

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

**Contempt Petition No. 128 of 2006 in
Original Application No. 817 of 2006 c.w.
Original Application No. 1056 of 2004**

Allahabad this the 08th day of February, 2012

**Hon'ble Mr. Justice S.C. Sharma, Sr. J.M./HOD
Hon'ble Ms. Jayati Chandra, Member-A**

Indrapal S/o Late Shri Sahadeo Prasad, R/o House No. H-14,
Central Excise & Income Tax Colony, 6, Muir Road, Allahabad.

Petitioner

By Advocate: Mr. Satish Mandhyan

Vs.

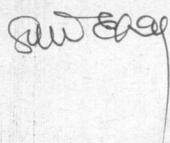
Shri Vinod Kumar, Chief Commissioner of Income Tax (C.C.A.), 5,
Ashok Marg, Lucknow:

Opposite Party

By Advocate: Mr. N.P. Shukla

ORDER

Instant Contempt Petition has been moved to punish the contemnor/opposite party for willful disobedience of the Order dated 08.08.2006 passed by this Tribunal. It has been alleged in the petition² that a direction was given by the Tribunal to keep one post vacant in case they intend to hold D.P.C. for promotion to the next higher grade from amongst Group 'D' staff or else to continue status quo till such time as the applicant has been

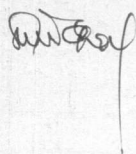


assigned proper seniority and granted necessary reliefs in terms of Tribunal's order under reference as well as per their letter dated 15.02.2006 and 20.12.2005, referred to above.

2. On behalf of the opposite party, CA has been filed, and it has been alleged therein that the main relief as well as the interim relief is identical and an ex parte interim order was passed in favour of the applicant, and by granting interim relief, O.A. stands allowed finally, and it is not permissible in law. Afterwards, on behalf of the opposite party, an application was moved for vacation of ex parte interim order dated 08.08.2006. Application for vacation of interim order ~~is~~ remained pending for consideration. Learned counsel relied on the Judgment of Hon'ble Supreme Court reported in (1992) 4 Supreme Court Cases 167 State of J and K Vs. Mohd. Yaqoob Khan and others. The Hon'ble Supreme Court held as under: -

"So long the stay matter in the writ petition was not finally disposed of, the further proceeding in the contempt case was itself misconceived and no orders therein should have been passed."

On the basis of this Judgment of the Hon'ble Supreme Court, it has been argued by the learned counsel that as stay vacation application of the respondents was pending and hence no contempt can be said to be made out against the interim order passed by the Tribunal.



Moreover, what has been alleged in the O.A. was misconceived and barred by principle of resjudicata. Whatever relief was claimed in O.A. No. 817/2006, has already been granted to the applicant by the Tribunal in the earlier O.A. No. 1056/2004 vide order dated 08.11.2005. Hence, subsequent O.A. was not maintainable. Under these circumstances, Contempt Petition is not maintainable and is liable to be dismissed. We have only heard Sri N.P. Shukla, Advocate for the opposite party as none is present for the petitioner in the revised call. It is a fact that the application for vacation of the interim order is pending of the opposite party and in view of the Judgment of Hon'ble Supreme Court, no Contempt can be said to be made out. Moreover, it has not been demonstrated before us on behalf of the petitioner that how the contempt is made out against the interim order. In our opinion, no Contempt ~~Petition~~ is made out against the opposite party, and the same is liable to be dismissed.

3. Contempt Petition is dismissed. Notice issued to the opposite party is hereby discharged.

Member-A

Member-A

/M.M/

Sr. J.M./HOD