

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW
BENCH, LUCKNOW

Impleadment Appl. 1924/2014
in

Contempt Petition No. 21 of 2013
In

Original Application No 405 of 2005

Order Reserved on. 09.03.2015

Order Pronounced on 12/3/15

HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

Anup Kishore Pandey aged about 50 years, son of Sri C. K. Pandey, resident of 67/44 Lal Kuan, Lucknow.

Applicant

By Advocate Sri L. K. Pandey
Versus

1. Prof. Samir K Brahmachair, Director General, Council of Scientific & Industrial Research and Secretary, DSIR, Government of India, Resident of Director General's Bangalow, CRRI Residential Colony Campus, CV Raman Marg, Maharani Bagh, New Delhi-110065.
2. Dr. T. K. Chakraborty, Director, Central Drug Research Institute, Lucknow, resident of B.S. 10/1, Sector-10 Janki Puram Extension, Sitapur Road, Lucknow.

Respondent

By Advocate Sri Pankaj Awasthi for Sri A. K. Chaturvedi

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present contempt petition is preferred by the applicant for non compliance of the order dated 27.07.2012 passed in O.A. No. 404/05.

2. The learned counsel appearing on behalf of the applicant has also moved an impleadment application through which he wanted to implead Dr. Paramveer Singh Ahuja, Director General, CSIR as well as Dr. S. K. Puri, Director, CDRI, Lucknow. The learned counsel for the applicant has indicated that the order passed by the Tribunal has not been complied with as such, they are liable to be punished and the impleadment application so filed by him may be allowed.

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3. On behalf of the respondents, detailed counter reply is filed and through counter reply, it is categorically indicated by the respondents that the order so passed by the Tribunal has been fully complied with. The applicant has been absorbed/regularized in terms of the direction of the Tribunal and also been notionally promoted and he has also been paid the entire arrears of salary and no other amount is due to be paid to the applicant.

4. On behalf of the applicant rejoinder is filed and through rejoinder mostly the averments made in the contempt petition are reiterated and the contents of the counter reply are denied. It is also indicated by the applicant that while deciding the OA, the Tribunal order as under:-

Now as to the question of relief. The applicants claim is for regularization at part ;with Akhilesh Kumar and SA Singh and others with consequential benefits flowing there-from. While the Tribunal appreciates the entitlement of the applicants for regularization from the date others have been regularized, in so far as consequential benefits are concerned, especially in monetary terms, it is difficult to allow the same. At best regularization can be ordered from the date when the last person so similarly situated as the applicants was regularized. The pay shall , however be fixed on notional basis in the same pay scale as attached to the post of Technician Gr. II. The seniority shall also be worked out accordingly from the date of regularization. It is made clear that if there be any other conditions attached to regularization, such as probation period etc., the same would equally apply to the case of the applicants on their regularization. If any tests/interview is to be held for confirmation purposes etc., the same shall also be followed and individuals must fulfill all the conditions for continuance in the said posts as in the case of others. In case any technicians grade II earlier appointed as stated above have already been promoted, the case of the applicants for such promotion shall be considered only on their fulfilling the requisite conditions attached to the promotion.

and the order passed by the Tribunal is not complied till date.

5. Heard the learned counsel for the parties and perused the pleadings on record.

6. While deciding the O.A., the Tribunal directed the respondents to absorb/regularize the applicant from the date others have been regularized and so far as consequential benefits are concerned, especially in monetary terms, the same was not allowed by the Tribunal, it is also observed that the same may be done when the last person so similarly situated as the applicants was regularized. It is also indicated

that the pay shall, however, be fixed on notional basis in the same pay scale as attached to the post of Technician Grade II and the seniority shall also be worked out accordingly from the date of regularization. It is also indicated by the Tribunal that if there be any other conditions attached to regularization, such as probation period etc., the same would equally apply to the case of the applicant on their regularization. It is also directed by the Tribunal that in case, any technicians Grade II earlier appointed as stated above, have already been promoted the case of the applicants for such promotion shall be considered only on their fulfilling the requisite conditions attached to the promotion.

The respondents through their counter reply indicated that the applicant along with Shri S. C. Tiwari, was absorbed/ regularized against the regular post of Group-II(1) in the pay scale of Rs. 3050-4590. W.e.f. 9.9.1998, through office memorandum dated 28.12.2012 and his pay was fixed w.e.f. 9.9.1998 on notional basis vide office memorandum dated 16.2.2013 in the pay scale of Rs. 3050-4590, revised to Pay Band-1- Rs. 5200-20200 with Grade Pay-Rs. 1900, w.e.f. 1.1.2006.

