

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 1007 of 2024

Appellant :- Pulkit Singh Verma And Another

Respondent :- Shri Hukum Singh

Counsel for Appellant :- Sankalp Narain

Counsel for Respondent :- Hanuman Prasad Dube

Hon'ble Arun Bhansali,Chief Justice

Hon'ble Vikas Budhwar,J.

1. This intra court appeal under Chapter VIII Rule 5 of the Rules of the Court is against the order dated 17.10.2024 passed in Contempt Application (Civil) No.4915 of 2020 (Shri Hukum Singh v. Shri Pulkit Singh Verma, Chairman Sahkari Avas Nirman Evam Vitt Nigam Ltd. and another) whereby the learned Single Judge has directed that the appellants-contemnors either to file their compliance affidavit showing full compliance of the orders passed on 15.05.2019 in Writ-A No.16921 of 2016 (Hukum Singh v. State of U.P. and others) while according payment of the entire backwages due to the applicant-respondent or to be personally present in the Court for framing of the charges.
2. Briefly stated facts sans unnecessary details are that the applicant-respondent who was working as Assistant Accountant in Ghaziabad Branch of Sahkari Avas Nirman Evam Vitt Nigam Ltd. was confronted with an order dated 22.12.2015 of Managing Director of Sahkari Avas Nirman Evam Vitt Nigam Ltd. dispensing with his services.
3. Questioning the said order, the applicant-respondent preferred Writ-A No.16921 of 2016 (Hukum Singh v. State of U.P. and others) seeking following reliefs:

“(i) issue a writ, order or direction in the nature of certiorari, for quashing the order dated 22.12.2015 passed by the Managing Director Sahakari Awas Nirman Evam Vitta Limited (Annexure No.1 to the writ petition).

(ii) issue, a writ, order or direction in the nature of mandamus directing the respondents not to interfere in the services of the petitioner in pursuance to the order dated 22.12.2015 passed by the Managing Director, Sahakari Awas Nirman Evam Vitta Nigam Limited.

(iii) issue any other writ, order or direction which this Hon'ble Court may deem fit and proper and to which the petitioners may be found entitled in the facts and circumstances of the case.

(iv) Award cost of the writ petition to the petitioner.

4. On contest, the writ petition came to be decided on 15.05.2019 in the terms similar to those in Writ-A No.8132 of 2016 (Rajeev Chandra Pathak v. State of UP and four others), the order *in extensio* is quoted as under:

“Heard learned counsel for the petitioner and Sri Kartikeya Saran, learned counsel for the respondents.

Learned counsels for parties are ad idem that this petition would merit disposal in terms similar to those as made today in Writ - A No. - 8132 of 2016 (Rajeev Chandra Pathak Vs. State Of U.P. And 4 Others).

Accordingly and for the reasons assigned therein, this petition shall stand allowed on similar terms and directions.”

5. For the ready reference, the operative portion of the order passed in Writ - A No. - 8132 of 2016 (Rajeev Chandra Pathak Vs. State Of U.P. And 4 Others) is extracted as below:

“From the principles enunciated by the Division Bench, it is therefore manifest that service in the Cooperative Society was not an employment under the Government nor could it be described as government service as commonly understood. In view thereof, the perceived violation of the Government Order dated 10 July 2000 was clearly not a ground which could have been taken in aid of the dispensation of the services of the petitioner.

The Court finds considerable force in the last submission of Sri Dubey which rests upon the status and character of the third respondent having transformed into a Multi State Cooperative Society in 2001. Undisputedly, pursuant to the resolution passed by the concerned society by its general body it transformed into a Multi State Cooperative Society in 2001. It was also issued an amended certificate on 15 October 2001. Once the society stood transposed and transformed into a Multi State Cooperative Society, the State Government was clearly deprived of jurisdiction or authority to issue directives to it including and extending to those relating to a perceived illegal appointment. Accordingly and for all the aforesaid reasons, this Court finds itself unable to sustain the impugned order of termination.

The writ petition is accordingly allowed. The impugned order dated 22 December 2015 is hereby quashed. The petitioner shall be entitled to all consequential benefits.”

