

A NIAZ MOHAMMAD AND ORS. ETC. ETC.

v.

STATE OF HARYANA AND ORS.

SEPTEMBER 20, 1994

B [M.N. VENKATACHALIAH, CJI. KULDIP SINGH
AND N.P. SINGH, JJ.]

Contempt of Court Act. 1971 :

C *Section 2(b)—Civil contempt—Wilful disobedience a prerequisite—Compelling circumstances under which contemner unable to comply with the order—Held: Does not amount to contempt.*

D These petitions were filed for initiating contempt proceedings against the respondents for non-payment of arrears of salary to the Petitioners-Instructors in the Adult and Non-formal Education Scheme under the Education Department of Haryana, on par with squad teachers as directed by the Court earlier. On the contempt petitions directions were issued to the Union of India and the State of Haryana to make joint efforts and to use the resource for paying the amount due to the teachers within two months. The Union of India filed an application for modifying the said order since the earlier direction was issued to State of Haryana which has to comply with it and not the Union of India. This Court permitted the Union of India to convert the said application into a Review petition.

F On behalf of the State of Haryana, it was contended that the total financial liability would be in the order of Rs. 28 crores which it was not aware when the direction was issued, and unless the Union of India contributes and bears a part of the burden, it would not be possible to comply with the said direction.

G Dismissing the petitions, this Court

H **HELD :** 1. The Court while considering the issue as to whether the alleged contemner should be punished for not having complied and carried out the direction of the Court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the Act while defining civil contempt, have said that it must be wilful

disobedience to any judgment, decree, direction, order, writ or other process of a court. Before a contemner is punished for non-compliance of the direction of a court, the court must not only be satisfied about the disobedience of any judgment decree, direction or writ but should also be satisfied that such disobedience was wilful and intentional. If from the circumstances of a particular case, brought to the notice of the Court, the Court is satisfied that although there has been a disobedience but such disobedience is the result of some compelling circumstances under which it was not possible for the contemner to comply with the order, the Court may not punish the alleged contemner. [726-G, H, 727-A, C, D]

Dushyant Somal v. Sushma Somal, AIR (1981) SC 1026, relied on.

2. In the present case, there is no specific direction in the judgment of this Court dated 2.6.1988 in the connected Writ Petition, to pay any particular amount to the Instructors. This Court has simply decided the question as to whether they are entitled to the scale of Pay which has been given to Squad Teachers. Having decided that question in favour of the Instructors, this Court directed that arrears be paid to be Instructors from their respective dates of appointments, treating them at par with the Squad Teachers. That the said direction will involve payment of about 28 crore of rupees was neither known to the Court not to the parties to that proceeding. As such, this Court is now entitled to examine the question as to whether in the special facts and circumstances of the present case, the respondents, should be punished for having committed contempt of this Court. [727-D to F]

State of Madhya Pradesh v. Pramod Bhartiya, [1993] 1 SCC 539, relied on.

3. There is no wilful disobedience on the part of the respondents in complying the direction given by this Court in the said judgment. It cannot be disputed that when the aforesaid direction was given, this Court was not conscious that the direction had created a liability for payment of about 28 crores of rupees, as arrears to the Instructors in the Adult and Non-formal Education Scheme under the Education Department in the State of Haryana. Out of that amount about 20 crores of rupees have already been disbursed for different periods to the Instructors. In this background, it is not possible to hold that respondents have committed contempt of this Court for which they ought to be punished by this Court. [728-E, F]

- A** ORIGINAL JURISDICTION C.M.P. No. 314/89 in W.P. (C) No. 597/86 With I.A. No. 3-6 in C.M.P. No. 314/89 in WP (C) 597/86 CMP No. 7984/89 WP (C) No. 78/88 CMP No. 7984/89 In WP (C) No. 395/88, Contempt P. Nos. 14, 115/89, 344, 345, 346 & 347/93 in W.P. (C) No. 494/88 CMP No. 7983/88, in WP (C) No. 77/83, WP(C) No. 401/89, CMP. Nos. 3293, 3292/89, 3291, 3289/89, 5490, 3060/89 in WP (C) No. 455/86, WP (C) No. 635/86, 636/86, 777/86 75/90, 1518/87, 1686/87, I.A. No. 1/90 in Contempt. P.No. 14/89 in WP (C) No. 494/88, W.P. (C) No. 784/89, Contempt P.No. 81/91 in WP (C) Nos. 1428/87, C.P. No. 82/91 in WP. 1489/87 & R.P. (C) No. 618/93.

