

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:

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 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 advertng 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 1st 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 be held 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 to be 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.

JUDIS