6. Pleadings reveal that the order passed in Writ-A No.16921 of 2016 (Hukum Singh v. State of U.P. and others) on 15.05.2019 was not put to challenge before higher forum and the same attained finality whereas the order passed on 15.05.2019 Writ - A No. - 8132 of 2016 (Rajeev Chandra Pathak Vs. State Of U.P. And 4 Others) was subject matter of challenge at the instance of the Sahkari Avas Nirman Evam Vitt Nigam Ltd. in Special Appeal (Defective) No.693 of 2019 which came to be dismissed on 26.08.2019 and the same was carried by way of Special Leave to Appeal (C) No.27474 of 2019 which also resulted to the same fate on 25.11.2019.

7. Since, according to the applicant-respondent, the order of the Writ Court dated 15.05.2019 passed in Writ-A No.16921 of 2016 (Hukum Singh v. State of U.P. and others) was not complied in letter and spirit as backwages was not accorded, which constrained the applicant-respondent to file ***Contempt Application (Civil) No.554 of 2020 (Shri Hukum Singh v. Shri Pulkit Singh Verma, Chairman Sahkari Avas Nirman Evam Vitt Nigam Ltd. and another)*** in which on 28.01.2020, the following orders were passed:

"Heard learned counsel for the applicant.

By order dated 15.5.2019 passed in Writ A No.16921 of 2016 filed by the applicant, the Court directed as under:

"Learned counsels for parties are ad idem that this petition would merit disposal in terms similar to those as made today in Writ - A No. - 8132 of 2016 (Rajeev Chandra Pathak Vs. State Of U.P. And 4 Others).

Accordingly and for the reasons assigned therein, this petition shall stand allowed on similar terms and directions."

Learned counsel for the applicant submits that the judgement passed in Writ A No.8132 of 2016 was challenged in Special Appeal Defective No.693 of 2019 and a Division Bench of this Court had proceeded to dismiss the same on 26.8.2019. The Corporation has also approached Hon'ble Apex Court by preferring Special Leave to Appeal (C) No.27474/2019, which was also dismissed on 25.11.2019 and for all practical purposes the writ court order has attained finality. The opposite parties have wilfully not complied with the order and, thus, have committed civil contempt liable for punishment under Section 12 of the Contempt of Courts Act, 1971.

Prima facie a case of contempt has been made out. However, considering the facts and circumstances of the case, one more opportunity is afforded to the opposite party to comply with the aforesaid order of the Court within three weeks from the date of production of a certified copy of this order.

The applicant shall supply a duly stamped registered envelope addressed to the opposite parties and another self-addressed stamped envelope to the office within one week from today. The office shall send a copy of this order along with the self-addressed envelope of the applicant with a copy of contempt application to the opposite parties within one week thereafter and keep a recorded thereof.

The opposite parties shall comply with the directions of the writ court and intimate him of the order through the self-addressed envelop within a week thereafter.

With the aforesaid observations, this application is disposed of at this stage with liberty to the applicant to move a fresh application, if the order is not complied with by the opposite parties within the stipulated time as aforementioned.”

8. It is also the case of the applicant-respondent that despite the order dated 28.01.2020 passed in Contempt Application (Civil) No.554 of 2020 requiring the appellants-contemnors to comply with the order of the Writ Court dated 15.05.2019 passed in Writ-A No.16921 of 2016, the backwages were not paid, which led to filing of ***Contempt Application (Civil) No.4915 of 2020 (Shri Hukum Singh v. Shri Pulkit Singh Verma, Chairman Sahkari Avas Nirman Evam Vitt Nigam Ltd. and another)***. The appellants-contemnors contested the said contempt petition while objecting to the entitlement of grant of backwages. The learned Single Judge upon hearing the parties on 17.10.2024 proceeded to pass directions requiring the appellants-contemnors either to file their compliance affidavit showing full compliance of the order passed by the Writ Court with relation to the payment of the entire backwages due to the applicant-respondent or be personally present in the Court for framing of charges.

