

**HIGH COURT OF TRIPURA
AGARTALA**

Cont.App(C) 4 of 2024

- 1. Shri L. T. Darlong**
Occupying the post of Secretary,
Government of Tripura in the Industries and Commerce
(Handloom, Handcrafts & Sericulture),
Civil Secretariat, New Capital Complex, PO: Kunjaban, Agartala, West Tripura
- 2. Shri Tarun Debbarma,**
holding the post of Director, Directorate of Handloom,
Handcrafts and Sericulture, having office at ITI Road, Indranagar,
PO: Kunjaban, Agartala, West Tripura
- 3. Smt. Rina Debbarma,**
presently holding the post of Under Secretary,
Government of Tripura in the Industries & Commerce Department,
Capital Complex, PO: Kunjaban, Agartala, West Tripura
- 4. Smt. Vishwashree B. IAS,**
presently holding the post of Director,
Directorate of Industries and Commerce,
Government of Tripura, having office at Gorkha Basti,
PO: Kunjaban, Agartala, West Tripura.

---Contemnor-Appellants(s)

Versus

- 1. Shri Narayan Chakraborty**
Son of late Krishna Kumar Chakraborty,
resident of Shyamali Apartment, Nandanagar,
PO: Kunjaban, Ward No.6, District-West Tripura

---Contemnee-Respondent(s)

For Appellant(s)	:	Mr. M. Debbarma, Addl. GA
For Respondent(s)	:	Mr. Sankar Lodh, Advocate.
Date of hearing	:	11.03.2025.
Date of pronouncement	:	25.03.2025.
Whether fit for reporting	:	Yes.

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Judgment & Order

(T. Amarnath Goud, J)

Heard learned counsel for the parties.

[2] This is an appeal under Section 19 of the Contempt of Courts Act, 1971 read with the provisions of Rule 11 of the Contempt of Courts (High Court of Tripura) Rules, 2023 against the order dated 02.08.2024 passed in Cont.Cas(C) 12 of 2024 by the Single Judge of this Court.

[3] It is the case of the petitioner that the contempt petition was filed alleging violation of an order dated 27.09.2023 passed in WP(C) No. 164 of 2023 whereby the opinion of the this Court was to complete the ad-hoc promotion exercise within a period of 16 (sixteen) weeks from the date of receipt of copy of this order. However, pursuant to the said court's order, a review Departmental Promotion Committee (DPC) has been convened on 15.03.2024 and after considering his Annual Confidential Reports (ACRs) has recommended for ad-hoc promotion to the petitioner by way of creating one supernumerary post and also assured to give promotion within two months from the date of creation of supernumerary post by the official respondents and thereby, all writ court's order has been complied with in letter and spirit by the official respondents. The petitioner filed contempt case and in the contempt proceeding without deciding the contempt case under Section 10 and 12 of the Act, further order has been passed in supplementing the earlier order in writ petition and further directing the official respondent contemnors to give ad-hoc promotion with retrospective effect from the date when his juniors were given promotion. The official respondent contemnors challenging this order as the learned Contempt Court has no jurisdiction to pass such extended order in a contempt proceeding except to look into whether the earlier order passed by the writ court has been complied or not as per the provisions of the Contempt of Court Act, 1971 and therefore, the order passed by the learned contempt court has no jurisdiction, violative of the provisions of the Contempt of Court Act, 1971. Hence, this appeal.

[4] For the sake of examining the matter, the relevant portion of the order dated 27.09.2023 in writ petition being WP(C) 164 of 2023 is extracted below:

“If that be so, upon consideration of the rival submission of the parties and the relevant pleadings taken note of in the foregoing paragraphs, this Court is of the opinion that the matter requires to be remitted to the competent authority in the light of the decisions rendered by the Apex Court in the case of Abhijit Ghosh Dastidar (Supra) and also G.R.

Meghwal (Supra). The competent authority would constitute a review DPC and place the case of the petitioner with the relevant remarks and notings so that his case can be reconsidered on the basis of the remaining ACRs other than those adverse ACRs for the relevant years 2016-17, 2017-18, 2018-19 which remained uncommunicated. The competent authority would also examine the plea of the petitioner as regards the grant of 3rd ACP from the date on which he completed 25 years of service in accordance with law. Let it be made clear that this Court has not made any observations as to whether the petitioner is fit to be granted promotion which would depend upon the decision to be taken by the review DPC or 3rd ACP. Let such exercise be completed within a period of 16(sixteen) weeks from the date of receipt of copy of this order."