C IN

Writ Petition (C) No. 597 of 1986.

(Under Article 32 of the Constitution of India.)

- D** Altaf Ahmad, Additional Solicitor General, Ms. Rekha Pandey, B.K. Prasad and K. Swamy for the appearing parties.

Rajinder Sachhar, Ms. Indu Malhotra and Ms. Shirin Khajuria for the Respondents.

- E** The Judgment of the Court was delivered by

N.P. SINGH, J. These petitions have been filed for initiating proceeding for contempt, against the respondents, for having disobeyed and ignored the order passed by this Court on 2.6.1988 in Writ Petition (Civil) No. 597 of 1986.

- F** The petitioners were working as instructors under the Adult and Non-formal Education Scheme, under the Education Department of Haryana. The object of the said Scheme was to impart literacy (functional and awareness) to the adult illiterates in age group of 15-35 years and to provide literacy to the children in the age group of 5-15 years, who were drop-outs from the primary and middle school level or who had never joined any regular school. At the relevant time there was another Scheme known as State Social Education Scheme in the State of Haryana, for imparting education to the illiterates, in the villages known as State Adult Education Programme. The teachers employed under the Scheme were
- G**
- H** known as squad teachers.

In the year 1981 the services of the head squad teachers and squad teachers were regularised and the pay scales of regular Head Masters and teachers of primary schools maintained by the State Government were given to them. The petitioners in the aforesaid writ petition claimed that they were also performing the same nature of duties as performed by squad teachers as such they were also entitled to pay scales of the squad teachers under the Education Department along with other benefits from the date they were initially appointed.

On behalf of the State, this claim was contested. According to the State, the writ petitioners who were instructors, did not perform similar duties as performed by squad teachers. But it was said by this Court :

"There is no doubt that instructors and squad teachers are employees of the same employer doing work of similar nature in the same Department, therefore the appointment on a temporary basis or on regular basis does not affect that doctrine of equal pay for equal work. Article 39(d) contained in Part IV of the Constitution ordains the State to direct its policy towards securing equal pay for equal work for both men and women. Though Article 39 is included in the Chapter on Directive Principles of State Policy, but it is fundamental in nature. The purpose of the Article is to fix certain social and economic goals for avoiding any discrimination amongst the people doing similar work in matters relating to pay. The Doctrine of equal pay for equal work has been implemented by this Court in *Randhir Singh v. Union of India*, *Dhirendra Chamoli v. State of U.P.* and *Surinder Singh v. Engineer-in-Chief, CPWD*. In view of these authorities it is too late in the day to disregard the Doctrine of equal pay for equal work on the ground of the employment being temporary and the other being permanent in nature. A temporary or casual employee performing the same duties and functions is entitled to the same pay as paid to a permanent employee.

The respondents' contention that the mode of recruitment of petitioners is different from the mode of recruitment of squad teacher inasmuch as the petitioners are appointed locally while squad teachers were selected by the Subordinate Service Selection Board after competing with candidates from any part of the

A country. Emphasis was laid during argument that if a regular selection was held many of the petitioners may not have been appointed they got the employment because outsiders did not compete. In our opinion, this submission has no merit. Admittedly, the petitioners were appointed on the recommendation of a Selection Committee appointed by the Adult Education Department. It is true that the petitioners belong to the locality where they have been posted, but they were appointed only after selection, true that they have not been appointed after selection made by the Subordinate Service Selection Board but that is hardly relevant for the purposes of application of doctrine of "equal pay for equal work".

