

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

Con.Case(C).No. 526 of 2015 (S) IN WP(C).27700/2014

JUDGMENT IN WP(C) 27700/2014

.....

PETITIONER/PETITIONER:

C.K.SAJAN, S/O.C.V.KRISHNAN, AGED 51 YEARS,
WORKING AS VEHICLE SUPERVISOR,
KERALA STATE ROAD TRANSPORT CORPORATION,
KARUNAGAPPALLY AND RESIDING AT
CHENGANAMADATHIL HOUSE,
KOTTPADI P.O, KOTHAMANGALAM-686 695
ERNAKULAM.

BY ADV. SRI.N.UNNIKRISHNAN

RESPONDENT/RESPONDENT NO.1:

SHRI ANTONY CHACKO, S/O.M.A.CHACKO, AGED 52,
RESIDING AT ETTUKKETIL HOUSE, CHATHANAD PO,
ALAPPUZHA DISTRICT AND WORKING AS CHAIRMAN
AND MANAGING DIRECTOR , KERALA STATE ROAD
TRANSPORT CORPORATION, TRANSPORT BHAVAN,
FORT, THIRUVANANTHAPURAM-695 023.

BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING BEEN FINALLY
HEARD ON 20-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX IN COC 526/2015

PETITIONER'S EXHIBITS:

ANNEXURE-1 A TRUE COPY OF THE JUDGMENT DATED 1.12.2014 IN WPC 27700/2014

ANNEXURE-2 A TRUE COPY OF THE LETTER DATED 8.1.2015 ADDRESSED TO THE RESPONDENT

ANNEXURE-3 A TRUE COPY OF THE REPRESENTATION DATED 19.12.2014 FILED BEFORE THE RESPONDENT

ANNEXURE-4 A TRUE COPY OF THE REMINDER LETTER DATED 11.2.2015

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

Con.Case (C)No.526 of 2015

Dated this the 20th day of July, 2015

JUDGMENT

The petitioner, a conductor, has a grievance that he has been subjected to frequent transfers by his employer, the Kerala State Road Transport Corporation, despite his ill health. When the petitioner was working at Karunagapally Depot, he absented himself from 09.03.2014 to 09.07.2014 allegedly owing to his ill health. Once he was admitted into duty on the strength of medical certificates the petitioner produced, he was transferred to Kottarakkara Depot. Assailing the order of transfer, the petitioner filed W.P.(C) No.27700/2014. This Court through its judgment dated 1st December, 2014 directed the respondents as follows:

“In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioner and the learned Standing Counsel for the respondent

Corporation, this court, without adverting to the merits of the matter, disposes of the writ petition with a direction to the first and second respondents to consider the case of the petitioner keeping in view his ill health and take appropriate decision concerning his request to be transferred to Kothamangalam, his home depot. If needed, the petitioner may submit a comprehensive representation to the respondent authorities placing [on record] the facts and circumstances under which he seeks transfer. The consideration of the representation shall be within one month from the date of receipt of such representation. No order as to costs."

2. In course of time, on 19.12.2014, the petitioner is said to have submitted Annexure-3 detailed representation to the respondent authorities. Subsequently, having sent Annexure-4 reminder letter dated 11.02.2015, the petitioner filed the present contempt case on 28.03.2015.

3. The respondent on 22nd June, 2015 filed a counter affidavit with an effort to refute the petitioner's allegations. Shorn of extraneous particulars, especially concerning the merits of the matter, the counter affidavit is to the effect that, though the petitioner's representation dated

19.12.2014 was received on 23.12.2014, the respondent, however, received a copy of the judgment only on 17.01.2015. According to the respondent, he has considered the petitioner's representation in the light of the directions given in the Annexure 1 judgment and passed Annexure-R1(a) orders on 11.02.2015.

4. Having placed on record the circumstances under which Annexure-R1(a) came to be passed, the respondent has also tendered an unconditional apology for the inconvenience and the difficulty, if any, caused to the Court. The apology, nevertheless, cannot be termed unconditional; it is, at best, a mealy-mouthed one, for the expression used is, 'the inconvenience and the difficulty, if any, caused'. It calls for no further comment. It appears that there occurred some delay in communicating Annexure-R1(a) order to the petitioner.

5. Indeed, the petitioner has filed a very detailed reply to the counter affidavit filed by the respondent, chiefly

contending that the delay in complying with the judicial directive of this Court remains unexplained. Though the reply has many references to the merits of the matter concerning the supposed justification on petitioner's part to seek transfer, this Court, nevertheless, cannot convert the contempt proceedings into a rehearing of writ petition on merits, as such a course of action is impermissible.

6. The Hon'ble Supreme Court in **D.N.Taneja v. Bhajan Lal**¹ has observed thus:

“12. [A] contempt is a matter between the court and the alleged contemnor. Any person who moves the machinery of the court for contempt only brings to the notice of the court certain facts constituting contempt of court. After furnishing such information he may still assist the court, but it must always be borne in mind that in a contempt proceeding there are only two parties, namely, the court and the contemnor.”

7. The same view has been echoed in **State of Maharashtra v. Mahboob S. Allibhoy**², wherein the

¹ (1988) 3 SCC 26

² (1996) 4 SCC 411

Hon'ble Supreme Court has reiterated that the person bringing the facts constituting contempt to the notice of the Court can never be a party to the lis, nor can he join the proceedings as a petitioner.

8. Worthy of reproduction are the observations of the Hon'ble Supreme Court in **Om Prakash Jaiswal v. D.K.Mittal**³, wherein their Lordships have held thus:

“17. The jurisdiction to punish for contempt is summary but the consequences are serious. That is why the jurisdiction to initiate proceedings in contempt as also the jurisdiction to punish for contempt in spite of a case of contempt having been made out are both discretionary with the court. Contempt generally and criminal contempt certainly is a matter between the court and the alleged contemnor. No one can compel or demand as of right initiation of proceedings for contempt. Certain principles have emerged. A jurisdiction in contempt shall be exercised only on a clear case having been made out. Mere technical contempt may not be taken note of. It is not personal glorification of a Judge in his office but an anxiety to maintain the efficacy of the justice administration system effectively which dictates the conscience of a Judge to move or not to move in contempt jurisdiction. Often an apology is

³ (2000) 3 SCC 171

accepted and the felony condoned if the Judge feels convinced of the genuineness of the apology and the prestige of the court having been restored. Source of initiation of contempt proceedings may be suo motu, on a reference being made by the Advocate General or any other person with the consent in writing of the Advocate General or on reference made by a subordinate court in case of criminal contempt. A private party or a litigant may also invite the attention of the court to such facts as may persuade the court in initiating proceedings for contempt. However, such person filing an application or petition before the court does not become a complainant or petitioner in the proceedings. He is just an informer or relator. His duty ends with the facts being brought to the notice of the court. It is thereafter for the court to act on such information or not to act though the private party or litigant moving the court may at the discretion of the court continue to render its assistance during the course of proceedings. That is why it has been held that an informant does not have a right of filing an appeal under Section 19 of the Act against an order refusing to initiate the contempt proceedings or disposing of the application or petition filed for initiating such proceedings. He cannot be called an aggrieved party."

(emphasis added)

9. Having regard to the facts and circumstances and the ratio laid down in the above quoted judicial

pronouncements, this Court is of the opinion that the respondent is not guilty of any wilful disobedience of Annexure-1 judgment of this Court; as a result, the Contempt Case stands closed. It is, however, left open for the petitioner to assail, if he chooses to, Annexure-R1(a) order of his employer, the Road Transport Corporation. No order as to costs.

Dama Seshadri Naidu, Judge

tkv