 28.08.2003:
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> 97 - Vacancies were informed by the Government vide letter dated 19.09.2003 out of which 50 names were recommended as per directions of Hon'ble Court in the order dated 28.08.2003 FRESH ELIGIBILITY LIST AFTER HON'BLE SURPEME COURT ORDER DATED 28.08.2003.

> YEAR 1996 List of 120 candidates (pg. 193-197) all categories

i) Break-up of 120 candidates S.No. Requisition To Ge Sc Sc Oth Re received tal ner he he er ma from the No al dul dul Bac rks Governmen . ed ed k-

	t	of candidates		Castes	Tribes	ward classes
1		120	52	22	Nil	46

YEAR 1997

List of 154 candidates (pg. 206-212) all categories

i) Break-up of 154 candidates S.No. Requisition To Ge Sc Sc Oth Re received tal ner he he er ma from the No al dul dul Bac rks Governmen . ed ed k-

	t	of candidates		Castes	Tribes	ward classes
1		154	121	07	Nil	26
2	Merit List revised on 14.07.2006	158	125	07	Nil	26

YEAR 1999

List of 98 candidates all categories

i) Break-up of 98 candidates S.No. Requisition To Ge Sc Sc Oth Re received tal ner he he er ma from the No al dul dul Bac rks Governmen . ed ed k-

	t	of candidates		Castes	Tribes	ward classes
1		98	53	14	Nil	31

Note: In compliance of Hon'ble Supreme Court order dated 28.08.2003 only 50 candidates recommended from the eligible candidates of the year 1996 as per vacancy informed by State Government on 19.09.2002.

Break-up for year 1996 vacancies for the post of Principals in Government Inter Colleges (Boys & Girls) S.No Requisition To G S S Ot . received tal e c c he from the No n h h r Remarks Government . of er e e Ba Po al d d ck sts ul ul -

				e d C a st es	e d Tr ib es	wa rd cla ss es	
1		216	10	46	04	58	
2	Selected	104 + 1*	10 1	03	Nil	Nil	* 1 (one) General General vacancy reserved as per orders of Hon'ble High Court in Subhash Babu Vs. U.P.P.S.C. & Ors.
3	Carry forward vacancies	111	06	43	04	58	

Details of vacancies filled-up by 1997 Examination Government sends requisition for 548 posts of Principals in Government Inter Colleges (Boys & Girls) and for the post of Sr. Lecturer in District Education & Training Institutes. Thereafter, Government vide letter no. 1978/15-1-97-8(2)/95 T.C., dated 05th September, 1997. Informed U.P.P.S.C. that 548 posts includes 216 posts for which requisition has already been sent to the U.P.P.S.C. in 1996 as a result of which only 332 vacancies are available for 1997 Examination and 111 carry forward vacancies of 1996 Examination are available. Details break-up of these posts were sent by Government Letter No. 2561/15-1-96-8(2)/95, dated 19th August 1996.

Total no. of posts 332 are bifurcated as below:-

> Principals - 146 (19 for Plain Cadre + 127 for Hill Cadre) Sr. Lecturers - 186 (162 for Plain Cadre + 24 for Hill Cadre) Carry forward vacancies of 1996 Exam. For (Principals) Hill Cadre - 111 Posts Total No. of Vacancies (146+186+111)=443 for which selection was made.

A. Details of 19 posts for Principals (Plain Cadre) S.No Requisition To G Sc Sc Ot R . received from tal e he he he emark the No n dul dul r s Government . of er ed ed Ba Po al Ca Tri ck sts ste be -

				s	s	wa rd cla ss es
1		19	09	04	Nil	06

2	Selected	19	09	04	Nil	06

B. Details of 127 Posts for Principals (Hill Cadre) S.No Requisition Tot G S Sc Ot Re . received from the al e c he her ma Government No. n h dul Ba rks of er e ed ck-

		Po sts	al	d ul e d C a st e s	Tri be s	wa rd cla sse s
1		127	63	27	02	35
2	Carry forward vacancies of 1996 exam.	111	06	43	04	58
3	Total	238	69	70	06	93
4	Selected	124	69	26	01	28
5.	Carry forwarded vacancies	114	Nil	44	05	65

C. Details of 162 Posts for Sr. Lecturers (Plain Cadre) S.No Requisition To G Sc Sc Ot Rema . received from tal e he he her rks the No n dul dul Ba Government . of er ed ed ck-

		Po sts	al	Ca ste s	Tri be s	wa rd cla sse s
1		162	81	34	03	44
2	Selected	124	81	18	Nil	25
3	Carry forward vacancies	38	Nil	16	03	19

D. Details of 24 Posts for Sr. Lecturers (Hill Cadre) S.No Requisition To G Sc Sc Ot R . received from tal e he he he emark the No n dul dul r s Government . of er ed ed Ba Po al Ca Tri ck sts ste be -

s	s	wa rd cla ss es

1		24	12 05	Nil	07
2	Selected	12	12 Nil	Nil	Nil
3	Carry forward 12 vacancies		Nil 05	Nil	07

Details of Vacancies filled-up by 1999 Examination (Special Recruitment) A. Details of 164 Posts for Principals (Plain Cadre) S Requ T G Sc S O . isitio ot e he c t N n al n du h h Remarks o recei N e le e er . ved o. r d d B from of a Ca ul a the P l ste e c Govt. o s d k st T -

	s			ribes	wardclasses	
1	164	0	65	08	91	Vide High Court order in Writ Petition No. 26986/1998 - selection for 51 posts stayed. Hence, selection for 113 was made.

B. Selection for 113 posts:-
Principals - 63 (Hill Cadre)

Sr. Lecturers - 50 (38 for Plain Cadre + 12 for Hill Cadre)

i) Break up for post of Principals - 63 Hill Cadre S.No. Requisition To Ge Sc Sc Oth Re received tal ner he he er ma from the No al dul dul Bac rks Governmen . ed ed k-

	t	ofcandidates		Castes	Tribes	wardclasses
1		63	0	24	03	36
2	Selected	44	0	20	01	23
3	Carry Forward	19	0	04	02	13

i) Break up for post of Sr. Lecturers - 38 PlainCadre S.No. Requisition To Ge Sc Sc Oth Re received tal ner he he er ma from the No al dul dul Bac rks Governmen . ed ed k-

t of Ca Tri war

		ca nd id at es		ste s	be s	d clas ses
1		38	0	16	03	19
2	Selected	31	0	12	Nil	19
3	Carry Forward	07	0	04	03	Nil

i) Break up for post of Principals - 12 Hill Cadre S.No. Requisition Tot G S Sc Ot R received from the al e c he her e Government No. n h dul Ba m of e e ed ck- ar ca r d Tri wa k ndi a ul be rd s dat l e s cla es d sse C s a st e s 1 12 0 05 Nil 07 2 Selected Nil 0 Nil Nil Nil 3 Carry Forward 12 0 05 Nil 07 Details of vacancies filled-up by 1999 Examination (General Recruitment) Special Selection for 64 posts which are bifurcated as below:-

A. Details of 64 posts for Principals (15 for Plain Cadre + 49 for Hill Cadre)

i) Break up for post of Principals - 15 for Plain Cadre S.No Requisition To G Sc Sc Ot R . received from tal e he he he emark the No n dul dul r s Government . of er ed ed Ba Po al Ca Tri ck sts ste be -

				s	s	wa rd cla ss es
1		15	08	03	Nil	04
2	Selected	15	08	03	Nil	04

ii) Break up for post of Principals - 49 for Hill Cadre S.No Requisition To G Sc Sc Ot Rem . received from tal e he he her arks the No n dul dul Ba Government . of er ed ed ck-

		Po sts	al	Ca ste s	Tri be s	wa rd cla sse s
1		49	25	11	01	12
2	Selected	39	24	05	Nil	10
5.	Carry forwarded vacancies	10	01	06	01	02

Hon'ble High Court vacated the stay order passed in Writ Petition No. 26986/1998 on 16.03.2001 as a result of 51 posts which were of Hill Cadre after creation of Uttaranchal State U.P.P.S.C. unable to fill up the aforesaid vacancies.

U.P. Government vide its letter No. 2513/15-1-2003-27(40)/02 dated 19th September, 2003 informed that there are 97 vacancies available till 30th June, 2003. Details of abovementioned posts as follows:-

Principals Government Inter College (Boys & Girls)] Total Post - 50] Total 97 Sr. Lecturer in Education & Training Institutes:] vacancies Total Post - 47] Principals Government Inter College (Boys & Girls):

Total Post - 50

i) Break-up of 50 post for Principals Government Inter College (Boys & Girls) S.No Requisition To G Sc Sc Ot Remarks . received from tal e he he her the No n dul dul Ba Government . of er ed ed ck-

			Po sts	al	Ca ste s	Tri be s	wa rd cla sse s	
1		50		26	13	02	09	
2	Selected	48		26	13	Nil	09	
3	Carry forward vacancies	02		Nil	Nil	02*	Nil	* No ST candidate was available

Sr. Lecturer in Education & Training Institutes Total Post - 47

i) Break-up of 47 posts for Sr. Lecturer in Education & Training Institutes S.No Requisition To G Sc Sc Ot Remar . received from tal e he he he ks the No n du du r Government . e led led B of r Ca Tri ac Po al ste be k-

			st s		s	s	w ar d cl as se s	
1		47		35	08	03	01	
2	Selected	02		02	Nil	Nil	Nil	
3	Carry forward vacancies	45		33	08	03*	01	* No ST candidate

was
available

Learned senior counsel for the petitioners contended that as per the vacancies indicated in the above-stated Chart, General Category appointments for 1996 batch were over-stated and Reserved Category appointments were under-stated, thus, the seats available to the General Category were not completely reflected in the said Chart. According to the petitioners, transfer of Reserved Category candidates getting age relaxation, lower cut-off marks in Preliminary Examination and also in Main Examination coupled with fees relaxation cannot validly be transferred to General Category. The petitioners also contended that neither UPPSC nor the Deputy Director of Education in their affidavits have whispered a word about any mistake having occurred while giving 548 vacancies in advertisement issued on 01.01.1997 and the stand now taken in the chart that 548 vacancies for 1997 batch was wrongly published in the advertisement can now be accepted.

Having gone through the details of vacancies for the years 1996, 1997 and 1999 for the post of Principals and Senior Lecturers in District Education & Training Institutes, as shown in the above-extracted Chart, we find that the UPPSC has satisfactorily explained that the advertisement of 548 posts was made as per the requisition of the State Government which numbers were later on found to be wrong, because 216 vacancies which were advertised in 1996 batch, were wrongly included in 548 vacancies. The vacant posts for 1997 batch were only 332 and not 548 and 111 vacancies carried forward from 1996 batch, the total vacancies in 1997 were 443. The petitioners also contended that 14 new District Institutes of Education & Training have come into existence, thus, creating 84 more vacancies for the post of Senior Lecturers and the petitioners' version is that there are, in all, 180 total vacancies for General Category (46 unfilled for 1996 batch, 41 from 1997 batch less (requisitioned) and 93 from 1997 batch (persons not joined). The petitioners have also submitted a chart in which they have given position of additional seats becoming available due to various miscellaneous reasons as on date in addition to the seats which still remained to be filled from the list of successful/recommended candidates of 1997 batch. As per the Chart produced before us, the petitioners have stated that there are as many as 338 total vacancies for general category available with the State of U.P. against which the four petitioners who filed Civil Appeal No.1124 of 2000 can be conveniently adjusted/appointed and the stand of the respondents not appointing the petitioners against the available posts is wholly unwarranted and unjustified. We regret our inability to accede to the contentions raised by the learned counsel for the petitioners.

A cursory glance of the Contempt of Courts Act, 1971 and the provisions thereof makes it abundantly clear that the Act has been brought in the Statute book to define the limit and powers of certain Courts punishing for contempt of courts and it has laid down the procedure for exercise of such powers. Contempt of Court has been defined under Section 2(a) of the Act, to mean civil contempt or criminal contempt. `Civil Contempt' has been defined under Section 2(b) of the Act to mean `wilful disobedience of any judgment, decree, direction, order, writ or other process of court of willful breach of undertaking given to a court.' It is by now well-settled under the Act and under

Article 129 of the Constitution of India that if it is alleged before this Court that a person has willfully violated its order it can invoke its jurisdiction under the Act to enquire whether the allegation is true or not and if found to be true it can punish the offenders for having committed `civil contempt' and if need be, can pass consequential orders for enforcement of execution of the order, as the case may be, for violation of which, the proceeding for contempt was initiated. In other words, while exercising its power under the Act, it is not open to the court to pass an order, which will materially add to or alter the order for alleged disobedience of which contempt jurisdiction was invoked. When the Court directs the authority to consider a matter in accordance with law, it means that the matter should be considered to the best of understanding by the authority and, therefore, a mere error of judgment with regard to the legal position cannot constitute contempt of court. There is no willful disobedience if best efforts are made to comply with the order.

Having considered the entire factual backdrop of the matter and given our due consideration to the above extracted various orders passed by this Court in this case and having considered the detailed explanations given by the Chairman, UPPSC, Secretary, UPPSC, and Deputy Director [Education] in their respective affidavits as noticed above which in our view are quite satisfactory and further examination of the details of year-wise vacancies position for the posts in question stated in the above- extracted Chart submitted by the UPPSC, it cannot be said that a deliberate circumvention and dubious method was adopted by the contesting respondents to avoid implementation of the judgments/orders of this Court nor the facts and circumstances mentioned above would establish that the contesting respondents have willfully or deliberately disobeyed the judgments/orders of this Court dated 07.03.2006 and 09.03.2007 as alleged by the petitioners. In terms of the order dated 07.03.2006, the respondents have passed an appropriate order which was communicated to the petitioners. The UPPSC have placed on record all the relevant documents relating to these proceedings as directed by this Court in its order dated 09.03.2007.

In the result, there is no merit in these contempt petitions and they are, accordingly, dismissed. We, however, make it clear that the contesting respondents are not precluded from considering the legitimate claims of the petitioners as well as the applicants who have filed Interlocutory Applications before this Court if they are otherwise eligible in accordance with law. As no substantive relief, as prayed for by the applicants in their applications, can be granted to them in these contempt proceedings these applications shall stand disposed of.

....J. (S. B. Sinha) ....J. (Lokeshwar Singh Panta) New Delhi, July 24, 2008.

J.S. Parihar vs Ganpat Duggar & Ors on 11 September, 1996

Equivalent citations: AIR 1997 SUPREME COURT 113, 1996 AIR SCW 4272, 1997 (1) SERVLJ 236 SC, (1997) 1 SERVLJ 236, (1996) 9 JT 608 (SC), 1996 (6) SCC 291, 1996 (9) JT 608, (1997) 1 LAB LN 66, (1996) 6 SERVLR 723, (1997) 2 CIVLJ 375, 1996 SCC (L&S) 1422, (1997) 6 SUPREME 133

Author: K. Ramaswamy

Bench: K. Ramaswamy

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            PETITIONER:
J.S. PARIHAR

        Vs.

RESPONDENT:
GANPAT DUGGAR & ORS.

DATE OF JUDGMENT:       11/09/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
FAIZAN UDDIN (J)
G.B. PATTANAIK (J)




ACT:



HEADNOTE:



JUDGMENT:
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O R D E R We have heard the counsel on both sides. Leave granted.

These appeals by special leave arise from the order of the Division Bench dated April 3, 1996 made in Special Civil Appeal Nos. 1 & 2 of 1995. The facts are not in dispute. The controversy relates to the preparation of the controversy relates to the preparation of the seniority list of the engineers in Rajasthan Civil Engineering Services (Public Health Branch). In W.P.No. 560/79 by order dated

October 6, 1988 the Division Bench of the High Court declared the seniority list prepared with retrospective effect in terms of the amended Rules as unconstitutional; it accordingly quashed the list and directed preparation of the seniority list afresh to determine the inter se seniority on that basis and to grant promotion to the appellants within the specified time. The same order came to be reiterated by order of another Division Bench dated September 9,1989 made in W.P. No. 1074/80. It was further reiterated in the order dated March 22,1990. When the seniority list came to be prepared, the contempt proceedings were initiated under Section 12 of the Contempt of Courts Act, 1971 (for short the "Act"). The learned single Judge on consideration of the merits in the seniority held that the respondents had not willfully disobeyed the orders of the Court and gave directions as under:

"In Gyaneshwar's case, only retrospectivity of these amendments was challenged and, therefore, it was felt by the learned Judges of the Division Bench that retrospectivity of these amendments has already been held to be ultra vires in Kailash Chand Goyal's case and so, it had not been declared as such afresh. In that case, the notifications whereby amendments were introduced were not challenged but only their retrospectivity was challenged and, therefore, the decision of this Court in Gyaneshwar's case does not hold the filed. The controversy raised in this case is squarely covered by the decision of this Court in Kailash Chand Goyal's case (supra) and in Kailash Chand Goyal's case, the impugned notifications Annexures 5 to 6 have been quashed in their entirety and so the seniority of the petitioner has to be determined on the basis of the directions given by this Court in Kailash Chand Goyal's case (supra) and promotions have to be accorded accordingly. Of course, it appears quite just and reasonable that the nonpetitioners did not intend to disobey the directions given by this Court on account of the legal advice that has been tendered to them and on account of certain interpretations put to the judgment rendered in Kailash Chand Goyal's case (supra) on the basis of Gyaneshwar's case (supra) and as some confusion prevailed with the nonpetitioners on account of that, they could not comply this order.

However, the non-petitioners are directed to comply with the order of this Court dated 22.3.1990 by giving effect to the ratio of the decision that has been rendered by a Division Bench of this Court in Kailash Chand Goyal's case (supra) and the seniority list should be prepared as directed in the judgment in Kailash Chand Goyal's case (supra) and promotions should be accorded accordingly. If this order is not complied with within a period of six months from today, the petitioner will be free to move a contempt petition afresh against the non-petitioners."

The State had filed appeal against these directions. A preliminary objection was taken on the maintainability of the appeal and also arguments were advanced. The Division Bench while holding the appeal as not maintainable under Section 19 of the Act, held that the appeal would be maintainable as a Letter Patent Appeal as the direction issued by the learned single Judge would be a judgment within the meaning of Clause (18) of the Rajasthan High Court Ordinance. Accordingly the Division Bench set aside the directions issued by the learned single Judge. Thus these appeals by special leave.

The question is: whether an appeal against the directions issued by the learned single Judge is maintainable under Section 19 of the Act? Section 19 of the Act envisages that "an appeal shall lie as

of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt where the order or decision is that of a single Judge, to a bench of not less than two Judges of the Court." Therefore, an appeal would lie under Section 19 when an order in exercise of the jurisdiction of the High Court punishing the contemner has been passed. In this case, the finding was that the respondents had not willfully disobeyed the order. So, there is no order punishing the respondent for violation of the orders of the High Court. Accordingly, an appeal under Section 19 would not lie.

The question then is: whether the Division Bench was right in setting aside the direction issued by the learned single Judge to redraw the seniority list. It is contended by Mr.S.K. Jain, learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision take by the Government in preparation of the seniority list in the light of the law laid down by three benches, the learned Judge cannot come to a conclusion whether or not the respondent had willfully or deliberately disobeyed the orders of the Court as defined under Section 2(b) of the Act. Therefore, the learned single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2.7.1991. Subsequently promotions came to be made. The question is:

> whether seniority list is open to review in the contempt proceedings to find out, whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the willful violation of the order. After re-exercising the judicial review in contempt proceedings, afresh direction by the learned single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the single Judge, the Division Bench corrected the mistake committed by the learned single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned single Judge when the matter was already seized of the Division Bench.
>
> The appeals are accordingly dismissed. It may be open to the aggrieved party to assail the correctness of the seniority list prepared by the State Government, if it is not in incomformity with the directions issued by the High Court, if they so advised, in an appropriate forum. No costs.

Manish Gupta And Others vs Gurudas Roy on 9 February, 1995

Equivalent citations: AIR1995SC1359, 1995LABLC1611, 1995(1)SCALE664, (1995)3SCC559, 1995(1)UJ500(SC), AIR 1995 SUPREME COURT 1359, 1995 AIR SCW 1318, 1995 LAB. I. C. 1611, (1995) 29 ATC 646, 1995 (3) SCC 559, 1995 SCC (L&S) 753, (1995) 2 SERVLR 58

Author: S.C. Agrawal

Bench: S.C. Agrawal

ORDER

S.C. Agrawal, J.

1. Leave granted.

2. We have heard learned Counsel for the parties.

3. This appeal is directed against the order dated September 7, 1993 passed by the Calcutta High Court in Civil Rule No. 2650 of 1990 whereby the appellants have been held guilty of Contempt of Court for having failed to comply with the directions contained in the order dated September 20, 1989 passed by the Division Bench of Calcutta High Court in F.M.A.T. No. 1120 of 1988 dismissing the said appeal against the judgment and order dated March 10, 1988 passed by a learned single Judge in Civil Rule No. 561(W) of 1984. By the impugned order the learned Judges of the High Court, after holding that the appellants are guilty of Contempt of Court, have directed:

> However before punishing the contemnors for wilful violation of the order dated 20.9.89 we wish to give an opportunity to the respondents to purge themselves of their contumacious conduct and accordingly direct the respondents (i) to fix the basic pay of the petitioner as on 26.7.80 at Rs. 475/- in keeping with the basic pay accorded to Hrishikesh Roy; (ii) calculate the petitioners pay thereafter in keeping with the pay given to Hrishikesh Roy; (iii) grant the petitioner the benefit of the revised scales of pay under the 1990 ROPA Rules and; (iv) pay to the petitioner the amount of pay on such basis within six weeks from the date of this order.

4. The High Court also directed the appellants to pay a sum of Rs. 5,000/- to the respondent to be adjusted against the entitlement of the respondent in accordance with the impugned order.

5. The facts giving rise to the filing of the Contempt Petition by the respondent are briefly as under:

6. The respondent was appointed as a Lower Division Clerk in the pay scale Rs. 125-200/- in the Office of the Director, Public Vehicles Directorate on September 1, 1965. On May 27, 1969 he joined the Ghosh Commission of Enquiry as a Lower Division Assistant in the pay scale Rs. 150-250/-. The said appointment was by way of deputation. On his release from deputation the respondent joined the Home Department as a Lower Division Assistant on June 4, 1971. He was regularised on the post of Lower Division Assistant with effect from June 4, 1976 by order dated March 21, 1977. In the draft gradation list of Lower Division Assistants of the Home Department as on January 1, 1982 his seniority was shown on the basis of his having been appointed as Lower Division Assistant on June 4, 1971. Feeling aggrieved by his placement in the said gradation list the respondent filed a Writ Petition (Civil Rule No. 561(W) of 1984) which was allowed by a learned single Judge of the High Court by judgment dated March 10, 1988. It was held that the seniority of the respondent on the basis of Lower Division Assistant should be computed with effect from May 27, 1969 when he was sent on deputation to the Ghosh Commission of Enquiry as a Lower Division Assistant The learned single Judge while allowing the said Writ Petition gave the following directions:

> The draft gradation list is set aside and quashed. The respondents are directed to determine the seniority of the petitioner on the basis of continuous length of service from 27th May, 1969 and confer upon the petitioner all consequential benefits.

7. The Letters Patent Appeal (F.A.M.T. 1120 of 1988) filed against the said judgment of the learned single Judge was dismissed by a Division Bench of the High Court by judgment dated September 20, 1989.

8. During the pendency of the said Writ Petition of the respondent before the High Court he was appointed as Upper Division Assistant on officiating basis with effect from April 1, 1981. After the decision of the Division Bench of the High Court dated September 20, 1989 order dated January 22, 1990 was passed whereby the pay of the respondent as Upper Division Assistant was refixed. On January 30, 1990 the gradation list corrected up to March 31, 1989 was circulated wherein the position of the respondent was fixed as if he had joined as Lower Division Assistant on June 4, 1971. By order dated July 24, 1990 the respondent was promoted on the post of Upper Division Assistant with effect from July 26, 1980. The said order was passed by antedating the seniority of the respondent on the basis that he was working on the post of Lower Division Assistant with effect from May 27, 1969. By another order dated October 23, 1990 the Common Gradation List of Secretariat Upper Division Assistants was revised.

9. Feeling aggrieved by the fixation of his pay the respondent, on August 9, 1990, filed the Contempt Petition (giving rise to this appeal) in the Calcutta High Court wherein the respondents complaint was that by order dated January 22, 1990 the pay scale of the respondent had been reduced to a level lower than what he was enjoying prior to order dated September 20, 1989 passed by the Appellate Bench. During the pendency of the said Contempt Petition order dated November 8, 1990 was passed whereby the pay of the respondent on the post of Upper Division Assistant was fixed under the pre-1990 scales of pay. This fixation was done pending his exercising the option under

West Bengal Services (Revision of Pay and Allowances) Rules, 1990, hereinafter referred to as 'the 1990 Rules'. By another order dated December 27, 1990 relaxation was given under Rule 5 of the 1990 Rules to the respondent to exercise his option within 30 days from the date of the issue of the said order. The respondent, however, did not exercise his option and, therefore, his pay was not fixed as per the revised rules. On December 17, 1992 order was passed in the contempt proceedings by the High Court whereby it was recorded that the respondent had exercised his option for the new pay scales and the appellants were directed to recalculate the benefits on the basis of the option exercised. After the passing of the said order dated December 17, 1992, an order dated January 6, 1993 was issued whereby the pay of the respondent was refixed and a sum of Rs. 16,508/- towards arrears for the period from April 1, 1989 to December 30, 1992 was paid to the respondent on January 15, 1993.

10. The grievance of the respondent on the contempt proceedings was in respect of the following matters:

> (i) He should have been given promotion on the post of Upper Division Assistant from an earlier date because one Hrishikesh Roy, who admittedly joined the department as a Lower Division Clerk several months after the respondent, was promoted as Upper Division Assistant on the same date as the respondent, i.e., July 26, 1980;
>
> (ii) There was delay in effecting the promotion;
>
> (iii) The draft gradation list updated up to March 31, 1989 circulated on January 30, 1990 was in contravention of the order of the Appellate Bench dated September 20, 1989 and the correction in the said gradation list was made after the contempt notice was issued;
>
> (iv) The basic pay of the respondent, as on May 1, 1991, was fixed at Rs. 2070/- whereas Hrishikesh Roy, who was junior to the respondent, was drawing the basic pay of Rs. 2135/- at the time his retirement on March 31, 1991; and
>
> (v) The respondent should have been given the benefit of special pay of Rs.30/- which he had been drawing when he was sent on deputation.

11. The High Court has not accepted the contention urged on behalf of respondent that he should have been promoted as Upper Division Assistant from a date earlier to July 26, 1980 and has held that in the absence of particulars of any employee junior to the respondent being promoted earlier the choice of the same date of promotion as Upper Division Assistant for Hrishikesh Roy and the respondent could not, without more, be faulted. As regards the complaint about delay in the promotion the High Court has observed that though there was about one year's delay from the date of the Appellate Bench's order in effecting the promotion, but the delay in this regard is not so unreasonable as to be contumacious inasmuch as the order of promotion was issued before the Contempt Rule was issued. The contention of the respondent regarding special ay of Rs. 30/- was

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also not accepted and it has been held that the said special pay was withdrawn after the respondent returned from deputation and he had accepted the basic pay from 1979 without such special pay and he could not insist on the addition of special pay now. The appellants have been found guilty of contempt of Court on following grounds:

> (1) The graduation list corrected up to March 31, 1989 circulated on January 30, 1990 was in contravention of the order of the Appellate Bench inasmuch as in the said gradation list the seniority of the respondent was fixed as if he had joined on June 4, 1971 whereas the direction of the Court was that the respondent should be treated as in service from May 27, 1969. The correction in the gradation list was made after the Contempt Rule was issued and thus the appellants had violated the first direction given by the learned single Judge in the earlier Writ Petition which was upheld by the Division Bench in appeal.
>
> (2) The second direction given by the Appellate Bench which required the appellants to confer consequential benefits on the respondent was not correctly implemented because in view of the provisions of Rule 55(4) of the West Bengal Service Regulations, Part I, the respondent was entitled at least to the same pay as Hrishikesh Roy and no reason and explanation had been offered for denying the same to the respondent. The High Court was also of the view that by issuing the order dated January 22, 1990 the appellants had violated the mandate to grant to the respondent consequential benefits which he was enjoying before he was declared successful in the litigation.

12. Before we proceed to examine whether the conduct of the appellants constitutes contempt, we consider it necessary to point out that for the purpose of Civil Contempt it is necessary that there should be wilful or deliberate disobedience of orders of the Court. It has also to be borne in mind that the Appellate Bench has not provided any period for complying with the directions given in the order dated September 20, 1990.

