

CASE NO.:
Appeal (crl.) 646 of 2000

PETITIONER:
D.S. Poonia, W. Sudhirkumar Singh

RESPONDENT:
Yumnam Dimbajit Singh & Anr., Shri Yumnam Dimbajit Singh and anr.

DATE OF JUDGMENT: 25/02/2003

BENCH:
DORAISWAMY RAJU & SHIVARAJ V. PATIL

JUDGMENT:

J U D G M E N T

Shivaraj V. Patil J.

These two appeals are filed aggrieved by the common judgment and order dated 14.7.2000 passed by the Division Bench of the High Court in Criminal Contempt Petition No. 1/2000. In this judgment, parties will be referred to as they are arrayed in the contempt petition. In brief, the facts leading to the filing of these appeals are that respondent no. 2 was an employee in Manipur Electronics Development Corporation (MANITRON); pursuant to the instructions of the Election Commission for computerization of electoral rolls, respondent no. 2 was appointed on deputation for a period of one year as Assistant Chief Electoral Officer (ACEO) by an order dated 7.11.1997; since computerization work could not be completed, his deputation was sought to be extended for one more year with effect from 12.11.1998; the petitioner challenged this order of extension in Writ Petition Civil Rule No. 1187/98 inter alia contending that since respondent no. 2 was serving in a Corporation, an autonomous body it was not permissible to take him on deputation; only a State services Officer could be taken on deputation and not an officer belonging to the Corporation; accepting this contention, the writ petition was allowed quashing the order of extension given to respondent no. 2; while quashing the order, from the relevant file the High Court found that the services of the second respondent as ACEO was no more required in the Department of Election as computerization of electoral rolls had been completed; the respondent no. 2 was only B-Tech (Electronics and Communication) and not a computer engineer; despite the office objection raised, respondent no. 1 extended the period of deputation of respondent no. 2 for one more year by overruling the objections. Respondent no. 2 filed writ Appeal No. 108/99 against the order passed in the writ petition; the writ appeal was admitted on 24.6.1999 and an interim order was passed in the following terms: -

"In the meanwhile, the impugned judgment of the learned single judge in Civil Rule No. 1187/98 is stayed. But we direct that the deputation of the

appellant in Writ Appeal No. 108/99, Sri W.Sudhirkumar Singh will not be extended beyond the existing period of deputation expiring on 11.11.1999. We further direct that the Draft Recruit Rules for recruitment to the post of Assistant Chief Election Officer will be finalized by the end of September, 1999 and recruitment to the post of Assistant Chief Election Officer will be completed by 11.11.1999."

In the aforementioned interim order, respondent no. 1 was restrained from extending the period of deputation of the respondent no. 2 beyond 11.11.1999. At the same time, a direction also was given for framing the recruitment rules for recruitment to the post of ACEO and to finalise the recruitment before 11.11.1999.

When these directions given in the above extracted interim order passed by the Division Bench were not followed, the petitioner filed a Civil Contempt Petition No. 357/99. Responding to the direction issued in this contempt petition, learned counsel for respondent no. 1 produced copy of the order dated 11.11.1999 passed by the respondent no. 1 purportedly in compliance with the direction given in the said interim order. Looking to the said order, the court on 15.12.1999 closed the Civil Contempt Petition No. 357/99 so far it related to the respondent no. 1.

Despite the order dated 11.11.1999 passed by the respondent no. 1, at the time of hearing of the Civil Contempt Petition No. 357/99 and obtaining a favourable order in respect of the respondent no. 1, the respondent no. 2 was still functioning as ACEO as appeared in the letter dated 30.11.1999. Further, the respondent no. 2 had received goods supplied by MANITRON on 13.12.1999 as ACEO which led to filing of the present contempt petition which was originally registered as Contempt Case (C) No. 4/2000. On 3.2.2000 when the conduct of the respondent no. 2 was brought to the notice of the court, learned counsel appearing for the respondent no. 1 submitted that the respondent no. 2 had acted on his own and the respondent no. 1 had not entrusted such work to him. Although Contempt Petition (C) No. 4/2000 was finally heard and reserved for judgment, considering the gravity of the offence that the court's order dated 15.12.1999 had been obtained by the respondent no. 1 by practicing fraud, the High Court was of the opinion that the conduct of the respondent no. 1 came within the purview of the definition of criminal contempt under Section 2(c) of the Contempt of Courts Act, 1971. In this view, the court allowed respondent nos.1 and 2 to file further affidavits, if any. Thus, the Civil Contempt Petition No. 4/2000 came to be converted into Criminal Contempt Petition No. 1/2000. The Division Bench of the High Court, after elaborately considering the rival submissions made on either side, passed the impugned order punishing the respondent no. 1 sentencing him to incarceration for one month and to pay a fine of Rs. 2000/- and the respondent no. 2 for

incarceration for 15 days and to pay a fine of Rs.1000/-. Under these circumstances, the respondent nos. 1 and 2 have filed these appeals.

