

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Cont.Case(C) No. 14/2011**

% **Date of Decision: 17.01.2011**

Shri Parveen Kumar Petitioner

Through Mr. R.V. Sinha, Advocate

Versus

Shri Navin Kumar & Ors. Respondents

Through Mr. D.S. Mahendru, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MS. JUSTICE VEENA BIRBAL

- | | | |
|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

*

The petitioner/applicant has invoked the Civil contempt jurisdiction of this Court by the above noted petition on account of alleged disobedience of the order dated 23rd December, 2010 passed by this Court in WP(C) No. 8619/2010 titled as 'Praveen Kumar Vs. UOI & Ors.'

The petitioner has filed the writ petition under Article 226 of the Constitution of India for quashing the order dated 13th December, 2010 passed by the Central Administrative Tribunal, Principal Bench in OA No. 3160/2010 holding that there was no illegality, infirmity or perversity in the orders of transfer issued on administrative grounds/public interest, and that the transfer order cannot be interfered with except if the orders are issued by an incompetent authority, which was found not to be the case in the present matter of the petitioner and therefore the Original application filed by the petitioner was dismissed and the interim order passed by the Tribunal was vacated.

The petitioner approached this Court against the order dated 13th December, 2010 passed in OA No 3160/2010, inter alia, on various grounds and this Court was pleased to pass the order dated 23rd December, 2010, observing that counsel for the respondents would obtain instructions in the light of discussions in the Court, to ascertain whether the petitioner could be retained, if not in Karnal, in an area where during the weekends the petitioner would be able to join his family in Karnal and till the next date of hearing the order of transfer would not be given effect to.

The petitioner/applicant has now filed the present petition alleging that despite the order dated 23rd December, 2010 when the petitioner reported on 27th December, 2010 for joining his duties, he was not allowed to join. A letter dated 27th December, 2010 was issued to the petitioner to hand over his charge to one Sh. F.C. Tyagi, Assistant Engineer (E) and respondent No. 4, Sh. Narender Kaushal Executive Engineer (E) did not allow the petitioner to join his duties despite bringing the order of the Court dated 23rd December, 2010 which was sent by letter dated 27th December, 2010 to his notice. According to the petitioner, in the circumstances, respondent No. 4 has not bothered to comply with the directions of this Court willfully and has further threatened the petitioner to hand over the charge which is apparent from the language in the letter.

Along with the contempt petition, the petitioner has filed a copy of the letter dated 30th December, 2010 stating that the petitioner had been relieved from his office through PIMS on 14th December, 2010 afternoon and office order of even no. 2780 dated 14th December, 2010 was passed stipulating that the petitioner is no more on the pay roll of the office, which order was given to the petitioner on 14th December, 2010 and he was instructed to hand over the charge to Mr. F.C.Tyagi, Assistant Engineer (E)-P, Karnal Central Electrical Division and sign the TR-1 Form. The said letter categorically stipulated that on 14th

December, 2010, the petitioner refused to sign the TR-1 Form and committed to sign the TR-1 Form on 15th December, 2010 but he did not sign the same later on and rather filed the writ petition. The letter further states that despite the reminder bearing even No. 2789 dated 15th December, 2010 and reminder bearing even No. 2804 dated 18th December, 2010, and finally the reminder bearing even no. 2819 dated 27th December 2010 given to the petitioner, he did not sign form TR-1. The relevant portion of the letter dated 30th December, 2010, a copy of which is also filed by the petitioner is as under:-

“ In compliance of Director (Admn), D.G. office, Nirman Bhawan, Delhi vide letter no. Nil dt.14/12/2010. You have been relived from this office through PIMS on 14/12/2010 after noon vide this office order even no.2780 dt.14/12/2010 and you are no more on the pay roll of this office. The same orders were given to you on 14/12/2010 and instructed to hand over the charge to Sh.F.C.Tyagi, Assistant Engineer (E)-P, Karnal Central Electrical Division and signed the TR-1 Form, but you have refused to sign the TR-1 form and committed to sign the TR-1 on 15/12/2010, but till date you have not signed the same.

Inspite of various reminders issued by this office vide even no.2789 dt.15/12/2010, 2804 dt.18/12/2010, 2819 dt.27/12/2010, you have still not handed over the charge that clearly shows your disobedience and negligency.”

The contempt petition had come for hearing on 12th January, 2011 when the counsel for the petitioner was asked whether it was

disclosed in the writ petition that the copy of the letter dated 14th December, 2010 after dismissal of his writ petition on 13th December, 2010 stating that he is no more on the pay roll of the office was not tendered to him and that he had not refused to take it and TR-1 Form was also not asked to be signed by the petitioner, and that he did not tell the respondent that he would sign the Form TR-1 on the next date. The learned counsel for the petitioner did not answer the query raised by this Court and sought an adjournment to produce the copy of the writ petition in order to ascertain whether the facts pertaining to 14th December, 2010 were disclosed by the petitioner or not before obtaining the interim order dated 23rd December, 2010 from this Court.