13. As regards violation of the first direction regarding the Fixation of seniority of the respondent in the cadre of Upper Division Assistant it may be stated that it is not disputed that the said seniority has been correctly determined by order dated October 23, 1990. All that has happened is that this correction was made after the rule was issued on the Contempt Petition and that the gradation list updated up to March 31, 1989 that was circulated on January 30, 1990 did not give effect to the order of the Appellate Bench dated September 20, 1989 because in the said gradation list the position of the respondent was fixed as if he had joined on June 4, 1971 whereas the direction of the Court was that he should be treated as in service on May 27, 1969. In our opinion, the said conduct of the appellants in circulating the said gradation list on January 30, 1990 cannot be construed as wilful or deliberate disobedience of the order dated September 20, 1989 passed by the Appellate Bench dated September 20, 1989. In order to give effect to the order of the appellate Bench dated September 20, 1989 the matter of promotion of the respondent as Upper Division Assistant had to be reviewed on the basis of his being treated, in service since May 27, 1969. This was done by order dated July 24, 1990 whereby the respondent was promoted as Upper Division Assistant with effect

from July 26, 1980. On January 30, 1990 when the gradation list was circulated the date of promotion of the respondent had not been revised and, therefore, the said gradation list was prepared on the basis of the date of his promotion that was operative on January 30, 1990. After issuance of the order dated July 24, 1990 revising the date of promotion of respondent the seniority of the respondent in the gradation list was corrected by order dated October 23, 1990 on the basis of the revised date of promotion is per order dated July 24, 1990. The fact that during this period between July 24, 1990 and October 23, 1990 the respondent had filed the Contempt Petition and the High Court had issued the rule on the said petition cannot lead to the inference that there was an intention to wilfully disobey the directions given by the Appellate Bench in its order dated September 20, 1989 in the matter of fixation of the seniority of the respondent. In this context, it cannot be ignored that the process of implementation of the directions given by the Appellate Bench had commenced before the filing of the Contempt Petition and the order dated July 24, 1990 revising the date of promotion of respondent to the post of Upper Division Assistant had been passed prior to the filing of the Contempt Petition by the respondent. In these circumstances, it cannot be held that by circulating the gradation list on January 30, 1990 the appellants had violated the first direction given by the Appellate Bench.

14. As regards implementation of the second direction given by the Appellate Bench the High Court has found fault with the order dated January 22, 1990, whereby the pay of the respondent as Upper Division Assistant was fixed after the order of the Appellate Court dated September 20, 1989. The High Court has observed that by the said order the basic pay of the respondent on the post of Upper Division Assistant was fixed at a level lower than the basic pay which he was drawing prior to the passing of the order of the Appellate Bench. On behalf of the appellants it was pointed out before the High Court that on his opting for the revised scale of pay under the West Bengal Service (Revision of Pay and Allowances) Rules, 1981 with effect from May 2, 1981 the respondent began drawing pay at the rate of Rs. 445/- per month as Lower Division Assistant, but this was subject to verification and correction of the pay statement by the Finance Department and that subsequently the Finance Department fixed his pay at Rs. 430/- per month with effect from May 2, 1981 in the revised scale of pay of Lower Division Assistant. By order dated January 22, 1990 the pay of the respondent was fixed having regard to his officiating promotion as Upper Division Assistant with effect from April 1, 1981 vide order dated June 13, 1988. In the Contempt Petition the respondent has stated:

> By reason of such purposed refixation the basic pay of your petitioner will be reduced to Rs. 600/- which is even less than the basic pay of Rs. 600/- which your petitioner has been drawing in May 1989.

15. If the pay as refixed was Rs. 600/- which was also the pay drawn by the respondent in May 1989, it is difficult to appreciate how it can be said that the basic pay of the respondent was reduced as a result of such refixation. The said refixation was done on the basis of the officiating promotion of the respondent as upper Division Assistant and not on the basis of the order passed by the Appellate Bench on September 20, 1989. Morever, in the order dated January 22, 1990 it was expressly mentioned:

> This is a provisional fixation of his pay and final fixation will be made as per refixation of the seniority in the U.D. cases by common cadre wing.

16. The pay of the respondent was, thereafter, refixed in the light of the orders dated July 24, 1990 and October 23, 1990 revising date of his promotion as Upper Division Assistant and his seniority in the cadre of Upper Division Assistant on that basis. In these circumstances, it cannot be said that the order dated January 22, 1990 reflects an intention on the part of the appellants to wilfully or deliberately disobey the directions given by the Appellate Bench in the order dated September 20, 1989.

17. As regards the subsequent refixation of the basic pay of the respondent the High Court has held that the direction given by the Appellate Bench had been disobeyed by the appellants for the reason that his pay was not fixed at the same level as that of Hrishikesh Roy even though Hrishikesh Roy had become junior to the respondent by reason of order dated September 20, 1989 passed by the Appellate Bench. In this connection, the learned Judges have referred to Rule 55(4) of the West Bengal Service Rules, Part I (hereinafter referred to as 'the Rules').

18. Shri G.L. Sanghi, the learned senior Counsel appearing for the appellants, has submitted that the High Court has not correctly appreciated the provisions contained in Rule 55(4) and has failed to take note of the proviso to the said Rule which reads as under:

> 55(4) If a Government employee while officiating in a higher post draws pay at a rate higher than his Senior Officer either due to fixation of his pay in the higher post under the normal rules, or due to revision of pay scales, the pay of the Government employee senior to him shall be refixed at the same stage and from the same date his junior draws the higher rate of pay irrespective of whether the lien in the lower post held by the Senior Officer is terminated at the time of refixation of pay subject to the conditions that both the Senior and Junior Officers should belong to the same cadre and the pay scale of the posts in which they have been promoted are almost identical.
>
> The benefit of this rule shall not be admissible in case where a senior Government employee exercises his option to retain unrevised scales of pay, or where pay drawn by the Senior Officer in the lower post before promotion to the higher post was also less than that of his junior.

19. The main part of Rule 55(4) lays down that in cases where a government employee is drawing pay at a rate higher than his senior officer either due to fixation of his pay in the higher post or due to revision of pay scales the pay of the government employee senior to him shall be refixed at the same stage and from the same date his junior draws the higher rate, but in the proviso to the said Sub-rule (4) of Rule 55 it has been provided that the benefit of the said rule shall not be admissible in cases where a senior government employee exercises his option to retain un-revised scale of pay or where the pay drawn by the senior officer in the lower post before promotion to the higher post was also less than that of his junior.

20. On behalf of the appellants it has been submitted that in the present case the proviso was applicable because the pay drawn by the respondent on the lower post of Lower Division Assistant before his promotion to the post of Upper Division Assistant was less than that drawn by Hrishikesh Roy and, therefore, the respondent could not claim fixation of his pay on the post of Upper Division Assistant at the same level as enjoyed by Hrishikesh Roy. It has been pointed out that Hrishikesh Roy joined service on the post of typist on July 28, 1958 much prior to the respondent who joined as Lower Division Clerk in the same pay scale as Hrishikesh Roy, i.e., Rs. 125-200/- on September 1, 1965 and that the basic pay of Hrishikesh Roy on the post of typist on April 1, 1960 was Rs. 137/- per month while the basic pay of the respondent when he joined service on September 1, 1965 was Rs. 125/- per month and that on July 26, 1980 when the respondent and Hrishikesh Roy were promoted as Upper Division Assistant the basic pay that was drawn by Hrishikesh Roy as Lower Division Assistant was Rs. 460/- while the basic pay of the respondent on May 1, 1980, prior to his promotion as Upper Division Assistant on July 26, 1980, stood at Rs. 380/- per month.

21. We do not propose to go into the question of interpretation of Rule 55(4) of the Rules. But, at the same time, we cannot say that there is no merit in the submission of Shri Sanghi that in view of the proviso to Rule 55(4) the respondent cannot claim the fixation of his basic pay on the same level as the basic pay drawn by Hrishikesh Roy. In our view the appellants could reasonably proceed on the basis that in view of the proviso contained in Rule 55(4) of the Rules the pay of the respondent cannot be fixed at the same level as that of Hrishikesh Roy and, therefore, in fixing the basic pay of the respondent it cannot be said that the appellants had wilfully and deliberately disobeyed the directions given by the Appellate Bench in its order dated September 20, 1989. On that view of the matter the learned Judges of the High Court were, in our opinion, not justified in holding the appellants guilty of contempt of court for not complying with the directions of the Appellate Bench regarding fixation of basic pay of the respondent. If the respondent feels that the refixation of his pay has not been made in accordance with the relevant rules he may, if so advised, pursue the remedy available to him in law for enforcing his rights.

22. The appeal is, therefore, allowed, the order dated September 7, 1993 passed by the Division Bench of the High Court holding the appellants guilty of contempt of court is set aside and Civil Rule No. 2650 of 1990, filed by the respondent, is dismissed. It is made clear that dismissal of the Contempt Petition would not preclude the respondent form pursuing any remedy which may be available to him in law in relation to fixation of his pay on the post of Upper Division Assistant. The sum of Rs. 5000/-, paid to the respondent in pursuance of the order of the High Court dated September 7, 1993, will have to be refunded by the respondent. No order as to costs.

Niaz Mohammad And Others, Etc. Etc. vs State Of Haryana And Others on 20 September, 1994

Equivalent citations: AIR1995SC308, JT1994(6)SC260, 1994(4)SCALE292, (1994)6SCC332, [1994]SUPP3SCR720, 1995(1)UJ124(SC), AIR 1995 SUPREME COURT 308, 1994 AIR SCW 4481, 1994 AIR SCW 4470, (1995) 1 CURLR 614, (1995) 1 SERVLJ 1, 1994 SCC (SUPP) 3 582, (1995) 1 SCJ 414, (1994) 5 SERVLR 600, (1994) 28 ATC 576, (1994) 69 FACLR 1122, 1994 (6) JT 260, (1994) 6 JT 315 (SC), (1995) 1 SCT 11, (1995) SCCRIR 342

Author: N.P. Singh

Bench: M.N. Venkatachaliah, Kuldip Singh, N.P. Singh

ORDER

N.P. Singh, J.

1. These petitions have been filed for initiating proceeding for contempt, against the respondents, for having disobeyed and ignored the order passed by this Court on 2.6.1988 in Writ Petition (Civil) No. 597 of 1986.

2. The petitioners were working as instructors under the Adult and Non-formal Education Scheme, under the Education Department of Haryana. The object of the said Scheme was to impart literacy (functional and awareness) to the adult illiterates in age group of 15-35 years and to provide literacy to the children in the age group of 5-15 years, who were drop-outs from the primary and middle school level or who had never joined any regular school. At the relevant time there was another Scheme known as State Social Education Scheme in the State of Haryana, for imparting education to the illiterates, in the villages known as State Adult Education Programme. The teachers employed under the Scheme were known as squad teachers.

3. In the year 1981 the services of the head squad teachers and squad teachers were regularised and the pay scales of regular Head Masters and teachers of primary schools maintained by the State Government were given to them. The petitioners in the aforesaid writ petition claimed that they were also performing the same nature of duties as performed by squad teachers as such they were also entitled to pay scales of the squad teachers under the Education Department along with other benefits from the date they were initially appointed.

4. On behalf of the State, this claim was contested. According to the State, the writ petitioners who were instructors, did not perform similar duties as performed by squad teachers. But it was said by this Court :

> There is no doubt that instructors and squad teachers are employees of the same employer doing work of similar nature in the same Department, therefore the appointment on a temporary basis or on regular basis does not affect that doctrine of equal pay for equal work. Article 39(d) contained in Part IV of the Constitution ordains the State to direct its policy towards securing equal pay for equal work for both men and women. Though Article 39 is included in the Chapter on Directive Principles of State Policy, but it is fundamental in nature. The purpose of the Article is to fix certain social and economic goals for avoiding any discrimination amongst the people doing similar work in matters relating to pay. The Doctrine of equal pay for equal work has been implemented by this Court in Randhir Singh v. Union of India, Dhirendra Chamoli v. State of U.P. and Surinder Singh v. Engineer-in-Chief, CPWD. In view the these authorities it is too late in the day to disregard the Doctrine of equal pay for equal work on the ground of the employment being temporary and the other being permanent in nature. A temporary or casual employee performing the same duties and functions is entitled to the same pay as paid to a permanent employee.
>
> The respondents' contention that the mode of recruitment of petitioners is different from the mode of recruitment of squad teacher inasmuch as the petitioners are appointed locally while squad teachers were selected by the Subordinate Service Selection Board after competing with candidates from any part of the country. Emphasis was laid during argument that if a regular selection was held many of the petitioners may not have been appointed they got the employment because outsiders did not compete. In our opinion, this submission has no merit. Admittedly, the petitioners were appointed on the recommendation of a Selection Committee appointed by the Adult Education Department. It is true that the petitioners belong to the locality where they have been posted, but they were appointed only after selection, true that they have not been appointed after selection made by the Subordinate Service Selection Board but that is hardly relevant for the purposes of application of doctrine of "equal pay for equal work". The difference in mode of selection will not affect the application of the doctrine of "equal pay for equal work" if both the classes of persons perform similar functions and duties under the same employer.
>
> Ultimately it was held that instructors were entitled to the same pay scale as sanctioned to the squad teachers and a direction was given to fix the scale of pay of the instructors with effect from the date of their initial appointment by ignoring the break, in service on account of six months fresh appointments.

5. From the judgment aforesaid, it appears that the aforesaid direction had been given to the State of Haryana. In the Writ Petition aforesaid, Union of India had not been impleaded as a party. At some later stage Union of India was added as a proforma respondent. From the judgment it does not appear that Union of India was involved in any manner in the implementation of the scheme.

6. In the present petition for initiating the proceeding for contempt of this Court, against the respondents, it has been alleged that by not having paid the arrears of salary to the instructors, in terms of the aforesaid order passed by this Court, respondents are liable to be punished. On 7.8.1991 this Court passed the following order :

> State Counsel is granted three months' time for making the payments. List the matters after three months.
>
> Yet another order was passed on 11.11.1991 saying:
>
> The judgment of this Court requiring the respondent to pay salary to the teachers is binding on the State of Haryana as well as on the Union of India. We, accordingly, direct the Union of India and the State of Haryana both to make joint efforts and to use the resources for paying the amount due to the teachers within 2 months.
>
> List the application after two months.
>
> Thereafter a petition was filed on behalf of the Union of India for modifying the aforesaid order dated 11.11.1991 saying that in view of the specific direction given in the judgment of this Court, which is sought to be enforced by the petitioners, there was no occasion to issue any direction to the Union of India by the aforesaid order dated 11.11.1991 because the direction which is sought to be enforced in the proceeding for contempt, has to be complied with by the State of Haryana. On 4.11.1992 this Court head the counsel, appearing for Union of India, State of Haryana and the petitioners and granted permission to the Union of India to convert the application for modification of order dated 11.11.1991, into a Review Petition.

7. It appears to be an admitted position that by virtue of the judgment aforesaid directing that the instructors under the Adult and Non-formal Education Scheme of the Education Department of the State of Haryana, be treated at part with squad teachers under the Social Education Scheme of the Education Department of the same State for purpose of payment of salary and other emoluments with effect from the date of their initial appointments, the total liability created is about 28 crores of rupees. On behalf of the State of Haryana, it was stated that this Court itself was not conscious, when the aforesaid writ petition was allowed, about the nature of financial burden. Mr. Sachar, who appeared for the State of Haryana, categorically stated that unless Union of India contributes and bears a part of the burden aforesaid which has been caused on the State of Haryana, it is not possible to comply with the direction given in the aforesaid judgment. In that connection he informed the Court that with great difficulties, in order to comply with the direction of this Court, Rs. 20 crores have been arranged and paid to the different instructors under the Adult and

Non-formal Education Scheme, which was a temporary scheme. He expressed the predicament of the State of Haryana in releasing any further fund, beyond what has already been paid, and sought a direction to the Union of India to contribute the balance of the amount.

8. During hearing of the application, reference was made to later judgments of this Court, where Benches consisting of three Judges have reviewed all the earlier judgments of this Court in respect of the doctrine of "equal pay for equal work". Special reference was made to the judgment in the case of State of Madhya Pradesh v. Pramod Bhartiya , where it has been pointed out that the doctrine of equal pay for equal work was neither a mechanical rule nor does it mean geometrical equality. The concept of reasonable classification and all other rules evolved with respect to Articles 14 and 16(1) come into play wherever complaint of infraction of the said rule fails for consideration. It was further said that it was not enough to say that the qualifications were same or the schools were of the same status or the service conditions were similar, what was more crucial was whether they discharge similar duties, functions and responsibilities. The burden to prove that in all respects, the two groups are identical, was on the petitioners, who claimed equal pay. According to us, now it is not open for this Court to examine the correctness of the view expressed and the direction given in favour of the petitioners, the. disobedience of which is the subject matter of the present controversy.

9. Section 2(b) of the Contempt of Court Act, 1971 (hereinafter referred to as 'the Act') defines "Civil Contempt" to mean "willful disobedience to any judgment, decree, direction, order, writ, or other process of a court...". Where the contempt consists in failure to comply with or carry out an order of the court made in favour of the party, it is a civil contempt. The person or persons in whose favour such order or direction has been made can move the Court for initiating proceeding for contempt against the alleged contemner, with a view to enforce the right flowing from the order or direction in question. But such a proceeding is not like an execution proceeding under CPC. The party in whose favour an order has been passed, is entitled to the benefit of such order. The Court while considering the issue as to whether the alleged contemner should be punished for not having complied and carried out the direction of the Court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the Act while defining civil contempt, have said that it must be willful disobedience to any judgment, decree, direction, order, writ or other process of a court. Before a contemner is punished for non compliance of the direction of a court the Court must not only be satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was willful and intentional. The Civil Court while executing a decree against the judgment debtor is not concerned and bothered whether the disobedience to any judgment, or decree, was willful. Once a decree has been passed it is the duty of the court to execute the decree whatever may be consequences thereof. But wile examining the grievance of the person who has invoked the jurisdiction of the Court to initiate the proceeding for contempt for disobedience of its order, before any such contemner is held guilty and punished, the Court has to record a finding that such disobedience was willful and intentional. If from the circumstances of a particular case, brought to the notice of the court, the Court is satisfied that although there has been a disobedience but such disobedience is the result of some compelling circumstances which it was not possible for the contemner to comply with the order, the Court may not punish the alleged contemner.

10. In the present case, there is no specific direction in the aforesaid judgment of this Court dated 2.6.1988 in the connected Writ Petition, to pay any particular amount to the instructors, This Court has simply decided the question as to whether they are entitled to the scale of pay which has been given to squad teachers. Having decided that question in favour of the instructors, this directed that arrears be paid to the instructors w.e.f. their respective dates of appointments, treating them at par with the squad teachers. This direction will involve payment of about 28 crores of rupees was neither known to the Court not to the parties to that proceeding. As such, this Court is now entitled to examine the question as to whether in the special facts and circumstances of the present case, the respondents should be punished for having committed contempt of this Court. In the case of Dushyant Somal v. Sushma Somal this Court said :

> Nor is a person to be punished for Contempt of Court for disobeying an order of Court except when the disobedience is established beyond reasonable doubt, the standard of proof being similar, even if not the same, as in a criminal proceeding. Where the person alleged to be in contempt is able to place before the Court sufficient material to conclude that it is impossible to obey the order, the Court will not be justified in punishing the alleged contemner.

In Halsbury's Laws of England, 4th Edn, Volume 9, para 53 page 34, it has been said :

> Although contempt may be committed in the absence of willful disobedience on the part of the contemner, committal or sequestration will not be order unless the contempt involves a degree of fault or misconduct.

11. It has been further stated :

> In circumstances involving misconduct, civil contempt bears a two-fold character, implying as between the parties to the proceedings merely a right to exercise and a liability to submit to a form of civil execution, but as between the party in default and the state, a penal or disciplinary jurisdiction to be exercised by the court in the public interest.

12. Taking all facts and circumstances into consideration, we are satisfied that in the facts and circumstances of the present case, there is no willful disobedience on the part of the respondents in complying with the direction given by this Court in the aforesaid judgment. It cannot be disputed that when the aforesaid direction was given, this Court was not conscious that the direction had created a liability for payment of about 28 crores of rupees, as arrears to the instructors in the Adult and Non-formal Education Scheme under the Education Department in the State of Haryana. Out of that amount about 20 crores of rupees have already been disbursed for different periods to the instructOrs. In this background, it is not possible to hold that respondents have committed contempt of this Court, for which they ought to be punished by this Court. Accordingly, all the petitions including W.P.(C) Nos. 401 and 784 of 1989 are dismissed.

Director Of Education, Uttaranchal & ... vs Ved Prakash Joshi & Ors on 15 July, 2005

Equivalent citations: AIR 2005 SUPREME COURT 3200, 2005 (6) SCC 98, 2005 AIR SCW 3759, 2005 ALL. L. J. 2874, (2005) 5 KHCACJ 380 (SC), (2005) 4 ALLMR 856 (SC), (2005) 6 JT 276 (SC), 2005 (6) JT 276, 2005 (5) SLT 453, 2005 (7) SRJ 302, (2005) 32 ALLINDCAS 958 (SC), 2005 (4) ALL MR 856, 2005 SCC(CRI) 1357, 2005 (5) SCALE 529, 2005 (5) KHCACJ 380, 2005 (3) SERVLJ 4 SC, (2006) 2 JCR 174 (SC), 2005 (32) ALLINDCAS 958, 2005 SCC (L&S) 812, (2005) 4 MAD LW 767, (2005) 3 SCT 476, (2005) 3 RECCRIR 744, (2005) 3 ALL WC 2964, (2005) 3 MAH LJ 930, (2005) 3 MPLJ 415, (2005) 2 CAL LJ 201, (2006) 3 EASTCRIC 132, (2005) 32 OCR 70, (2005) 3 PAT LJR 239, (2005) 5 SUPREME 116, (2005) 5 SCALE 529, (2005) 2 WLC(SC)CVL 204, (2005) 3 JLJR 119, (2005) 4 CIVLJ 927, (2005) 6 BOM CR 172

Author: Arijit Pasayat

Bench: Arijit Pasayat, S.H. Kapadia

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           CASE NO.:
Appeal (civil)  3713 of 2005

PETITIONER:
Director of Education, Uttaranchal & Ors

RESPONDENT:
Ved Prakash Joshi & Ors.

DATE OF JUDGMENT: 15/07/2005

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
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J U D G M E N T ARIJIT PASAYAT, J.

Leave granted.

Order passed by learned Single Judge of the Allahabad High Court giving certain directions while dealing with application filed under Sections 14 and 15 of the Contempt of Courts Act, 1971 (in short the 'Act') read with Article 215 of the Constitution of India, 1950 (in short the 'Constitution') is challenged in this appeal. The foundation of such application was alleged non-compliance of the

directions given by the learned Single Judge of the High Court in Writ Petition no.129/84 by order dated 16th September, 1997. By the impugned order learned Single Judge has given certain directions while disposing of the Contempt Petition.

According to the learned counsel for the appellants such directions could not have been given while dealing with application for contempt. Such exercise of power is not authorized in law. During the hearing of the application by the High Court the respondent no.1 (applicant before the High Court) had contended that in view of the judgment passed by the learned Single Judge in the Writ Petition the applicant was entitled to arrears of salary etc. The appellant and the functionaries of the State who were impleaded as respondents in the contempt proceedings took the stand that there was no positive direction for giving arrears of salary and, therefore, non-payment would not constitute wilful violation to attract action in terms of Section 12 of the Act.

The High Court was of the view that no positive directions could have been issued for arrears of salary. The Competent Committee was yet to consider the question of regularization under the U.P. Regularization of Adhoc Appointments (on posts outside purview of U.P. Public Service Commission) Rules, 1979 (in short the 'Rules'). Reference was made also to certain decisions to hold that once the order of termination is set aside, it is to be deemed that incumbent had continued in service and would be entitled to salary and allowances as if there was no break in service. It was also held that when an authority acts in disregard to a settled position in law, the commission or omission would amount to contempt even if such an act may not amount to wilful disobedience. The contempt court can act like an executing Court and can issue further directions to compel the authority for taking action which is in consonance with settled law. It was accordingly held that respondent no.1-the applicant was entitled to arrears of salary from the date of his termination upto the date of reinstatement in service. The contempt petition was accordingly disposed of.

In support of the appeal, learned counsel for the appellant submitted that it is not in dispute that no specific direction was given regarding arrears. In fact, by office order no.NI(Lecturer)Yojana/1693-1/83/98-99 dated 10.8.1998, it was clearly stipulated that the respondent no.1 shall not be paid salary for the distributed period but shall be entitled for the benefit of increments earned earlier as usual.

Learned counsel for the respondent no.1 submitted that the High Court had rightly taken note of the fact that as order of termination was set aside, and the natural consequence is payment of back wages. Merely because the earlier order of the High Court did not specifically deal with this aspect, that cannot be a ground to deny the benefits to him.

While dealing with an application for contempt, the Court is really concerned with the question whether the earlier decision which has received its finality had been complied with or not. It would not be permissible for a Court to examine the correctness of the earlier decision which had not been assailed and to take the view different than what was taken in the earlier decision. A similar view was taken in K.G. Derasari and Anr. V. Union of India and Ors. (2001 (10) SCC 496). The Court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the

judgment or order. If there was no ambiguity or indefiniteness in the order, it is for the concerned party to approach the higher Court if according to him the same is not legally tenable. Such a question has necessarily to be agitated before the higher Court. The Court exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the Court passing the judgment or order. Right or wrong the order has to be obeyed. Flouting an order of the Court would render the party liable for contempt. While dealing with an application for contempt the Court cannot traverse beyond the order, non-compliance of which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible. In that view of the matter, the order of the High Court is set aside.

If the appellant has any grievance so far as the order dated 10.8.1998 is concerned denying him the arrears of salary, he may, if so advised, approach the appropriate forum for such remedy as is available in law.

The appeal is allowed to the aforesaid extent with no order as to costs.

Union Of India And Ors vs Subedar Devassy Pv on 10 January, 2006

Author: Arijit Pasayat

Bench: Arijit Pasayat, Tarun Chatterjee

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            CASE NO.:
Appeal (civil)  1066 of 2000

PETITIONER:
Union of India and Ors.

RESPONDENT:
Subedar Devassy PV

DATE OF JUDGMENT: 10/01/2006

BENCH:
Arijit Pasayat & Tarun Chatterjee

JUDGMENT:
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JUDGMENT ARIJIT PASAYAT, J.

Challenge in this appeal is from an order passed by a learned single Judge of the Madhya Pradesh High Court in contempt proceedings. The respondent had filed a writ petition (W.P. No.4511/1996) which was disposed of with certain directions. Alleging that the directions were not complied with, a petition was filed for initiation of contempt proceedings. Response was filed by the appellants taking a positive stand that the directions have been complied with and whatever was to be legally done has been so done. After taking note of the stand taken by the present appellants who were respondents in the contempt proceeding, learned single Judge dropped the contempt proceeding by accepting the explanation of the respondents as reasonable. It was specifically noted that from the steps taken by the alleged contemnors, it cannot be said that the action of the respondents in the contempt proceedings, i.e. the present appellant, was, in any manner, contemptuous or disrespectful. Having said that, certain further directions were given. The directions given form the subject matter of challenge in this appeal. According to Mr. Vikas Singh, learned Addl. Solicitor General, after having held that there was no contempt involved, further directions given have no sanctity in law. The order, however, is supported by the learned counsel appearing for the respondent.

While dealing with an application for contempt, the court is really concerned with the question whether the earlier decision which has received its finality had been complied with or not. It would not be permissible for a court to examine the correctness of the earlier decision whicgh had not been assailed and to take a view different from what was taken in the earlier decision. A similar view was taken in K.G. Derasari v. Union of India, [2001] 10 SCC 496. The court exercising contempt

jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order. If there was no ambiguity or indefiniteness in the order, it is for the party concerned to approach the higher court if according to him the same is not legally tenable. Such a question has necessarily to be agitated before the higher court. The court exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the court passing the judgment or order. Though strong reliance was placed by learned counsel for the appellants on a three-Judge Bench decision in Niaz Mohd. v. State of Haryana, [1994] 6 SCC 332 we find that the same has no application to the facts of the present case. In that case the question arose about the impossibility to obey the order. If that was the stand of the appellants, the least it could have done was to assail correctness of the judgment before the higher court.

The above position was highlighted in Prithawi Nath Ram v. State of Jharkhand and Ors., [2004] 7 SCC 261.

On the question of impossibility to carry out the direction, the views expressed in T.R. Dhananjaya v. J. Vasudevan, [1995] 5 SCC 619 need to be noted. It was held that when the claim inter se had been adjudicated and had attained finality, it is not open to the respondent to go behind the orders and truncate the effect thereof by hovering over the rules to get around the result, to legitimise legal alibi to circumvent the order passed by a court.

In Mohd. Iqbal Khanday v. Abdul Majid Rather, [1994] 4 SCC 34, it was held that if a party is aggrieved by the order, he should take prompt steps to invoke appellate proceedings and cannot ignore the order and plead about the difficulties of implementation at the time contempt proceedings are initiated.

If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach the court that passed the order or invoke jurisdiction of the appellate court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong, the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. While dealing with an application for contempt the court cannot traverse beyond the order, non-compliance with which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible.

We notice that pursuant to the direction given by the High Court, the exercise directed to be undertaken was in fact undertaken. The respondent was given promotion and in the meantime he has retired. That being so, it is not necessary to go into the correctness of the direction given, except clarifying the position in law.

The appeal is accordingly disposed of. No costs.

K.G. Derasari And Anr. vs Union Of India (Uoi) And Ors. on 10 December, 1999

Equivalent citations: [2000(86)FLR489], JT1999(10)SC486, (2001)10SCC496

Author: U.C. Banerjee

Bench: U.C. Banerjee

ORDER

G.B. Pattanaik, J.

1. Leave granted.

2. The short question that arises for consideration in this appeal is whether the Tribunal was justified in an application for contempt by issuing direction which tantamounts to the review of its earlier decision?

3. The dispute relates to the principles to be followed for determination of seniority on being promoted to the post of U.D.C. from that of L.D.C.