[5] The impugned order dated 02.08.2024 passed in Cont.Cas(C) 12 of 2024 is as follows:

"[6] I find substance in the submissions of learned counsel for the petitioner. In the background circumstances explained above, since the review DPC has recommended creation of a supernumerary post to promote the petitioner, the same should be given effect from the date his juniors were promoted and not prospectively otherwise, the legal right which has accrued in favour of the petitioner upon the decision of the review DPC in the light of the directions passed by the writ Court, could be defeated. Let such promotion order be issued within a period of six weeks from today from the due date."

[6] Aggrieved by the said impugned order dated 02.08.2024, the appellant has approached before this court seeking the following relief(s):

- (i) Admit this appeal;
- (ii) Issue notice calling upon the respondent to show cause as to why suitable direction(s)/order(s) shall not be issued for quashing the impugned order dated 02.08.2024 passed in Cont.Cas(C) No.12 of 2024.
- (iii) Call for all the necessary records and on perusal of the records and hearing the parties be pleased to allow this Appeal and be pleased to quash the impugned Order dated 02.08.2024 passed in Cont.Cas(C)12 of 2024.

And

- (iv) Pending final adjudication of this appeal be pleased to stay Order dated 02.08.2024 in Cont. Case(C) No.12 of 2024 passed by the Hon'ble Single Judge of this Court and/or pass such order further Order(s) as Your Lordship may deem fit proper.

[7] It is contended by learned Addl. Government Advocate for the appellant that the supernumerary post was created for promotion of the petitioner considering his unfit benchmark ACR for consecutive three years by the review DPC and therefore, his ad-hoc with retrospective effect from the date while his juniors were promoted. The relaxation of benchmark ACR of the petitioner for ad-

hoc promotion by way of creating a supernumerary post has been considered prospectively as one time measured in the case of the petitioner keeping in mind of the observations of this court. Therefore, the petitioner has no right to claim retrospectively from the date when the other officers were promoted.

[8] It is further contended by learned Addl. Government Advocate that review DPC has been constituted in compliance of the order passed in WP(C) no.164 of 2023 dated 27.09.2023 and recommended the name of the petitioner for ad-hoc promotion by creating one supernumerary post and accordingly one supernumerary post was created and thereby complied with the writ court's order. Thereafter, the contempt court has no jurisdiction to modify or enlarge the original order of the writ court under the proceeding of contempt jurisdiction and therefore the order dated 02.08.2024 passed in Cont.Cas(C)12 of 2024 is without jurisdiction and violative of the mandates of the Contempt of Courts Act, 1971. Accordingly, the order dated 02.08.2024 is liable to be interfered with the court in appeal.

[9] It is further contended that no such direction to give ad-hoc promotion in a particular manner could have been issued in the limited well defined jurisdiction of a contempt court enhance in any view of the mater in the order dated 27.09.2023 passed in WP(C) no.164 of 2023 is liable to be interfered with in this appeal.

[10] In course of his submission, learned Addl. GA has placed his reliance upon the judgment of the Hon'ble Supreme Court in **Sudhir Vasudeva, Chairman & MD ONGC & Ors vs. M. George Ravishekaran & Ors.** reported in **AIR 2014 SC 950** where the apex court has observed as under:

"15. The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of

a contempt plea involves a process of self determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or willful violation of the same. Decided issues cannot be reopened; nor the plea of equities can be considered. Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above.”

[11] On the contrary, Mr. S. Lodh, learned counsel for the respondent-writ petitioner has drawn the attention of this court in the guidelines on Departmental Promotion Committees, the relevant portion of which has been extracted herein under for ready reference:

If the officers placed junior to the officer concerned have been promoted, he should be promoted immediately and if there is no vacancy the junior most person officiating in the higher grade should be reverted to accommodate him. On promotion, his pay should be fixed under F.R. 27 at the stage it would have reached, had he been promoted from the date the officer immediately below him was promoted but no arrears would be admissible. The seniority of the officer would be determined in the order in which his name, on review, has been placed in the select list by DPC. If in any such case a minimum period of qualifying service is prescribed for promotion to higher grade, the period from which an officer placed below the officer concerned in the select list was promoted to the higher grade should be reckoned towards the qualifying period of service for the purpose of determining this eligibility for promotion to the next higher grade.