B The difference in mode of selection will not affect the application of the doctrine of "equal pay for equal work" if both the classes of persons perform similar functions and duties under the same employer."

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D Ultimately it was held that instructors were entitled to the same pay scale as sanctioned to the squad teachers and a direction was given to fix the scale of pay of the instructors with effect from the date of their initial appointment by ignoring the break, in service on account of six months fresh appointments.

E From the judgment aforesaid, it appears that the aforesaid direction had been given to the State of Haryana. In the Writ Petition aforesaid, Union of India had not been impleaded as a party. At some later stage Union of India was added as a proforma respondent. From the judgment it does not appear that Union of India was involved in any manner in the implementation of the scheme.

F

In the present petition for initiating the proceeding for contempt of this Court, against the respondents, it has been alleged that by not having paid the arrears of salary to the instructors, in terms of the aforesaid order passed by this Court, respondents are liable to be punished. On 7.8.1991 this Court passed the following order :

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"State Counsel is granted 'three months' time for making the payments. List the matters after three months."

H Yet another order was passed on 11.11.1991 saying:

"The judgment of this Court requiring the respondent to pay salary to the teachers is binding on the State of Haryana as well as on the Union of India. We, accordingly, direct the Union of India and the State of Haryana both to make joint efforts and to use the resources for paying the amount due to the teachers within 2 months.

List the application after two months."

Thereafter a petition was filed on behalf of the Union of India for modifying the aforesaid order dated 11.11.1991 saying that in view of the specific direction given in the judgment of this Court, which is sought to be enforced by the petitioners, there was no occasion to issue any direction to the Union of India by the aforesaid order dated 11.11.1991 because the direction which is sought to be enforced in the proceeding for contempt, has to be complied with by the State of Haryana. On 4.11.1992 this Court head the counsel, appearing for Union of India, State of Haryana and the petitioners and granted permission to the Union of India to convert the application for modification of order dated 11.11.1991, into a Review Petition.

It appears to be an admitted position that by virtue of the judgment aforesaid directing that the instructors under the Adult and Non-formal Education Scheme of the Education Department of the State of Haryana, be treated at par with squad teachers under the Social Education Scheme of the Education Department of the same State for purpose of payment of salary and other emoluments with effect from the date of their initial appointments, the total liability created is about 28 crores of rupees. On behalf of the State of Haryana, it was stated that this Court itself was not conscious, when the aforesaid writ petition was allowed, about the nature of financial burden. Mr. Sachar, who appeared for the State of Haryana, categorically stated that unless Union of India contributes and bears a part of the burden aforesaid which has been caused on the State of Haryana, it is not possible to comply with the direction given in the aforesaid judgment. In that connection he informed the Court that with great difficulties, in order to comply with the direction of this Court, Rs. 20 crores have been arranged and paid to the different instructors under the Adult and Non-formal Education Scheme, which was a temporary scheme. He expressed the predicament of the State of Haryana in releasing any further fund,

- A beyond what has already been paid, and sought a direction to the Union of India to contribute the balance of the amount.

B During hearing of the application, reference was made to later judgments of this Court, where Benches consisting of three Judges have reviewed all the earlier judgments of this Court in respect of the doctrine of "equal pay for equal work". Special reference was made to the judgment in the case of *State of Madhya Pradesh v. Pramod Bhartiya*, [1993] 1 SCC 539, where it has been pointed out that the doctrine of equal pay for equal work was neither a mechanical rule nor does it mean geometrical equality. The concept of reasonable classification and all other rules evolved with respect to Articles 14 and 16(1) come into play wherever complaint of infraction of the said rule fails for consideration. It was further said that it was not enough to say that the qualifications were same or the schools were of the same status or the service conditions were similar, what was more crucial was whether they discharge similar duties, functions and responsibilities. The burden to prove that in all respects, the two groups are identical, was on the petitioners, who claimed equal pay. According to us, now it is not open for this Court to examine the correctness of the view expressed and the direction given in favour of the petitioners, the disobedience of which is the subject matter of the present controversy.

