

Reserved on 28.10.2023

Delivered on 31.10.2023

Court No. - 9

Case :- CONTEMPT APPLICATION (CIVIL) No. - 5089 of 2023

Applicant :- Ranbir Singh

Opposite Party :- Sri Sanjay Srinet, Chairman And Another

Counsel for Applicant :- S.M.Faraz I. Kazmi, Sr. Advocate

Hon'ble Rohit Ranjan Agarwal, J.

1. Sri Anoop Trivedi, Senior Advocate, assisted by Sri S.M.Faraz, learned counsel for the applicant and Sri G.K.Singh, Senior Advocate, assisted by Sri B.N.Mishra, learned counsel for the opposite party are present.

2. This contempt application has been filed for punishing the opposite party for not complying the order dated 08.02.2023 passed in Writ-A No.1789 of 2022.

3. The facts, in brief, are that the applicant is posted as Tehsildar in District Auraiya in Uttar Pradesh. He was put under suspension on 01.08.2018. A Departmental Promotion Committee (DPC) for the promotion from the post of Tehsildar to Deputy Collector was held on 2nd August, 2018. The result was kept in sealed cover as far as applicant was concerned. The applicant being aggrieved by the action of the State Government filed Writ-A No.1789 of 2022 seeking direction for considering the case of the applicant and opening the sealed cover and granting promotion w.e.f. 23.08.2018, when other officers of the batch and some junior officers were promoted. The writ Court on 08.02.2023 while disposing of the writ petition directed the competent authority to consider the claim

of the applicant for opening the sealed cover within a period of eight weeks from the date, a copy of the order was placed before the authority concerned in the light of the observations made in the order and taking note of decision of Apex Court in case of **Union of India and others vs. K.V. Jankiraman and others (1991) 4 SCC 109, Km. Maya (Mahila Constable) vs. State of U.P. and others) 2011 (5) ADJ 818** as well as two Government Orders dated 28.05.1997 and 09.01.2018.

4. Pursuant to the direction of the writ Court, the meeting of Selection Committee was held on 31.05.2023 and decision taken was sent by the Commission to the Government on 06.06.2023, informing that considering the seriousness of allegation levelled against the applicant in the disciplinary proceedings and approved prosecution sanctioned, it was not found appropriate in public interest to recommend him for promotion. In the meantime a contempt application No.3578 of 2023 was filed, which was disposed of by order dated 08.05.2023 granting time to the opposite party to comply the order within three months.

5. The applicant was informed by the opposite party No.1 about the decision taken on 06.06.2023. The Government on 11.08.2023 requested for re-discussion and opening of sealed cover envelope. A DPC was again held on 11.09.2023 and after consideration, the Committee found the charge to be serious and found that the applicant was not suitable for promotion.

6. This Court on 15.09.2023 had directed the authority concerned to revisit the order dated 12.09.2023 in the light of the decision of Apex Court rendered in case of **K.V. Jankiraman and others (supra)** and Government Orders dated 28.05.1997 and 09.01.2018 pursuant to which DPC was held on 10.10.2023 and after considering the matter in the light of the

judgment of Apex court and two Government Orders, a decision was taken finding the applicant not suitable for promotion. A compliance affidavit has been filed bringing on record the recommendation sent by the opposite party No.1 on 12.10.2023 as Annexure 3 to the compliance affidavit.

7. Learned counsel for the applicant submitted that the opposite party had not complied the order passed by writ Court on 08.02.2023 and as the charge sheet was not submitted when the first DPC was held as such the case of the applicant should have been considered for promotion in view of the judgment rendered by Apex Court in case of **K.V. Jankiraman and others (supra)**. Further, it has been contended that DPC held on 10.10.2023 had only reiterated the earlier stand taken by it and no fresh consideration has been made.

8. Sri G.K.Singh, Senior Advocate appearing for the opposite party No.1 submitted that after the order was passed for revisiting the earlier order, the Committee had considered not only the judgment rendered by Apex court but also after considering the Government Order dated 28.05.1997 wherein, in Clauses 2(a) and 10(a), it has been stated that such promotion cannot be granted when an employee is under suspension and the charges are serious in nature. According to him, the DPC after consideration had found that the charges levelled against the applicant are very serious in nature. He further contended that prosecution is in progress and departmental action is pending in the matter relating to irregularities in purchasing land of Yamuna Expressway Industrial Development Authority, Gautam Budh Nagar. Further, CBI was granted approval for prosecution sanctioned against the applicant and a Case Crime No.421/2018 under Section 420, 467, 468, 471, 120B IPC and Section 13(1)C, 13(1)D and 13(2) of Prevention of Corruption

Amendment Act, 2018 is already registered against the applicant.