[12] Relying on the above guidelines, it is represented that the respondent should be placed before the juniors after the promotion.

[13] He also placed his reliance on a Supreme Court judgment in **Amit Kumar Das, Joint Secretary, Baitanik, a Registered Society vs Shrimati Hutheesingh Tagore Charitable Trust** reported in **2024 SCC Online SC 83** where the apex court has observed as follows:

16. This being the settled legal position, we find that the fact situation in the present case is such, that vacating of the stay order in the appeal by the High Court in exercise of contempt jurisdiction did not assume either a restitutive or a remedying character. Violation of the status quo condition in the stay order stood complete, even as per the High Court, and vacating

of the stay order did not have the effect of restoring the parties to their original position or deny the contemnor the benefit of the disobedience which already stood concluded. Violation of a conditional stay order, in the usual course, would entail vacating thereof in a properly (1984) 4 SCC 216 constituted proceeding. By resorting to such a step while exercising contempt jurisdiction, the High Court, in our considered opinion was not acting in furtherance of the principle adumbrated in the above decisions.

17. No doubt, the concluded act in violation of the status quo order in relation to possession of the suit premises amounted to 'civil contempt' under Section 2(b) of the Contempt of Courts Act, 1971, and warranted appropriate consequences under the provisions thereof. However, without taking recourse to such a step, the High Court thought it fit to vacate the stay order in the appeal so as to enable the Trust to execute the decree. This action of the High Court clearly transgressed the scope and extent of its contempt jurisdiction and cannot be sustained. To that extent, the impugned order is set aside. However, as the High Court desisted from exercising contempt jurisdiction, owing to this misconceived measure, despite finding the contemnor guilty of willfully violating the status quo condition in the stay order, we consider it appropriate to remand the matter to the High Court for continuing with that exercise as we have now set aside the course of action adopted by the High Court in the alternative.

18. Further, as the Trust asserts that the stay order stood vacated automatically owing to the default by the Society in making deposits, it is for the Trust to take appropriate steps. The Trust would be at liberty to take all such measures as are permissible in law in that regard, be it before the High Court or the executing Court.

[14] He further contended that no appeal lies against the order in contempt as there is no punishment and prayed to dismiss the appeal.

[15] Heard both sides.

[16] Since the appeal is filed under Section 19 read with the provisions of Rule 11 of the Contempt of Courts (High Court of Tripura) Rules, 2023, the same is reproduced herein under for ready reference.

Section 19. Appeals.-(1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt-

(a) Where the order or decision is that of a single judge, to a Bench of not less than two Judges of the Court;

(b) where the order or decision is that of a Bench, to the Supreme Court;

Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.

(2) Pending any appeal, the appellate Court may order that –

(a) the execution of the punishment or order appealed against be suspended;

(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfied the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).

(4) An appeal under sub-section (1) shall be filed –

(a) in the case of an appeal to a Bench of the High Court, within thirty day;

(b) in the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against.

Rule 11. (i) Every appeal under the Act shall be registered as Contempt Appeal.

(ii) An appeal shall lie from any order of High Court in the exercise of its jurisdiction to punish for contempt-

(a) where the order is passed by a single Judge, to a Bench of not less than two Judges of the Court;

(b) where the order is passed by a Bench, to the Supreme Court.

(iii) An appeal under sub-section (ii) shall be filed-

(a) The High Court within thirty days;

(b) To the Supreme Court within sixty days from the date of the order appealed against.

[17] To deal with the case, this court also thinks it apposite to extract herein below the Section 12 of the Contempt of Courts Act, 1971 for ready reference:

12. Punishment for contempt of court. (1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

Explanation. An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section(1) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced with the leave of the court, by the detention in civil prison of each such person:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.

Explanation. For the purpose of sub-sections (4) and (5), -

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

[18] Having considered the rival submission as advanced by the counsel for the parties and also having gone through the records, this court is of the opinion that the contempt was filed under Section 12 of the Contempt of Courts Act, 1971. On bare perusal of the impugned order, it transpires that even the contempt case is supplementing the writ petition already disposed of. The findings and direction in contempt order does not fall under the provision of Section 12 of the Contempt Courts Act, 1971.