9. Assailing the said directions, the appellants-contemnors have filed the present appeal.

10. Shri G.K. Singh, Senior Advocate assisted by Shri Sankalp Narain, learned counsel for the appellants-contemnors has sought to argue that the order of the learned Single Judge cannot be sustained for a single moment inasmuch as the learned single judge has exceeded its jurisdiction while according benefits which was not even sought for or granted by the Writ Court. Elaborating the said submission, it has been submitted that there were only two reliefs claimed by the applicant-respondent in Writ-A

No.16921 of 2016 namely, quashing of the order dated 22.12.2015 terminating the services of the applicant-respondent and a mandamus directing the appellants-contemnors not to interfere in the services of the applicant-respondent pursuant to the termination order dated 22.12.2015 however, the learned Single Judge on the original side while allowing the said writ petition only quashed the termination order dated 22.12.2015 making him entitled to all consequential benefits. Submission is that consequential benefits does not take within its realm backwages and it cannot be claimed as a matter of right as certain legal requirements have to be complied with such as proving the fact that the employee was not gainfully employed during the period when he was under termination till his reinstatement coupled with other factors. Argument is that entitlement of backwages is an issue which is to be adjudicated in the original proceedings and once the same was not granted in specific terms in the order of the Writ Court then it was not open for the learned Single Judge while exercising contempt jurisdiction to issue directions for grant of backages. Reliance has been placed upon the decisions of the Hon'ble Supreme Court in ***Rajasthan State Road Transport Corpn. and others v. Shyam Bihari Lal Gupta***, 2005 (7) SCC 406, ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and others***, (2013) 10 SCC 324 and ***The Management of Regional Chief Engineer, PHED, Ranchi v. Their Workmen***, 2019 (18) SCC 814 so as to contend that the payment of back-wages post reinstatement pursuant to the order of the Writ Court is not automatic and the same is dependent upon the nature of the relief granted by the courts of law and also subject to the requirements under the relevant statutory provisions. While deriving force from the decision in ***Anil Kumar Gupta and others v. Pawan Kumar Singh and others***, 2015 (11) ADJ 210, it is contended that the contempt court cannot go behind the order of the writ court of which breach is complained off while supplementing the same. It is, therefore, prayed that the order of the learned Single Judge be set aside and appeal be allowed *in toto*.

11. Countering the submission of the learned counsel for the appellants-contemnors, Shri Hanuman Prasad Dube, along with Shri Ashok Malviya and Shri Vipul Dube have submitted that the order of the learned Single Judge needs no interference in the present proceedings inasmuch as the learned Single judge while exercising the contempt jurisdiction has acted within the four corners of law and on finding that the order of the writ court has been wilfully flouted by the appellants-contemnors, the ultimate step by way of an opportunity either to file compliance affidavit or to appear in person for framing the charges was passed. Submission is that, once the writ petition preferred by the applicant-respondent came to be allowed while setting aside the termination order and making him admissible to all consequential benefits then in absence of challenging the said directions, it is not open for the appellants-contemnors to interpret the order of the Writ Court according to their own wisdom, when, the order of the Writ Court for grant of all consequential benefits was clear and specific. In nutshell, the submission is that consequential benefits includes backwages, particularly, when the order of the Writ Court did not deny backwages. Reliance has been placed upon the decision in the case of ***Baranagore Jute Factory PLC Mazdoor Sangh (BMS) and others v. Baranagore Jute Factory PLC and others*** , 2017 (5) SCC 506, and ***Special Leave Petition (C) No.34892 of 2014 (Amit Kumar Das, Joint Secretary, Baitanik, a registered society v. Shrimati Hutheesingh Tagore Charitable Trust)***, decided on 30.01.2024 so as to contend that the contempt court in a given case issue appropriate directions for remedying or rectifying the things done in violation of the Court's order and also take restitutive measure at any stage of the proceedings.

12. We have heard the learned counsel for the rival parties and perused the record carefully.

13. The facts are not in issue. It is not in dispute that Writ-A No.16921 of 2016 preferred by the applicant-respondent came to be allowed on 15/05/2019 in the similar terms as those in Writ - A No. - 8132 of 2016

(Rajeev Chandra Pathak Vs. State Of U.P. And 4 Others) whereby the termination order 22.12.2015 was quashed and the applicant-respondent was made entitled to all consequential benefits. It is also not in dispute that an intra court appeal as well as Special Leave Petition preferred by the applicant-respondent questioning the order dated 15.05.2019 passed in Writ - A No. - 8132 of 2016 (Rajeev Chandra Pathak Vs. State Of U.P. And 4 Others) came to be dismissed whereas in the case of the applicant-respondent, the order dated 15.05.2019 in Writ-A No.16921 of 2016, attained finality as the same was not subject matter of challenge before higher forum.

