

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

CONTEMPT PETITION NO. 336 of 2013

IN

CIVIL APPEAL NO. 4985 of 2012

Ram Kishan

...Applicant

Versus

Sh. Tarun Bajaj & Ors.

...Respondents

J U D G M E N T

Dr. B.S. Chauhan, J.

1. This Contempt Petition has been filed by the applicant that the respondents, who are alleged contemnors herein, have wilfully violated the judgment and order dated 5.7.2012 passed by this Court in C.A. No. 4985 of 2012 as the respondents failed to pay all consequential benefits of service as directed and thus, the respondents should be dealt with under the provisions of Contempt of Courts Act, 1971 (hereinafter referred to as 'the Act') and further, to direct the contemnors to implement the order in its true

spirit and fix his pension according to the post of Joint Secretary (Legal) and provide all its retirement benefits.

2. Facts and circumstances of this petition are that the applicant while working as an Under Secretary (Legal), Dakshin Haryana Bijli Vitran Nigam Ltd. (hereinafter referred to as 'Nigam') was compulsorily retired vide an order dated 19.11.2003. Aggrieved, he challenged the said order by filing Writ Petition No. 3954 of 2004 and during its pendency, he reached the age of superannuation on 28.2.2006. The said writ petition was allowed by the learned Single Judge vide judgment and order dated 10.2.2009 quashing the impugned order dated 19.11.2003 but did not award the back wages to the applicant for the period he was out of job. The Nigam filed LPA No. 646 of 2009 challenging the order of the learned Single Judge. The applicant also filed LPA No. 542 of 2009 for claiming the arrears of pay. The LPA of Nigam was dismissed affirming the judgment and order of the Single Judge vide judgment and order dated 24.7.2009 and has attained finality. The appeal filed by the applicant was also dismissed vide judgment and order dated 10.8.2009.

3. Aggrieved, the applicant challenged the judgment and order dated 10.8.2009 of the Division Bench by filing the Special Leave

Petition which was entertained as C.A. No. 4985 of 2012, which was disposed of by this Court vide judgment and order dated 5.7.2012 directing that the applicant shall be entitled to the back wages for the period during which he was out of job alongwith reinstatement. The applicant has not been given the benefit of re-designated pay/post and the pay-scale of a higher post wherein after the compulsory retirement of the applicant, one Smt. Pooman Bhasin had been appointed w.e.f. 16.3.2005 and has been extended the benefit which has been allegedly denied to the applicant.

Hence, this Contempt Petition.

4. Shri Vikas Mehta, learned counsel appearing on behalf of the applicant, has submitted that as the learned Single Judge of the High Court had allowed the writ petition filed by the applicant quashing the order of compulsory retirement with all consequential benefits except back wages and this Court allowed the appeal of the applicant and has given back wages also. The conjoint reading of both the orders tantamount to grant of all possible/permissible benefits to the applicant for his service. As the applicant was senior to Smt. Poonam Bhasin, he was entitled to the re-designated post as well as the salary for the post of Joint Secretary (Legal), which has been denied by the respondents. Therefore, the applicant is entitled

for the claim and the respondents should be prosecuted and punished for disobedience of the said judgments and orders.

5. On the contrary, Shri Narender Hooda, learned AAG appearing on behalf of the respondents, has vehemently opposed the application contending that there is neither any direction of any court to give benefit of the revised post to the applicant, nor his candidature has ever been considered for that post. The State authority cannot be forced to pay the salary to two persons for one post. The applicant has never challenged the re-designation of Smt. Poonam Bhasin. Thus, there is no wilful disobedience of any order passed by this Court. The application for initiating the contempt proceedings is totally misconceived and is liable to be rejected.

6. We have considered the rival contentions advanced by learned counsel for the parties and perused the records.

7. The judgment and order of the learned Single Judge granting the relief to the applicant reads:

“Resultantly, this writ petition is allowed, the order dated 19.11.2003 (Annexure P-27) is set aside and the petitioner is ordered to be reinstated into service **with all consequential benefits**. It is, however, clarified that the petitioner will not be entitled to wages for the period he was out of job.”
(Emphasis added)

The judgment and order of this Court dated 5.7.2012 in Civil

Appeal No. 4985/2012 reads:

“Accordingly, we allow the appeal and modify the order of the learned Single Judge, as also of the Division Bench, by directing that the appellant will also be entitled to back-wages for the period during the termination of his services and reinstatement in terms of the High Court’s order.”

