

CASE NO.:

Appeal (crl.) 170 of 1996

Appeal (crl.) 171 of 1996

PETITIONER:

JHARESWAR PRASAD PAUL & ANR

Vs.

RESPONDENT:

TARAK NATH GANGULY & ORS.

DATE OF JUDGMENT: 08/05/2002

BENCH:

D.P.Mohapatra & K.G.Balakrishna

JUDGMENT:

D.P.MOHAPATRA, J.

In these appeals filed by special leave the appellants have challenged the judgment/order dated 11.11.1992 passed by the High Court at Calcutta in the contempt proceeding, Civil Rule No.2197(W)/88, holding inter alia, that the respondents have not complied with the order dated 29.2.1988 of the Court effectively and in appropriate manner.

The relevant facts of the case giving rise to the proceeding may be stated thus :

The respondents, 27 in number, were holding posts of clerk-cum-cash collector in the Directorate of Dairy Development, Government of West Bengal. They filed writ petition No.CO 8793(W) of 1984 raising a grievance that though they have been holding the posts since long and have been doing clerical work similar to those of lower division clerks in the department they have not been given the benefit provided under the Government Order No.3868-F dated 31.3.1984. In the said Government Order it was ordered, inter alia, that members of the Lower Division Clerical cadre will be entitled to promotion to the Upper Division Clerical cadre on the ratio of 1:1 and the order was applicable to Lower Division Clerks/Assistants in all Government Departments and Directorates including the Directorate of Dairy Development. The further grievance of the writ petitioners was that they were denied the benefit of promotion and consequent financial benefits envisaged under the aforementioned Government order merely for the reason that designation of the posts held by them was clerk-cum-cash collector and not Lower Division Clerk/Assistant. It was the case of the petitioners that the duties discharged by them are similar to those of the Lower Division Assistants and in addition to such duties they also do the work of collection of cash. Therefore, there was no justification, to deny them the benefits of the aforementioned Government order. The petitioners sought the following reliefs in the writ petition:

a) A writ in the nature of Mandamus do issue

directing the respondents and each one of them to show cause as to why the incumbents in the post of Clerk-cum-Cash Collector including the petitioners under the Directorate of Dairy Development, Government of West Bengal should not be taken into account in the preparation of common seniority List amongst the Lower Division Clerical Cadre under the said Directorate.

b) A writ in the nature of Mandamus do issue directing the respondents and each one of them to act in accordance with law and to promote the Lower Division Clerical Cadre to the Upper Division Clerical Cadre in terms of the Government order dated 31.3.1984 being No.3868-F in terms of the common seniority list prepared in accordance with law taking the petitioners into account.

c) A writ in the nature of Mandamus do issue directing the respondents and each one of them to show cause as to why the posts of Clerk-cum-Cash Collectors should not be considered as belonging to the Lower Division Clerical Cadre under the Directorate of Dairy Development, Government of West Bengal.

d) Rule Nisi be made absolute if the respondents fail to show adequate cause.

e) An order of injunction do issue restraining the respondents, particularly the respondents nos. 2 and 3 from giving effect or any further effect to the Government order dated 31.3.1984 being No.3868-F issued by the Assistant Secretary, Department of Finance till a common seniority list in the Lower Division Clerical Cadre under the Directorate of Dairy Development, Government of West Bengal is prepared taking the posts of Clerk-cum-Cash Collector as constituent of the said Cadre.

f) Direction be given upon the respondents to prepare the Common seniority and/or Gradation List in the Lower Division Clerical Cadre under the Directorate of Dairy Development taking the posts of Clerks-cum-Cash Collectors as belong to the said cadre and thereafter to promote the Lower Division Clerical Cadre to the Upper Division Clerical Cadre at the ratio of 1:1 in terms of Government order dated 31.3.1984 being No.3868-F.

g) Ad-interim order in terms of prayers(e) and (f) above.

h) Costs of this application be paid by the respondents."

The gist of the case of the respondents was that the writ petitioners were not members of the Cadre of Lower Division Assistants; that they were holding ex-cadre posts; that the duties and responsibilities discharged by the writ petitioners were not similar to those performed by Lower Division Assistants, and therefore, they were not entitled to the benefits of promotion and consequential financial benefits as envisaged in the Government order No.3868-F dated 31.3.1984.

A learned single Judge of the High Court by the judgment dated 15th May, 1986 disposed of the writ petition holding, inter alia, that : "Channel of promotion, method of recruitment, and the nature of duties and mode of creation of the Clerk-cum-Cash Collectors being different from Lower Division Clerks, the ratio of 1:1 in the matters of promotion could not be conferred upon the Clerk-cum-Cash Collectors."