14. The bone of contention between the parties is whether the contempt court was within its jurisdiction to issue directions for payment of back-wages or not. The stand of the applicant-respondent is that once the applicant-respondent did not claim backwages and the same was also not specifically granted by the Writ Court then it was not open for the learned Single Judge while exercising contempt jurisdiction to issue the impugned direction.

15. To test the said submission, the first and foremost question, which would arise is whether the appellants-contemnors can take such a defence and raise objection to the entitlement of the applicant-respondent for grant of back-wages. The answer would be obviously 'no', for the simple reasons that the order of the Writ Court setting aside the termination order and allowing all consequential benefits has not been questioned by the appellants-contemnors and the same has attained finality. Apparently, the appellants-contemnors while objecting to the grant of back-wages to the applicant-respondent are seeking to sit in appeal over the judgment and order of the writ court. The same is thoroughly impermissible in law, particularly, when the judgment and order of the writ court has attained finality. As a matter of fact, the only step which is to be taken is for the compliance of the order of the writ court in entirety. The Division Bench of this Court in **Union of India and others v. Praveen Kumar and**

others, 2003 (6) AWC 5586 had the occasion to consider a situation which is somewhat akin to the present situation and went on to observe as under:

“The learned Tribunal had given the direction only to implement the said judgment and order and thus it was not open to the Union of India to sit in appeal against the said findings of fact recorded by it. Admittedly, neither the petitioner Union of India nor respondent no. 3 challenged the said order before any forum and it attained the finality. Thus, we fail to understand as under the garb of implementation of the order how the Union of India could review it and record its own finding of fact contrary to those given by the Tribunal. Any order passed by any authority in contravention of the order of the Court is nullity, and thus, remains inexecutable and unenforceable vide Moolraj Vs. Murti Raghunathji Mahraj, AIR 1967 S.C. 1386; Surjit Singh & ors. Vs. Harbans Singh & ors, (1995) 6 SCC 50. Government of Andhra Pradesh & ors. Vs. Gudepu Sailoo & ors. (2000) 4 SCC 625; Kannambath Narayanan Nair Vs. Kannambath Sankaran Nair & ors, AIR 1963 Kerala 79; and Satyendra Pal Vs. The Regional Transport Authority, Agra & anr., 1982 ALJ 310).

There is another aspect of the matter and the case requires to be examined from that angle. Even if the Court passed an interim order it is not permissible for a party to disobey even if ultimately it is found that the Court granting the interim relief had no jurisdiction to entertain the case and if a party does so it runs the risk of being exposed to contempt of Court proceedings. In Tayabbhai M Bagasarwalla & anr. Vs. Hind Rubber Industries Private Limited, AIR 1997 SC 1240 the Hon'ble Supreme Court held that if the case has been instituted bona fide and an order is passed and is disobeyed, the defendant cannot escape the consequences of their disobedience and they have no choice but to obey the said order. Even if the defendants are of the view that the Court passing such an order has no jurisdiction, they are bound to follow the order passed by the Court. However, if they are aggrieved of the said order, either they should file an application to modify or recall the order before the same Court or approach the higher Court in appeal or revision setting aside the said order. In the instant case, as the issue had been adjudicated fully and attained finality, it is shocking to judicial conscious that the Union of India had the audacity to re-examine the issue sitting in appeal over the said judgment and order rendered by the learned Tribunal. The finding of fact recorded by the Tribunal for the entitlement of the respondent no. 1, and particularly, on the issue that the one vacancy available in U.P.Cadre was meant for general category candidate attained finality and the said judgment and order has not been challenged, and thus, the doctrine of res judicata was attracted.”

16. As regards, the reliance placed upon the decisions in the case of **Rajasthan State Road Transport Corpn. and others** (*supra*), **Deepali Gundu Surwase** (*supra*) and **The Management of Regional Chief Engineer, PHED, Ranchi** (*supra*) are concerned, they are distinguishable on the facts of the case, for the simple reason that those are the cases wherein it has been observed that grant of back-wages are not automatic

but subject to adjudication by the courts of law on the original side regarding entitlement of back-wages and fulfilment of certain formalities amongst others regarding proof by the employee/ workman that he had gainfully employed during the interregnum period. However, in the present case, there already happens to be an order of not only of reinstatement post quashing of termination order but grant of all consequential benefits. In case, according to the appellants-contemnors, the applicant-respondent was not entitled for back-wages then the proper course open for them was to either move clarification application or approach the higher forum by way of an appeal. Since nothing was done at the end of the appellants-contemnors and they did not avail the legal remedies available to them then it is not open for the appellants-contemnors to object to the claim, particularly, in the contempt proceedings.