8. Both the judgments referred to hereinabove speak of back wages and the judgment of the learned Single Judge in the High Court referred to **all consequential benefits**. Therefore, the question does arise as to whether such an order would also mean that the applicant could claim post revision and benefits of the higher post without being considered for the said post.

9. Contempt jurisdiction conferred onto the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizens that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of

caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi-criminal in nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of contempt jurisdiction on mere probabilities. (Vide: **V.G. Nigam & Ors. v. Kedar Nath Gupta & Anr.**, AIR 1992 SC 2153; **Chhotu Ram v. Urvashi Gulati & Anr.**, AIR 2001 SC 3468; **Anil Ratan Sarkar & Ors. v. Hirak Ghosh & Ors.**, AIR 2002 SC 1405; **Bank of Baroda v. Sadruddin Hasan Daya & Anr.**, AIR 2004 SC 942; **Sahdeo alias Sahdeo Singh v. State of U.P. & Ors.**, (2010) 3 SCC 705; and **National Fertilizers Ltd. v. Tuncay Alankus & Anr.**, AIR 2013 SC 1299).

10. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is 'wilful'. The word 'wilful' introduces a mental element and hence, requires looking into the mind of person/contemnor by gauging his actions, which is an indication of one's state of mind. 'Wilful' means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual,

accidental, bonafide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a “bad purpose or without justifiable excuse or stubbornly, obstinately or perversely”. Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. “Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct”. (Vide: **S. Sundaram Pillai, etc. v. V.R. Pattabiraman**; AIR 1985 SC 582; **Rakapalli Raja Rama Gopala Rao v. Naragani Govinda Sehararao & Anr.**, AIR 1989 SC 2185; **Niaz Mohammad & Ors. etc.etc. v. State of Haryana & Ors.**, AIR 1995 SC 308; **Chordia Automobiles v. S. Moosa**, AIR 2000 SC 1880; **M/s. Ashok Paper Kamgar Union & Ors. v. Dharam Godha & Ors.**, AIR 2004 SC 105; **State of Orissa &**

Ors. v. Md. Illiyas, AIR 2006 SC 258; and **Uniworth Textiles Ltd. v. CCE, Raipur**, (2013) 9 SCC 753).

11. In **Lt. Col. K.D. Gupta v. Union of India & Anr.**, AIR 1989 SC 2071, this Court dealt with a case wherein direction was issued to the Union of India to pay the amount of Rs. 4 lakhs to the applicant therein and release him from defence service. The said amount was paid to the applicant after deducting the income tax payable on the said amount. While dealing with the contempt application, this Court held that “withholding the amount cannot be held to be either malafide or was there any scope to impute that the respondents intended to violate the direction of this Court.”

12. In **Mrityunjoy Das & Anr. v. Sayed Hasibur Rahaman & Ors.**, AIR 2001 SC 1293, the Court while dealing with the issue whether a doubt persisted as to the applicability of the order of this Court to complainants held that it would not give rise to a contempt petition. The court was dealing with a case wherein the statutory authorities had come to the conclusion that the order of this court was not applicable to the said complainants while dealing with the case under the provision of West Bengal Land Reforms Act, 1955.

13. It is well settled principle of law that if two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. The effect and purport of the order is to be taken into consideration and the same must be read in its entirety. Therefore, the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act. (See: **Sushila Raje Holkar v. Anil Kak (Retd.)**, AIR 2008 (Supp-2) SC 1837; and **Three Cheers Entertainment Pvt. Ltd. & Ors. v. C.E.S.C. Ltd.**, AIR 2009 SC 735).

14. In view of the aforesaid settled legal proposition, we have repeatedly asked the learned counsel appearing for the applicant under what circumstances this Court can ask the statutory authority to pay the salary to two persons for one post, particularly in view of the fact that Smt. Poonam Bhasin had never been a party to the lis, nor her re-designation/promotion had ever been challenged by the applicant or someone else. More so, learned counsel for the applicant could not point out the service rules applicable to the applicant to assess his eligibility etc.

15. In such a fact-situation, leaving the issue of entitlement of the applicant, we are of the considered opinion that no case is made

out to initiate the contempt proceedings against the respondents.

The petition is totally misconceived and devoid of merit, hence, it

is dismissed. No order as to costs.

.....J.
(Dr. B.S. CHAUHAN)

.....J.
(J. CHELAMESWAR)

New Delhi,
January 17, 2014



JUDGMENT