4. On an application being filed before the Central Administrative Tribunal (for short "the Tribunal") which was registered as O.A. No. 392/93, the Tribunal disposed of the matter by its order dated 17.1.1995 following the decision in the case of Mohinder Kumar and Ashok Mehta [T.A. No. 556/1986 and O.A. 147/88]. That decision of the Tribunal was made on 17.1.1995 and it transpires that there was an earlier decision in the case of N. Ravindran which arose out of a judgment of Central Administrative Tribunal, Ernakulam Bench and which had not been placed before the Tribunal. On a contempt application being filed before the Tribunal alleging that the decision dated 17.1.1995 has not been followed, the Tribunal examines the decision in Ravindran's case, reviews its earlier order and holds that there is no contempt. It is this order which is being assailed in this appeal.

5. The learned Counsel for the appellant contends that in a proceeding for contempt under the provisions of Contempt of Courts Act, the Court or the Tribunal is required to examine whether the decision which has already reached finality not being challenged or annulled in an appropriate forum, has been complied with or not. It is not permissible for the Tribunal at that stage to re-examine the matter in the light of some other judgment and reverse its earlier decision.

6. The learned Additional Solicitor General, however, contends that the law on the question of inter se seniority having been settled by the judgment of this Court in Ravindran's case in C.A. Nos. 4556-59/93, it will be well within the powers of the Tribunal to take that into consideration and review its earlier direction notwithstanding the fact that the application before the Tribunal is one for initiation of a contempt proceeding as the authorities did not comply with its earlier direction. He also pointed out that in pursuance of the direction of the Tribunal in the impugned order, a fresh tentative seniority list was drawn up which was circulated inviting objections and, on consideration of those objections, a final gradation list had been formed and, therefore, it would not be appropriate for this Court to unsettle that finality. The learned Additional Solicitor General also brought to our notice the provisions of Rule 24 of the Administrative Tribunal Rules.

7. Having considered the rival submissions at the bar, we have no hesitation to come to the conclusion that the Tribunal was not entitled to in a contempt proceeding, to consider the legality of its earlier order which has reached finality not being assailed or annulled by a competent forum. If the Tribunal has not looked into any previous decision of this Court which is the law of the land and by which it was bound, the remedy available to the aggrieved person was to file an application for review. Admittedly, no review application was filed before the Tribunal. In an application for contempt, the Tribunal was only concerned with the question whether the earlier decision has reached its finality and whether the same has been complied with or not. It would not be permissible for a Tribunal or Court to examine the correctness of the earlier decision which has not been assailed, and reverse its earlier decision. In that view of the matter, the impugned order cannot be sustained, the same being beyond the powers and jurisdiction of the Tribunal in a contempt proceeding.

8. Needless to mention that if the impugned order is not sustainable, then the subsequent seniority list drawn up pursuant to the direction under the said order also cannot be sustained. We, therefore, set aside the impugned order of the Tribunal and leave the parties to take such remedial measures as may be permissible under law.

9. This appeal accordingly stands allowed.

Mrityunjoy Das & Anr vs Sayed Hasibur Rahaman & Ors on 16 March, 2001

Equivalent citations: AIR 2001 SUPREME COURT 1293, 2001 (3) SCC 739, 2005 AIR SCW 6009, 2001 AIR SCW 1162, 2006 (1) AIR JHAR R 192, (2005) 36 ALLINDCAS 35 (SC), 2005 (8) SLT 574, 2006 (1) SCC(CRI) 296, 2006 (1) BLJR 608, 2001 (2) UJ (SC) 1106, 2001 (4) SRJ 301, 2006 ALL MR(CRI) 281, (2006) 1 CHANDCRIC 117, 2006 (2) SCC (CRI) 296, 2001 UJ(SC) 2 1106, 2005 (13) SCC 766, 2005 (36) ALLINDCAS 35, (2005) 9 JT 574 (SC), (2006) 2 CAL HN 555, 2006 BLJR 1 608, (2006) 108 FACLR 1200, 2006 (1) SRJ 177, (2001) 4 ALLMR 255 (SC), 2001 (2) LRI 1217, 2001 (2) SCALE 499, 2001 CALCRILR 289, (2001) 3 JT 592 (SC), 2001 (3) JT 592, 2001 (4) ALL MR 255, (2006) 2 JCR 76 (PAT), (2006) 42 ALLINDCAS 216 (PAT), (2006) SC CR R 1392, 2006 CHANDLR(CIV&CRI) 698, (2005) 9 SCALE 371, (2001) 2 ALL WC 1239, (2006) 1 EASTCRIC 89, (2006) 2 JLJR 50, (2006) 33 OCR 631, (2006) 1 PAT LJR 476, (2006) 1 RECCRIR 139, (2006) 1 SCJ 324, (2006) 1 ALLCRIR 250, (2006) 1 CAL LJ 225, (2006) 1 ALLCRILR 443, (2005) 4 CRIMES 269, (2001) 1 UC 526, (2005) 4 CURCRIR 272, (2005) 7 SUPREME 742, (2001) 2 RECCRIR 260, (2001) 2 SUPREME 395, (2001) 2 SCALE 499, (2001) 2 CIVLJ 600, (2001) 2 ALLCRIR 1045, 2006 (1) ANDHLT(CRI) 225 SC, 2006 (54) ACC (SOC) 1 (GAU)

Bench: Umesh C. Banerjee, S.N. Phukan

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           CASE NO.:
Contempt Petition (civil) 202  of  2000


PETITIONER:
MRITYUNJOY DAS & ANR

        Vs.

RESPONDENT:
SAYED HASIBUR RAHAMAN & ORS.

DATE OF JUDGMENT:       16/03/2001

BENCH:
Umesh C. Banerjee & S.N. Phukan
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JUDGMENT:

In SLP No. 1416 of 1997 JUDGMENT BANERJEE, J.

L...I...T.......T.......T.......T.......T.......T.......T..J The introduction of the Contempt of Courts Act, 1971 in the statute book has been for purposes of securing a feeling of confidence of the people in general for due and proper administration of justice in the country. It is a powerful weapon in the hands of the law courts by reason wherefor it must thus be exercised with due care and caution and for larger interest.

Incidentally, a special leave petition (1416/1997) was filed before this Court by Paschim Banga Rajya Bhumijibi Sangh against the judgment of the Calcutta High Court pertaining to the question of constitutionality of certain provisions of West Bengal Land Reforms Amendment Acts 1981 and 1986. The said Sangha filed an Interlocutory Application being I.A.No.3 OF 1999 for issuance of certain directions which inter alia reads as below:

> (a) direct the State of West Bengal and its Revenue Authorities not to initiate any proceedings for vesting of the land against the members of the Petitioner Sangha and if any vesting proceeding has been already initiated against the members of the Petitioner Sangha in that event not to pass any order and maintain status-quo in respect of the land in question in all respect till the disposal of the Special Leave Petition (Civil) No.1416 of 1997 pending before this Honble Court or in alternative clarify that the order dated 20.3.1998 as quoted in paragraph 19-20 will apply only to the parties thereto and not to the members of the Petitioner No.1 Sangha.

The Interlocutory Application was heard on 29th October, 1999 and this Court was pleased to pass an order therein to the following effect:

> At the request of Learned counsel for the Applicants four weeks time is granted to enable him to put on record appropriate information regarding members of the Sangha for whom the application is moved and the nature of the stay required.
>
> In the meantime Learned Counsel for the Respondent will also take appropriate instructions in connection with this I.A. Subsequently on 16th December, 1999, this Court in I.A.No.3 passed an interim order to the effect as below:@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ Having heard Learned counsel for the parties, by way of an interim order, it is directed that status-quo regarding possession on spot shall be maintained by both the sides in connection with the members of the Petitioner-Sangha who were before the High Court in the Writ Petition out of which the present proceedings arise.
>
> (Emphasis supplied) In the meantime, learned senior counsel for the respondent-State of West Bengal will verify the list of these members, (Emphasis supplied) which is furnished to him by Learned Counsel for the Petitioner and

subject to that verification further orders will be passed after three months.

To be placed after three months.

In the application (I.A.No.3) a further order was passed on 17th April, 2000 which reads as below:@@ JJJJJJJJJJJJJJJJJJJJJJJJ We have heard learned senior counsel for the Petitioners, Mr. Shanti Bhushan and Learned Senior Counsel for respondent-State of West Bengal, Mr. Ray, Learned Senior Counsel for respondent-State of West Bengal is right when he says that some more time is required as 13,000 persons are listed and they have to ascertain about their existence on the spot. We grant time up to the end of July, 2000. I.A. will be placed in the second week of August, 2000. In the meantime, at the request of Learned Counsel for the Petitioners, Mr. Shanti Bhusan we grant additional interim relief in continuation of our earlier order dated 16.12.1999 to the effect that if in the meantime, any vesting orders have been passed in respect of the lands of members of Petitioner Sangha who were before the High Court in the matter out of which the present proceedings arise, then those vesting orders shall not be implemented until further orders."

It is this order which is said to have been violated and thus bringing the orders of this Court into ridicule. The factum of violation is said to have been deliberate since in spite of the order as above and even after the service of the order dated 17th April, 2000 to the authorities of Land Reforms Department, Government of West Bengal for its compliance, the Petitioner No.1 being a resident of village Amriti, District, Malda, West Bengal and a life member of the Paschim Banga Rajya Bhumijibi Sangha was served with a notice dated 5.4.2000 under Section 57 of the West Bengal Land Reforms Act together with Section 14-T (3) of the said Act read with Rule 4 of the Rules framed thereunder by the Revenue Officer Cell, Malda asking to submit details of land held by him and his family members since 7.8.1969 and particulars of land transferred by him after that date. The records depict that a reply to the said notice was furnished as early as 30th April, 2000 alongwith the certification of membership of the Sangha and copy of the order dated 16th December, 1999 passed by this Court. It further appears that a hearing did take place and the Revenue Officer passed an order of vesting on 17th April, 2000. Subsequently, on the factual matrix, it appears that by the notice dated 26th April, 2000 issued by the Revenue Officer, possession of 37.47½ acres of land was directed to be made over to the Land Revenue Authority on 27.4.2000. It has been the definite case of the petitioners that in spite of receipt of both the orders dated 16th December, 1999 and 17th April, 2000, the Block Land & Land Reforms Officer, English Bazar, Malda came on the site and took possession of the said land. Similar is the situation as regards the land belonging to petitioner No.2 and possession 20.76 acres of land was also obtained by the Block Land & Land Reforms Officer, English Bazar, Malda. This act of obtaining possession from the applicants herein is stated to be a deliberate violation of this Courts order and thus cannot but be ascribed to be contemptuous in nature.

Mr. Sanyal, the learned Senior Advocate appearing in support of the petition for Contempt contended that the high handedness of the executive authorities is apparent in the deliberate action of taking over possession of land from two of the members of the Samiti even after coming to know

of the orders of this Court and resultantly committing an act of gross contempt.

Admittedly, this Court passed an order on 17th April, 2000 as a continuation of the earlier order dated 16th December, 1999 to the effect that if in the meantime, any vesting order has been passed in respect of the land of members of petitioners Sangha who were before the High Court in the matter out of which the present proceeding arise, then those vesting orders shall not be implemented until further orders. The order dated 16th December, 2000 also categorically records the maintenance of status quo regarding possession on spot by both the State and Private Respondents. As regards however the Private Respondents, the order was directed to be made applicable to the cases of the members of the petitioners Sangha who were before the High Court in the Writ Petition out of which the present proceeding arose.

Needless to state that Land Reforms Legislation in States have been introduced with a view to proceed with the socialistic approach as enshrined in the Constitution. The amendments have been effected in the main provisions of the act, validity of which stands further scrutiny before this Court. We are however, not called upon to delve into these issues neither we intend to do the same. The noting aforesaid is just to introduce the subject for our consideration though in a separate jurisdiction being of extra- ordinary nature but as conferred by and under the statute.

Let us however, at this juncture consider the counter affidavit as filed by the alleged Contemnors and assess the situation as to whether there is any deliberate act on the part of the revenue officers of the State or an omission to note the true effect of the order which has resulted in such an action which is said to be contemptuous in nature. The alleged Contemnors No.2 and 3 being Sayed Kadar Hossain and Chitaranjan Chakraborti stated that as officers of the Government, they have tried to discharge their duties to the best of their ability, capacity and understanding. There was never any motive or intention to violate or disobey the orders of this Court. In paragraphs 4 and 5 alleged contemnors stated as below.

4. We respectfully submit that as understood by us that the number of the Petitioner Sangha who were before the High Court in the Writ Petition were understood by us as parties on the date on which the Writ Petition was filed. The petitioners themselves have admitted that they became members only in 1992-93, and the order of this Honble Court would not be applicable then as they were not members of the Sangha on the date of filing the Writ Petition. If the interpretation given by the Petitioners was sought to be accepted, then there could be no occasion for this Honble Court making the order for verification of members of the Sangha. We never proceeded with the matter to violate the orders of this Honble Court.

5. We also submit that in the proceedings, the Petitioners were given full opportunity of being heard and in fact the Petitioner appeared through Advocate and made submission and after considering the facts and circumstances of the case and also the material on record, the Revenue Officer being the competent Authority under the Act (Contemnor No.2) recorded the following finding:

> It appears from certificate which was issued by that Sangha that Sl. No. of Life Membership of raiyat Mrityunjoy Das is 2698/93. It is clear that the raiyat obtained

membership in the year 1993 and he was not the member of the said Sangha during the time of filing the Writ Applicant or before the Honble High Court. So the raiyat is not entitled to get benefit of the order of the Honble Supreme Court dated 16.12.1999.

A true copy of the order dated 17.4.2000 in this regard is annexed herewith and marked as Annexure- R 1/1.

We further submit that we have not tried to justify the conduct any way, by making the aforesaid statements and have stated these only to explain the circumstances and if any lack of understanding as aforesaid has resulted in violation of this order and consequently the Contempt of Court, I repent for the same and tender my unqualified apology before this Honble Court. I further submit that whatever I have done was in the course of my official work as a Government servant and I have no personal interest whether the process of Land Reforms continues or halts. On the face of this order of this Honble Court, or in that way any Order of any Court, which I am duty bound to obey. I again submit that if my interpretation of the order of this Honble Court was wrong that was because of my limitations to understand but there is nothing malafide in it and I cannot think of over-reaching or flouting the order of this Honble Court in any way or under any circumstances.

On the state of pleadings as above, Mr. Tapas Chandra Ray, the learned Senior A d v o c a t e a p p e a r i n g f o r t h e @ @ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ Respondents with his usual eloquence submitted that the@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJ order of this Court dated 16th December, 1999 pertaining to the maintenance of status quo regarding possession, has been rather categorical in its application: This Court has restricted its applicability to the members of the petitioners Sangha who were before the High Court in the Writ Petition and not all and sundry. Mr. Ray drew the attention of the Court to a portion of the order (as emphasized in page 3 hereof) and submitted that a contra interpretation to the order would not only be grossly irregular but be totally unsubstantiated. The user of the words who were before the High Court in the writ petition shall have to be attributed some meaning and the intention has been rather clear and categorical as to its applicability. Mr. Ray contended that this Court obviously could not indulge in surplusage or record a specific order without attributing any meaning thereto and it is in this context Mr. Ray further contended that in any event, if two explanations are available and out of which one stands adopted by the alleged contemnors which cannot by any stretch, be termed to be wholly unwarranted, question of returning a verdict of guilty in an Application for Contempt does not and cannot arise.

Contra however, is the submission of Mr. Sanyal and Mr. Ganguli for the petitioners with reference to the user of the words present proceeding by this Court which cannot as contended but mean that the order has been intended to apply to the applicants before this Court, in addition to the members who were members on the date of filing

of the Writ Petition and this by no stretch be restrictive at all. Since, otherwise the order would only be partial and a majority of the persons proceeding with this litigation as parties herein would be deprived of the same a situation which cannot possibly be conceived in the matters of an order of this Court since this Court confers benefit on to those who seek relief in a proceeding before this Court indeed an attractive submission.

Before however, proceeding with the matter any further, be it noted that exercise of powers under the Contempt of Courts Act shall have to be rather cautious and use of it rather sparingly after addressing itself to the true effect of the contemptuous conduct. The Court must otherwise come to a conclusion that the conduct complained of tentamounts to obstruction of justice which if allowed, would even permeat in our society (vide Murray & Co. v. Ashok Kr. Newatia & Anr.: 2000 (2) SCC 367) this is a special jurisdiction conferred on to the law courts to punish an offender for his contemptuous conduct or obstruction to the majesty of law. It is in this context that the observations of the this Court in Murrays case (supra) in which one of us (Banerjee, J.) was party needs to be noticed.

The purpose of contempt jurisdiction is to uphold the majesty and dignity of the Courts of law since the image of such a majesty in the minds of the people cannot be led to be distorted. The respect and authority commanded by Courts of Law are the greatest guarantee to an ordinary citizen and the entire democratic fabric of the society will crumble down if the respect for the judiciary is undermined. It is true that the judiciary will be judged by the people for what the judiciary does, but in the event of any indulgence which even can remotely be termed to affect the majesty of law, the society is bound to lose confidence and faith in the judiciary and the law courts thus, would forfeit the trust and confidence of the people in general.

The other aspect of the matter ought also to be noticed at this juncture viz., the burden and standard of proof. The common English phrase he who asserts must prove has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the standard of proof, be it noted that a proceeding under the extra-ordinary jurisdiction of the Court in terms of the provisions of the Contempt of Court Act is quasi criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond reasonable doubt. The observations of Lord Denning in Re Bramblevale (1969 3 All ER 1062) lend support to the aforesaid. Lord Denning in Re Bramblevale stated:

A contempt of court is an offence of a criminal character. A man may be sent to prison for it,. It must be satisfactorily proved. To use the time- honoured phrase, it must be proved beyond all reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the

scale against him. But there must be some other evidence. Where there are two equally consistent possibilities open to the Court, it is not right to hold that the offence is proved beyond reasonable doubt.

In this context, the observations of the Calcutta High Court in Archana Guha v. Ranjit Guha Neogi (1989 (II) CHN

252) in which one of us was a party (Banerjee, J.) seem to be rather apposite and we do lend credence to the same and thus record our concurrence therewith.

In The Aligarh Municipal Board and Others v. Ekka Tonga Mazdoor Union and Others (1970 (III) SCC 98), this Court in no uncertain term stated that in order to bring home a charge of contempt of court for disobeying orders of Courts, those who assert that the alleged contemners had knowledge of the order must prove this fact beyond reasonable doubt. This Court went on to observe that in case of doubt, the benefit ought to go to the person charged.

In a similar vein in V.G. Nigam and others v. Kedar Nath Gupta and another (1992 (4) SCC 697), this Court stated that it would be rather hazardous to impose sentence for contempt on the authorities in exercise of contempt jurisdiction on mere probabilities.

Having discussed the law on the subject, let us thus at this juncture analyse as to whether in fact, the contempt alleged to have been committed by the alleged cotemners, can said to have been established firmly without there being any element of doubt involved in the matter and that the Court would not be acting on mere probabilities having however, due regard to the nature of jurisdiction being quasi criminal conferred on to the law courts. Admittedly, this Court directed maintenance of status quo with the following words the members of the petitioner Sangha who were before the High Court in the writ petition out of which the present proceedings arise. And it is on this score the applicant contended categorically that the intent of the Court to include all the members presenting the Petition before this Court whereas for the Respondent Mr. Ray contended that the same is restricted to the members who filed the writ petition before the High Court which culminated in the initiation of proceeding before this Court. The Counter affidavit filed by the Respondents also record the same. The issue thus arises as to whether the order stands categorical to lend credence to the answers of the respondent or the same supports the contention as raised by the applicants herein Incidentally, since the appeal is pending in this Court for adjudication, and since the matter under consideration have no bearing on such adjudication so far as the merits of the dispute are concerned, we are not expressing any opinion in the matter neither we are required to express opinion thereon, excepting however, recording that probabilities of the situation may also warrant a finding, in favour of the interpretation of the applicant. The doubt persists and as such in any event the respondents being the alleged contemners are entitled to have the benefit or advantage of such a doubt having regard to the nature of the proceeding as noticed herein before more fully.

In view of the observations as above, we are not also inclined to go into the question of apology. On the wake of@@ JJJJJJJJJJJJJJJJJJJJJJJJJJ the aforesaid, this Contempt Petition fails and is

dismissed@@ JJJJJJJJ without however, any order as to costs.@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ

State Of Maharashtra vs Mahboob S. Allibhoy & Anr on 10 April, 1996

Equivalent citations: 1996 SCC (4) 411, JT 1996 (6) 151, AIR 1996 SUPREME COURT 2131, 1996 AIR SCW 2577, 1996 (4) SCC 411, 1996 SCC(CRI) 675, (1996) 6 JT 151 (SC), 1996 ALL CJ 2 984, (1997) 69 ECR 249, (1996) 85 ELT 22, (1997) 1 MAHLR 91, (1996) 3 RECCRIR 195, (1996) 3 SCJ 144, (1996) 2 CURCRIR 207, (1996) 2 ALLCRILR 435, (1996) 2 CRIMES 130, (1997) 1 BOM CR 531

Author: N.P Singh

Bench: N.P Singh

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           PETITIONER:
STATE OF MAHARASHTRA

        Vs.

RESPONDENT:
MAHBOOB S. ALLIBHOY & ANR.

DATE OF JUDGMENT:       10/04/1996

BENCH:
SINGH N.P. (J)
BENCH:
SINGH N.P. (J)
AHMAD SAGHIR S. (J)

CITATION:
 1996 SCC  (4) 411        JT 1996 (6)   151
 1996 SCALE  (4)158


ACT:



HEADNOTE:



JUDGMENT:
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O R D E R This appeal has been filed on behalf of the State of Maharashtra for setting aside an order dated 12th July, 1988 passed by the High Court of Bombay dropping the contempt proceeding which

had been initiated against the respondents.

It appears that respondents had filed a writ petition before the High Court claiming refund of Rs.2,60,144-70 paid as counter-vailing/additional duty. The Customs Department filed an affidavit stating that a false claim had been made before the Court for obtaining refund because in fact the writ petitioners - respondents had not paid any duty at all and had claimed the refund on basis of forged documents. In connection with the said dispute, a notice was issued to the respondents as to why a complaint be not filed against them under Sections 191, 192, 209 and 210 of the Indian Penal Code. A notice was also issued to the respondents directing them to show cause why proceedings for contempt be not initiated against them. After taking into consideration the show cause filed on behalf of the respondents an order was passed directing that a complaint be filed against them. The learned Judges having passed the aforesaid order directed that no action be taken under Contempt of Courts Act, 1971 (hereinafter referred to as the 'Act'). This part of the order is being challenged in this appeal. According to the appellant-State in the facts and circumstances of the present case the contempt proceeding should not have been dropped.

The preliminary question which has to be examined as to whether in the facts and circumstances of the case an appeal is maintainable against an order dropping the proceeding for contempt. It is well settled that an appeal is a creature of a statute. Unless a statute provides for an appeal and specifies the order against which an appeal can be filed, no appeal can be filed or entertained as a matter of right or course. Section 19 of the Act says:

> Appeals - (1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt -
>
> (a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court;
>
> (b) where the order or decision is that of a Bench, to the Supreme Court:
>
> Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union Territory, such appeal shall lie to the Supreme Court. (2) Pending any appeal, the appellate Court may order that -
>
> (a) the execution of the punishment or order appealed against be suspended;
>
> (b) if the appellant is in confinement, he be released on bail; and
>
> (c) the appeal be heard notwithstanding that the appellant has not purged his contempt.
>
> (3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal the High Court may also exercise all or any of the powers conferred by sub-section (2). (4) An appeal under

sub-section (1) shall be filed

(a) in the case of an appeal to a Bench of the High Court, within thirty days;

(b) in the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against.

On a plain reading Section 19 provides that an appeal shall lie as of right from any order or decision of the High Court in exercise of its jurisdiction to punish for contempt. In other words, if the High Court passes an order in exercise of its jurisdiction to punish any person for contempt of court, then only an appeal shall be maintainable under sub- section (1) of Section 19 of the Act. As sub-section (1) of Section 19 provides that an appeal shall lie as of right from any order, an impression is created that an appeal has been provided under the said sub-section against any order passed by the High Court while exercising the jurisdiction of contempt proceedings. The words 'any order' has to be read with the expression 'decision' used in said sub-section which the High Court passes in exercise of its jurisdiction to punish for contempt. 'Any order' is not independent of the expression 'decision'. They have been put in an alternative form saying 'order' or 'decision'. In either case, it must be in the nature of punishment for contempt. If the expression 'any order' is read independently of the 'decision' then an appeal shall lie under sub-section (1) of Section 19 even against any interlocutory order passed in a proceeding for contempt by the High Court which shall lead to a ridiculous result.

It is well known that contempt proceeding is not a dispute between two parties, the proceeding is primarily between the court and the person who is alleged to have committed the contempt of court. The person who informs the court or brings to the notice of the court that anyone has committed the contempt of such court is not in the position of a prosecutor, he is simply assisting the court so that the dignity and the majesty of the court is maintained and upheld. It is for the court, which initiates the proceeding to decide whether the person against whom such proceeding has been initiated should be punished or discharged taking into consideration the facts and circumstances of the particular case. This Court in the case of Baradakanta Mishra v. Mr. Justice Gatikrushna Misra C.J. of the Orissa H.C., AIR 1974 SC 2255 - 1975(1) SCR 524 said:

> ...Where the Court rejects a motion or a reference and declines to initiate a proceeding for contempt, it refuses to assume or exercise jurisdiction to punish for contempt and such a decision cannot be regarded as a decision in the exercise of its jurisdiction to punish for contempt. Such a decision would not, therefore, fall within the opening words of Section 19, subsection (l) and no appeal would lie against it as of right under that provision.
>
> Again in the case of D.N. Taneja V. Bhaian Lal, (1988) 3 SCC 26 it was said:
>
> "The right of appeal will be available under sub-section (1) of Section 19 only against any decision or order of a High Court passed in the exercise of its jurisdiction to punish for contempt. In this connection, it is pertinent to refer to the provision of Article 215 of the Constitution which provides that every High Court shall be a court

of record and shall have all the powers of such a court including the power to punish for contempt of itself. Article 215 confers on the high Court the power to punish for contempt of itself. In other words, the High Court derives its jurisdiction to punish for contempt from Article 215 of the Constitution. As has been noticed earlier, as appeal will lie under Section 19(1) of the Act only when the High Court makes an order or decision in exercise of its jurisdiction to punish for contempt. It s submitted on behalf of the respondent and, in our opinion rightly, that the High Court exercises its jurisdiction or power as conferred on it by Article 215 of the Constitution when it imposes a punishment for contempt. When the High Court does not impose any punishment on the alleged contemnor, the High Court does not exercise its jurisdiction or power to punish for contempt. The jurisdiction cf the High Court is to punish. When no punishment is imposed by the High Court, it is difficult to say that the High Court has exercised its jurisdiction or power as conferred on it by Article 215 of the Constitution."

No appeal is maintainable against an order dropping proceeding for contempt or refusing to initiate a proceeding for contempt is apparent not only from sub section (1) of Section 19 but also from sub-section (2) of Section 19 which provides that pending any appeal the appellate Court may order that

(a) the execution of the punishment or the order appealed against be suspended;

(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

Sub-section (2) of Section 19 indicates that the reliefs provided under clauses (a) to (c) can be claimed at the instance of the person who has been proceeded against for contempt of court.

But even if no appeal is maintainable on behalf of the person at whose instance a proceeding for contempt had been initiated and later dropped or whose petition for initiating contempt proceedings has been dismissed, is not without any remedy. In appropriate cases be can invoke the jurisdiction of this Court under Article 136 of the Constitution and this Court on being satisfied that it was a fit case where proceeding for contempt should have been initiated, can set aside the order passed by the High Court. In suitable cases, this Court has to exercise its jurisdiction under Article 136 of the Constitution in the larger interest of the administration of Justice.

So far the facts of the present case are concerned, the learned Judges having passed an order directing that a complaint be lodged against the respondents, thought it proper not to pursue the proceeding for contempt against them. No appeal under Section 19(1) of the Act is maintainable. In the facts and circumstances of the case it cannot be said that such an order requires to be interfered with by this Court in exercise of its jurisdiction under article 136. The appeal is dismissed. No costs.

THE CONTEMPT OF COURTS ACT, 1971

ARRANGEMENT OF SECTIONS

SECTIONS

1. Short title and extent.
2. Definitions.
3. Innocent publication and distribution of matter not contempt.
4. Fair and accurate report of judicial proceeding not contempt.
5. Fair criticism of judicial act not contempt.
6. Complaint against presiding officers of subordinate courts when not contempt.
7. Publication of information relating to proceedings in chambers or in camera not contempt except in certain cases.
8. Other defences not affected.
9. Act not to imply enlargement of scope of contempt.
10. Power of High Court to punish contempts of subordinate courts.
11. Power of High Court to try offences committed or offenders found outside jurisdiction.
12. Punishment for contempt of court.
13. Contempts not punishable in certain cases.
14. Procedure where contempt is in the face of the Supreme Court or a High Court.
15. Cognizance of criminal contempt in other cases.
16. Contempt by judge, magistrate or other person acting judicially.
17. Procedure after cognizance.
18. Hearing of cases of criminal contempt to be by Benches.
19. Appeals.
20. Limitation for actions for contempt.
21. Act not to apply to Nyaya Panchayats or other village courts.
22. Act to be in addition to, and not in derogation of, other laws relating to contempt.
23. Power of Supreme Court and High Courts to make rules.
24. Repeal.