- E Section 2(b) of the Contempt of Court Act, 1971 (hereinafter referred to as 'the Act') defines "Civil Contempt" to mean "wilful disobedience to any judgment, decree, direction, order, writ, or other process of a court.....". Where the contempt consists in failure to comply with or carry out an order of the court made in favour of the party, it is a civil contempt. The person or persons in whose favour such order or direction has been made can move the Court for initiating proceeding for contempt against the alleged contemner, with a view to enforce the right flowing from the order or direction in question. But such a proceeding is not like an execution proceeding under Code of Civil Procedure. The party in whose favour an order has been passed, is entitled to the benefit of such order.
- G The Court while considering the issue as to whether the alleged contemner should be punished for not having complied and carried out the direction of the Court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the Act while defining civil contempt, have said that it must be wilful disobedience to any judgment, decree, direction, order, writ or other process of a court. Before a contem-
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ner is punished for non compliance of the direction of a court the Court must not only be satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was wilful and intentional. The Civil Court while executing a decree against the judgment debtor is not concerned and bothered whether the disobedience to any judgment, or decree, was wilful. Once a decree has been passed it is the duty of the court to execute the decree whatever may be consequences thereof. But while examining the grievance of the person who has invoked the jurisdiction of the Court to initiate the proceeding for contempt for disobedience of its order, before any such contemner is held guilty and punished, the Court has to record a finding that such disobedience was wilful and intentional. If from the circumstances of a particular case, brought to the notice of the court, the Court is satisfied that although there has been a disobedience but such disobedience is the result of some compelling circumstances which it was not possible for the contemner to comply with the order, the Court may not punish the alleged contemner.

In the present case, there is no specific direction in the aforesaid judgment of this Court dated 2.6.1988 in the connected Writ Petition, to pay any particular amount to the instructors, This Court has simply decided the question as to whether they are entitled to the scale of pay which has been given to squad teachers. Having decided that question in favour of the instructors, this directed that arrears be paid to the instructors w.e.f. their respective dates of appointments, treating them at par with the squad teachers. This direction will involve payment of about 28 crores of rupees was neither known to the Court not to the parties to that proceeding. As such, this Court is now entitled to examine the question as to whether in the special facts and circumstances of the present case, the respondents should be punished for having committed contempt of this Court. In the case of *Dushyant Somal v. Sushma Somal*, AIR (1981) SC 1026 = [1981] 2 SCC 277 this Court said :

"Nor is a person to be punished for Contempt of Court for disobeying an order of Court except when the disobedience is established beyond reasonable doubt, the standard of proof being similar, even if not the same, as in a criminal proceeding. Where the person alleged to be in contempt is able to place before the Court sufficient material to conclude that it is impossible to obey

- A the order, the Court will not be justified in punishing the alleged contemner."

In Halsbury's Laws of England, 4th Edn, Volume 9, para 53 page 34, it has been said :

- B "Although contempt may be committed in the absence of wilful disobedience on the part of the contemner, committal or sequestration will not be order unless the contempt involves a degree of fault or misconduct."

- C It has been further stated :

- D "In circumstances involving misconduct, civil contempt bears a two-fold character, implying as between the parties to the proceedings merely a right to exercise and a liability to submit to a form of civil execution, but as between the party in default and the state, a penal or disciplinary jurisdiction to be exercised by the court in the public interest."

- E Taking all facts and circumstances into consideration, we are satisfied that in the facts and circumstances of the present case, there is no willful disobedience on the part of the respondents in complying with the direction given by this Court in the aforesaid judgment. It cannot be disputed that when the aforesaid direction was given, this Court was not conscious that the direction had created a liability for payment of about 28 crores of rupees, as arrears to the instructors in the Adult and Non-formal Education Scheme under the Education Department in the State of
- F Haryana. Out of that amount about 20 crores of rupees have already been disbursed for different periods to the instructors. In this background, it is not possible to hold that respondents have committed contempt of this Court, for which they ought to be punished by this Court. Accordingly, all the petitions including W.P.(C) Nos. 401 and 784 of 1989 are dismissed.

G.N.

Petitions dismissed.