The copy of the contempt petition does not disclose that any such averment was made by the petitioner, that the letter dated 14th October, 2010 relieving him of his duty and directing to hand over the charge was not tendered to him and was not refused by him. The contempt petition also does not disclose that he had not assured on 14th December, 2010 that he will sign TR-1 Form on 15th December, 2010. Though a copy of the letter dated 30th December, 2010 was annexed with the contempt petition but this averment has not been denied in the contempt petition.

Today, the learned counsel for the petitioner again did not produce the copy of the writ petition and tried to argue the matter, again contending that the order dated 23rd December, 2010 has been violated intentionally and willfully. The learned counsel for the respondent has perused the copy of the writ petition. Perusal of the writ petition reveals that the petitioner did not divulge in the writ petition that he had been relieved of his duties on 14th December, 2010 and that the letter was not tendered to him or that he had not refused to accept the letter. It has been disclosed that the petitioner was asked to sign TR-1 Form on 14th December, 2010 and that he had declined to sign it on the plea that he would sign it on 15th December, 2010.

In the circumstances, it is apparent that the petitioner concealed this material fact and did not disclose it to the High Court, whose Contempt jurisdiction is sought to be invoked. It is inevitable to infer in the circumstances that the letter dated 14th December, 2010 bearing even No. 2780 intimating the petitioner that he was no more on the pay roll of the office was tendered to him which he refused to sign. The petitioner also concealed the fact that he was asked to sign the TR-1 Form on 14th December, 2010, however, he committed to sign the form on the next day, i.e., 15th December, 2010 but he did not sign the same and allegedly went on leave. It is well settled that contempt jurisdiction is to be used sparingly and only in case of willful disobedience where

there is a case beyond reasonable doubt. Contempt power is to be exercised to uphold the dignity of the Court in the larger interest of the society and for proper administration of justice delivery system. The petitioner has concealed the material facts and in the circumstances, he cannot be permitted in the present facts and circumstances to invoke the Contempt jurisdiction of this Court.

The Supreme Court of India in the case of Perspective Publications Ltd. and Anr. Vs. State of Maharashtra, AIR 1971 SC 221 had observed at page 230, inter alia as under:-

“The summary jurisdiction by way of contempt must be exercised with great care and caution and only when its exercise is necessary for the proper administration of law and justice.” (Per Grover, J.) Contempt of Court is essentially a matter which concerns the administration of justice and the dignity and authority of judicial Tribunals. It is not a right of a party to be invoked for the redress of his grievances. It is not also a mode by which the rights of a party, adjudicated upon by a Tribunal can be enforced against another party. Moreover, if the matter, as in the present case, requires a detailed inquiry, it must be left to the Court which passed the order and which presumably is fully acquainted with the subject-matter of its own order. When the matter relates to mere infringement of an order, as between parties, it is clearly inexpedient to invoke and exercise contempt jurisdiction as a mode of executing the order, merely because other remedies may take time or are more circumlocutory in character. Contempt jurisdiction should be reserved for what essentially brings the administration of justice into contempt or unduly weakens it (vide (1964) 68 Cal WN 148, AIR 1951 Pat 231, AIR 1966 Mad 21 and AIR 1971 ALL 231).

In the circumstances, if the petitioner had been relieved from his Office PIMS on 14th December, 2010 afternoon by office order even No. 2780 dated 14th December, 2000 and he was no more on the pay roll of the office, it cannot be held that there is any willful and deliberate violation of the order dated 23rd December, 2010. This is also evident that the petitioner was asked to hand over the charge to Mr. F.C. Tyagi, Assistant Engineer (E)-P, Karnal Central Electrical Division and sign the TR-1 Form on 14th December, 2010 but the petitioner refused to sign the TR-1 Form and committed to sign TR-1 Form on 15th December, 2010.

If these facts are taken into consideration, it will be difficult to infer that the respondents have willfully and deliberately violated the order dated 23rd December, 2010 which was passed on the premise that the petitioner has not been relieved and has not been asked to hand over the charge and sign the TR-1 Form. With the contempt petition though the letter dated 30th December, 2010, incorporating these facts, has been filed, however in the contempt petition, it has not been even denied that the averments made in the letter dated 30th December, 2010 are incorrect and not admitted by the petitioner.

In the circumstances, we do not find any grounds to invoke the Contempt jurisdiction of this Court. The petition is without any merit and it is, therefore, dismissed.

ANIL KUMAR, J.

JANUARY 17, 2011
'rs'

VEENA BIRBAL, J.