Mr. Mukul Rohtagi, the learned Additional Solicitor General, on behalf of respondent no. 1 (the appellant in Criminal Appeal No. 646/2000) urged that the services of respondent No.2 (the appellant in Criminal Appeal No. 627/2000) were to be availed on deputation from MANITRON for the purpose of computerization of the electoral rolls; after the passing of the order by the court not to extend the term of respondent no. 2 on deputation, his term on deputation was not extended; however, having regard to the incompleteness of the work and in the interest of early completion of the work, his services were taken on contract basis; other steps were taken pursuant to the direction of the High Court to fill up the post of ACEO in accordance with rules; the respondent no. 2 was repatriated even if it was found that although there was some delay in repatriation which was not intentional. He drew our attention to the relevant portions in the documents placed on record to show that there was neither deliberate disobedience of the order passed by the High Court nor any fraud was played on the court to say that the respondents committed criminal contempt. He submitted that both the respondents tendered unconditional apology for the faults said to have been committed by them which the High Court could have graciously accepted. Similar submissions were made on behalf of the appellant in Criminal Appeal No. 627/2000. On behalf of respondent no. 1, submissions were made supporting the impugned order.

Having perused the impugned order in which all the contentions are elaborately dealt with, it is difficult for us to say that all was well with the appellants in these appeals. As can be seen from the interim order passed on 24.6.1999, the order of learned Single Judge made in writ petition was stayed; direction was given not to extend the deputation of respondent no. 2 beyond 11.11.1999, direction was given to finalise the draft recruitment rules for recruitment to the post of ACEO and that the recruitment to the said post will be completed by 11.11.1999. The period of deputation of respondent no. 2 was not extended on deputation beyond 11.11.1999 in terms of the aforementioned interim order. However, in order to complete the remaining work, his services were availed on contract basis; even that contract was cancelled later; this is to be appreciated in the light of compliance of the other directions given in the same interim order; draft recruitment rules were made and finalized but the post could not be filled up as the petitioner obtained stay of the rules by filing a writ petition; in the meanwhile, certain service benefits were given to him; the appellants had tendered unconditional apology before the High Court; the respondent no. 2 has been repatriated. However, from the events and facts reflected in the impugned order, it appears to us, certain wrong statements were made by respondent Nos. 1 and 2, may be with anxiety to defend themselves. This Court in the case of Suresh Chandra Poddar vs. Dhani Ram & Ors. [(2002) 1 SCC 766] in paras 9 and 10

observed thus:-

"9. Section 12 of the Contempt of Courts Act, 1971 has indicated a caution that while dealing with the powers of contempt, the court should be generous in discharging the contemner if he tenders an apology to the satisfaction of the court. In the present case the apology tendered was found to be not genuine by the Tribunal. We are dismayed, if not distressed, that despite delineating on all the steps adopted by the appellant for challenging the order of the Tribunal before the High Court and despite the fact that the appellant had implemented the order even though there was no time schedule to do so, the Tribunal has chosen to depict the apology tendered by the appellant as one without contrition.

10. Section 13 of the Contempt of Courts Act says that notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence

"unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice".

In that case, the Central Administrative Tribunal had given direction to publish a fresh seniority list but no time limit was fixed. When the application for contempt was filed, in reply, it was submitted that order had been complied with during pendency of the writ petition challenging the order of the Tribunal. However, the Tribunal punished the contemnors in spite of the contemnors tendering an apology. In the context of the facts of the said case, this Court observed that in the absence of any time limit fixed for complying with the order, the Tribunal should have directed first the contemnors to implement the direction in the absence of any time limit fixed. Thereafter, action could have been taken for non-implementation after the expiry of the time frame. This Court went on to observe in para 12 thus:-

"We have chosen to say so much in this case to give a message to the Tribunal that contempt jurisdiction is not to be exercised casually but only sparingly and in very deserving cases. It is appropriate to bear in mind the adage "It is good to have the power of giant, but not good to use it always"

In our considered view, in the light of what is stated above and having regard to the facts and circumstances of this case, it would subserve the ends

of justice if the impugned order is modified by setting aside the sentence of incarceration passed against both the appellants and a fine of Rs. 2,000/- is imposed on each of them. We accordingly modify the impugned order. Appellant in Criminal Appeal No. 646/2000 shall pay cost of Rs.5,000/- within six weeks which amount shall be paid to the Supreme Court Legal Aid Committee. The appellant in Criminal Appeal No. 627/2000 shall pay Rs.5,000/- as cost to the respondent no. 1 within six weeks.

The appeals are disposed of accordingly in the above terms.

JUDIS