[19] In so far as the maintainability of the appeal is concerned, since the contempt case was filed under Section 12 of the Contempt of Courts Act, 1971 and the present appeal is preferred under Section 19 of the Contempt of Courts Act, 1971, this court finds that Section 19 of the said Act is applicable here as the jurisdiction exercised under Section 12 and orders passed, though not punished, cognizance under Section 12 has been taken. Thus Section 19 read with Rule 11 of Contempt of Courts (High Court of Tripura) Rules, 2023 comes to the rescue of the appellant. This Court, invoking the provisions, enshrined in Rule 11 of the said Rules, holds the power to hear the present appeal and pass an appropriate order.

[20] In **K.G. Derasari And Anr. Vs Union of India (Uoi) And Ors** reported in **(2001) 10 SCC 496**, the apex court has observed as under:

"7. Having considered the rival submissions at the bar, we have no hesitation to come to the conclusion that the Tribunal was not entitled to in a contempt proceeding, to consider the legality of its earlier order which has reached finality not being assailed or annulled by a contempt forum. If the Tribunal has not looked into any previous decision of this Court which is the law of the land and by which it was bound, the remedy available to

the aggrieved person was to file an application for review. Admittedly, no review application was filed before the Tribunal. In an application for contempt, the Tribunal was only concerned with the question whether the earlier decision has reached its finality and whether the same has been complied with or not. It would not be permissible for a Tribunal or Court to examine the correctness of the earlier decision which has not been assailed, and reverse its earlier decision. In that view of the matter, the impugned order cannot be sustained, the same being beyond the powers and jurisdiction of the Tribunal in a contempt proceeding.”

[21] In **Sudhir Vasudeva, Chairman & MD ONGC & Ors vs. M. George**

Ravishekaran & Ors. reported in **AIR 2014 SC 950** the apex court has observed as under:

“15. The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or willful violation of the same. Decided issues cannot be reopened; nor the plea of equities can be considered. Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above.”

[22] In **Amit Kumar Das, Joint Secretary, Baitanik, a Registered Society**

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SC 83 the apex court has observed as follows:

16. This being the settled legal position, we find that the fact situation in the present case is such, that vacating of the stay order in the appeal by the High Court in exercise of contempt jurisdiction did not assume either a restitutive or a remedying character. Violation of the status quo condition in the stay order stood complete, even as per the High Court, and vacating of the stay order did not have the effect of restoring the parties to their original position or deny the contemnor the benefit of the disobedience which already stood concluded. Violation of a conditional stay order, in the usual course, would entail vacating thereof in a properly (1984) 4 SCC 216 constituted proceeding. By resorting to such a step while exercising contempt jurisdiction, the High Court, in our considered opinion was not acting in furtherance of the principle adumbrated in the above decisions.

17. No doubt, the concluded act in violation of the status quo order in relation to possession of the suit premises amounted to 'civil contempt' under Section 2(b) of the Contempt of Courts Act, 1971, and warranted appropriate consequences under the provisions thereof. However, without taking recourse to such a step, the High Court thought it fit to vacate the stay order in the appeal so as to enable the Trust to execute the decree. This action of the High Court clearly transgressed the scope and extent of its contempt jurisdiction and cannot be sustained. To that extent, the impugned order is set aside. However, as the High Court desisted from exercising contempt jurisdiction, owing to this misconceived measure, despite finding the contemnor guilty of willfully violating the status quo condition in the stay order, we consider it appropriate to remand the matter to the High Court for continuing with that exercise as we have now set aside the course of action adopted by the High Court in the alternative.

18. Further, as the Trust asserts that the stay order stood vacated automatically owing to the default by the Society in making deposits, it is for the Trust to take appropriate steps. The Trust would be at liberty to take all such measures as are permissible in law in that regard, be it before the High Court or the executing Court.

[23] Upon careful consideration of the facts and legal provisions, this Court finds that under Section 12 of the Contempt of Courts Act, 1971, the requirements of imposing punishment for contempt, as mandated under the said provision, orders though have not been passed but cognizance has been taken and supplemental order of writ is passed which is beyond the scope of Section 12 of the Act and it amounts to review of earlier order of writ.

[24] Accordingly, the impugned order dated 02.08.2024 is set aside. The contempt proceedings against the appellant stand quashed.

[25] In view of the above, the appeal stands allowed. As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.

B.Palit, J

T. Amarnath Goud, J

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