17. Nevertheless, there is no quarrel to the proposition of law as enunciated in plethora of decisions that the contempt court cannot travel beyond the original order and supplant the same while infusing new directions. However, there lies a slight distinction that the applicant-respondent possesses a positive direction for grant of all consequential benefits. Likewise the judgment heavily relied upon by the appellants-contemnors in **Anil Kumar Gupta** (*supra*) is concerned, the same is of no aid or assistance, particularly, when only issue involved was that the Writ Court only quashed the consequential orders terminating the appointments, however, the contempt court proceeded to issue directions for continuity of services and payment of backwages/ arrears of salary. The Division Bench proceeded to hold that the contempt court exceeded to his jurisdiction while traversing beyond the parameters of the original order while issuing supplemental direction which was legally not permissible.

18. An issue came up for consideration before the Hon'ble Apex Court in **Commissioner, Karnataka Housing Board v. C. Muddaiah**, (2007) 7

SCC 689 wherein the directions of the contempt court was not being obeyed and implemented while injecting the doctrine of “no work no pay”, the following was observed as under:

“32. We are of the considered opinion that once a direction is issued by a competent court, it has to be obeyed and implemented without any reservation. If an order passed by a court of law is not complied with or is ignored, there will be an end of the rule of law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the court. In our judgment, upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of justice. The argument of the Board therefore, has no force and must be rejected.

“33. The matter can be looked at from another angle also. It is true that while granting a relief in favour of a party, the court must consider the relevant provisions of law and issue appropriate directions keeping in view such provisions. There may, however, be cases where on the facts and in the circumstances, the court may issue necessary directions in the larger interest of justice keeping in view the principles of justice, equity and good conscience. Take a case, where ex facie injustice has been meted out to an employee. In spite of the fact that he is entitled to certain benefits, they had not been given to him. His representations have been illegally and unjustifiably turned down. He finally approaches a court of law. The court is convinced that gross injustice has been done to him and he was wrongfully, unfairly and with oblique motive deprived of those benefits. The court, in the circumstances, directs the authority to extend all benefits which he would have obtained had he not been illegally deprived of them. Is it open to the authorities in such case to urge that as he has not worked (but held to be illegally deprived), he would not be granted the benefits? Upholding of such plea would amount to allowing a party to take undue advantage of his own wrong. It would perpetrate injustice rather than doing justice to the person wronged.

34. We are conscious and mindful that even in absence of statutory provision, normal rule is "no work no pay". In appropriate cases, however, a court of law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The court may in the circumstances, direct the authority to grant him all benefits considering "as if he had worked". It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a court of law and if such directions are issued by a court, the authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant Board, therefore, has no substance and must be rejected.”

(emphasis supplied)

19. Suffice is to say that the jurisdiction of the contempt court for issuance of appropriate direction for implementation of the orders is no

more *res-integra* in view of the decision in the case of **Amit Kumar Das, Joint Secretary, Baitanik, a registered society** (*supra*) wherein the following was observed as under:

“14. However, in Baranagore Jute Factory PLC. Mazdoor Sangh (BMS) vs. Baranagore Jute Factory PLC, considering the aforesaid precedent, a 2-Judge Bench of this Court noted that the 3-Judge Bench had clarified therein that directions which are explicit in the judgment or ‘are plainly self-evident’ can be taken into account for the purpose of considering whether there is any disobedience or wilful violation. The Bench further held that the Court has a duty to issue appropriate directions for remedying or rectifying the things done in violation of the Court order and in that regard, the Court may even take restitutive measures at any stage of the proceedings.”

20. Viewing the case from all corners of law, we are of the opinion that the learned Single Judge while exercising the contempt jurisdiction has not transgressed its limits and has issued the impugned directions in furtherance of compliance of the order of the writ court.

21. Resultantly, the appeal is **dismissed**.

Order Date :- 27.11.2024

A. Prajapati

(Vikas Budhwar, J.) (Arun Bhansali, C.J.)