In the writ appeal filed by the writ petitioners assailing the judgment of the single Judge, a Division Bench of the High Court by judgment rendered on 29.2.1988 set aside the judgment and ordered that the petitioners should be given the benefits due in terms of the order being order No.3868-F dated 31.3.1984. The operative portion of the judgment runs as follows:

"Thus on the basis of the ratio of the judgments of the Supreme Court or the observations as made, we are inclined to hold that in this case, the said petitioners have been deprived of the protection of equal pay for equal work and that has caused a grave failure of justice by the State Government and that too, in not following the ratio of 1:1 as indicated above. We hold further that in the case of the said petitioners, the Finance Department Memo No.3868-F dated 31st March, 1984 should have been applied in its entirety and not in part, as has been done in this case and the said petitioners, as its appeared, are not getting the necessary benefits under the same, since they have not been designated or declared and considered as clerks. In fact, the said Memo was intended to give or provide for more benefits to the said petitioners. Really the said petitioners have been denied of the due and necessary benefits under the said memo, since they have been shown or mentioned to be holding ex-cadre posts.

Such being the position, we feel that this appeal should be allowed and accordingly, we allow the same, set aside the judgment and order of the learned trial Judge and keep it on record further that the said petitioners should now be given the due benefits in terms of the order being order No.3868-F dated 31st March, 1984 and on giving such effect, they be paid their due and necessary emoluments in accordance with law. We also hold and observe that the Rule of Automatic promotion as indicated hereinbefore, should also be adhered to and followed in appropriate cases."

The respondents in the appeal challenged the

judgment of the Division Bench by filing a Special Leave Petition (being SLP No. 14123 of 1988) in this Court which was dismissed by the order passed on 24.4.1989. The review petition filed against the said order was also dismissed.

Thereafter the State Government issued the order being G.O.No.264-MK/3M-56/84-I dated 31.1.1991 extending the benefit of G.O.No.3868-F dated 31.3.1984 to the Clerk-cum-Cash Collectors in the Directorate of Dairy Development. The said Government order was implemented and the Respondents and some other Clerk-cum-Cash Collectors in the Directorate were given promotion to the higher post like Senior Clerk-cum-Cash Collectors, Supervisors, etc. Not satisfied with the Government Order issued in January 1991 and the consequential benefits of promotion given to them by implementing the said order the writ petitioners filed an application under Article 215 of the Constitution of India alleging, inter alia that the respondents in the writ petition have failed to comply with the judgment/order of the High Court in its entirety and in its letter and spirit. The petitioners made the following prayers in the petition :

- "a) Rule NISI do issue calling upon the respondents to show cause as to why they should not be committed to prison or to suitably be dealt with for committing the acts of contempt as enumerated in paragraph 7 in the foregoing petition;
- b) If the respondents fail to show adequate cause the Rule NISI be made absolute;
- c) Order be passed directing the respondents and each one of them to act in terms of the order passed by this Hon'ble Court on 29th February, 1988 in Appeal from Original order being No.561 of 1987 and to prepare a common gradation list of Lower Division Clerical Cadre taking into account the post of Clerk-cum-Cash Collector and to give due benefits to the petitioners in terms of the order being order No.3868 F dated 31st March 1984.
- d) Ad-interim order in terms of prayers (b);
- e) Costs."

Considering the application filed by the writ petitioners the Division Bench of the High Court passed the judgment/order dated 11.11.1992, the operative portion of which reads as follows:

"From the facts and circumstances, we hold that respondents contemnors have not complied with the order dated 29.2.88 effectively and in appropriate manner but there is some doubts whether the disobedience to the Judgment or neglect to comply with the Judgment or order was willful or not and accordingly the respondent/contemnors are entitled to benefit of

doubt and hence, we do not propose to inflict any punishment to the respondent/contemners. At the same time we cannot be unmindful to the trend of contumacious act of the respondents for which petitioners had suffered immensely and have been suffering till now. In order to mitigate the situation, without inflicting any punishment, we direct respondents/contemners to introduce a common gradation list of Lower Division Clerical cadres so that Cashier-cum-Cash Collector gets promotion by virtue of their seniority and consequential pay protection with that of Lower Division Clerk.

We believe that by adopting such steps, it will be complete and effective compliance of the order passed by this court on 29th February, 1988. Such effect should be given within 31st December, 1992 and respondents shall release consequential benefits including arrears, if any by 31st March, 1993. After computation, if any arrear is payable to the petitioners, they will be entitled to interest @ 12%p.a. which shall be computed from the date of expiry of two months from the date of the order i.e. dated 29.2.88.