9. I have heard learned counsel for the parties and perused the material on record.

10. The sole issue is as to whether the order of the writ Court dated 08.02.2023 has been complied with or not?

11. From perusal of the order passed by the writ Court it is clear that only a direction was issued to the competent authority to consider the claim of the applicant for opening the sealed cover in the light of the observations made in the order of the writ Court taking note of the decision of the Apex Court rendered in case of **K.V. Jankiraman and others (supra)** and two Government Orders dated 28.05.1997 and 09.01.2018. Earlier, in the DPC held on 12.09.2023, the opposite party had found that the applicant was not suitable for promotion but the Committee did not consider the two Government Orders and the decision of the Apex Court. It was after the order dated 15.09.2023 of this Court, which had required the opposite party No.1 to revisit its order, that the DPC was again held on 10.10.2023 and order was passed on 12.10.2023 and after considering both the Government Orders as well as judgment of Apex Court, the Committee found the applicant to be unsuitable for being promoted to the post of Deputy Collector from that of Tehsildar as the charges against the applicant were serious in nature and proceedings were going on.

12. The only direction of the writ Court was to the Competent Authority to consider the claim of the applicant for opening the sealed cover in the light of the two Government Orders and the decision of Apex Court which the authorities after consideration had found that the applicant cannot be promoted looking to the

gravity of charges against him.

13. This Court finds that no roving inquiry can be done by this Court while exercising jurisdiction under Section 12 of the Contempt of Courts Act and the Court cannot look into the charges levelled against the applicant by the authorities.

14. It is not in dispute that the applicant was put under suspension on 01.08.2018 while the DPC was held on 02.08.2018. Clause 2(a) of the Government Order of 1997 clearly provides that the decision has to be kept in sealed cover, while Clause 10(a) provides that no such promotion can be accorded if the charges are of serious nature.

15. In **Dr. U.N. Bora, Ex. Chief Executive Officer and others Vs. Assam Roller Flour Mills Association and another 2022 (1) SCC 101**, the Apex Court had held that the Court exercising jurisdiction under Section 12 of the Contempt of Courts Act cannot delve into the disputed question of fact, nor it can do any roving inquiry. Relevant para 8 of the judgment is extracted hereas under :

"8. We are dealing with a civil contempt. The Contempt of Courts Act, 1971 explains a civil contempt to mean a willful disobedience of a decision of the Court. Therefore, what is relevant is the "willful" disobedience. Knowledge acquires substantial importance qua a contempt order. Merely because a subordinate official acted in disregard of an order passed by the Court, a liability cannot be fastened on a higher official in the absence of knowledge. When two views are possible, the element of willfulness vanishes as it involves a mental element. It is a deliberate, conscious and intentional act. What is required is a proof beyond reasonable doubt since the proceedings are quasi-criminal in nature. Similarly, when a distinct mechanism is provided and that too, in the same judgment alleged to have been violated, a party has to exhaust the same before approaching the court in exercise of its jurisdiction under the Contempt of Courts Act, 1971. It is well open to the said party to contend that the benefit of the order passed has not been actually given, through separate proceedings while seeking appropriate relief but certainly not by way of a contempt proceeding. While dealing with a contempt petition, the Court is not expected to conduct a roving inquiry and go beyond the very

judgment which was allegedly violated. The said principle has to be applied with more vigor when disputed questions of facts are involved and they were raised earlier but consciously not dealt with by creating a specific forum to decide the original proceedings."

16. Thus, I find that as the order dated 08.02.2023 passed by writ Court has been complied with to the extent that consideration has been accorded by the competent authority while opening the sealed cover and taking decision so as to give the benefit of promotion to the applicant or not on 12.10.2023, a copy of which having been brought on record as Annexure 3 to the compliance affidavit, no case for contempt is made out.

17. The contempt applicant is misconceived and hereby **dismissed**.

18. Contempt notice stands discharged.

19. However it is open to the applicant to assail the order passed by the opposite party before the appropriate Forum, if so advised.

Order Date :- 31.10.2023
Kushal