2024 INSC 544

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. ____________ OF 2024

[ARISING OUT OF SLP (CIVIL) NOS. 19647-48 OF 2022]

S. TIRUPATHI RAO **... APPELLANT**

VERSUS

M. LINGAMAIAH & ORS **...RESPONDENTS**

WITH

CIVIL APPEAL NOS. ____________ OF 2024

[ARISING OUT OF SLP (CIVIL) NOS. 19748-19749 OF 2022]

JUDGMENT

DIPANKAR DATTA, J.

CIVIL APPEAL NOS. ____________ OF 2024

[ARISING OUT OF SLP (CIVIL) NOS. 19647-48 OF 2022]

Leave granted.

2. These appeals assail the common judgment and order dated 27th April, 2022[1] of the High Court for the State of Telangana at Hyderabad[2] allowing

Validity unknown
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Date: 2024.07.22
16:56:40 IST
Reason:

[1] impugned order, hereafter
[2] High Court, hereafter

Review I.A. No. 1/2020 in LPA 1/2018 and Review I.A. No. 3/2020 in CA 33/2017[3] preferred by the first respondent. The impugned order of the High Court recalled the order under review and dismissed a contempt appeal as well as a letters patent appeal of the appellant.

3. The present dispute emerges from a complex and interwoven set of legal proceedings, involving myriad parties and decisions rendered by both judicial and quasi-judicial authorities. The factual matrix, to the extent relevant for adjudication of these civil appeals, is noticed hereunder:

I. Ms. Sultana Jahan Begum, daughter of Nawab Moin-ud-Dowla Bahadur, instituted Original Suit 130/1953[4] (since renumbered as Civil Suit 07/1958 upon its transfer to the High Court) before the City Civil Court, Andhra Pradesh, seeking partition of her father's properties known as 'Asman Jahi Paigah'.

II. On 06th April, 1959, a preliminary decree was passed by the High Court on the basis of a compromise entered into by and between the parties to the civil suit. The schedule of properties included within it Raidurg village[5].

III. Notably, it is recorded therein that the plaintiff chose to withdraw her claim against, *inter alia*, the defendant no. 48 in the suit, i.e., the Secretary, Finance Department of the Government of Andhra Pradesh. Resultantly, the suit stood dismissed against the State unconditionally.

[3] review petitions, hereafter
[4] civil suit, hereafter
[5] subject land, hereafter

IV. During the pendency of the civil suit, Nawab Zaheer Yar Jung, son of Nawab Moin-ud-Dowla Bahadur, filed a claim petition before the Nazim-e-Atiyat, claiming the subject land as jagir land. This claim was negatived by the Nazim-e-Atiyat *vide* an order dated 28th October, 1968 upon verification of sanad, which revealed that there did not exist any document granting paigah with respect to the subject land to the claimant's father.

V. The order passed by the Nazim-e-Atiyat, upon appeal, was confirmed by the Board of Revenue *vide* an order dated 29th December, 1976, which held that the subject land stood escheated to the Government.

VI. Meanwhile, on 01st October, 2003, the decree holders in the civil suit executed a deed of assignment in favour of the first respondent herein in respect of land measuring more or less Ac 143.00 guntas forming part of certain survey numbers of the subject land.

VII. On 26th December, 2003, the High Court passed the final decree and judgment in the civil suit in favour of the first respondent, with respect to land measuring more or less acres 84.30 guntas[6] forming part of Survey No. 46 of the subject land.

VIII. Pursuant thereto, the first respondent had approached the Tahsildar with a prayer for mutation of his name in respect of the decretal property in the revenue records which proved abortive. Consequently, the first respondent invoked the writ jurisdiction of the High Court by preferring

[6] decretal property

Writ Petition 1729/2009[7], seeking direction for effecting mutation in terms of the final decree in the civil suit. The respondent's writ petition was heard with a connected matter being Writ Petition 581/2009.

IX. On 05th March, 2009, a Single Judge of the High Court *vide* a common order disposed of both the writ petitions at the admission stage itself, with the following order:

> "A partial final decree was passed by this Court on 26.12.2003 in Application No.1409 of 2003 in C.S. No. 7 of 1958, directing several steps. One of the steps is that the names of the decree holders be mutated in respect of the property mentioned in the decree. It appears that the persons, who have purchased part of the property from the parties to the decree, have also approached the respondents for mutation of their names. Having regard to the fact that there was a specific direction in the decree, Acviving (sic, requiring) authorities first to implement the decree by effecting mutation in the only (sic) after the initial step is complied with.
>
> Hence, the writ petitions are disposed of, directing that the Deputy Collector / Tahsildar, Serilingampally Mandal, Ranga Reddy District, shall effect necessary mutations in the revenue records strictly in accordance with the decree, dated 26.12.2003, in Application No.1409 of 2003 in C.S.No.7 of 1958 passed by this Court, after issuing notices to the affected parties. The subsequent purchasers, if any, shall be entitled to pursue their remedies after this step. There shall be no order as to costs."

X. Thereafter, one Syed Azizulla Husaini challenged only the decision in Writ Petition 581/2009. In exercise of appellate jurisdiction, a Division Bench of the High Court, *vide* order dated 18th August 2009, modified the order dated 05th March, 2009 as follows:

> "Heard the learned advocates. The learned advocates appearing for the respondents have no objection if the objections which have been filed by the appellant before the Deputy Collector / Tahsildar, Srilingampally Mandal, Ranga Reddy District are also considered along with the other objections which have been filed by the affected parties.

[7] writ petition, hereafter

In the circumstances, the order dated 05-03-2009 passed in Writ Petition No. 581 of 2009 is modified to the effect that while considering the objections of the affected parties, the Deputy Collector / Tahsildar, Srilingampally Mandal, Ranga Reddy District shall also consider the objections which have already been filed by the present appellant viz. Syed Azizullah Hussaini."

XI. However, the appellant (the Tahsildar) did not carry the order of disposal of the writ petition of the first respondent in appeal and, thus, between the appellant and the first respondent, the order dated 05th March, 2009 became final and binding.

XII. In view of the Tahsildar's inaction in effecting mutation, as ordered, the first respondent instituted Contempt Case 217/2014[8] before the High Court on 10th February, 2014.

XIII. The Single Judge, *vide* order dated 04th October, 2017, allowed the contempt petition. The State's contention that the petition was barred by limitation was rejected on the ground that the Tahsildar's failure to obey the order of the Court, till mutation was effected, would constitute a continuing wrong. Consequently, the Tahsildar was directed to mutate the name of the first respondent in terms of the final decree, and was also sentenced to simple imprisonment for a term of two months, together with a fine of Rs 1500/- (Rupees fifteen hundred only).

XIV. This decision of the Single Judge was challenged by the appellant in two separate appeals – (i) Contempt Appeal 33/2017[9], presented against the punishment imposed on the appellant and (ii) Letters Patent Appeal

[8] contempt petition, hereafter
[9] contempt appeal, hereafter

(94)

01/2018[10], presented against the direction for mutation of the name of the first respondent in the revenue records qua the decretal property.

XV. A Division Bench of the High Court[11], *vide* a detailed judgment and order dated 16th August, 2018, allowed both the appeals and set aside the order under challenge for two primary reasons – (i) the contempt petition was barred by limitation, the failure of the Tahsildar to effect the mutation constituting a single act and not a continuing wrong; and (ii) the preliminary decree recorded that the civil suit was withdrawn as against the State Government. Thus, there did not exist any decree which could have been executed against the Government by the civil court. Thus, as a legal and logical corollary, the State could not be bound to effect mutation in the revenue records in terms of a decree which was unenforceable against it. Consequently, the first respondent's attempt to seek a direction of mutation against the State, on the strength of such a decree, was held to be fraudulent in nature.

XVI. Challenge laid by the first respondent to the judgment and order dated 16th August, 2018 by presenting special leave petitions[12] before this Court was not entertained resulting in its dismissal *vide* order dated 29th October, 2018. A petition seeking review[13] of such order of dismissal was also dismissed by this Court *vide* order dated 08th January, 2019.

XVII. This Court having spurned his aforesaid challenges, the first respondent knocked the doors of the High Court once again by filing review petitions

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[10] letters patent appeal, hereafter
[11] Division Bench (original), hereafter
[12] SLP (C) 24646-24647/2018
[13] R.P. (C) 3973/2018

against the common judgment and order dated 16th August, 2018 (allowing the letters patent appeal and the contempt appeal).

XVIII. As noted at the beginning of this judgment, *vide* the impugned order, another Division Bench[14] of the High Court allowed the review petitions.

IMPUGNED ORDER

4. The Division Bench (review) noted at the outset that the merits of the matter need not be looked into, and then went on to undertake an exhaustive examination of precisely the same.

4.1 The High Court adversely observed that the State had not yet obtained any decree against the first respondent or his predecessors-in-interest to the effect that the subject land belonged to it. The State was noted to have filed OSA (Sr) No. 2116/2011, challenging the final decree proceedings dated 26th December, 2003 but the same stood dismissed *vide* order dated 24th August, 2011, with an observation that the State ought to initiate separate proceedings in accordance with law. However, no such proceedings were thereafter initiated by the State.

4.2 The High Court further observed that the State sought to set up title to the subject land based on the concept of escheat without invoking the provisions of the Andhra Pradesh Escheats and Bona Vacantia Act, 1974. This led to admonition of the State authorities for taking mutually inconsistent pleas of 'absolute title' and 'right by escheat'.

[14] Division Bench (review), hereafter

4.3 The State was further held to have suppressed material information and approached the Court with unclean hands inasmuch as the stand taken by them was not supported by any documentary evidence.

4.4 The State, on its part, had argued that the contempt action was itself barred by limitation, as per section 20 of the Contempt of Courts Act, 1971[15] read with rule 21 of the Andhra Pradesh High Court Writ Proceedings Rules, 1977[16]. Such argument was rejected by the Division Bench (review) by relying on the decision in ***Pallav Seth v. Custodian***[17], wherein it was held that the period of limitation would only commence upon the date from the discovery of fraud played by the party on the Court/opposite party; the State having acted fraudulently by suppressing information, the contempt petition would not be barred by limitation.

4.5 With respect to the contempt alleged, the Division Bench (review) examined the conduct of the State in remaining silent on the matter of mutation and held that such silence could not be interpreted to be a refusal on the part of the State to act upon the representations. In view thereof, coupled with the State's periodic representations made before the Court that they would implement the direction for mutation, it was held that such acts constituted a continuing wrong so as to ensconce the contempt petition within the ambit of the period of limitation.

4.6 In such review proceedings, the first respondent had brought on record additional documents in the nature of sale deeds, orders by revenue

[15] the Act, hereafter
[16] the Writ Rules, hereafter
[17] (2001) 7 SCC 549

authorities and governmental memos, to which allegedly access was obtained only after the disposal of the contempt appeal, to argue that the subject land was the self-acquired private property of the first respondent's predecessor-in-interest. The Division Bench (review) undertook a detailed examination of the same to definitively conclude, with the aid of section 79 of the Indian Evidence Act, 1872, that the property belonged to the predecessor-in-interest of the first respondent. The State's objection to such documents was overruled as the same were held to come within the purview of "new and important matter or evidence" as provided in Order XLVII Rule 1 of the Code of Civil Procedure[18].

4.7 In summation, the Division Bench (review) reviewed and reversed the judgment and order dated 16th August, 2018 and confirmed the order dated 04th October, 2017 of the Single Judge passed on the writ petition. The appellant's sentence of imprisonment was modified to four months, and a direction was issued to implement the order passed in the writ petition within a period of four weeks.

SUBMISSIONS

5. Mr. C.S. Vaidyanathan, learned senior counsel for the appellant, while seeking our interference with the impugned order, submitted as under:

a) The Division Bench (review) of the High Court erred in allowing the review petitions, without affording a hearing to the appellant on merits.

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[18] CPC, hereafter

b) The Division Bench (review) set aside the reasoned judgment of the Division Bench (original) in the contempt appeal and while substituting its own reasoning for that in the order under review, did not disclose the error that was apparent on the record; instead, it proceeded to decide the review as if it were sitting in appeal over the earlier decision.

c) The Division Bench (review) placed undue reliance on the additional documents produced by the first respondent, which were accepted on face value, without giving an opportunity to the appellant to rebut the same.

d) The Division Bench (review), in exercise of its review jurisdiction, went beyond the order of the Single Judge passed in the writ petition. It is settled law that a writ court cannot adjudicate on title, since the same falls within the exclusive jurisdiction of a civil court.

e) The Division Bench (original) had rightly set aside the order of the Single Judge, as the order had been obtained by playing fraud on the Court and the proceedings in the suit were itself fraudulent in nature.

f) The civil suit was dismissed as against the State Government and, thus, there could not have been an executable decree as against the State.

g) The Division Bench (original) had rightly allowed the appellant's appeal on the ground that the failure to mutate the names of the

first respondent was not a continuing wrong and, therefore, the contempt petition was barred by limitation.

6. Mr. C. A. Sundaram, learned senior counsel appearing for an intervenor, who disputed the title of the first respondent, adopted the submissions of Mr. C.S. Vaidyanathan. In addition, he contended that there cannot be a more egregious mistake as the one committed by the Division Bench (review) in exercise of its review jurisdiction. He invited our attention to the grounds of review forming part of the review petition and contended that none of the grounds can be said to be within the parameters of section 114 read with Order XLVII Rule 1 of the CPC; hence, the Division Bench (review) assumed a jurisdiction which it could not have more particularly after the unsuccessful misadventures of the first respondent before this Court.

7. Mr. Ranjit Kumar, Mr. Neeraj Kishan Kaul, Mr. Vipin Sanghi and Mr. R. Anand Padmanabhan, learned senior counsel appearing for the various respondents, in support of upholding the impugned order, submitted as under:

a) The appellant had not approached this Court with clean hands since the Government Pleader, during the pendency of the contempt proceedings, had avowed that the process of mutation had already commenced, while the counter affidavit filed in the same proceedings stated that the contempt petition itself was barred by limitation.

b) The State had submitted in the contempt proceedings that there was serious dispute with respect to the question of title which could only

be adjudicated in a civil suit; however, during the course of the review proceedings, the senior counsel appearing for the State categorically stated that no civil suit had been filed till date.

c) During the period 1968 to 2022, the appellant had consistently taken the plea of absolute title having been escheated to the Government, but in course of consideration of the review petitions, undertook a mutually inconsistent plea of the subject land being Government land on the basis of revenue entries.

d) The appellant did not raise objections with respect to fraud and fabrication when the additional documents were produced by the first respondent before the High Court; having acquiesced to the same, the appellant was now estopped from raising such pleas.

e) The first respondent relied on a multitude of orders by both judicial and administrative authorities to prove that the subject land was privately purchased, and constituted self-acquired lands of the first respondent's predecessor in interest.

ANALYSIS

8. The present *lis* confronts us primarily with two inter-related legal issues. The first one requires us to examine whether the parameters set out in Order XLVII Rule 1 of the CPC for exercising the power of review, as interpreted by this Court in its numerous judgments, were at all satisfied for the High Court to embark on an exercise of review. The second issue requiring our consideration is the *terminus a quo* for commencement of the point of limitation in matters of contempt, in the light of provisions of section

20 of the Act read with Article 215 of the Constitution and rule 21 of the Writ Rules. This would, in turn, require us to examine whether the contempt petition could have been held to be maintainable by the High Court on the ground of the appellant having continued to observe the order (directing mutation to be effected) in the breach; in other words, whether there was a continuing wilful breach of the order of the Single Judge dated 5th March, 2009, amounting to civil contempt. These being preliminary legal issues are proposed to be dealt with at the outset. Needless to observe, hardly any other issue would survive for decision should any of these issues be answered in favour of the appellant and against the first respondent.

9. We are not too inclined to examine the contention raised on behalf of the appellant that he was not extended reasonable and adequate opportunity of hearing, once the Division Bench (review) allowed the review petitions and proceeded to reverse the decision of the Division Bench (original) on merits. There are other formidable grounds of challenge, which would necessarily fall for our examination and succeeding on one of such grounds would render the contention raised redundant.

10. The Division Bench (review) extensively discussed the grounds which need to exist so as to validate the invocation and exercise of the Court's power of review. In the impugned order, it held that the State suppressed certain title documents, which were for the first time produced before the Court by the first respondent as additional documents. The additional documents constituted, *inter alia*, an order of the Board of Revenue, Andhra Pradesh dated 19th November, 1959, which confirmed that the subject land is private land and not *inam* or Government land. The first respondent justified the

production of these documents on the ground that access to such documents was obtained only after the Division Bench (original) had rendered the judgment and order dated 16th August, 2018. It was argued that if the Division Bench (original) had the benefit of examination of such additional documents, it would not have set aside the order dated 04th October, 2017 passed on the contempt petition. The Division Bench (review) held that since the first respondent had discovered new evidence which was unavailable at the earlier stage of proceedings, the threshold for maintainability of a review petition was satisfied.

11. While proceeding to determine the correctness of the impugned order vis-à-vis the exercise of review jurisdiction, we ought to remind ourselves of certain cardinal principles. The exercise of review jurisdiction is not an inherent power given to the court; the power to review has to be specifically conferred by law. In civil proceedings, review jurisdiction is governed by section 114 read in conjunction with order XLVII of the CPC and the court has to be certain that the elements prescribed therein are satisfied before exercising such power. This Court in ***Kamlesh Verma v. Mayawati***[19] has succinctly observed that:

> "19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC."
>
> (emphasis ours)

12. That the provisions contained in section 114 and Order XLVII of the CPC relating to review of an order or decree are mandatory in nature and any

[19] (2013) 8 SCC 320

petition for review not satisfying the rigours therein cannot be entertained *ex debito justitiae*, by a court of law, is trite.

13. There is a plethora of decisions analysing the statutory provisions governing the exercise of review jurisdiction; however, we would be referring to a few of them for the purpose of the present exercise. Suffice it to note that despite legal proceedings having commenced with institution of the civil suit as far back as in 1953, the present controversy has, as its source, a writ petition between the first respondent and the Tahsildar preferred in 2009. Although the explanation to section 141 of the CPC makes it clear that provisions of the CPC would not apply to proceedings under Article 226 of the Constitution, there is authority in abundance that the principles flowing from the CPC may safely be taken as a guide to decide writ proceedings but to the extent the same can be made applicable.

14. To put it plainly, Order XLVII Rule 1 of the CPC provides three grounds for review:

1) discovery of new and important matter or evidence which, after the exercise of due diligence was not within the applicant's knowledge or could not be produced by the applicant at the time when the decree was passed, or order made; or
2) mistake or error apparent on the face of the record; or
3) for any other sufficient reason, which must be analogous to either of the aforesaid grounds.

15. In ***Moran Mar Basselios Catholicos and another* v. *Most Rev. Mar Paulose Athanasius*[20]**, this Court approved the view that the third ground – "any other sufficient cause" must mean a reason sufficient on grounds, at least analogous to the first two grounds. The same view has been reiterated in a recent decision of this Court in ***State (NCT of Delhi) v. K.L. Rathi Steels Ltd.***[21]. This Court affirmed that the scope of the third ground had to be narrowly construed so as to not traverse beyond the orbit of the first two grounds.

16. Since the Division Bench (review) invoked the first clause, we hasten to emphasize that an applicant seeking review on the basis of discovery of new evidence has to demonstrate: first, that there has been discovery of new evidence, of which he had no prior knowledge or that it could not be produced at the time the decree was passed or the order made despite due diligence; and secondly, that the new evidence is material to the order/decree being reviewed in the sense that if the evidence were produced in court when the decree was passed or the order made, the decision of the court would have been otherwise. Ultimately, it is for the court to decide whether a review sought for by an applicant, if granted, would prevent abuse of the process of law and/or miscarriage of justice.

17. When the ground for review sought is that of discovery of new evidence, this Court in ***State of West Bengal v. Kamal Sengupta***[22] has clarified that

[20] AIR 1954 SC 526
[21] 2024 SCC OnLine SC 1090
[22] (2008) 8 SCC 612

the same must be evidence which should be materially important to the decision taken. The following passage is instructive:

> "**21.** At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review *ex debito justitiae*. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier."
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> (emphasis ours)

18. In the light of the legal position crystalised by the above discussion, we proceed to discern the rationale of the High Court in allowing the review petition.

19. The proceedings of these civil appeals, as noted, have the writ petition as its genesis and not the civil suit, which was decreed in 2003. It is of utmost importance to bear in mind that the Division Bench (review) was called upon to review the judgment and order dated 16th August, 2018 of the Division Bench (original), which allowed the contempt appeal and the letters patent appeal and not any other final decree or order. The Division Bench (review), in our opinion, has fundamentally confused both its remit and the subject matter of the review; whilst passing the impugned order, it has merged the two proceedings (the civil suit and the writ petition) into one to ostensibly create necessary grounds of review. The additional documents discovered by the first respondent could have constituted a ground to review any other decree/order but, most certainly, were of no consequence for the purpose

of the review petitions, which were decided by the impugned order. This, we hold, for the reasons that follow.

20. This Court in ***Aribam Tuleshwar Sharma v. Aribam Pishak Sharma***[23] while clarifying the ambit of the review jurisdiction has categorically held that a decision cannot be reviewed merely because it is erroneous on merits, since that would fall squarely within the province of a court exercising appellate jurisdiction.

21. In ***Meera Bhanja v. Nirmala Kumari Choudhury***[24], this Court affirmed the ratio in ***Aribam Tuleshwar Sharma*** (supra) and further expounded that review proceedings were not by way of an appeal, and would have to be strictly confined to the scope and ambit of Order XLVII, Rule 1 of the CPC. It was further held that an error apparent on the face of the record must be such an error which must strike one on mere looking of the record, obviating the need for long-drawn reasonings on two possible opinions. This Court in ***Haridas Das v. Usha Rani Banik***[25], while reiterating the decisions in ***Meera Bhanja*** (supra) and ***Aribam Tuleshwar Sharma*** (supra), drew out the narrow contours within which review jurisdiction of this Court had to be exercised and held that Order XLVII, CPC does not allow for the rehearing of a dispute merely because a party had not highlighted all aspects of the case.

22. The Division Bench (original) had held that the decree was not enforceable against the State; this, because the State, though a party defendant

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[23] (1979) 4 SCC 389
[24] (1995) 1 SCC 170
[25] (2006) 4 SCC 78

originally, did not suffer any decree owing to the dismissal of the civil suit against the State *vide* judgment and preliminary decree dated 06th April, 1959. The said Division Bench in its judgment and order dated 16th August, 2018 categorically noted that the first respondent committed fraud on the Court by obtaining a direction of mutation in the writ proceedings on the strength of a final decree rendered in a suit which had been given up against the State Government. The Division Bench (original) set aside the direction to mutate the name of the first respondent in the revenue records on three technical but fundamental grounds – first, that a non-party to a suit could not be bound by the decree; secondly, the decision on the title of the subject land not having been rendered upon hearing the version of the State, no direction of the nature made by the Single Judge could have validly been made; and thirdly, that the contempt petition was barred by limitation.

23. In the light of the present controversy, the additional documents purporting to validate the title of the subject land [even if obtained by the first respondent belatedly and not in course of the proceedings before the Division Bench (original) and howsoever clinching the same might appear to be for the *lis* to be decided in his favour] can neither be considered material nor relevant to the central issue, i.e., contempt, if any, of the direction contained in the order of disposal of the writ proceedings.

24. As noted earlier, the Division Bench (original) *inter alia* proceeded to dismiss the contempt petition as time-barred. We propose to consider the averments made in the contempt petition in greater depth a little later. However, what stands out is that a decision having been rendered by the Division Bench (original) upon consideration of the pleadings in the

contempt petition vis-à-vis the law relating to limitation contained in the Act, such decision was not open to a review on the basis of alleged discovery of new evidence since the same did not have any relation with the finding that the contempt petition was time-barred. The first respondent failed to present any new evidence countering the reasoning of the Division Bench (original) that a time-barred contempt petition had been entertained by the Single Judge; furthermore, the title documents or orders of the Board of Revenue had no bearing on either the factum of the State not being a party to the civil suit, or on the question of limitation. Quite apart the ground of discovery of new evidence, the decision of the Division Bench (original) which was rendered upon an exhaustive analysis of the materials on record including the pleadings did not suffer from any error, much less any error apparent on the face of the record, warranting a review. Even if any error were present, such error could have been rectified only in exercise of the court's appellate jurisdiction and not the review jurisdiction.

25. The grounds of review that the first respondent had urged in the review petition have been meticulously looked into by us. They numbered in excess of 90 (ninety). The general impression is that more the number of grounds, less the likelihood of existence of a case for review. To succeed in a motion for review, viewed through the prism of 'error apparent on the face of the record', it does neither require long-drawn arguments nor an elaborate process of reasoning as these may be required, in a given case, when exercising the power of merit review. An error apparent on the face of the record has to be self-evident. Where, conceivably, two opinions can

be formed in a given set of facts and circumstances and one opinion of the two has been formed, there is no error apparent on the face of the record. However, disabusing our mind of such an impression, we have looked into each of the grounds. Not a single ground deserved consideration to embark on an exercise to review the judgment and order dated 16th August, 2018 even on the basis of discovery of new and important matter or evidence. We are constrained to observe that there has been usurpation of the power of review by the Division Bench (review) to overturn a well-considered and well-crafted decision of the Division Bench (original).

26. No other legitimate cause for review having been made out in the review petition before the High Court as well as before us by the first respondent and bearing in mind the above, we unhesitatingly hold that there was no valid, legal and/or proper ground for the Division Bench (review) to reverse the judgment and order under review on the basis of the additional documents brought on record by the first respondent during the review proceedings.

27. The first legal issue is, thus, answered in favour of the appellant.

28. Having held that the review jurisdiction was not available to be exercised by the Division Bench (review), reversal of the impugned order is the solitary conceivable outcome. However, the importance of the second legal issue cannot be over-emphasized. The purpose of the law of contempt is to secure public respect and confidence in the judicial process. We have found the law on the question of applicability of the principle of "continuous wrong/breach/offence" for the purpose of section 20 of the Act not too

certain; hence, we feel it expedient to give a brief overview of the law of contempt and how such law has evolved and developed as well as chart out the course of action to be followed by the high courts while exercising contempt jurisdiction not only generally but also on the face of an objection as to maintainability of a time-barred action initiated by a party for civil contempt.

29. The power of the Supreme Court and a high court to punish for breach of its orders is expressly recognised by Articles 129 and 215 of the Constitution, respectively. It is an inherent power, distinguishable from a power derived from a statute. In ***R.L. Kapur v. State of Tamil Nadu***[26], this Court pointed out that the inherent power or jurisdiction was neither derived from the statutory law relating to contempt nor did such statutory law affect such inherent power or confer a new power or jurisdiction. In view of the recognition of such power by the Constitution itself, they partake the character of constitutional power and consequentially no law made by legislature could take away the jurisdiction conferred on the Supreme Court and the high courts.

30. In ***Aligarh Municipal Board v. Ekka Tonga Mazdoor Union***[27], this Court observed as follows:

> "5. *** Contempt proceeding against a person who has failed to comply with the Court's order serves a dual purpose: (1) vindication of the public interest by punishment of contemptuous conduct and (2) coercion to compel the contemner to do what the law requires of him. The sentence imposed should effectuate both these purposes. ***"

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[26] (1972) 1 SCC 651
[27] (1970) 3 SCC 98

31. This Court in ***Jhareswar Prasad Paul v. Tarak Nath Ganguly***[28], held that:

> 11.*** It is to be kept in mind that the court exercising the jurisdiction to punish for contempt does not function as an original or appellate court for determination of the disputes between the parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition, be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which is alleged to have committed deliberate default in complying with the directions in the judgment or order.
>
> (emphasis ours)

32. ***In Re: Vinay Chandra Mishra***[29] is a decision where, referring to Article 129, this Court observed that the jurisdiction to take cognizance of the contempt as well as to award punishment for it being constitutional, it cannot be controlled by any statute.

33. Despite such a power being conferred by the Constitution, what would constitute contempt - civil and criminal - and also, what would be the procedure for initiating action and how to punish for contempt is provided by the Act. The source of power to enact the Act can be traced to Items 77 and 14 of Lists I and III, respectively, of the Seventh Schedule appended to the Constitution.

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[28] (2002) 5 SCC 352
[29] (1995) 2 SCC 584

(112)

34. In ***L.P. Misra (Dr.) v. State of U.P.***[30], this Court set aside the order under challenge (punishing the appellant for criminal contempt committed on the face of the court but without extending to him any opportunity to show cause). In the process, a three-Judge Bench of this Court had the occasion to observe that it *"is true that the High Court can invoke powers and jurisdiction vested in it under Article 215 of the Constitution of India but such a jurisdiction has to be exercised in accordance with the procedure prescribed by law"*.

35. In ***Pallav Sheth*** (supra) too, a three-Judge Bench of this Court noticed ***L.P. Misra (Dr.)*** (supra) and reiterated that *"the power under Article 129 and/or Article 215 should be exercised in consonance with the provisions of a validly enacted law"*.

36. Yet again, this Court in ***Ashok Kumar Aggarwal v. Neeraj Kumar***[31] overturned the decision of the high court under challenge which passed an order in contempt proceedings solely on merits disregarding the procedural objections (including that of limitation). This Court reiterated that high courts were obliged to examine whether procedure prescribed by law had been complied with when a petition under Article 215 was presented before the court. Such examination would also include a scrutiny of whether limitation, as prescribed by section 20, was attracted to the facts of the case.