Considering the facts and circumstances, we direct the respondents/contemners nos.1, 3, 4 and 5 to pay Rs.2,000/- to each of the petitioners individually towards cost of litigation."

Shri T.C.Ray, learned senior counsel appearing for the appellants, raised the contention that the High Court was in error in issuing the directions in the impugned judgment/order in exercise of its contempt jurisdiction inasmuch as the judgment of the Division Bench, non-compliance of which was alleged by the writ petitioners, did not contain any specific order or direction for treating the ex-cadre posts of Clerk-cum-Cash Collector as posts in the cadre of Lower Division Clerk/Assistant and for preparation of a combined seniority list including the holders (writ petitioners and others) of such ex-cadre post, in the cadre of Lower Division Clerk/Assistants. It was the further submission of the learned counsel that not only the ordering portion of the judgment but also in the entire judgment the question of common gradation list has neither been discussed nor any finding recorded. In the absence of any adjudication on the question and any order or direction to that effect in the judgment the appellants could not have been held to have acted in a contumacious manner in not treating the writ petitioners as members of the cadre of Lower Division Assistant and in not preparing a common gradation list.

Shri Gobind Das, learned senior counsel appearing on behalf of the respondents supporting the judgment/order under challenge strenuously contended that preparation of a common seniority list was specifically prayed for in the writ petition and when the Division Bench allowed the appeal and granted the reliefs sought by the writ petitioners it followed as a necessary consequence that the respondents in the writ petition were mandated to treat the writ petitioners and other Clerk-cum-Cash Collectors as part of the cadre of Lower Division Assistants and give them promotional benefits of 1:1 ratio and other consequential financial benefits.

The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. Since the respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined. The Contempt of Courts Act, 1971 has been introduced under the statute for the purpose of securing the feeling of confidence of the people in general for true and proper administration of justice in the country. The power to punish for contempt of courts is a special power vested under the Constitution in the courts of record and also under the statute. The power is special and needs to be exercised with care and caution. It should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct. It is to be kept in mind that the court exercising the jurisdiction to punish for contempt does not function as an original or appellate court for determination of the disputes between the parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order. If this limitation is borne in mind then criticisms which are sometimes leveled against the courts exercising contempt of court jurisdiction "that it has exceeded its powers in granting substantive relief and issuing a direction regarding the same without proper adjudication of the dispute" in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the judgment or order passed in the contempt proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended to maintain the majesty and image of courts.

Judging the case in hand on the touchstone of the principles noted above, we find that the directions issued by the Division Bench in the impugned judgment in effect granted substantive reliefs not covered by the judgment/order passed in the original proceeding. In the judgment no direction was issued by the High Court that the writ petitioners will be admitted to the cadre of Upper Division Clerks/Assistants in the Directorate. As noted earlier, they have all along been holding the posts of Clerk-cum-Cash Collector which are ex-cadre posts. Entry of such persons into the cadre of Upper Division Clerk/Assistants

has to be considered taking into account various aspects of the matter. It is one thing to say that the benefits under the Government Order may be extended to the writ petitioners also and extending benefits of the Government Order to the writ petitioners is one thing and directing their entry into the existing cadre of Office Assistants is a different thing. Such a dispute can only be determined on consideration of all relevant aspects of the matter and cannot be and should not be ordered in the summary proceeding for taking action for contempt of court. If the High Court felt that the grievance of the writ petitioners relating to the question of their entry into the cadre of Upper Division Clerks/ Assistants has not been dealt with by the court and specific direction has not been issued while disposing of the writ petitions/appeals then the appropriate course was to leave it to the parties (writ petitioners) to agitate the matter before the competent forum. Further the question of entry of holders of ex-cadre posts, like the writ petitioners, into an existing cadre is a matter of policy which the Government has to decide. Be it noted here that on consideration of the matter the High Court held that no action for contempt of court need be taken against the respondents in the writ petition for deliberate disobedience of the judgment or order passed by the High Court. Thereafter it was not open to the court to pass any order granting substantive relief to the applicants (writ petitioners) on the plea that the question raised was also a part of their grievance in the writ petition.

In the facts and circumstances of the case, we are constrained to hold that the judgment/order passed by the High Court was without jurisdiction. In the result, the appeals are allowed. The judgment/order under challenge is set aside. The petition filed by the writ petitioners for taking action for contempt of court against the respondents is dismissed.