On behalf of the respondents, it is also indicated that while filing the present contempt petition, the applicant has concealed the office memorandum dated 28.12.2012 as well as the office memorandum dated 16.2.2013 despite to this fact that the orders were issued on 16.2.2013.

Apart from this, it is also vehemently argued and submitted by the respondents counsel that the applicant was also considered for his next assessment promotion from Group II(1) to Group II (2), w.e.f. 10.12.1998 and further the applicant was considered for his next assessment promotion from Group II (2) to Group II (3) w.e.f. 10.12.2005 and accordingly, he was promoted through office memorandums dated 16.8.2013 and 17.9.2013 respectively.

The learned counsel for the respondents has also pointed out that pay of the applicant has been fixed w.e.f. 10.12.1998 as Group II (2), pay scale of res. 4500-7000 Group II(3), pay scale of Rs. 5500-9000 w.e.f. 10.12.2005 Not only this, it is also vehemently argued by the respondents

counsel that the applicant was regularized/absorbed w.e.f. 9.9.1998 and two assessment promotions w.e.f. 10.12.1998 and 10.12.2005 were granted and accordingly, the applicant has been paid arrears of salary w.e.f. 6.8.2012 to September, 2013 after admissible deductions and accordingly, the amount is being credited in the applicant's account on 10.10.2013. Not only this, it is also indicated by the respondents that no further amount is due to be paid to the applicant. As per the order of the Tribunal, the Tribunal observed that the applicant is entitled for regularization from the date others have been regularized. As regards consequential benefits is concerned, the same was not allowed by the Tribunal. Only regularization was allowed from the date when the last person who was similarly situated was given benefit of the same. It is also observed by the Tribunal that the pay shall however be fixed on notional basis in the same pay scale as attached to the post of Technician Grade II and the seniority was also be worked out from the date of regularization.

As per the compliance report so submitted by the respondents, the applicant has been regularized and was also given two assessment promotions i.e. w.e.f. 10.12.1998 and 10.12.2005 and was also paid arrears of salary. The applicant while filing the rejoinder has indicated that while granting the benefit of promotion, the fixation of pay was to be made on the notional basis but the same has not been done. The bare reading of the annexures annexed with the counter reply are clear to the extent that the entire benefit as directed by the Tribunal has already been awarded to the applicant as such, it cannot be said that the respondents have not complied with the orders of the Tribunal.

7. In the case of **J.S. Parihar Vs. Ganpat Duggar and others** **AIR 1997 Supreme Court 113**, the Hon'ble Apex Court has been pleased to observe 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 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, 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."

8. In the case of **Lalit Mathur Vs. L. Maheswara Rao (2000) 10 SCC 285**, the Hon'ble Supreme Court observed 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."

9. Further in the case of **Ashok Kumar Pandey Vs. Ashok Kumar Singh ,D.I.O.S.,Ballia and others 2003 (5) AWC 4393** Hon'ble Court has observed 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."

10. In the case of **Brahma Deo Tiwari Vs. Alok Tandon, District Magistrate, Allahabad 2004 (1) AWC 543** Hon'ble Court has observed 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."

11. 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 another reported in AIR 2001 SC 3468**. The Hon'ble Apex Court 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.”

12. 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:-

“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.”

13. As observed by the Hon’ble Apex Court in the case of **Prithawi Nath Ram Vs State of Jharkhand and Others reported in AIR 2004 SC 4277**, the Hon’ble Apex Court has been pleased to observe 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 to 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 of which is alleged. In other words, it cannot say what should not have been done or what should have been done. 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.

14. The Hon'ble Apex Court in the case of **K.G. Derasari and another Vs. Union of India and others reported in 2002 Supreme Court Cases (L&S) 756** has observed as under:-

"Having considered the rival submissions at the Bar, we have no hesitation to come to the conclusion that the Tribunal was not entitled in a contempt proceedings to consider the legality of its earlier order which has reached finality not being assailed or annulled by a competent forum."

15. The Tribunal, cannot re-appreciate the evidence and also about the correctness of the order passed earlier as such the contempt petition is liable to be discharged. Since there is no willful disobedience on the part of the respondents as such, we do not find any reason to allow the application for impleadment. Accordingly, the same is rejected.

16. Considering the observations of the Hon'ble Apex Court and factual position of the case, we are of the view that the contempt petition is liable to be dismissed and is so ordered. The notices issued stand discharged.

J. Chandra
 (Ms. Jayati Chandra)
 Member (A)

Navneet Kumar
 (Navneet Kumar)
 Member (J)

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