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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CONT.CAS(C) 711/2009

% Judgment dated 06.02.2013

HARI RAM AHIRWAR

..... Petitioner

Through: Mr.Rajesh Srivastava, Advocate

versus

R.K.VERMA

..... Respondent

Through: Mr.Rajeev Mehra, ASG with Mr.J.N. Agarwal,
and Mr.Sumeet Pushkarna, Advocates
along with Mr.Rajiv Verma, CMD, DTC
and Mr.Jagdish, Manager (PLD), DTC

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

1. In this case petitioner alleges willful disobedience of the order passed by a Single Judge of this court in Writ Petition No.1523/1997 on 19.12.2001.
2. Counsel for the petitioner submits that at the time of final hearing of the Writ Petition No.1523/1997 in which the order of 19.12.2001 was passed, a statement was made by counsel appearing for the respondent that the petitioner would be given benefit of his past service rendered, however, the respondents have failed to regularize the services of the petitioner from 04.03.1992 when he was appointed on ad-hoc basis. It is submitted that the respondents have regularized his services from 22.01.2009 when a vacancy arose for the post of Manager.
3. Counsel for the petitioner further submits that even after a vacancy had arisen the respondents did not offer the same to the petitioner, which forced the petitioner to file another writ petition being Writ Petition No.4966/2004, which was however, dismissed on the ground that merely

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fill up the said post, as it would lie within the discretion of the employer. The statement of counsel for the petitioner was again noted that before anyone else is regularized as a Manager (Electrical), petitioner would be first regularized in the post of Manager (Electrical). Aggrieved by the aforesaid order, the petitioner filed an LPA No.688/2004, which was allowed.

4. The present contempt petition was filed in the year 2009. It may, however, be noticed that the petitioner has since been promoted to senior manager during the pendency of the contempt petition.
5. Learned Additional Solicitor General, appearing for respondents, however, submits that the respondents have complied with the directions contained in the order dated 19.12.2001. It is submitted that the petitioner was to be given benefit of the past services rendered by him only for the purposes of considering his case of seniority and promotion which has been carried out.
6. Learned Additional Solicitor General also submits that the vacancy arose in the year 2009, the petitioner was given benefit and was regularized in the post of Manager (Electrical), subsequently, a vacancy arose for the post of Senior Manager (Electrical) in the year 2012; giving benefit to the petitioner in terms of the order passed by the Single Judge, the petitioner was promoted out of turn ahead of similarly situated persons and prior to his having completed five years on the last post, which is the post of Manager (Electrical). It is submitted that the petitioner was promoted ahead of time in 2012 instead of the year 2014, thus the order of the Single Judge has been complied with in letter and spirit.
7. I have heard counsel for the parties and carefully perused the judgment of the learned Single Judge.
8. The necessary facts which are required to be noticed for disposal of this

contempt petition and as observed by the learned Single Judge in the order dated 19.12.2001, are that the petitioner had made an application to the respondent, corporation in the absence of any formal advertisement released by them; and the case of the petitioner was considered and recommended for consideration. The DTC accepted the recommendation, and the petitioner was appointed for the post, although he did not meet the eligibility criteria. The Single Judge also noticed that even the rules were relaxed for a single individual, although there was no available post and strength in the said cadre. The learned Single Judge has observed as under:

“Before parting with the records, however, I am inclined to make certain observations with regard to the state of facts, which are apparent on the face of the records.

The petitioner herein is a person, who submits an application on a plain paper for his appointment in any post of the Corporation, without there being any advertisement, which is considered and recommended for favourable consideration. The Corporation also accepts the aforesaid recommendation, issues an order of appointment although the petitioner, at that stage, did not possess the eligibility criteria, by relaxing the rules for one single individual and even though there was no available post and strength in the said cadre. This is shocking to the conscience of this court. It would be appropriate for the competent authority to see that nothing of this kind happens in future and that there should be no back door entry to any post in the Corporation, under any circumstances. With the aforesaid observations and directions, the writ petition stands disposed of.”

9. In this backdrop, the petitioner filed the Writ Petition No.1523/1997, seeking regularization, as he continued to work on ad hoc basis for a period of nine years. Petitioner also sought consequential benefits of

seniority and promotion.

10. Since the bone of contention between the parties are two paragraphs of the order dated 19.12.2001, I deem it appropriate to reproduce the same.

“The statement of the counsel appearing for the respondent that the respondent shall also give full benefit of the past service rendered by the petitioner in the Corporation, while considering his case of seniority and promotion, is also taken on record.

Since an order is already passed that the case of the petitioner shall be considered for regularisation against the sanctioned post of Manager (Electrical) as and when the same is available, in his own turn, in accordance with law, a further direction is also issued to the respondent to give benefit of entire past service of the petitioner while considering his case for further promotion to the post of Senior Manager (Electrical), as and when the same is available to the petitioner.”

11. A careful reading of the order dated 19.12.2001 and more particularly the extracted portion would show that a statement was made by the counsel appearing for the DTC that DTC would give full benefit of past services rendered by the petitioner in the Corporation, while considering his case for seniority and promotion. The statement was made by the learned counsel in all fairness.
12. Keeping this statement in mind, the learned Single Judge thereafter directed that the case of the petitioner would be considered for regularization against the sanctioned post, as and when the same is available. Admittedly, the post became available in the year 2009 and the petitioner was offered the said post. A further direction was issued to give benefit of the entire past services of the petitioner while considering his

case for further promotion to the post of Senior Manager (Electrical), as and when the same is available.

13. In my view this benefit has also been given to the petitioner, as the post of Senior Manager (Electrical) was available in the year 2012 and taking into consideration his past services he has been promoted out of turn, so as to avail the benefit of promotion from Manager to Senior Manager, or else the petitioner would have had to work for a period of five years in the post of Manager before he could be promoted. I am informed that persons similarly situated as that of the petitioner continue to work as Manager and they have not been given any benefit and this benefit has only been given to the petitioner alone on account of the orders passed in the writ petition filed by him.
14. Another aspect, which has been brought to the notice of the court is that the petitioner cannot be given benefit of the Assured Career Promotion Scheme (ACP Scheme), as in the year 2001 such a scheme was not in force and the scheme was only formulated in the year 2002 and that such an aspect could not be anticipated in the year 2001. Further the ACP Scheme cannot be made applicable to the case of the petitioner is for the reasons that the scheme provides that the same would not be applicable to ad-hoc persons.
15. It has been repeatedly held that the power to punish for contempt is a special power, which is to be exercised with care and caution and should be used sparingly by the courts on being fully satisfied with regard to the contemptuous conduct of a party. It would be useful to reproduce the observations of the Supreme Court in the case of Jharieswar Prasad Paul and Another Versus Tarak Nath Ganguly and Others 2002 Cri.L.J. 2935:

'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.'

16. For the reasons aforesaid, it cannot be said that the respondents have wilfully disobeyed the directions contained in the order dated 19.12.2001 or the conduct of the respondents was contemptuous. No grounds are made out to initiate contempt proceedings against the respondents. Accordingly, the petition stands dismissed. Notice of contempt is discharged.
17. At this stage, counsel for the petitioner submits that for the past services rendered by him, petitioner will take recourse to such remedies, which may be available to him, petitioner may do so, in accordance with law.


G.S.SISTANI, J

FEBRUARY 06, 2013

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