

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:
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.

JUDIS