37. The 'procedure prescribed by law' or a 'validly enacted law' referred to in the aforementioned decisions is the one the Act envisages. Proceedings for

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[30] (1998) 7 SCC 379
[31] (2014) 3 SCC 602

contempt being quasi-criminal in nature, no punishment can be ordered by any court without strictly adhering to the stringent provisions therefor, however needless they may appear to be when a contempt is committed on the face of a high court and such court has no two opinions that following the course prescribed by the Act to punish for contempt would eventually turn out to be a useless formality.

38. Much water has flown under the bridge since the aforesaid decided cases. Having regard to some extreme cases of exercise of contempt power increasing over a period of time, a three-Judge Bench of this Court in ***State of Uttar Pradesh v. Association of Retired Supreme Court & High Court Judges***[32] speaking through the Hon'ble the Chief Justice of India had to devise a Standard Operating Procedure[33] for being followed by the high courts while summoning public officials, alleged to be in contempt, to be physically present in court. Deeply concerned with the lack of self-restraint shown in the exercise of contempt power in certain cases, the Bench directed framing of rules by all the high courts in terms of the SoP, as devised. This Court noted in such decision that mandating the physical presence of a contemnor, specifically in the case of public officials, comes at a cost to the public interest and efficiency of public administration, and thus ought not to be resorted to at the drop of a hat.

39. We wish to add to this by way of clarification that concomitantly, there lies a bounden duty on the contemnor to comply with the court's order without any delay, in a case where legal recourse has not been taken to set

[32] (2024) 3 SCC 1
[33] SoP, hereafter

aside/review/vacate the order which is alleged to have been breached. A public official against whom an allegation of contempt is levelled, upon being noticed either by issuance of a rule for contempt or by court notice, must work out his remedy in accordance with law if he wishes not to comply with the court's direction. He must not wait for compliance to be secured only upon all the phased steps to be taken by the high courts in terms of paragraph 44 of ***State of Uttar Pradesh*** (supra), forming part of the SoP, are complete. A public official who is arrayed as a contemnor is as much bound by an unchallenged order of a high court as a private party is, and cannot consider himself not bound by the law by virtue of the office he holds. Being under a duty to comply with a final and binding order of a high court, the contemnor ought not to drag his feet in doing the same until the coercive measure of summoning the contemnor to be physically present is resorted to by the high court. We are reminded at this stage of what this Court in ***Aligarh Municipal Board*** (supra) said:

> "5. *** It must also be clearly under stood in this connection that to employ a subterfuge to avoid compliance of a court's order about which there could be no reasonable doubt may in certain circumstances aggravate the contempt.***"

(emphasis ours)

Deliberate delay in effecting compliance with an order could be seen as aggravating the contempt resulting in a degree of punishment higher than what the court earlier thought of imposing. Be that as it may.

40. Axiomatically, not only any order imposing punishment for proved contempt must be in accordance with the procedure prescribed by the Act but initiation of the proceedings too has to be in accordance with the three modes that the Act envisages. One of these is by presentation of a petition

for civil contempt before a high court complaining of wilful and deliberate refusal by a person obliged to comply with its final and binding order – a situation with which we are concerned.

41. In ***Pallav Sheth*** (supra), a three-Judge Bench of this Court had the occasion to consider whether the view taken by a two-Judge Bench in ***Om Prakash Jaiswal v. D.K. Mittal***[34] was correct. In ***Om Prakash Jaiswal*** (supra), the Bench had taken the view that filing of an application or petition for initiating proceedings for contempt does not amount to initiation of proceedings by the court and initiation under section 20 of the Act can only be said to have occurred when the court forms the *prima facie* opinion that contempt has been committed and issues notice to the contemner to show cause why he should not be punished. Such view did not find favour with the Bench in ***Pallav Sheth*** (supra). It was observed that a provision like section 20 has to be interpreted having regard to the realities of the situation, and that, too narrow a view of section 20 had been taken in ***Om Prakash Jaiswal*** (supra) which did not seem to be warranted; the view taken would not only cause hardship but would perpetrate injustice. Relevant passages from the decision in ***Pallav Sheth*** (supra) read thus:

> "**39.** ... When the judicial procedure requires an application being filed either before the court or consent being sought by a person from the Advocate-General or a Law Officer, it must logically follow that proceedings for contempt are initiated when the applications are made.
> **40.** In other words, the beginning of the action prescribed for taking cognizance of criminal contempt under Section 15 would be initiating the proceedings for contempt and the subsequent action taken thereon of refusal or issuance of a notice or punishment thereafter are only steps following or succeeding such initiation. Similarly, in the case of a civil contempt, filing of an application drawing the attention of the court

[34] (2000) 3 SCC 171

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is necessary for further steps to be taken under the Contempt of Courts Act, 1971.

41. One of the principles underlying the law of limitation is that a litigant must act diligently and not sleep over its rights. In this background such an interpretation should be placed on Section 20 of the Act which does not lead to an anomalous result causing hardship to the party who may have acted with utmost diligence and because of the inaction on the part of the court, a contemner cannot be made to suffer. Interpreting the section in the manner canvassed by Mr Venugopal would mean that the court would be rendered powerless to punish even though it may be fully convinced of the blatant nature of the contempt having been committed and the same having been brought to the notice of the court soon after the committal of the contempt and within the period of one year of the same. Section 20, therefore, has to be construed in a manner which would avoid such an anomaly and hardship both as regards the litigants as also by placing a pointless fetter on the part of the court to punish for its contempt. An interpretation of Section 20, like the one canvassed by the appellant, which would render the constitutional power of the courts nugatory in taking action for contempt even in cases of gross contempt, successfully hidden for a period of one year by practising fraud by the contemner would render Section 20 as liable to be regarded as being in conflict with Article 129 and/or Article 215. Such a rigid interpretation must therefore be avoided.

42. ... if the filing of an application before the subordinate court or the High Court, making of a reference by a subordinate court on its own motion or the filing of an application before an Advocate-General for permission to initiate contempt proceedings is regarded as initiation by the court for the purposes of Section 20, then such an interpretation would not impinge on or stultify the power of the High Court to punish for contempt which power, dehors the Contempt of Courts Act, 1971 is enshrined in Article 215 of the Constitution. Such an interpretation of Section 20 would harmonise that section with the powers of the courts to punish for contempt which is recognised by the Constitution.

43. ***

44. Action for contempt is divisible into two categories, namely, that initiated suo motu by the court and that instituted otherwise than on the court's own motion. The mode of initiation in each case would necessarily be different. While in the case of suo motu proceedings, it is the court itself which must initiate by issuing a notice, in the other cases initiation can only be by a party filing an application. In our opinion, therefore, the proper construction to be placed on Section 20 must be that action must be initiated, either by filing of an application or by the court issuing notice suo motu, within a period of one year from the date on which the contempt is alleged to have been committed."

42. Interpretation of section 20 of the Act, which formed the crux of the discussion in ***Pallav Sheth*** (supra), has the marginal note 'limitation for actions for contempt'. Section 20 ordains that:

> "20. No court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed."

43. The *vires* of section 20 of the Act has been upheld by Division Benches of the High Court of Andhra Pradesh, High Court of Karnataka and the High Court at Calcutta in ***Advocate General v. A.V. Koteswara Rao***[35], ***High Court of Karnataka v. Y.K. Subanna***[36] and ***Arthur Branwell & Company Ltd. v. Indian Fibres Ltd.***[37], respectively.

44. In upholding the *vires* of section 20, the High Court of Karnataka in ***Y.K. Subbanna*** (supra) traced the legislative history of section 20 of the Act. It is considered profitable to read the relevant passages therefrom, which are as follows:

> "**79.** The Act for the first time, by enacting Section 20, introduced a period of limitation. The Sanyal Committee examined the question as to whether any period of limitation should be prescribed in respect of contempt proceedings and observed in Paragraph 8 of Chapter X of its Report, as under:
>
> > '8. Limitation:— Contempt procedures are of a summary nature and promptness is the essence of such proceedings. Any delay should be fatal to such proceedings, though there may be exceptional cases when the delay may have to be over looked but such cases should be very rare indeed. From this point of view we considered whether it is either necessary or desirable to specify a period of limitation in respect of contempt proceedings. The period, if it is to be fixed by statute, will necessarily have to be very short and provision may also have to be made for condoning delay in suitable cases. We feel that on the whole instead of making any hard

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[35] 1984 Cri. LJ. 1171

[36] 1989 SCC OnLine Kar 404

[37] 1993 (2) CLJ 182

and fast rule on the subject the matter may continue to be governed by the discretion of the Courts as hithertofore.'

80. The Joint Select Committee of Parliament on Contempt of Court (Bhargava Committee) after examining the Report of Sanyal Committee on the question of limitation, thought that the contempt procedures by their very nature should be initiated and dealt with as early as possible and considered it necessary and desirable that period of limitation should be specified in respect of actions for contempt and, therefore, laid down in the new clause (Clause 20) a period of one year at the expiration of which no proceedings for contempt should be initiated. The reasons given by the Joint Select Committee for introducing Clause 20 in the Bill, as reported by it are these:

> 'The Committee are of the opinion that contempt procedures by their very nature should be initiated and dealt with as early as possible. It was brought to the notice of the Committee that in some cases contempt proceedings have been initiated long after the alleged contempt had taken place. The Committee therefore consider it necessary and desirable that a period of limitation should be specified in respect of actions for contempt and have accordingly laid down in the new clause a period of one year at the expiration of which no proceedings for contempt should be initiated.'

81. This is the legislative history of Section 20."

45. We can safely affirm, drawing from our joint experience on the Bench, that in the vast majority of cases seeking invocation of the provisions of the Act for an alleged civil contempt, institution of proceedings is through a petition or an application containing information made available by a party alleging that the facts disclosed by him do constitute contempt of court and, thus, provide the court the premise for initiating proceedings to commit for contempt. The role of such a party, who brings a petition for contempt and activates the court's machinery, is merely that of an informer. Despite such a party figuring in the memo of parties as a petitioner, the matter relating to entertainment of his petition and the punishment to be imposed, in case of a proved contempt, relate to the exclusive jurisdiction and authority of the high courts to punish for contempt and is substantially a matter between

the court and the alleged contemnor. Whether or not to take the assistance of the petitioning informer is a question which invariably must be left entirely to the discretion of the court seized of the proceedings.

46. In exercising its jurisdiction to punish for contempt, the courts in India do keep in mind the benefit that could accrue to the petitioning informer (if he is a party to the parent proceedings out of which the contempt arises) upon implementation of the order alleged to have been wilfully disobeyed; but more than anything else, the endeavour is to uphold the majesty, dignity and prestige of the courts. Indubitably, the jurisdiction to punish for contempt is exercised when the alleged contemnor, by his action(s), shows extreme lack of solicitude in complying with an order of court, which has attained finality and is binding on him. So long a final order passed by a court is not set aside in appeal/revision or recalled in exercise of review jurisdiction or an interim order is vacated at a subsequent stage of the proceedings, it continues to bind the parties to the proceedings and it would amount to subversion of the rule of law if any party, in breach, were encouraged to continue such breach. An order of a court has to be complied with and it would not amount to a valid defence that in the contemnor's own understanding or because of legal opinion tendered to him, the order did not warrant compliance being erroneous. This Court in ***Commissioner, Karnataka Housing Board v. C. Muddaiah***[38] has held that once a direction has been issued by a competent court, it has to be obeyed and implemented without reservation; the order of the court cannot be rendered

[38] (2007) 7 SCC 689

(20)

ineffective on the specious plea that no such direction could have been given by the court. A party, though perceiving an order to be erroneous, allowing it to attain finality by reason of acceptance thereof cannot escape the rigours of compliance. He has to pursue his appellate or other remedy to escape the consequences that can visit him, should the high court hold him guilty of contempt. Such a compliance is insisted upon for securing the majesty, dignity and prestige of the court.

47. Insofar as an interim order is concerned, despite an element of contempt being involved, if a defence appearing to be valid in law and having substance is raised before the high court by a party in default which shakes the very foundation of the order alleged to have been violated and upon the high court reaching a satisfaction of such a defence being valid to the extent that the subject order ought not to have been passed, it would always be open to the said court, depending on the nature of order and the breach alleged, to first secure compliance of the order by allowing the contemnor to purge the contempt without prejudice to his rights and contentions and, after such compliance, to revisit the order as per law and the circumstances present before it and then pass appropriate orders. There could be exceptional situations where the consequences of complying with an interim order, apparently erroneous or without jurisdiction and which has attained finality, could bring about irretrievable consequences. In such a case, where the high court is satisfied that securing compliance of its order would cause more injustice than justice, notwithstanding the finality attached to such order, the high court's authority ought to be conceded to pass such order as the justice of the case before it demands.

48. Lord Denning in ***Hadkinson* v. *Hadkinson***[39] had observed:

> "The court would only refuse to hear a party to a cause when the contempt impeded the course of justice by making it more difficult for the court to ascertain the truth or to enforce its orders and there was no other effective means of securing his compliance. The court might then in its discretion refuse to hear him until the impediment was removed or good reason was shown why it should not be removed."

49. This decision was followed by the House of Lords in ***X Ltd.* v. *Morgan-Grampian Ltd.***[40] which also observes that the court will proceed with the contempt where a contemnor not only fails willfully and contumaciously to comply with an order of the court, albeit makes it clear that he will continue to defy court's authority. The courts in such circumstances may decline to entertain an appeal or hear a party unless they purge themselves.

50. It will be appropriate here to also quote from ***Halsbury's Laws of England***[41], which states:

> "Thus a party in contempt may apply to purge the contempt, he may apply with a view to setting aside the order in which his contempt is founded, and in some cases he may be entitled to defend himself when some application is subsequently made against him. Even the plaintiff in contempt has been allowed to prosecute his action, when the defendant had not applied to stay the proceedings. Probably the true rule is that the party in contempt will not be heard only on those occasions when his contempt impedes the course of justice and there is no other effective way of enforcing his obedience."

51. This Court ***In the Matter of Anil Panjwani***[42] has observed that it is no rule of law and certainly not a statutory rule that a contemnor cannot be heard unless the contempt is purged. It has only developed as a rule of practice for protecting the sanctity of the court proceedings and the dignity

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[39] 1952 (2) All ER 567
[40] 1990 (2) All ER 1
[41] Volume 8, Third Edition
[42] (2003) 7 SCC 375

of the court that a person who is *prima facie* guilty of having attacked the court may be deprived of the right of participation in the hearing lest he should misuse such an opportunity unless he has agreed to disarm himself. The court would not be unjust in denying hearing to one who has shown his lack of worth by attacking the court unless he has agreed to beat a retreat and the court is convinced of the genuineness of such retreating. It lies within the discretion of the court to tell the contemner charged with having committed contempt of court that he will not be heard and would not be allowed participation in the court proceedings unless the contempt is purged. This is a flexible rule of practice and not a rigid rule of law. The discretion shall be guided and governed by the facts and circumstances of a given case. Where the court may form an opinion that the contemner is persisting in his behaviour and initiation of proceedings in contempt has had no deterrent or reformatory effect on him and/or if the disobedience by the contemner is such that so long as it continues it impedes the course of justice and/or renders it impossible for the court to enforce its orders in respect of him, the court would be justified in withholding access to the court or participation in the proceedings from the contemner. On the other hand, the court may form an opinion that the contempt is not so gross as to invite an extreme step as above, or where the interests of justice would be better served by concluding the main proceedings instead of diverting to and giving priority to hearing in contempt proceeding the court may proceed to hear both the matters simultaneously or independently of each other or in such as it may deem proper.

52. Therefore, it would be correct to state that the court's power when dealing with the question of contempt, in a sense, is discretionary. It cannot be gainsaid that even in cases where disobedience of the order of the court is not disputed, the court may also accept a defence, if raised, of impossibility to comply with an order and come to the conclusion that since it is impossible to enforce its order, action to punish may not be initiated. That apart, refusal may be justified by grave concerns of public policy. Much would depend on the facts and circumstances of the case, the nature of the contempt under enquiry, etc., which would enable the court to exercise its discretion either way. However, to demonstrate his *bona fide*, the contemnor ought to bring any valid defence for his disability to comply with the court's direction to its notice without wasting any time. Whatever be the position before it, nothing stands in the way of the high court from passing an order to ensure that nothing impedes the course of justice.

53. Reverting to the point of limitation, even in case of a petition disclosing facts constituting contempt, which is civil in nature, the petitioner cannot choose a time convenient to him to approach the Court. The statute refers to a specific time limit of one year from the date of alleged contempt for proceedings to be initiated; meaning thereby, as laid down in ***Pallav Sheth*** (supra), that the action should be brought within a year, and not beyond, irrespective of when the proceedings to punish for contempt are actually initiated by the high court.

54. An action for contempt - though instituted through a petition or an application – is essentially in the nature of original proceedings, as held by this Court in ***High Court of Judicature at Allahabad v. Raj Kishore***

Yadav[43]; a *fortiori*, a prayer for condonation of delay in presenting the petition/application alleging contempt would not be maintainable. The express negative phraseology used in section 20 of the Act, as a legislative injunction, places a fetter on the court's power to initiate proceedings for contempt unless the petition/application is presented within the time-frame stipulated therein. However, since section 20 also uses the expression "date on which the contempt is alleged to be committed" as the starting point of the period of one year to be counted for reckoning whether the petition/application has been presented within the stipulated period, the high courts ought to be wary of crafty and skilful drafting of petitions/applications to overcome the delay in presentation thereof.

55. The Act, which is a special law on the subject of contempt, does not expressly or by necessary implication exclude the applicability of sections 4 to 24 of the 1963 Act. This Court, in ***State of West Bengal v. Kartick Chandra Das***[44] has held that in terms of section 29(2) of the 1963 Act, provisions contained in section 5 of the 1963 Act can be called in aid by a party who seeks condonation of delay in presentation of an appeal under section 19(1) of the Act. Similarly, in exceptional cases, provisions like sections 12, 14, 17, 22, etc. of the 1963 Act could be invoked to seek exemption from the law of limitation, which is distinct from condonation of delay. In an appropriate case, it would be open to the party who has not petitioned the court within the period of one year, as stipulated in section 20 of the Act, to seek exemption from the law of limitation in line with the

[43] (1997) 3 SCC 11
[44] (1996) 5 SCC 342

principle flowing from Order VII Rule 6, CPC[45], by showing the ground upon which such exemption is claimed. We have no hesitation to hold that in a case where a civil contempt is alleged by a party by referring to a "continuing wrong/breach/offence" and such allegation *prima facie* satisfies the court, the action for contempt is not liable to be nipped in the bud merely on the ground of it being presented beyond the period of one year as in section 20 of the Act. Applicability of the principle underlying Order VII Rule 6, CPC for granting exemption would only be just and proper having regard to the object and purpose for which the jurisdiction to punish for contempt is exercised by the courts if, of course, the court is satisfied that benefit of such an exemption ought to be extended in a given case. At the same time, it must be remembered that the court cannot grant exemption from limitation on equitable consideration or on the ground of hardship. Inspiration in this regard may be drawn from the decision of the Privy Council in ***Maqbul Ahmad v. Onkar Pratap Narain Singh***[46]. However, as observed earlier, contempt proceedings being in the nature of original proceedings, akin to a suit, application of section 5 of the 1963 Act to seek condonation of delay is excluded.

56. A caveat needs to be added here. For a "continuing wrong/breach/offence" to be accepted as a ground for seeking exemption in an action for contempt,

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[45] Grounds of exemption from limitation law. - Where the suit is instituted after the expiration of the period prescribed by the law limitation, the plaint shall show the ground upon which exemption from such law is claimed:

Provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.

[46] AIR 1935 PC 85

the party petitioning the court not only has to comprehend what the phrase actually means but would also be required to show, from his pleadings, the ground resting whereon he seeks exemption from limitation. Should the party fail to satisfy the court, the petition is liable to outright rejection. Also, the court has to be vigilant. Stale claims of contempt, camouflaged as a "continuing wrong/breach/offence" ought not to be entertained, having regard to the legislative intent for introducing section 20 in the Act which has been noticed above. Contempt being a personal action directed against a particular person alleged to be in contempt, much of the efficacy of the proceedings would be lost by passage of time. Even if a contempt is committed and within the stipulated period of one year from such commission no action is brought before the court on the specious ground that the contempt has been continuing, no party should be encouraged to wait indefinitely to choose his own time to approach the court. If the bogey of "continuing wrong/breach/offence" is mechanically accepted whenever it is advanced as a ground for claiming exemption, an applicant may knock the doors of the Court any time suiting his convenience. If an action for contempt is brought belatedly, say any time after the initial period of limitation and years after the date of first breach, it is the prestige of the court that would seem to become a casualty during the period the breach continues. Once the dignity of the court is lowered in the eyes of the public by non-compliance of its order, it would be farcical to suddenly initiate proceedings after long lapse of time. Not only would the delay militate against the legislative intent of inserting section 20 in the Act (a provision not found in the predecessor statutes of the Act) rendering the section a

dead letter, the damage caused to the majesty of the court could be rendered irreparable. It is, therefore, the essence of justice that in a case of proved civil contempt, the contemnor is suitably dealt with, including imposition of punishment, and direction as well is issued to bridge the breach.

57. Having thus held, we move on to examine the objection as to maintainability of the contempt action initiated by the first respondent upon the inaction of the appellant in effecting mutation of the decretal property in his favour in the revenue records and also as to whether a case of "continuing wrong/breach/ offence" was at all shown by the first respondent in the contempt petition.

58. To recapitulate, the Single Judge had allowed the writ petition of the first respondent on 05th March, 2009 with a direction to the Tahsildar to effect the necessary mutation in the revenue records in accordance with the final decree dated 26th December, 2003. Pertinently, the direction issued to the appellant *vide* the order of disposal of the writ petition did not specifically mention a time-frame within which the order was to be implemented.

59. In view of the absence of a time-frame in the order, much would turn on rule 21 of the Writ Rules[47]. Having read the relevant rule, we presume that the learned Single Judge was aware of such a rule and, hence, refrained from stipulating a time-frame for compliance of the Court's order. Irrespective of any time-frame fixed in an order, the direction contained

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[47] Unless the court otherwise directs, the direction or order made or the rule absolute issued by the High Court shall be implemented within two months of the receipt of the order.

therein would require compliance within the period stipulated in rule 21 if the person responsible for such compliance has notice of it even *aliunde*.

60. The question of the contempt petition being barred by limitation has to be decided keeping section 20 of the Act and rule 21 of the Writ Rules in mind together with what constitutes a "continuing wrong/breach/offence". Undisputedly, the contempt petition was instituted on 04th October, 2014, more than 5 (five) years after the order (of which contempt had been alleged) was passed, i.e., on 05th March, 2009. Notably, the appellant had not carried the order dated 05th March, 2009 (disposing of the writ petition) in appeal. Therefore, question of operation of the said order remaining suspended did not arise and the principle embodied in section 15 of the 1963 Act was not attracted. The said order required the appellant to effect mutation in terms of the decree of the civil court. No time-frame for compliance of such order having been stipulated by the Single Judge, it would stand to reason that the same required compliance at least by the end of the time-frame stipulated by rule 21.

61. The appellant has asserted before us that the contempt action was time-barred in view of the fact that limitation for initiation of contempt action commenced on 04th May, 2009, i.e., when the two-month period stipulated by rule 21 expired and ended on 03rd May, 2010, i.e., in accordance with section 20 of the Act. However, the first respondent has contended that the contempt petition was not barred by limitation since the act of the appellant in not implementing the direction for effecting mutation was in the nature of a continuing wrong.

62. The date on which service of the order dated 05th March, 2009 disposing of the writ petition was effected on the appellant is not stated anywhere in the contempt petition by the first respondent. No such date is also reflected in the representations that the first respondent claims to have made on 11th May, 2009, 12th September, 2009, 22nd October, 2010, 16th August, 2012 and 05th February, 2014. It is also not seen from the appellant's counter affidavit that he pleaded non-service of such order. We are, thus, inclined to the view that the appellant had notice *aliunde* of the order dated 05th March, 2009. Proceeding on the premise that the order must have been served immediately after the same was passed by the Single Judge and in the light of rule 21 of the Writ Rules, the appellant had 2 (two) months' time from receipt of the order dated 05th March, 2009, i.e., say till the end of May, 2009 to implement the direction. The appellant failed to effect mutation, as directed, within the aforesaid time-frame and was, thus, in breach of the said order dated 05th March, 2009, say from June, 2009. There does not appear to be any explanation proffered in the contempt petition worthy of consideration as to why the contempt petition was delayed and not presented within the period of a year of commission of the breach when it first occurred, i.e., at least by the end of May, 2010.

63. The learned Single Judge deciding the contempt petition, *vide* order dated 04th October, 2017, was impressed by the arguments advanced by the first respondent and while holding that there has been a continuing wrong and also that the appellant is in contempt, allowed the contempt petition.

64. The Division Bench (review) held in favour of the first respondent observing that the inaction of the Government officials was a continuing wrong since

they did not outrightly refuse to implement the order, rather, till as late as 2017, assured that they would implement it but failed to do so. Furthermore, what weighed with the High Court was the alleged misrepresentation with respect to the title of the subject land; such misrepresentation being in the nature of fraud, would entitle the High Court to recall the primary order on merits. The State authorities were held to have misrepresented the title of the suit land inasmuch as they took mutually contradictory stands, i.e., on the one hand it was argued that the subject land was escheated land, and on the other, it was argued, on the strength of revenue entries, that the subject land always belonged to the State. The High Court then went on to examine and interpret documents produced by the respondents for the first time and accorded title in favour of the respondents.

65. For reasons more than one, the impugned order allowing the contempt petition is indefensible.

66. First, having read the impugned order, we are quite convinced that submissions that were advanced before the Division Bench (review) of the order dated 05th March, 2009 being in the process of implementation had the undesirable effect of shifting the focus of the High Court from adjudging the maintainability of the contempt petition as on date the same was presented, i.e., 04th October, 2014, to the unacceptable fact of actual non-compliance of the order of 05th March, 2009 despite indication of compliance. No doubt, compliance of an order of the court has to be insisted upon but within the four corners of the contempt petition. Non-compliance coupled with an assurance in court to comply, after the court has issued

notice on the contempt petition, is not sufficient to attract the principle of "continuing wrong/breach/offence". A contemnor on pain of suffering consequences for contempt may well give up available defences before the court and proceed to obey the order/direction, of which he is alleged to be in contempt; but if the jurisdiction to punish is otherwise barred, there is no law that prohibits the court from first proceeding to ascertain whether the jurisdiction is at all available to be exercised; and, when an objection of maintainability based on limitation is raised, it becomes all the more essential for the court to decide the objection leaving aside other considerations. The Division Bench (review), unfortunately, missed the woods for the tree.

67. Proceeding ahead, we find that as complex as the issues surrounding the title of the subject land are, the impugned order of the Division Bench (review) is unsustainable in law, for, it has exceeded its contempt jurisdiction, which indubitably is limited and finite in the sense that every court exercising power to punish for contempt ought to keep itself within the boundaries specified by the Act and the judicial pronouncements in this behalf. The laborious exercise undertaken to unravel the web of deeds and documents so as to determine the question of title was akin to an exercise undertaken by a court of first instance or first appeal and, thus, wholly unwarranted. It is of the utmost importance to remember that none of the documents produced by the first respondent answered the question as to whether the contempt petition was barred by limitation, which is the question the Division Bench (review) ought to have confined itself to, since it was only tasked with exercising review, and not appellate, jurisdiction.

68. In our considered view, it further becomes imperative to undertake an examination of the contempt petition itself. This exercise reveals that the primary grounds taken for the contempt petition being filed belatedly, *inter alia*, were the pendency of collateral proceedings and the continuous filing of representations before the Tahsildar by the applicants. Law is well-settled that the issue of limitation has to be considered with reference to the original cause of action. The period of limitation does not stand extended to the last of repeated representations made by a party, if filing of representation is not statutorily provided. The contempt petition is, however, entirely bereft of any pleading to the effect that the breach committed by the Tahsildar is in the nature of a continuing wrong or breach or offence, so as to overcome the bar of limitation set by section 20 of the Act read with rule 21 of the Writ Rules.

69. Despite the absence of any pleading as to "continuing wrong/breach/ offence", the Single Judge by placing reliance on the decision in ***Firm Ganpat Ram Rajkumar v. Kalu Ram***[48] proceeded to hold that the Tahsildar's inaction constituted a continuing wrong, thereby saving the petition from being barred by limitation. The Division Bench (review) approached the matter in a similar manner, and concluded that the contumacious conduct alleged was in the nature of a continuing wrong.

70. While we are not in disagreement with the view expressed in ***Firm Ganpat Ram Rajkumar*** (supra) because of the special facts and circumstances

[48] 1989 Supp (2) SCC 418

obtaining therein, the decision of the Division Bench (review) affirming that of the Single Judge is wholly unsustainable in law for a few other reasons.

71. First, it is trite that the court cannot traverse beyond the pleadings and make out a case which was never pleaded, such principle having originated from the fundamental legal maxim *secundum allegata et probate*, i.e., the court will arrive at its decision on the basis of the claims and proof led by the parties. The assertion of the contumacious conduct being in the nature of a "continuing wrong/breach/offence" is factual and has to be borne from the pleadings on record. Law is, again, well-settled that when a point is not traceable in the pleas set out either in a plaint or a written statement, findings rendered on such point by the court would be unsustainable as that would amount to an altogether new case being made out for the party. Absent such pleading of there being a "continuing wrong/breach/offence", the finding returned by the Single Judge, since affirmed by the Division Bench (review), cannot be sustained in law.

72. Even if a point of "continuing wrong/breach/offence" is traceable in the pleadings, the court ought not to accept it mechanically; particularly, in entertaining an action for contempt, which is quasi-criminal in nature, the court should be slow and circumspect and be fully satisfied that there has indeed been a "continuing wrong/breach/offence".

73. This takes us to the other infirmity in the decision of the High Court inasmuch as it held that the disobedience of the mutation order by the appellant was in the nature of a continuing wrong. A reference to section 22 of the 1963 Act would be prudent at this stage. It reads:

"22. Continuing breaches and torts - In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues."

74. While proceeding to examine the nature of the contumacious conduct in question, it is considered apposite to commence the discussion with a reference to ***Halsbury's Laws of India (Damages; Deeds and Other Instruments)***[49] reading thus:

"[115.032] *When cause of action is single and continuing* - A cause of action may be either single or continuing. When an act is final and complete and becomes a cause of action for injury to the plaintiff, it is single, arises once and for all and the plaintiff is entitled to sue for compensation at one time, for all past, present and future consequences of the wrongful act. But if there is repetition of a wrongful act or omission, it will comprise a continuing cause of action, and if an action is brought by the plaintiff, it will be restricted to recovery of damages which have accrued up to the date of suit. In such cases the cause of action is said to arise 'de die in diem' (from day to day). It is inaccurate strictly to speak of a 'continuing cause of action', but the phrase refers to a cause of action which arises from the repetition of acts or omissions of the same kind as that for which the action was brought."

75. The English Court of Appeals in ***National Coal Board v. Galley***[50] distinguished between the two scenarios by observing that neither do repeated breaches of continuing obligations constitute a continuing wrong nor intermittent breaches of a continuing obligation; rather there has to be present an element of continuance in both, the breach and the obligation.

76. This Court too, as far back as in 1958, with reference to the Limitation Act of 1908, discussed in ***Balkrishna Savalram Pujari v. Shree***

[49] Volume 9, First Edition
[50] [1958] 1 All ER 9

Dnyaneshwar Maharaj Sansthan[51] what would constitute a continuing wrong. The relevant passage reads thus:

> "20. *** s. 23 refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that s. 23 can be invoked.***
>
> As soon as the decree was passed and the appellants were dispossessed in execution proceedings, their rights had been completely injured, and though their dispossession continued, it cannot be said that the trustees were committing wrongful acts or acts of tort from moment to moment so as to give the appellants a cause of action de die in diem. We think there can be no doubt that where the wrongful act complained of amounts to ouster, the resulting injury to the right is complete at the date of the ouster and so there would be no scope for the application of s. 23 in such a case.***"

(emphasis ours)

77. The decision of this Court in ***Balkrishna Savalram Pujari*** (supra) was endorsed by this Court in ***M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das***[52] wherein, while concluding that the ouster of shebaitship was a single incident and did not constitute a continuing wrong, this Court further observed as follows:

> "343. The submission of *** is based on the principle of continuing wrong as a defence to the plea of limitation. In assessing the submission, a distinction must be made between the source of a legal injury and the effect of the injury. The source of a legal injury is

[51] AIR 1959 SC 798
[52] (2020) 1 SCC 1

founded in a breach of an obligation. A continuing wrong arises where there is an obligation imposed by law, agreement or otherwise to continue to act or to desist from acting in a particular manner. The breach of such an obligation extends beyond a single completed act or omission. The breach is of a continuing nature, giving rise to a legal injury which assumes the nature of a continuing wrong. For a continuing wrong to arise, there must in the first place be a wrong which is actionable because in the absence of a wrong, there can be no continuing wrong. It is when there is a wrong that a further line of enquiry of whether there is a continuing wrong would arise. Without a wrong there cannot be a continuing wrong. A wrong postulates a breach of an obligation imposed on an individual, where positive or negative, to act or desist from acting in a particular manner. The obligation on one individual finds a corresponding reflection of a right which inheres in another. A continuing wrong postulates a breach of a continuing duty or a breach of an obligation which is of a continuing nature. ...

...

Hence, in evaluating whether there is a continuing wrong within the meaning of Section 23, the mere fact that the effect of the injury caused has continued, is not sufficient to constitute it as a continuing wrong. For instance, when the wrong is complete as a result of the act or omission which is complained of, no continuing wrong arises even though the effect or damage that is sustained may enure in the future. What makes a wrong, a wrong of a continuing nature is the breach of a duty which has not ceased but which continues to subsist. The breach of such a duty creates a continuing wrong and hence a defence to a plea of limitation."

(emphasis ours)

78. The order on the writ petition directed the appellant to effect mutation in the revenue records in favour of the first respondent, in accordance with the final decree. The direction for mutation having been issued on 05th March, 2009, the appellant had a period of 2 (two) months therefrom to effect such mutation, as stipulated by the Writ Rules, which we shall assume the appellant failed or neglected to comply without just reason. From 04th May, 2009, i.e., the starting point for the limitation period for initiation of contempt action to commence, till 10th February, 2014, i.e., the date of the filing of the contempt petition, the appellant failed to effect mutation, as

ordered by the Single Judge. Could it be said that every day thereafter that the appellant did not effect mutation gave rise to a fresh cause of action so as to constitute a "continuing wrong/breach/offence"? To our minds, the answer is a clear and unequivocal 'NO'. Upon application of the test laid down by this Court in ***Balkrishna Savalram Pujari*** (supra) and ***M. Siddiq*** (supra), it is evident that when, by 04th May, 2009, the appellant failed to implement the direction of the High Court, the act of disobedience was complete as on that date itself. Every day thenceforth, the name of the first respondent continued to be absent from the revenue records but such absence could not be characterised as the injury or wrongful act itself; it was merely the damage which flowed from the standalone act of breach committed by the appellant – that of not effecting the mutation. The injury was not repetitive or in other words, did not arise *de die in diem*, but rather, it was the effect of the injury which continued till the date the first respondent presented the contempt petition on 10th February, 2014.

79. Having held that the nature of breach or offence committed by the appellant was not in the nature of a "continuing wrong/breach/offence", the bar of limitation was rightly pressed by the Division Bench (original) to halt the claim of the first respondent at the threshold itself, since the period of limitation to initiate the contempt action ended at least by May end of 2010. The decision of the Division Bench (original) in dismissing the first respondent's contempt petition as time-barred was unexceptionable and the Division Bench (review) acted illegally in reversing the same assuming the jurisdiction to review which, on facts and in the circumstances, was not available to be exercised.

80. The contempt petition was, thus, barred by limitation and no case for claiming exemption having been set up, the same deserved outright dismissal.

EPILOGUE

81. Having answered the two legal issues and before recording our conclusion, we cannot resist reflecting on the point of fraud having vitiated the proceedings. This point, in turn, emerges because the Division Bench (review) erroneously held the State to have practised fraud; and this discussion is necessitated since, to the contrary, there seems to be sufficient reason to hold the first respondent responsible therefor. The writ petition, in the form the same had been presented by the first respondent, does evince clear suppression of a material fact bordering on fraud on court and having the potential to render it not maintainable. But to this too, there is a caveat. This question, though quite fundamental in nature, does not appear to have been argued by the appellant before the High Court and also before us. Thus, argument on the issue of maintainability of the writ petition not having been advanced before us by the parties, whatever we observe and record hereafter is merely an indication of the direction our decision would have taken, if such point were raised or argued. We may not be misunderstood of having decided a point without calling upon the parties to address on it.

82. The effect of suppression of a material fact on maintainability of a writ petition is too well known. But what is important is, whether suppression of

a material fact in a writ petition amounts to fraud on court and whether an issue of maintainability based on suppression can be examined if the judgment and/or order of disposal of the writ petition has attained finality by reason of no appeal being carried therefrom.

83. This Court in ***Meghmala v. G. Narasimha Reddy***[53] observed that suppression of any material fact/document amounts to a fraud on the court and every court has an inherent power to recall its own order obtained by fraud as the order so obtained is non est.

84. Quite recently, in ***K. Jayaram v. BDA***[54], this Court held:

> "10. It is well-settled that the jurisdiction exercised by the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all facts before the court without concealing or suppressing anything. A litigant is bound to state all facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the court as well as with the opposite parties which cannot be countenanced."
>
> (emphasis ours)

85. It is also settled law that fraud is an extrinsic collateral act, which vitiates the most solemn of proceedings including judicial acts and that a plea of fraud can be set up even in a collateral proceeding. We are reminded of what this Court said in ***S.P. Chengalvaraya Naidu v. Jagannath***[55]:

> "The principle of 'finality of litigation' cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants."

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[53] (2010) 8 SCC 383
[54] (2022) 12 SCC 815
[55] (1994) 1 SCC 1

86. The Division Bench (original) noted that the civil suit having been withdrawn against the State, the first respondent could not have validly attempted to obtain a direction, through the medium of the writ petition, on the strength of a decree passed in such a suit where the State was no longer a party, yet, the Division Bench (review) held the State to have practised fraud.

87. A perusal of the averments in the writ petition do not reveal any mention of the civil suit having been withdrawn against the State Government. Suppression of a material fact on the part of the first respondent is indeed discernible which, if pleaded, could have altered the outcome of the writ petition. A very innocuous prayer was, however, made for effecting mutation in terms of the final decree, without disclosing that mutation was being asked for in respect of a piece of land over which the State itself had been claiming title and that the civil suit was withdrawn faced with such a claim of the State. A writ court being a court of equity, it is needless to observe that the parties are bound to approach the court with clean hands. Inasmuch as the aforesaid fact of withdrawal was not brought to the writ court's notice, an egregious breach of such principle is noticed. Suppression of such a material fact, as in the present case, could legitimately be argued to amount to a fraud on court. There can hardly be two opinions that such breach would strike at the very root of the matter and since a point of fraud can be raised even collaterally, if the point of fraud had been raised, the writ petition itself could have been held non-maintainable.

88. However, since our decision is premised on the reasons assigned while answering the issues formulated in paragraph 8 (supra), we wish to say no more.

CONCLUSION

89. For the foregoing reasons, we conclude that the High Court exceeded both its review and contempt jurisdiction. The impugned order is, thus, set aside, and the judgment and order of the Division Bench (original) in the contempt appeal and the letters patent appeal is restored.

90. The appeals succeed and are allowed. All pending applications stand disposed of. Parties shall, however, bear their own costs.

91. Determination of the title to the subject land, adjudication on the validity of the decrees in favour of the respondents, or decision on any other contentious issue are left open for a forum of competent jurisdiction to embark upon, if approached by any of the parties. None of the observations of this Court, or of the High Court in the impugned order should be treated as an expression of opinion in any particular matter or on any factual aspect whatsoever.

CIVIL APPEAL NOS. ____________ OF 2024

[ARISING OUT OF SLP (CIVIL) NOS. 19748-19749 OF 2022]

92. Leave granted.

93. These appeals assail the common judgment and order dated 26th September, 2022 of the High Court dismissing petitions[56] preferred by the appellant, seeking recall of the judgment and order dated 27th April, 2022 of the Division Bench (review). The High Court held that the recall petitions were review petitions in disguise; thus, the impugned judgment and order was upheld in view of the specific statutory bar of Order XLVII Rule 9, CPC.

94. The judgment and order 27th April, 2022 having been set aside for the reasons assigned above while allowing the civil appeals arising out of SLP (Civil) Nos. 19748-19749 of 2022, the order of the High Court dated 26th September, 2022 assailed in these appeals upholding the same can no longer stand. Resultantly, the impugned order is set aside. The present appeals succeed and are allowed on the same terms as the appeals decided hereinabove.

..J.
(SANJIV KHANNA)

..J.
(DIPANKAR DATTA)

New Delhi;
22nd July, 2024.

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[56] I.A. No. 3/2022 in Review I.A. No. 1/2020 in LPA 1/2018 and I.A. No. 10/2022 in Review I.A. No. 3/2020 in CA No. 33/2017

81 143

THE CONTEMPT OF COURTS ACT, 1971

ACT NO. 70 OF 1971

[*24th December*, 1971.]

An Act to define and limit the powers of certain courts in punishing contempts of courts and to regulate their procedure in relation thereto.

BE it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:—

1. Short title and extent.—(*1*) This Act may be called the Contempt of Courts Act, 1971.

(*2*) It extends to the whole of India:

[1]* * * * *

2. Definitions.—In this Act, unless the context otherwise requires,—

(*a*) "contempt of court" means civil contempt or criminal contempt;

(*b*) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;

(*c*) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—

(*i*) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or

(*ii*) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(*iii*) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;

(*d*) "High Court" means the High Court for a State or a Union territory, and includes the court of the Judicial Commissioner in any Union territory.

3. Innocent publication and distribution of matter not contempt.—(*1*) A person shall not be guilty of contempt of court on the ground that he has published (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceeding pending at that time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending.

(*2*) Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, the publication of any such matter as is mentioned in sub-section (*1*) in connection with any civil or criminal proceeding which is not pending at the time of publication shall not be deemed to constitute contempt of court.

(*3*) A person shall not be guilty of contempt of court on the ground that he has distributed a publication containing any such matter as is mentioned in sub-section (*1*), if at the time of distribution he had no reasonable grounds for believing that it contained or was likely to contain any such matter as aforesaid:

Provided that this sub-section shall not apply in respect of the distribution of—

(*i*) any publication which is a book or paper printed or published otherwise than in conformity with the rules contained in section 3 of the Press and Registration of Books Act, 1867 (25 of 1867);

1. The Proviso omitted by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10- 2019).

(*ii*) any publication which is a newspaper published otherwise than in conformity with the rules contained in section 5 of the said Act.

Explanation.—For the purposes of this section, a judicial proceeding—

(*a*) is said to be pending—

(*A*) in the case of a civil proceeding, when it is instituted by the filing of a plaint or otherwise,

(*B*) in the case of a criminal proceeding under the Code of Criminal Procedure, 1898 (5 of 1898), or any other law—

(*i*) where it relates to the commission of an offence, when the charge-sheet or *challan* is filed, or when the court issues summons or warrant, as the case may be, against the accused, and

(*ii*) in any other case, when the court takes cognizance of the matter to which the proceeding relates, and

in the case of a civil or criminal proceeding, shall be deemed to continue to be pending until it is heard and finally decided, that is to say, in a case where an appeal or revision is competent, until the appeal or revision is heard and finally decided or, where no appeal or revision is preferred, until the period of limitation prescribed for such appeal or revision has expired;

(*b*) which has been heard and finally decided shall not be deemed to be pending merely by reason of the fact that proceedings for the execution of the decree, order or sentence passed therein are pending.

4. Fair and accurate report of judicial proceeding not contempt.—Subject to the provisions contained in section 7, a person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding or any stage thereof.

5. Fair criticism of judicial act not contempt.—A person shall not be guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided.

6. Complaint against presiding officers of subordinate courts when not contempt.—A person shall not be guilty of contempt of court in respect of any statement made by him in good faith concerning the presiding officer of any subordinate court to—

(*a*) any other subordinate court, or

(*b*) the High Court,

to which it is subordinate.

Explanation.—In this section, "subordinate court" means any court subordinate to a High Court.

7. Publication of information relating to proceedings in chambers or *in camera* not contempt except in certain cases.—(*1*) Notwithstanding anything contained in this Act, a person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding before any court sitting in chambers or *in camera* except in the following cases, that is to say,—

(*a*) where the publication is contrary to the provisions of any enactment for the time being in force;

(*b*) where the court, on grounds of public policy or in exercise of any power vested in it, expressly prohibits the publication of all information relating to the proceeding or of information of the description which is published;

(*c*) where the court sits in chambers or *in camera* for reasons connected with public order or the security of the State, the publication of information relating to those proceedings;

(*d*) where the information relates to a secret process, discovery or invention which is an issue in proceedings.

(*2*) Without prejudice to the provisions contained in sub-section (*1*), a person shall not be guilty of contempt of court for publishing the text or a fair and accurate summary of the whole, or any part, of an order made by a court sitting in chambers or *in camera*, unless the court has expressly prohibited the publication thereof on grounds of public policy, or for reasons connected with public order or the security of the State, or on the ground that it contains information relating to a secret process, discovery or invention, or in exercise of any power vested in it.

8. Other defences not affected.—Nothing contained in this Act shall be construed as implying that any other defence which would have been a valid defence in any proceedings for contempt of court has ceased to be available merely by reason of the provisions of this Act.

9. Act not to imply enlargement of scope of contempt.—Nothing contained in this Act shall be construed as implying that any disobedience, breach, publication or other act is punishable as contempt of court which would not be so punishable apart from this Act.

10. Power of High Court to punish contempts of subordinate courts.—Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself:

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (45 of 1860).

11. Power of High Court to try offences committed or offenders found outside jurisdiction.—A High Court shall have jurisdiction to inquire into or try a contempt of itself or of any court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction, and whether the person alleged to be guilty of contempt is within or outside such limits.

12. Punishment for contempt of court.—(*1*) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court.

Explanation.—An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it *bona fide*.

(*2*) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (*1*) for any contempt either in respect of itself or of a court subordinate to it.

(*3*) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(*4*) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(*5*) Notwithstanding anything contained in sub-section (*4*), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to

be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.

Explanation.—For the purpose of sub-sections (*4*) and (*5*),—

(*a*) "company" means any body corporate and includes a firm or other association of individuals; and

(*b*) "director", in relation to a firm, means a partner in the firm.

[1][**13. Contempts not punishable in certain cases.**—Notwithstanding anything contained in any law for the time being in force,—

(*a*) no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice;

(*b*) the court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is *bona fide.*]

14. Procedure where contempt is in the face of the Supreme Court or a High Court.—(*1*) When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and, at any time before the rising of the Court, on the same day, or as early as possible thereafter, shall—

(*a*) cause him to be informed in writing of the contempt with which he is charged;

(*b*) afford him an opportunity to make his defence to the charge;

(*c*) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and

(*d*) make such order for the punishment or discharge of such person as may be just.

(*2*) Notwithstanding anything contained in sub-section (*1*), where a person charged with contempt under that sub-section applies, whether orally or in writing, to have the charge against him tried by some judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the Court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof.

(*3*) Notwithstanding anything contained in any other law, in any trial of a person charged with contempt under sub-section (*1*) which is held, in pursuance of a direction given under sub-section (*2*), by a Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed to appear as a witness and the statement placed before the Chief Justice under sub-section (*2*) shall be treated as evidence in the case.

(*4*) Pending the determination of the charge, the Court may direct that a person charged with contempt under this section shall be detained in such custody as it may specify:

Provided that he shall be released on bail, if a bond for such sum of money as the Court thinks sufficient is executed with or without sureties conditioned that the person charged shall attend at the time and place mentioned in the bond and shall continue to so attend until otherwise directed by the Court:

Provided further that the Court may, if it thinks fit, instead of taking bail from such person, discharge him on his executing a bond without sureties for his attendance as aforesaid.

1. Subs. by Act 6 of 2006, s. 2, for section 13 (w.e.f. 17-3-2006).

15. Cognizance of criminal contempt in other cases.—(*1*) In the case of a criminal contempt, other than a contempt referred to in section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by—

(*a*) the Advocate-General, or

(*b*) any other person, with the consent in writing of the Advocate-General, [1][or]

[1][(*c*) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.]

(*2*) In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate-General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(*3*) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty.

Explanation.—In this section, the expression "Advocate-General" means,—

(*a*) in relation to the Supreme Court, the Attorney-General or the Solicitor-General;

(*b*) in relation to the High Court, the Advocate-General of the State or any of the States for which the High Court has been established;

(*c*) in relation to the court of a Judicial Commissioner, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

16. Contempt by judge, magistrate or other person acting judicially.—(*1*) Subject to the provisions of any law for the time being in force, a judge, magistrate or other person acting judicially shall also be liable for contempt of his own court or of any other court in the same manner as any other individual is liable and the provisions of this Act shall, so far as may be, apply accordingly.

(*2*) Nothing in this section shall apply to any observations or remarks made by a judge, magistrate or other person acting judicially, regarding a subordinate court in an appeal or revision pending before such judge, magistrate or other person against the order or judgment of the subordinate court.

17. Procedure after cognizance.—(*1*) Notice of every proceeding under section 15 shall be served personally on the person charged, unless the Court for reasons to be recorded directs otherwise.

(*2*) The notice shall be accompanied,—

(*a*) in the case of proceedings commenced on a motion, by a copy of the motion as also copies of the affidavits, if any, on which such motion is founded; and

(*b*) in case of proceedings commenced on a reference by a subordinate court, by a copy of the reference.

(*3*) The Court may, if it is satisfied that a person charged under section 15 is likely to abscond or keep out of the way to avoid service of the notice, order the attachment of his property of such value or amount as it may deem reasonable.

(*4*) Every attachment under sub-section (*3*) shall be effected in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908), for the attachment of property in execution of a decree for payment of money, and if, after such attachment, the person charged appears and shows to the satisfaction of the Court that he did not abscond or keep out of the way to avoid service of the notice, the Court shall order the release of his property from attachment upon such terms as to costs or otherwise as it may think fit.

1. Ins. by Act 45 of 1976, s. 2 (w.e.f. 30-3-1976).

(86) (148)

(*5*) Any person charged with contempt under section 15 may file an affidavit in support of his defence, and the Court may determine the matter of the charge either on the affidavits filed or after taking such further evidence as may be necessary, and pass such order as the justice of the case requires.

18. Hearing of cases of criminal contempt to be by Benches.—(*1*) Every case of criminal contempt under section 15 shall be heard and determined by a Bench of not less than two judges.

(*2*) Sub-section (*1*) shall not apply to the Court of a Judicial Commissioner.

19. Appeals.—(*1*) An appeal shall lie as of right from any order or decision of the High Court in the exercise of its jurisdiction to punish for contempt—

(*a*) where the order or decision is that of a single judge, to a Bench of not less than two judges of the Court;

(*b*) where the order or decision is that of a Bench, to the Supreme Court:

Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.

(*2*) Pending any appeal, the appellate Court may order that—

(*a*) the execution of the punishment or order appealed against be suspended;

(*b*) if the appellant is in confinement, he be released on bail; and

(*c*) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(*3*) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (*2*).

(*4*) An appeal under sub-section (*1*) shall be filed—

(*a*) in the case of an appeal to a Bench of the High Court, within thirty days;

(*b*) in the case of an appeal to the Supreme Court, within sixty days,

from the date of the order appealed against.

20. Limitation for actions for contempt.—No court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.

21. Act not to apply to *Nyaya Panchayats* or other village courts.—Nothing contained in this Act shall apply in relation to contempt of *Nyaya Panchayats* or other village courts, by whatever name known, for the administration of justice, established under any law.

22. Act to be in addition to, and not in derogation of, other laws relating to contempt.—The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law relating to contempt of courts.

23. Power of Supreme Court and High Courts to make rules.—The Supreme Court or, as the case may be, any High Court, may make rules, not inconsistent with the provisions of this Act, providing for any matter relating to its procedure.

24. Repeal.—The Contempt of Courts Act, 1952 (32 of 1952), is hereby repealed.

28.08.2017

In Cont. Appeal No.2.2017

Shri Vishal Mishra, learned counsel for the appellants.

Shri Anil Mishra, learned counsel for the respondent.

In Conc.521.16, Conc.806.16, Conc.808.16,
Conc.810.16, Conc.812.16, Conc.814.16,
Conc.816.16, Conc.1222.16
and Conc.848.15

Shri B.P. Singh, Shri Devesh Sharma and Shri Kumar Gaurav Sharma, learned counsel for the petitioners.

Shri Rajendra Singh Yadav, Shri BPS Chouhan, Shri Nitin Agrawal, learned counsel for respondents.

With the consent of learned counsel for the parties the matter is finally heard.

This order would also govern the disposal of Conc.521.16, Conc.806.16, Conc.808.16, Conc.810.16, Conc.812.16, Conc.814.16, Conc.816.16, Conc.1222.16 and Conc.848.15. The relevant facts are taken from Contempt Appeal No.2/2017.

This appeal under Section 19(1) (a) of the Contempt of Court Act 1971 takes exception to order dated 01.03.2017 passed in Contempt Petition No.1222.2016.

The Contempt Case was directed for action

against respondents (present appellants) for alleged willful disobedience of order dated 23.09.2015 passed in Writ Petition No.6385/2015. The said Writ Petition was for direction for grant of regular pay-scale on the anvil that the petitioner had already been granted permanent classification in the year 2005 (vide order dated 15.06.2005). The said writ petition was disposed of in the terms of order passed by the Division Bench in W.A.No.110/2011. The direction by Writ Court in Writ Petition was that the order passed in WA No.110/2011 shall apply *mutatis mutandis*.

Be it noted, the Writ Petition No.6385/2015 was disposed of at motion hearing stage without adjudicating the claim of the petitioner of having been classified permanent on completion of 240 days. Such a permanent classification has since been held to be erroneous [Please See decisions in **State of M.P. and others Vs. Lalit Kumar Verma [(2007) 1 SCC 575], Mahendra L. Jain and others Vs. Indore Development Authority and others [(2005) 1 SCC 639], M.P. Housing Board and another Vs. Manoj Shrivastava [(2006) 2 SCC 702]**. Be that as it may.

The direction in WA.110.2011 which was *mutatis mutandis* to be followed was in the following terms:

> "(1) The petitioner shall file a fresh representation before respondents along

with the proof of acquiring permanent status by way of classification. The respondents shall verify and if petitioner's permanent status remains intact, he shall be given similar treatment, i.e., grant of regular pay scale attached to the permanent post from the date of classification as permanent employee.

(2) The respondents shall also grant increments attached to the pay scale and if rules permit, extend benefit of DA in favour of the petitioner.

(3) The respondents shall also pass a speaking order regarding claim of grant of seniority to the petitioner from the date of classification as permanent employee.

(4) If for any justifiable reason, the petitioner is not found entitled for any of the benefits claimed, a detailed and reasoned order be passed and communicated to the petitioner. The aforesaid exercise be completed within 120 days from the date of production of copy of this order along with the representation.

(5) It is made clear that it will not be open to the respondents to deny relief to the petitioners on the ground that they were not litigants in W.A. No. 1266/2010 and other similar matters, which were decided on merits, if they are otherwise similarly situated. Petition is disposed of."

Thus, vide direction No.1 discretion was given to the authorities to verify the status of the petitioner being that of permanent 'remains intact'.

The respondents (present appellants) on receiving representation examined the same as to the entitlement of the petitioner for permanent classification. The petitioner was issued show cause notice on 28.01.2017 that the classification was doubtful because it was found that the petitioner was not appointed as per recruitment rules, nor was he appointed against vacant post. The competent authority after considering the reply passed an order on 08.02.2017; whereby the petitioner was not found eligible for permanent classification immediately on completion of 240 days on daily wages. The competent authority after determining the status of the petitioner, went on to examine his case under the scheme of regularization of daily wagers brought in vogue vide Govt. of Madhya Pradesh General Administration Department's letter No.F 5-1/2013/1/3 Bhopal dated 07/10/2016 and finding the petitioner eligible, accordingly passed the following order:-

"योजना के संबंध में श्री रामनरेश राठौर की पात्रता पर गंभीरता पूर्वक विचार किया गया है तथा यह पाया गया है कि वे योजना का लाभ प्राप्त करने संबंधी सभी शर्तों को पूर्ण करते हैं।

उपरोक्त विवेचना अनुसार इस बिन्दु पर निम्न निष्कर्ष अभिलिखित किया जाता है:–

"आवेदक दैनिक वेतनभोगी श्रमिकों हेतु सामान्य प्रशासन विभाग द्वारा जारी परिपत्र दिनांक 07.10.2016 के अनुसार लाभ प्राप्त

करने की पात्रता रखता है। आवेदक उसके पदनाम ''बाल्वमेन'' के अनुरूप शासन के आदेश क्रमांक एफ 6–102/2016/1/34, भोपाल दिनांक 24.12.2016 के अनुसार अर्द्धकुशल श्रेणी से संबद्ध लाभों को प्राप्त करने का पात्र है।''

श्री रामनरेश राठौर, दैनिक वेतनभोगी, अर्द्धकुशल श्रमिक को प्राप्त होने वाले पारिश्रमिक एवं अन्य लाभ निम्नानुसार हैः–

- अर्द्धकुशल श्रमिक के अनुरूप पारिश्रमिक दिए जाने हेतु वेतनमान रूपये 4500–90–7500/– निर्धारित किया गया है।
- वरिष्ठता का लाभ प्राप्त होगा। वरिष्ठता का लाभ देने हेतु 01 सितम्बर 2016 की स्थिति में उनके द्वारा पूर्ण किये गये वर्षों के आधार पर संबंधित वेतनमान में अंकित वेतनवृद्धि की दर से गणना की जावेगी। आवेदक का नियोजन वर्ष 1990 में किया गय था, अतः उसे 26 वर्ष की वरिष्ठता प्राप्त होगी, तथा तदनुसार उसका वेतन निर्धारण किया जायेगा।
- यह वेतन निर्धारण 01 सितंबर 2016 की तिथि से होगा। आगामी वेतनवृद्धि सितम्बर 2017 से देय होगी।
- मंहगाई भत्ता भी देय होगा।
- कोई एरियर देय नहीं होगा।
- अधिवार्षिकी आयु पूर्ण होने पर 15 दिन प्रतिवर्ष के सेवाकाल के वेतन के आधार पर उपादान की पात्रता होगी। यह राशि आवेदक के लिये रूपये 1,50,000/– तक सीमित होगी।
- चतुर्थ श्रेणी का पद रिक्त होने पर आवेदक का उस पद पर नियमितीकरण हेतु सामान्य प्रशासन विभाग द्वारा जारी परिपत्र दिनांक 07.10.2016 में विहित प्रक्रिया एवं पात्रता अनुसार विचार किया जा सकेगा।

नियोजक द्वारा की गई गणना के अनुसार आवेदक को दिनांक 01 सितम्बर 2016 का पारिश्रमिक रूपये 17,456/– प्रतिमाह प्राप्त होंगे। फिलहाल श्रमायुक्त द्वारा निर्धारित दर से आवेदक को रूपये 11,685/– प्रतिमाह प्राप्त होते हैं। इस प्रकार आवेदक की परिलब्धियों में प्रतिमाह रूपये 5,771/– की वृद्धि होगी, जो कि वर्तमान परिलब्धियों से लगभग 53 प्रतिशत अधिक है। गणना का विवरण निम्नानुसार हैः–

पूर्व अनुसार पारिश्रमिक	(प्रतिमाह रूपये में)
श्रमायुक्त द्वारा निर्धारित पारिश्रमिक	8,435
20 वर्ष की सेवा उपरांत विशेष लाभ	2,500
मेहगाई भत्ता	750
योग परिलब्धियाँ	11,685

सामान्य प्रशासन विभाग द्वारा जारी परिपत्र दिनांक 07.10.2016 के अनुसार पात्रता (दिनांक 01.09.2016 की स्थिति में):—

आवेदक को देय वेतनमान	4500—90—7500
न्यूनतम वेतनमान	4500
कुल पूर्ण वर्ष (26) हेतु देय वेतनवृद्धि	26X90=2340
मूल वेतन	6840
मंहगाई भत्ता (132 प्रतिशत)	9028
कुल वेतन	15869
शासकीय अंशदान ई.पी.एफ. (10 प्रतिशत)	1587
योग परिलब्धियाँ	17456

कार्यपालन यंत्री, लोक स्वास्थ्य यांत्रिकी खंड, भिण्ड आवेदक को उपरोक्तानुसार परिलब्धियों का भुगतान 01 सितम्बर 2016 से सुनिश्चित करेंगे।

This order is the cause for filing contempt petition whereon learned Single Judge holding that respondents "with calculated intentions, intended to defy the order passed by the Court and that if the Supreme Court and thereby have made inroads with administration of justice. The effect of contemptuous act, in fact, is to render the order passed by this Court and that of 'Hon'ble Supreme Court in identical matters otiose. Hence,

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respondents are held to have committed contempt of court", called upon the present appellants to address on the question of quantum of punishment.

Against this order present appeal is filed.

Preliminary objection as to maintainability of present petition is raised. It is urged that unless punished, the appellants have no *locus standi* to file an appeal under Section 19 of 1971 Act. Reliance is placed on the decision in **Midnapore Peoples' Coop. Bank Ltd and others Vs. Chunilal Nanda and others [(2006) 5 SCC 399]**.

Careful reading of the judgment in **Midnapore Peoples' Coop. Bank Ltd and others (supra)**, and more particularly paragraph 11(iv), however, negatives the contention in the given facts of present case.

In the case at hand, as noticed, learned Single Judge having arrived at a conclusion holding the appellants herein guilty of committing contempt, had directed for hearing on sentence. Thus, a final verdict of punishment has been arrived at. Nothing remains for the appellants to defend. In **Midnapore Peoples' Coop. Bank Ltd and others (supra)**, it is held:

> "**11(iv)** Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of 'jurisdiction to punish for contempt' and, therefore, not appealable

under Section 19 of the CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under Section 19 of the Act, can also encompass the incidental or inextricably connected directions.

The present case falls in the category of the exception carved out by the Hon'ble Supreme Court i.e. such direction or decision which is incidental to or inextricably connected with the order punishing for contempt. In view whereof, the preliminary objection as to maintainability of the appeal is overruled.

As to the facts of the case, evidently, learned Single Judge in WP.6385/2015 did not adjudicate the right of the petitioner nor of his status as being classified as permanent. The Writ Court only recorded the submission and directed that the authorities concerned to consider the claim in the light of the direction issued by the Division Bench in WA.110.2011, thus, leaving the discretion with the authorities to consider the status of the petitioner and if found eligible to extend all the benefits he would be entitled for as per said status. The authorities concerned did consider the claim and having found that the alleged conferral of permanent classification being *de hors* the Standard Standing Order and the law laid down by

Supreme Court went on to further examine the status and entitlement under new policy. As the petitioner was found eligible under the new policy he has been extended with all the benefits. The petitioner if he had any grievance against such decision was at liberty to have questioned its validity before appropriate forum. Instead, alleging willful disobedience, the petitioner filed the contempt petition which is in our considered opinion was ill-advised.

It is manifestly clear from the order passed by learned Single Judge in the Contempt Case No.1222/2016 that the the claim of the petitioner was examined on merit. This would be evident from the findings in paragraph 21 and 22 of the decision. In view whereof, we are of the considered opinion that learned Single Judge transgressed its jurisdiction in a Contempt Petition.

In our considered opinion, the contempt court was only to examine whether the direction for consideration has been carried out. It was not required to consider the correctness of the order on merit.

It is held in **Anil Kumar Shahi (2) and others Vs. Prof. Ram Sevak Yadav and others [(2008) 14 SCC 115]**:

> "50. It is by now well settled under the Act and under Article 129 of the Constitution of India that if it is alleged before this

Court that a person has willfully violated its order it can invoke its jurisdiction under the Act to enquire whether allegation is true or not and if found to be true it can punish the offenders for having committed "civil contempt" and if need be, can pass consequential orders for enforcement of execution of the order, as the case may be, for violation of which, the proceeding for contempt was initiated. In other words, while exercising its power under the Act, it is not open to the Court to pass an order, which will materially add to or alter the order for alleged disobedience of which contempt jurisdiction was invoked. When the Court directs the authority to consider a matter in accordance with law, it means that the matter should be considered to the best of understanding by the authority and, therefore, a mere error of judgment with regard to the legal position cannot constitute contempt of Court. There is no willful disobedience if best efforts are made to comply with the order.

In **Dinesh Kumar Gupta Vs. United India Insurance Company Limited and others [(2010) 12 SCC 770]**, it is held:

"23. Besides this, it would also not be correct to overlook or ignore an important statutory ingredient of contempt of a civil nature given out under Section 2(b) of the Contempt of Courts Act, 1971 that the disobedience to the order alleging contempt has to satisfy the test that it is a wilful disobedience to the order. Bearing this important factor in mind, it is relevant to note that a proceeding for civil contempt would not lie if the order alleged

to have been disobeyed itself provides scope for reasonable or rational interpretation of an order or circumstance which is the factual position in the instant matter. It would equally not be correct to infer that a party although acting due to misapprehension of the correct legal position and in good faith without any motive to defeat or defy the order of the Court, should be viewed as a serious ground so as to give rise to a contempt proceeding.

24. To reinforce the aforesaid legal position further, it would be relevant and appropriate to take into consideration the settled legal position as reflected in the judgment and order delivered in Ahmed Ali V. Supdt. District Jail as also in B.K. Kar V. High Court of Orissa that mere unintentional disobedience is not enough to hold anyone guilty of contempt and although disobedience might have been established, absence of wilful disobedience on the part of the contemnor, will not hold him guilty unless the contempt involves a degree of fault or misconduct. Thus, accidental or unintentional disobedience is not sufficient to justify for holding one guilty of contempt. It is further relevant to bear in mind the settled law on the law of contempt that casual or accidental or unintentional acts of disobedience under the circumstances which negate any suggestion of contumacy, would amount to a contempt in theory only and does not render the contemnor liable to punishment and this was the view expressed also in State of Bihar Vs. Rani Sonabati Kumari and N. Baksi V. O.K. Ghosh."

In view whereof, the impugned order is set

aside. The consequential actions ensuing from the said order are also set aside. The contempt petition 1222/2016 is dismissed.

It is, however, made clear that if the petitioner is aggrieved by the order passed by the authorities in compliance to direction in WP.No.6385/2015 he is at liberty to assail the same before the appropriate forum. As we have not expressed any opinion to the correctness of the order passed by the competent authority, the same, if assailed, to be decided on its own merit.

The appeal is allowed to the extent above.

No costs.

(Sanjay Yadav)
Judge

(S.K. Awasthi)
Judge

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Central Administrative Tribunal, Lucknow Bench, Lucknow

CCP No. 36/2013 in O.A.No. 366/2011

This the 18th day of December, 2013

Hon'ble Sri Sudhir Kumar, Member (A)
Hon'ble Sri Navneet Kumar, Member (J)

Lal Bahadur Chaudhary aged about 52 years son of Sri Shiv Prasad Chaudhary, resident of village Isapur, Post Chamiyani, District- Unnao

Applicant

By Advocate:-Sri R.C. Saxena

Versus

1. Sri H.K. Jaggi, Secretary, Railway Board, New Delhi.
2. V.K.Gupta, General Manager, Northern Railway, Baroda House, New Delhi.
3. JagdeepRai, Divisional Railway Manager, Northern Railway, Lucknow.
4. Sri T.K. Pandey, Senior Divisional Engineer (Quardination), Northern Railway, Lucknow.

Respondents

By Advocate: Sri S. Verma

(Reserved on 28.10.2013)

ORDER

By Hon'ble Sri Navneet Kumar, Member (J)

The present Contempt Petition is preferred by the applicant for non-compliance of the order passed by the Tribunal in O.A. No. 366/2011, by virtue of which the Tribunal passed the following orders:-

> **"5. In view of the above, the impugned order dated 30.6.2011 (Annexure-1) issued by the respondent No. 4 is set aside and the respondents are directed to consider the case of the applicant for his permanent absorption in Northern Railway within three months from the date of receipt of a certified copy of this order in accordance with law and past precedents with all consequential benefits as per rules. No order as to costs."**

The copy of the said order was duly communicated to the respondents and when the order was not complied with, the applicant preferred the present contempt petition.

2. Learned counsel appearing on behalf of the applicant pointed out that the respondents despite knowing the consequences has not complied with the orders of the Tribunal. Not only this, it is also submitted that similarly placed three persons namely, Farooq Ahmad, A.K.Saxena and Vinod Kumar Saxena who had preferred separate Original Applications before the Principle Bench of the Tribunal were considered by the respondents regarding their permanent absorption in Northern Railway in accordance with law. Accordingly , the Tribunal also directed to consider the case of the applicant in accordance with law and past precedents. It is also pointed out on behalf of the applicant he was initially appointed as Lekhpal and posted under Sub Divisional Officer, Maharajganj, District- Raibareilly and subsequently the services of the applicant was confirmed on the post of Lekhpal vide order dated 13.7.1988 and thereafter, he had applied for appointment to the post of Survey Clerk in the office of Railway Personnel Office on deputation basis. After due process, the applicant was posted in Lucknow Division against the vacancy caused by one Saryu Prasad, Kanoongo Clerk and in pursuance thereof, the General Manager, H.Q., Baroda House, New Delhi issued a letter dated 7.12.1990 to the Divisional Railway Manager, Northern Railway, Lucknow stating therein that the approval of CE/C is accorded to the appointment of the applicant as Lekhpal on deputation from State Govt. ,U.P. to DRM office, lucknow as per usual terms and conditions and the Divisional Railway Manager, Lucknow, thereafter issued a letter dated 11.1.1991, directing the applicant to report for appointment as Lekhpal Clerk. The period of the applicant was subsequently extended upto 1997 and during this period in 1994, the applicant was promoted to Land Record inspector w.e.f. 30.4.1993 vide District Magistrate letter dated

30.4.2003 and accordingly the pay of the applicant was fixed in the grade of Rs. 1350-2200/- as per fixation made by the DRM, Northern Railway, Lucknow in December, 2000. The applicant submitted an application for his permanent absorption stating therein that since he is working continuously from the date of his initial appointment in the Northern Railway and the same was duly forwarded by the Divisional Railway Manager, Northern Railway Lucknow and when his application was not considered, he made several representations and has also relied upon the decision of the Principal Bench in O.A. No. 1877/1993, 1943/1993 and 2478/1993, where a direction was issued to the respondents to consider the case of the aforesaid applicants of the above O.A. regarding their permanent absorption in Northern Railway in accordance with law and past precedents. It is also pointed out by the learned counsel for the applicant that the judgment passed by the Principal Bench in the above OAs were complied with. But during this period, the applicant received an order dated 30.6.2011 wherbey the case of the applicant was rejected and he preferred the O.A. before this Tribunal which was dismissed on12.9.2011 with the following orders:-

> "In response to specific query made by this Tribunal, learned counsel for the applicant fairly concedes that the applicant has already been relief from the Railways on23.8.2011. This fact has not been indicated anywhere, which amounts to misleading and misrepresentation . Otherwise also this O.A. has become in-fructuous. Therefore, on these grounds, the O.A. is dismissed. No order as to costs."

3. The applicant filed writ petition before the Hon'ble High Court and the Hon'ble High Court has passed the following orders in the writ petition:-

> **"In view of the aforesaid ,we set aside the impugned order dated 12.9.2011 and remit the matter to the Central Administrative Tribunal for a fresh**

consideration on merit with direction to dispose it of at an early date. The operation of repatriation order dated 30.6.2011 (Annexure No. 33) shall remain in abeyance till the dispose of the O.A. on merit by the Tribunal."

4. The bare perusal of the order is absolutely clear that the order of rejecting the claim of the applicant was considered and the impugned order dated 30.6.2011 was set aside and the respondents were directed to consider the case of the applicant for permanent absorption in Northern Railway within three months from the date of receipt of certified copy of the order in accordance with law and past precedents. It is also pointed out by the learned counsel for the applicant that the respondents while deciding the case of the applicant has not considered the case of the applicant in the light of direction issued by the Tribunal. Apart from this, it is also pointed out by the learned counsel for the applicant that instead of Secretary, Railway Board, much junior officer has filed the compliance report as such he do not wish to file any reply to the said compliance report since the compliance report has not been filed by the Secretary, Railway Board as ordered by the Tribunal.

5. Learned counsel appearing on behalf of the respondents filed their compliance report and through compliance report, it is pointed out by the respondents that by means of order dated 8.10.2013, the Railway Board has passed an order and it is observed in the said order that the applicant may be repatriated to his parent Government i.e. Sub Divisional Magistrate, Maharajganj, U.P. It is also pointed out by the learned counsel for the respondents that the Tribunal vide order dated 9.9.2013 has only directed the respondents to file the compliance report , failing which the respondent No.1 shall appear in court on the next date. It is also pointed out by the learned counsel for respondents that prior to the next date fixed, copy of the compliance report was duly

served upon the learned counsel for the applicant, as such, the respondent No.1 i.e. Secretary, Railway board was not required to appear before the Tribunal. The respondents also submitted that no where in the order, it is said that only respondent No.1 will file compliance report. Only it a the direction to the respondents to file compliance report. Apart from this, learned counsel appearing on behalf of the respondents also relied upon the decision of Hon'ble Apex Court in the case of ***J.S. Parihar Vs. Ganpat Duggar and Chhotu Ram Vs. Urvashi Gulati***. The respondents also pointed out that while deciding the case of the applicant , the authorities duly considered all aspects of the matter and there after taken a decision to repatriate the applicant.

6. Heard the learned counsel for parties and perused the pleadings on record carefully.

7. The bare perusal of the order passed by the Tribunal shows that while deciding the O.A., the Tribunal quashed the order dated 30th June, 2011 and directed the respondents to consider the case of the applicant for his permanent absorption in Northern Railway within 3 months from the date of receipt of certified copy of the order. Apart from this, it is also observed by the Tribunal that the said consideration be made in accordance with law and past precedents. After the decision of the Tribunal , the applicant served the copy of the order upon the respondents for compliance of the same. The respondents after considering the directions issued by the Tribunal passed an order on 8th October, 2013 wherein it is pointed out by the respondents that the applicant was an employee of U.P. Govt. , was appointed on deputation basis from the said State Govt. to the DRM office, Northern Railway, Lucknow as Lekhpal for a period of 3 years as per usual terms and conditions and in pursuance thereof, he joined the said post of Lekhpal on 8.10.1991. The respondents have also considered the cases of absorption of Farooq Ahmad, A.K. Saxena and

Vinod Kumar Saxena in pursuance of the earlier orders of the Tribunal and the Ministry thereafter, declared vide its policy dated 6.4.1998 that previous cases of absorption of similarly situated deputationists should not be construed as precedent. Accordingly, the case of the applicant was rejected and it has been decided that the applicant may be repatriated back to his parent Govt./ Department.

8. The scope of contempt is limited and the Tribunal /Courts cannot re-appreciate the evidence in the contempt proceedings.

9. Courts are precluded from reopening the issue to see whether the order is right or wrong in Contempt Petition. Once there is an order passed by the Government on the basis of directions issued by the Court, there is fresh cause of action to seek redressal in an appropriate forum. Contempt jurisdiction is exercised for the purpose of upholding the majesty of law and dignity of judicial system as also of the courts and tribunals entrusted with the task of administering delivery of justice.The majesty of judicial Institution is to be ensured so that it may not be lowered and the functional utility of the constitutional edifice is preserved from being rendered ineffective.

10. As was mentioned by **Justice Williams in Miller vs. Knox (1838) 6 Scott, 1 : 4 Bing. N.C. 574, page 589**, the contempt of Court is so manifold in its aspects that it is difficult to lay down any exact definition of the offence. It is defined or described to be a disobedience to the Court, an opposing or a despising of the authority, justice, or dignity thereof.

11. In the case of In **Re-Johnson (1887) 20 QBD 68, at page No.74,** it was mentioned that the main question in considering a case of contempt always is as to whether or not there has been an interference or a tendency to interfere with the administration of justice by any of the actions of the respondents/alleged contemners.

12. There cannot be anything of greater consequence than to keep the streams of justice clear and pure, so that parties may proceed with safety both to themselves and their characters.

13. In a contempt petition case, the appreciation of the facts leading to a decision by the Bench as to whether an act is a contumacious act in itself or not, is an important factor to be seen. However, it is trite law that in a contempt petition case, the task of the contempt petitioner is only that of an informant, to point out the alleged contumacious act stated to have been committed by the respondent(s)/alleged contemner(s), and the role of the contempt petitioner who brings the alleged contumacious conduct of the respondent(s)/alleged contemner(s) to the notice of the Court/Tribunal, which is that of only an informant, comes to an end as soon as notices have been issued in exercise of contempt jurisdiction, and the contempt petitioner does not thereafter have the status of a litigant, as has been held and observed by the Hon'ble Apex Court in the case of Supreme Court Bar Association vs. Union of India: (1998) 4 SCC 409 (para 41): AIR 1998 SC 1895, and also in the cases of Jaipur Municipal Corporation vs. C.L. Mishra: (2005) 8 SCC 423 (para 9): (2005) 9 JT 195; B.K. Savithri vs. B.V.S. Anand: (2005) 10 SCC 207 (para 5): 2005 SCC Cri 1502, and K. Gopalan Nair vs. K. Balakrishnan Nair: (2005) 12 SCC 350 (para 3).

14. Proceedings for contempt are matters entirely between the court and the person alleged to have been guilty of contempt. No party has any statutory right to say that he is entitled as a matter of course to an order for committal because his opponent is guilty of contempt. All that he can do is to come to the Court and complain that the authority of the Court has been flouted and if the Court thinks that it was so, then the court in its discretion takes action to vindicate its authority.

15. In view of the facts, the question which arises for consideration in the instant contempt petition is that if, in compliance of an order

passed by the Tribunal/Court, the authorities have considered the case of the applicant and came to the conclusion on the basis of reasoning given therein that the applicant be repatriated back of any decision is taken , whether the contempt petition filed by the applicant is maintainable or not on the ground that such action is not in accordance with the directions given by the Tribunal as per the version of the applicant. The answer to the above question lies in the following judgments passed by the Hon'ble Apex Court or by the Hon'ble High Court:-

In the case of **J.S. Parihar Vs. Ganpat Duggar and others AIR 1997 Supreme Court 113**, the Apex Court has held as under:-

> **"The question then is whether the Division Bench was right in setting aside the direction issued by the learned Single Judge to redraw the seniority list. It is contended by Mr S.K. Jain, the learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three Benches, the learned Judge cannot come to a conclusion whether or not the respondent had wilfully or deliberately disobeyed the orders of the Court as defined under Section 2(*b*) of the Act. Therefore, the learned Single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2-7-1991. Subsequently promotions came to be made. The question is whether seniority list is open to review in the contempt proceedings to find out whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act."**

In the case of **Lalit Mathur Vs. L. Maheswara Rao (2000) 10 SCC 285**, the Hon'ble Supreme Court held as under:-

> **"The High Court in the writ petition had issued a direction for the consideration of the respondent's representation by the State Government. This direction was carried out by the State Government which had considered and thereafter rejected the representation on merits. Instead of challenging that order in a fresh writ petition under Article 226, the respondent took recourse to contempt proceedings which did not lie as the order had already been complied with by the State Government which had considered the representation and rejected it on merits."**

Further in the case of **Ashok Kumar Pandey Vs. Ashok Kumar Singh D.I.O.S.,Ballia and others 2003 (5) AWC 4393** this Court has held as under:-

> **"The D.I.O.S. considered the report and the matter of appointment of the applicant in great detail. He observed in the previous writ petition the applicant claimed his appointment under Section 18 of the U.P. Secondary Education Service Commission Act, 1982. However, in the second writ petition, he claimed his appointment under Removal of Difficulties II Order. Both these matters were considered and it was held that the appointment is not according to the rules either under Section 18 of the U.P. Secondary Education Service Commission Act, 1982, or under Removal of Difficulties Order (Second). therefore, the appointment was disapproved. It is further contended that previous approval in compliance of the order passed in the writ petition was passed by the Sub-Divisional Magistrate, who was holding the charge of D.I.O.S. without considering the provisions of the Act.**
>
> **Therefore, the direction of this Court has been complied with. If the applicant is aggrieved by the order of the D.I.O.S. deciding the matter and is of the view that the decision is not correct, he may challenge the same in the appropriate writ or in other proper proceedings. There is no ground to proceed with the contempt. The petition for contempt is accordingly dismissed."**

In the case of **Brahma Deo Tiwari Vs. Alok Tandon, District Magistrate, Allahabad 2004 (1) AWC 543** this Court has held as under:-

> **" As already noted hereinabove, this contempt petition has been filed alleging violation of the order of the writ court dated 10.12.1997 by which the writ court had directed to consider the case of the applicant with regard to his appointment. The contempt court after**

perusing the order dated 11.7.1997, though had disapproved the decision taken by the opposite party, had directed vide order dated 10.12.1997, to reconsider the case of the applicant after taking into consideration different aspect which are mentioned in the order itself. By the order dated 17.12.2002, the opposite party has considered all the aspects mentioned in the order dated 10.12.1997. Counsel for the applicant has urged that the order dated 17.12.2002 is neither legally nor factually correct. It may be so, but it is well settled that the contempt court can neither sit in appeal nor examine the correctness of a resultant order. The Apex Court in Lalith Mathur v. L. Maheshwara Rao, (2000) 10 SCC 285 and J. S. Parihar v. Ganpat Duggar, (1996) 6 SCC 291, has held that correctness of an order passed by a statutory authority on the directions of the writ court cannot be examined under the contempt jurisdiction. No doubt the resultant order may give rise to a fresh cause of action."

In the case of **Shail Raj Kishore , Secretary, Education Basic, U.P. Lucknow and others 2004 (3) AWC 2444** this court has held as under:-

"If the applicants feel that the order passed by the opposite party is not in accordance to the intent or desire of the Court or otherwise illegal and arbitrary, the same can only be challenged before the appropriate forum. In various cases, Apex Court has held that the Contempt Court cannot go into the merit of the order. Various grounds raised by the learned for the applicant to submit that the order is bad in law required consideration and adjudication, which can only be done by the appropriate Court and not by this Court."

16. Apart from this, the learned counsel for the respondents relied upon on the decision rendered by the Hon'ble Apex Court in the case of **Chhotu Ram Vs. Urvashi Gulati and anothers reported in AIR 2001 SC 3468**. The Hon'ble Apex Court has observed as under:-

"Court directed for considering the case of the applicant for promotion . The case of the petitioner was duly considered but his claim for promotion was rejected and in that event, since the case of the applicant was considered as such, the contempt proceedings cannot be proceeded as there is no violation of any direction issued by the Court."

The learned counsel for respondents has also relied upon a decision rendered by the Hon'ble Apex Court in the case of **Anil Kumar Shahi and others Vs. Prof. Ram Sevak Yadav and**

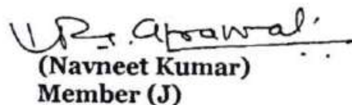
others reported in (2008) 14 SCC 115 in which the Hon'ble Apex Court has been pleased to observe as under:-

> **"When the Court directs the authority to consider a matter in accordance with law, it means that the matter should be considered to the best of understanding of an authority to whom direction is given, therefore, mere error of judgment with regard to the legal position does not constitute contempt of court. There is no willful disobedience if best efforts are made to comply with the court order."**

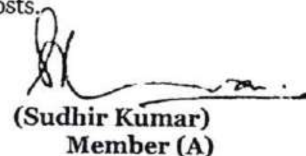
> **"In other words, while exercising its power under the Act, it is not open to the court to pass an order, which will materially add to or alter the order for alleged disobedience of which contempt jurisdiction was invoked. When the Court directs the authority to consider a matter in accordance with law, it means that the matter should be considered to the best of understanding by the authority and, therefore, a mere error of judgment with regard to the legal position cannot constitute contempt of court. There is no willful disobedience if best efforts are made to comply with the order."**

17. Considering the observations made by the Hon'ble Apex Court and the reasons given therein, if the applicant is feeling aggrieved by the decision taken by the competent authority and is of the view that the same is not in accordance with the directions given by the Tribunal, then he has remedy to challenge the same before the appropriate forum and for the said purpose remedy to him does not lie under the contempt of Court Act.

18. Considering the observations of the Hon'ble Apex Court and factual position of the case, the contempt petition is dismissed. The notices issued stand discharged. No order as to costs.



(Navneet Kumar)
Member (J)



(Sudhir Kumar)
Member (A)

HLS/-

CONC-922-2016

(NAMDEO PATIL Vs SHRI PRAMOD AGARWAL)

19-12-2016

Shri Sudarshan Chakrawarty, learned counsel for the applicant.

Shri Amit Seth, learned counsel for the respondent No.3.

1. Learned counsel for the applicant submits that the order passed by this Court in W.P. No.14751/15 dated 8.9.2015 has not been complied with by the respondents.

2. The respondents have filed a reply alongwith the compliance report of the order dated 21.7.2016, however, rebutting the same the petitioner has filed a rejoinder and stated that the respondents have not decided the claim of the petitioner in light of the judgment dated 7.11.2015 passed in WP No.1070/2003 Ã□Â¢Ã□Â□Ã□Â□K.L. Asre Vs. State of M.P. & Ors.Ã□Â¢Ã□Â□Ã□Â□

3. According to the petitioner the benefits of Kramonnati has been granted to the similarly situated persons namely Madan Gopal Sachan and C.B. Dubey in light of the judgment passed in the case of K.L. Asre (supra), but it has been denied to him illegally. The respondents have filed SLP (Civil) CC No.8436/2014 before the Hon'ble Supreme Court, which was decided on 4.7.2014, whereby the Hon'ble Apex Court has already considered the entitlement of time bound promotion to contingency paid employees. Hence, the petitioner is also entitled to get the benefit of time bound promotion scheme and the same has been affirmed by the Hon'ble Supreme Court. On the above ground, learned counsel for the applicant prays for initiation of contempt proceedings against the respondents.

4. As per order (Annexure-R/1) passed by the respondent No.2, whereby it is clear that the petitioner is not entitled to receive the benefits of Kramonati as he is working as a driver in contingency paid

establishment and there is no provision for them for time bound promotion or Kramonnati. On the above ground representation of the petitioner has been rejected.

5. Heard learned counsel for the parties and perused the record.

6. After order dated 8.9.2015, passed by this Court in WP No.14751/15, the respondents have passed a reasoned and speaking order on 21.7.2016 (Annexure-R/1) which may be termed as a little late but the detailed order passed encompasses relevant facts and reasons for disallowing the representation. In these circumstances it cannot be said that a deliberate circumvention and dubious method was adopted by respondents to avoid implementation of order of Court. In the case of Anil Kumar Shahi & Ors. Vs. Professor Ram Sevak Yadav & Others (2008) 14 SCC 115 the Apex Court has held as under:-

Ã□Â¢Ã□Â□Ã□Â□The contempt of Courts Act, 1971 has been brought to the statute book to define the limit and powers of certain Courts punishing for contempt of Court and it has laid down the procedure for exercise of such powers. Under the Act and under Article 129 of the Constitution, if it is alleged before the Supreme Court that a person has willfully violated its order, it can invoke its jurisdiction under the Act to enquire whether the allegation is true or not and if found to be true, it can punish the offenders for having committed Ã□Â¢Ã□Â□Ã□Â□civil contemptÃ□Â¢Ã□Â□Ã□Â□ and if need be, can pass consequential orders for enforcement or execution of the order, as the case may be for violation of which, the proceeding for contempt was initiated. While exercising its power under the Act, it is not proper to the Court to pass an order, which will materially add to or alter the order for alleged disobedience of which contempt jurisdiction was invoked. When the Court directs the authority to consider a matter in accordance with law, it means that the matter should be considered to the best of

understanding by the authority and, therefore, mere error of judgment with regard to legal position cannot constitute contempt of Court. There is no willful disobedience if best efforts are made to comply with the order.Ã□Â¢Ã□Â□Ã□Â□

7. The aforesaid principle was followed in the case of Maya Devi Dewangan Vs. M.R. Meena and Another by the coordinate bench of this Court reported in 2016(3) MPLJ 405.

8. In the case of Satish Shrivastava Vs. M.K. Varshane and Ors {2016 (3) MPLJ 388} the same principle has been followed in light of the principles laid down by the Division Bench of this Court in the case of Manjula Choudhary Vs. Priyanka Chouhan {2015(4) MPLJ 704}.

9. In the case of J.P. Parihar Vs. Ganpat Duggar (1996) 6 SCC 291, it has been made clear that once the order passed by the authority in compliance of the directions issued by the Court, whether rightly or wrongly, fresh cause of action arises for seeking redressal before an appropriate forum until and unless it is established that the order of compliance is in blatantly violation of the direction of this Court, no action is required to be taken under the Contempt of Court Act.

10. For the above discussions and reasons mentioned above, no case to initiate contempt proceedings against the respondents is made out. Hence, this contempt petition is dismissed.

(SMT. ANJULI PALO)
JUDGE

skm

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Court No. – 8 Case :- CONTEMPT No. - 2867 of 2017 Applicant :- UdayNarain Singh & Others Opposite Party :- Shri Alok Kumar, Prin. Secy. Deptt. Of Energy & Others, Civil Counsel

1. Heard Sri A. P. Mishra holding belief of Sri Prasoon Kumar Roy, learned counsel for the petitioner and Shri VinayakSaxena, learned Standing Counsel appearing for the respondent.No.1for Applicant :-Prasoon Kumar Rai Hon'ble AbdulMoin,J. "

2. The present contempt petition has been filed alleging non-compliance of the judgement and order dated 11.07.2017 passed by the writ Court in writ Petition No. 29997 of 2016 (S/B). Inre; Uday Narayan Singh and 43 ors. Vs. State of U.P. and anr, a copy of which is Annexure 1 to the contempt petition.

3. The writ Court while deciding the writ petition had issued the following directions:-
"6. Hon'ble Supreme Court in Civil Appeal No. 2608 of 2011, U.P. Power Corporation Ltd. Vs. Rajesh Kumar and others and other connected appeals has declared provisions of Section 3(7) of the Act, 1994 as ultra vires, and guidelines have been issued by the State Government vide G.O. dated 21.08.2015 regarding reservation of persons, who were promoted after 15.11.1997 and prior to 28.04.2012 giving them benefit of reservation and promotion and consequential seniority. Hence the matter has to be examined by the Principal Secretary of the Department, it would be appropriate to issue direction to the respondent No.1 to consider the petitioner's matter in the light of the judgment of the Hon'ble Supreme Court rendered in the case of U.P. Power Corporation Ltd. V. Rajesh Kumar and others in Civil Appeal No.2608 and other connected appeals and take a decision with regard to the promotion as and when it became due expeditiously preferably within two months from the date of communication of this order.
7. In the aforesaid terms the writ petition stands disposed of finally."

4. When the judgement of the writ Court was not complied with the present contempt petition was filed in December, 2017 wherein contempt notice had been issued to the respondent No. 1 and an affidavit of compliance have been filed on behalf of respondent No. 1. Along with the compliance affidavit an order dated 30.01.2018 has also been filed, a copy of which is Annexure 1 of the said affidavit by which the direction so issued by the writ Court have been alleged to have been complied with.

5. A perusal of the order dated 30.01.2018 would indicate that the respondents have considered the judgment passed by the writ Court dated 11.07.2017 as well as the judgment of the Hon'ble Supreme Court and have proceeded to decide the claim of the petitioners by contending that as in the Government order dated 21.08.2015, there is no provision of giving notional promotion to such retired persons who have retired subsequent to the judgment passed by the Hon'ble Supreme Court in the case of Rajesh Kumar, consequently they cannot be promoted.

6. Learned Counsel for the petitioner contends that the order dated 30.01.2018 which has been passed by the respondent-contemner in purported compliance to the judgment passed by the writ Court cannot be considered to be a compliance in letter and spirit of the judgment passed by the writ Court inasmuch as it was not the fault of the petitioners that they retired and are now not being promoted on the ground of they having been retired with the result that although others who have got the benefit of the judgment passed by the Hon'ble Supreme Court in the case of Rajesh Kumar are receiving a higher pay while the petitioners, who started litigating for their rights, have been deprived of their promotion on the ground that they are retired. Thus, this causes injustice to them. It is also contended that the Government order dated 21.08.2015 over which reliance has been placed in the order dated 30.01.2018 does not bar the promotion of such retired employees and consequently placing reliance over the said Government order while not promoting the petitioners on notional basis is a thing which is beyond the Government order of 21.08.2015 and hence the

respondent-contemner is in contempt.
7. To this argument, Sri VinayakSaxena, learned Standing Counsel, submits that the reasons as to why the petitioners are not being promoted have been categorically spelt out while passing the order dated 30.01.2018 in compliance to the judgement of the writ Court dated 11.07.2017. The subsequent order which has also been passed by the Hon'ble Supreme Court has also been referred in the order of 30.01.2018 and thus it is contended that the respondent-contemner has proceeded to pass an order to the best of his understanding and perfectly in the light and in the spirit of the judgment and order dated 11.07.2017 so passed by the writ Court and consequently the entire compliance which has to be made by the respondent-contemner of the order passed by the writ Court dated 11.07.2017 has been made and thus prays that the contempt petition may be dismissed.
8. Heard the learned counsel for the contesting parties and perused the record.
9. The judgment and order dated 11.07.2017 passed by the writ Court has already been reproduced above. The directions so issued by the writ Court was for the matter of the petitioners to be examined by the Principal Secretary of the Department in the light of the judgment of the Supreme Court in the case of Rajesh Kumar (Supra) and other connected appeals and the decision with regard to the promotion as and when it became due expeditiously was to be taken. The respondent-contemner has proceeded to pass the order dated 30.01.2018 in which after noticing the observations of the writ Court and the judgment of the Hon'ble Supreme Court in this regard, it has been indicated that as the petitioners have retired consequently they cannot be promoted. Thus, it is apparent that an order has been passed in compliance to the judgment and order dated 11.07.2017 passed by the writ Court. The petitioners are not satisfied with the order and say that it is wrong while on the other hand on behalf of the respondent-contemner it has been contended that the order is perfectly in accordance with the letter and spirit of the judgment and order dated 11.07.2017 passed by the writ Court and compliance has been made inasmuch as a decision with regard to the promotion of the petitioners in the light of Rajesh Kumar (Supra) has been taken. Thus, the question which arises now is that when the respondent-contemner has proceeded to pass an order in purported compliance to the judgment of the writ Court while on the other hand, the petitioners submit that the said order is said to have been passed wrongly, whether the contempt is said to have been committed or as an order has been passed in purported compliance to the directions issued by the writ Court, a fresh cause of action would accrue to the petitioners to challenge the said order before the appropriate Court in appropriate proceedings?
10. This issue is no longer res integra keeping in view a judgment of this Court passed in contempt No. 435 of 2016 Inre; Triyogi Narayan Tripathi Vs. Suresh Chandra and ors. decided on 09.10.2018. This Court while considering somewhat similar facts and circumstances wherein an order had been passed in purported compliance to the directions so issued by the writ Court was of the view that once the respondents have proceeded to pass an order no deliberate and willful disobedience can be said to have been committed by the respondent-contemners. Moreover, this Court while exercising contempt jurisdiction is not expected to go into the validity of the order so passed by the respondent-contemners. For the sake of convenience the relevant observations in the case of Triyogi Narayan Tripathi (Supra) are reproduced as under:
"17. At the outset, this Court may consider the law of contempt where an order has been passed in purported compliance to the direction issued by the Court.

18. The Hon'ble Supreme Court in the case of J.S. Parihar versus GanpatDuggar and others reported in 1996 (6) SCC 291 has held as under :-

"The question then is whether the Division Bench was right in setting aside the direction issued by the learned single Judge to redraw the seniority list. It is contended by Mr. S.K. Jain, the learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three benches, the learned Judge cannot come to a

conclusion whether or not the respondent had wilfully or deliberately disobeyed the orders of the Court as defined under Section 2(b) of the Act. Therefore, the learned single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2.7.1991. Subsequently promotions came to be made. The question is: whether seniority list is open to review in the contempt proceedings to find out, whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the willful violation of the order. After re-exercising the judicial review in contempt proceedings, afresh direction by the learned single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the single Judge, the Division Bench corrected the mistake committed by the learned single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned single Judge when the matter was already seized of the Division Bench.

19. The Hon'ble Supreme Court in the case of Manish Gupta and others versus Gurudas Roy reported in 1995 (3) SCC 559 has held as under :-

"21. We do not propose to go into the question of interpretation of Rule 55(4) of the Rules. But, at the same time, we cannot say that there is no merit in the submission of Shri Sanghi that in view of the proviso to Rule 55(4) the respondent cannot claim the fixation of his basic pay on the same level as the basic pay drawn by Hrishikesh Roy. In our view the appellants could reasonably proceed on the basis that in view of the proviso contained in Rule 55(4) of the Rules the pay of the respondent cannot be fixed at the same level as that of Hrishikesh Roy and, therefore, in fixing the basic pay of the respondent it cannot be said that the appellants had wilfully and deliberately disobeyed the directions given by the Appellate Bench in its order dated 20.09.1989. On that view of the matter the learned Judges of the High Court were, in our opinion, not justified in holding the appellants guilty of contempt of court for not complying with the directions of the Appellate Bench regarding fixation of basic pay of the respondent. If the respondent feels that the refixation of his pay has not been made in accordance with the relevant rules he may, if so advised, pursue the remedy available to him in law for enforcing his rights."

20. The Hon'ble Supreme Court in the case of Chhotu Ram versus Urvashi Gultati and another reported in 2001 (7) SCC 530 has held as under :-

"7 . Briefly stated the petitioner's grievance is based on the factum of nonconsideration of the petitioner's case or if considered not properly so considered on the basis that the petitioner was qualified by the cut-off date (1.1.1980). Be it noted however, that this Court as noticed above directed in the event the petitioner is fit for promotion as in September, 1980, he should be given the necessary promotion with all consequential benefits.

8. Mr. Mahabir Singh, learned counsel, appearing for the respondents however, firstly, very strongly contended that question of there being any act or conduct contemptuous in nature in the matter under consideration cannot arise. The conduct in order to come within the purview of the statutory provisions must be wilful and deliberate and in the contextual facts, question of there being any wilful and deliberate act does not and cannot arise. There is not even a whisper even in the petition of contempt as regards wilful neglect to comply with the order of the Court. The language of the statute begin a requirement in order to bring home the charge of contempt shall have to be complied with in is observance rather than in breach

and in the absence of which, the same cannot be termed to be an act of contempt and resultantly therefore the application must fail. The submission of Mr. Mahabir Singh appears to be of some significance. The proceeding in the Concepts of Courts Act being quasi-criminal in nature and the burden being in the nature of criminal prosecution, namely to prove beyond reasonable doubt as noticed above, requirements of the statute thus has a pivotal role to play. On merits as well Mr. Mahabir Singh contended that the petitioner is confusing the issue by treating the direction as a mandate for his promotion whereas this Court had directed the respondents to consider the promotion by treating the petitioner to be qualified on the cut-off date on 1.1.1980. There was no mandate as such to offer promotion to the petitioner. Incidentally, the petitioner's case was duly considered but since the latter was not found eligible and fit for promotion of reasons noticed as below, no promotion could be offered to the petitioner. Promotion was to be offered only however, upon compliance with certain eligibility criteria. This Court by reason of the order dated 8th October, 1999 did not issue a mandate but issued a direction for consideration only. In the event however, the matter being not considered or in the event consideration was effected in a manner to whittle down the claim of the petitioner, mitigation of the proceedings cannot but be said to be justified. But in the event, however, contextual facts depict that the consideration was effected in accordance with the normal rules, practice and procedure and upon such consideration, no promotion could be offered to the petitioner, question of there being any set of contempt would not arise. It is on this score, the order of the Governor dated 20th November, 2000 stands as a significant piece of evidence. The relevant extract whereof is noticed herein below:-

"Now the name of the appellant has been considered in the ranking list of the year 1980 considering him eligible as on 1.1.80 and the ranking list has been redrawn as per the directions of the Apex Court. The names have been reproduced above. A personal hearing has also been granted to Sh. Chhutu Ram on 8.6.2000.

In this regard the matter has been thrashed out and examined in detail. The name of Sh. Chhotu Ram does not find place in promotion zone, on the basis of inclusion of his name in the ranking list as on 1.1.80 prepared as per directions of the Hon'ble Apex Court dated 8.10.99. There were 5 (five) vacancies for promotion in the source of AMIE/BE in the year 1980 and there is no dispute regarding number of vacancies. The officers promoted in the year 1980, S/Sh. BS Sethi, KR Chopra, RP Kumar, SK Sodhi, RK Dagar beside Sh. JP Gupta promoted in 1981 for want of vacancy in 1980 are senior to the appellant Sh. Chhutu Ram. The ranking list from the year 1971 to 1999 were prepared after inviting objections of the concerned officers in view of the directions of the Apex Court dated 20.9.91. These lists were also approved by the Harayana Public Service Commission as stipulated/contemplated under Rule-9 of HSE Class-II Rules. 1970. Hence, version of Sh. Chhotu Ram that both these officers namely Sh. RP Kumar and RK Dagar be shifted from 1980 to 1979, cannot be considered. Actually both the officers were promoted in the year 1980 on ad hoc basis and later on they were promoted on regular basis vide order dated 30.11.92. The plea of Sh. Chhotu Ram that a post was kept reserved for him in the order dated 15.1.84 is also not in accordance with the rules as this order stands superseded vide order No.8/94/83-3IE. dated 30.11.92. Moreover the ranking list on the basis of which promotion order dated 15.1.84 was issued were not in accordance with the rules as observed by the Hon'ble Apex Court. So, this order of dated 15.1.84 cannot be considered a valid document in support of claim of the petitioner. So far his eligibility for promotion to the rank of Sub Divisional Officer in 1980 is concerned, he has earned only 3 good ACRs out of 8 ACRs. Thus he earned less than 50% Good ACRs and therefore, he is not eligible/fit for promotion as Sub-Divisional Officer.

In view of the position and facts detailed in the forgoing paras as well as personal hearing granted to the petitioner the petitioner's claim for promotion on the basis that he was qualified on 1.1.80 as per order of the Hon'ble Apex Court has been considered and he does not find place in promotion zone to the rank of Sub-Divisional Officer and his claim does not

hold good and is therefore rejected."

9 . On the wake of the recordings as above, and having duly considered the submissions of the parties and on proper reading of the order of this Court dated 8th October, 1999 we do not feel inclined to record any concurrence with the submissions of the learned Advocate in support of the petition. The petition has no merit. The petition therefore fails and is dismissed without however any order as to costs."
21. The Hon'ble Supreme Court in the case of Director of Education, Uttaranchal and others versus Ved Prakash Joshi and others reported in 2005 (6) SCC 98 has held as under :-
"7. While dealing with an application for contempt, the Court is really concerned with the question whether the earlier decision which has received its finality had been complied with or not. It would not be permissible for a Court to examine the correctness of the earlier decision which had not been assailed and to take the view different than what was taken in the earlier decision. A similar view was taken in K.G. Derasari and Anr. v. Union of India and Ors. The Court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who 1s alleged to have committed default in complying with the directions in the judgment or order. If there was no ambiguity or indefiniteness in the order, it is for the concerned party to approach the higher Court if according to him the same is not legally tenable. Such a question has necessarily to be agitated before the higher Court. The Court exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the Court passing the judgment or order. Right or wrong the order has to be obeyed. Flouting an order of the Court would render the party liable for contempt. While dealing with an application for contempt the Court cannot traverse beyond the order, non-compliance of which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible. In that view of the matter, the order of the High Court is set aside.

8 . If the appellant has any grievance so far as the order dated 10.8.1998 is concerned denying him the arrears of salary, he may, if so advised, approach the appropriate forum for such remedy as is available in law."

22. The Hon'ble Supreme Court in the case of LalithMathur versus L. Maheswara Rao reported in 2000 (10) SCC 285 has held as under :-

"2. The respondent was an employee of A.P. State Cooperative Rice Federation which was wound up and he ceased to be an employee of that Federation. He filed a writ petition in the High Court seeking reliefs, inter-alia, that his representation for absorption in alternative government service may be directed to be considered by the State Government. The writ petition was allowed and the direction was issued to the State Government to consider and dispose of the representation. Pursuant to that direction, the State Government considered the representation and rejected the claim of the respondent for absorption in government service. The respondent, instead of challenging the order by which his representation was rejected in a fresh writ petition, file a contempt petition in which he relied upon a judgment of the High Court in Writ Petition No.22230 of 1997 and batch decided on 15.10.1997, and the High Court too, relying upon that decision, observed in the impugned judgment as under: "The stand taken in the impugned order dated 15.04.1998 which has been reiterated in the counter affidavit filed on behalf of the respondents is that in view of Ordinance 4 of 1997 which was subsequently replaced by Act 14 of 1997 and the consequential order cancelling GOMs No. 329, Agriculture and Cooperation (Coop.I) Department dated 22.05.1993, the petitioner is not entitled to absorption in any government departments/organisations as sought for by him. I am afraid, it is not open to the respondents to take that stand in view of the order dated 05.12.1997 passed in the earlier Contempt Case No.1357 of 1997 where the

said stand of the respondents was specifically considered and rejected by this Court and the 2nd respondent was directed to reconsider the case of the petitioner for absorption. That apart, Section 4 of Ordinance 4 of 1997 specifically provides that "Nothing in this Ordinance shall disentitle any such employee to the benefits of any scheme of rehabilitation under the relevant orders issued by the Government form time to time'. Similarly, the order of status quo passed by the Hon'ble Supreme Court in SLPs (C) Nos. 1222-23 of 1998 does not in any way come in the way of absorption of the petitioner herein pursuant to the directions granted by this Court in WP No. 10208 of 1993 as well as in CC No.1357 of 1997. Admittedly, as many as 40 co-employees of the petitioner were already absorbed in other organisations and departments and one Satyanarayana who was a junior to the petitioner is also being continued in service by implementing the orders passed by the authority under the Shops and Establishments Act. Under these circumstances, I do not see why the petitioner herein should be denied the same consideration. For the aforesaid reasons this contempt case is disposed of directing the respondent to absorb the petitioner in any suitable post in any government department or public undertaking within three months from the date of receipt of a copy of this order."
3. The above will show that the High Court has directed the State Government to absorb the respondent against a suitable post either in a government department or in any public sector undertaking. This order, in our opinion, is wholly without jurisdiction and could not have been made in proceedings under the Contempt of Courts Act or Article 215 of the Constitution.
4. The High Court in the writ petition had issued a direction for the consideration of the respondent's representation by the State Government. This direction was carried out by the State Government which had considered and thereafter rejected the representation on merits. Instead of challenging that order in a fresh writ petition under Article 226, the respondent took recourse to contempt proceedings which did not lie as the order had already been complied with by the State Government which had considered the representation and rejected it on merits.
5. For the reasons stated above, the appeal is allowed, the impugned judgment of the High dated 10.08.1998 is set aside and the contempt petition filed by the respondent is dismissed. We, however, make it clear that representation was dismissed on merits, in such proceedings as he may be advised. There shall be no order as to costs."

23. This Court may also peruse the law laid down by the Hon'ble Supreme Court per which there has to be deliberate and wilful disobedience by the contemnor in order to to make out a case for contempt.

24. In this regard, the Hon'ble Supreme Court in the case of DebabrataBandopadbyay and others versus State of West Bengal and another reported in AIR 1969 SC 189 has held as under :-

"9. A question whether there is contempt of court or not is a serious one. The court is both the accuser as well as the judge of the accusation. It behoves the court to act with as great circumspection as possible making all allowances for errors of judgment and difficulties arising from inveterate practices in courts and tribunals. It is only when a clear case of contumacious conduct not explainable otherwise, arises that the contemner must be punished. It must be realised that our system of courts often results in delay of one kind or another. The remedy for it is reform and punishment departmentally. Punishment under the law of contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority. To take action in an unclear case is to make the law of contempt do duty for other measures and is not to be encouraged."
25. The Hon'ble Supreme Court in the case of B.K. Kar versus The Hon'ble the Chief Justice and his companion Justices of the Orissa High Court and others reported in AIR 1961 SC 1367 has held as under :-

"7. Before a subordinate court can be found guilty of disobeying the order of the superior

court and thus to have committed contempt of court, it is necessary to show that the disobedience was intentional. .... There may perhaps be a case where an order disobeyed could be reasonably construed in two ways and the subordinate court construed it in one of those ways but in a way different from that intended by the superior court. Surely, it cannot be said that disobedience of the order by the subordinate court was contempt of the superior court."

26. The Hon'ble Supreme Court in the case of Niaz Mohammad and others versus State of Haryana and others reported in 1994 (6) SCC 332 has held as under :-

"9 . Section 2(b) of the Contempt of Court Act, 1971 (hereinafter referred to as 'the Act') defines "Civil Contempt" to mean "willful disobedience to any judgment, decree, direction, order, writ, or other process of a court...". Where the contempt consists in failure to comply with or carry out an order of the court made in favour of the party, it is a civil contempt. The person or persons in whose favour such order or direction has been made can move the Court for initiating proceeding for contempt against the alleged contemner, with a view to enforce the right flowing from the order or direction in question. But such a proceeding is not like an execution proceeding under CPC. The party in whose favour an order has been passed, is entitled to the benefit of such order. The Court while considering the issue as to whether the alleged contemner should be punished for not having complied and carried out the direction of the Court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the Act while defining civil contempt, have said that it must be willful disobedience to any judgment, decree, direction, order, writ or other process of a court. Before a contemner is punished for non compliance of the direction of a court the Court must not only be satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was willful and intentional. The Civil Court while executing a decree against the judgment debtor is not concerned and bothered whether the disobedience to any judgment, or decree, was willful. Once a decree has been passed it is the duty of the court to execute the decree whatever may be consequences thereof. But wile examining the grievance of the person who has invoked the jurisdiction of the Court to initiate the proceeding for contempt for disobedience of its order, before any such contemner is held guilty and punished, the Court has to record a finding that such disobedience was willful and intentional."

27. The Hon'ble Supreme Court in the case of Mrityunjoy Das and another versus Sayed HasiburRahaman and others reported in 2002 (3) SCC 739 has held as under :-

"13. Before however, proceeding with the matter any further, be it noted that exercise of powers under the Contempt of Courts Act shall have to be rather cautious and use of it rather sparingly after addressing itself to the true effect of the contemptuous conduct. The Court must otherwise come to a conclusion that the conduct complained of tentamounts to obstruction of justice which if allowed, would even permeate in our society (vide Murray & Co. v. Ashok Kr. Newatia&Anr.). This is a special jurisdiction conferred on to the law courts to punish an offender for his contemptuous conduct or obstruction to the majesty of law. It is in this context that the observations of the this Court in Murray's case (supra) in which one of us (Banerjee, J.) was party needs to be noticed.

"The purpose of contempt jurisdiction is to uphold the majesty and dignity of the Courts of law since the image of such a majesty in the minds of the people cannot be led to be distorted. The respect and authority commanded by Courts of Law are the greatest guarantee to an ordinary citizen and the entire democratic fabric of the society will crumble down if the respect for the judiciary is undermined. It is true that the judiciary will be judged by the people for what the judiciary does, but in the event of any indulgence which even can remotely be termed to affect the majesty of law, the society is bound to lose confidence and faith in the judiciary and the law courts thus, would forfeit the trust and confidence of the people in general."

14. The other aspect of the matter ought also to be noticed at this juncture viz., the burden

and standard of proof. The common English phrase "he who asserts must prove" has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the 'standard of proof', be it noted that a proceeding under the extra-ordinary jurisdiction of the Court in terms of the provisions of the Contempt of Court Act is quasi criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond reasonable doubt. The observations of Lord Denning in Re Bramblevale 1969 3 All ER 1062 lend support to the aforesaid. Lord Denning in Re Bramblevale stated:

"A contempt of court is an offence of a criminal character. A man may be sent to prison for it,. It must be satisfactorily proved. To use the timehonoured phrase, it must be proved beyond all reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him. But there must be some other evidence.... Where there are two equally consistent possibilities open to the Court, it is not right to hold that the offence is proved beyond reasonable doubt."
15. In this context, the observations of the Calcutta High Court in ArchanaGuha v. RanjitGuhaNeogi 1989 (II) CHN 252 in which one of us was a party (Banerjee, J.) seem to be rather apposite and we do lend credence to the same and thus record our concurrence therewith.
16. In The Aligarh Municipal Board and Others v. Ekka Tonga Mazdoor Union and Others MANU/SC/0075/1970 : 1970CriL J1520 , this Court in no uncertain term stated that in order to bring home a charge of contempt of court for disobeying orders of Courts, those who assert that the alleged contemners had knowledge of the order must prove this fact beyond reasonable doubt. This Court went on to observe that in case of doubt, the benefit ought to go to the person charged.

17. In a similar vein in V.G. Nigam and others v. KedarNath Gupta and another MANU/SC/0419/1992 : 1992CriL J3576 , this Court stated that it would be rather hazardous to impose sentence for contempt on the authorities in exercise of contempt jurisdiction on mere probabilities.

18. Having discussed the law on the subject, let us thus at this juncture analyse as to whether in fact, the contempt alleged to have been committed by the alleged contemners, can said to have been established firmly without there being any element of doubt involved in the matter and that the Court would not be acting on mere probabilities having however, due regard to the nature of jurisdiction being quasi criminal conferred on to the law courts. Admittedly, this Court directed maintenance of status quo with the following words - "the members of the petitioner-Sangha who were before the High Court in the writ petition out of which the present proceedings arise". And it is on this score the applicant contended categorically that the intent of the Court to include all the members presenting the Petition before this Court whereas for the Respondent Mr. Ray contended that the same is restricted to the members who filed the writ petition before the High Court which culminated in the initiation of proceeding before this Court. The Counter affidavit filed by the Respondents also record the same. The issue thus arises as to whether the order stands categorical to lend credence to the answers of the respondent or the same supports the contention as raised by the applicants herein - Incidentally, since the appeal is pending in this Court for adjudication, and since the matter under consideration have no bearing on such adjudication so far as the merits of the dispute are concerned, we are not expressing any opinion in the matter neither we are required to express opinion thereon, excepting however, recording that probabilities of the situation may also warrant a finding, in favour of the interpretation of the applicant. The doubt persists and as such in any event the respondents being the alleged contemners are entitled to have the benefit or advantage of such a doubt having regard to the nature of the proceeding as noticed herein before more fully."

28. What comes out from a perusal of the aforesaid judgements is that for an act of contempt to be made out against the contemnor, there has to be a deliberate and wilfull disobedience and defiance of the order passed by a Court of law, the directions which are alleged to have been violated should be unambiguous and passing of an order in purported compliance of the order passed by a Court of law would give rise to a fresh cause of action.
29. Accordingly when the order dated 06.09.2018 passed by the respondents in compliance of the judgement and order dated 14.09.2015 is tested on the principle of law laid down by the Hon'ble Supreme Court in the aforesaid decision, what is to be seen is whether the respondents have proceeded to pass the order in purported compliance to the order passed the Court of law.

30. The judgement dated 14.09.2015 passed by the writ Court has been complied with by the respondents contemnors by passing an order dated 06.09.2018 and as such it cannot be said that the judgement dated 14.09.2015 has not been complied with. It may be that the compliance order dated 06.09.2018 is not as per expectation of the petitioner but for an order not coming up to the expectation of the petitioner, the remedy is elsewhere and not by filing of a contempt petition. Thus it cannot be said that there is deliberate and wilfull disobedience of the judgement dated 14.09.2015 as is sought to be made during course of the argument by learned Counsel for the petitioner. In compliance to the judgement passed by the writ Court, the respondent has proceeded to pass the order dated 06.09.2018 and consequently in case the petitioner is aggrieved by the same, he may challenge the same before the appropriate Court in appropriate proceedings but no deliberate and wilful disobedience can be said to have been committed by the respondents contemnors. Consequently with the passing of the order dated 06.09.2018, there arises a fresh cause of action to the petitioner, in case he is so aggrieved by the said order dated 06.09.2018 and it would thus be open for the petitioner to challenge the same in appropriate proceeding but no deliberate or wilful disobedience can be said to have been committed."

11. Accordingly following the aforesaid judgment in the case of Triyogi Narayan Tripathi (Supra) and the fact that the respondents have proceeded to pass an order dated 30.01.2018 in compliance to the judgment and order dated 11.07.2017 consequently it cannot be said that there is deliberate or willful disobedience or defiance of the order passed by the writ Court. Moreover, once an order dated 30.01.2018 has been passed a fresh cause of action accrues to the petitioners to challenge the said order in case they are so aggrieved by the same.
12. Accordingly keeping in view the aforesaid discussions the present contempt petition is dismissed and notices discharged.
Order Date :- 01.11.2018
Pachhere/-