

*** THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

AND

THE HON'BLE MRS. JUSTICE ANIS

+ CONTEMPT CASE No.1380 of 2014

% 07.12.2015

V.Vinay Vidyadhar and others

....Petitioners

v.

\$ Alok Rawath,

Secretary, Government of India,

Ministry of Water Resources,

Shram Shakthi Bhavan, New Delhi and another.

.... Respondents

! Counsel for the Petitioners: Smt. K.Udaya Sri

Counsel for Respondents: Sri B.Narayana Reddy

Assistant Solicitor General of India.

<Gist :

>Head Note:

? Cases referred:

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND
THE STATE OF ANDHRA PRADESH

CONTEMPT CASE NO.1380 OF 2014

Between:

V.Vinay Vidyadhar and others

... Petitioners.

And

Alok Rawath,
Secretary, Government of India,
Ministry of Water Resources,
Shram Shakthi Bhavan, New Delhi and another.

... Respondents.

JUDGMENT PRONOUNCED ON: 07.12.2015

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THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

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1. Whether Reporters of Local newspapers
may be allowed to see the Judgments?
2. Whether the copies of judgment may be marked to Law
Reporters/Journals
3. Whether Their Ladyship/Lordship wish to see the fair
copy of the Judgment?

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

C.C.No.1380 of 2014

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ORDER: (per Hon'ble Sri Justice Nooty Ramamohana Rao)

This Contempt case is instituted by the petitioners in W.P.No.24452 of 2010 complaining in a sense of willful and intentional violation of orders passed by this Court in the aforementioned writ petition on 30.11.2010.

One Sri V.Sambasiva Rao and '9' others, who were working as Assistant Chemists, Assistant Hydrogeologists etcetera approached the Central Administrative Tribunal, Hyderabad Bench (for short henceforth referred to as "C.A.T") and instituted O.A.No.1032 of 1996 seeking a declaration that the exclusion of the posts of Assistant Chemists and Assistant Hydrogeologists in the pay scale of Rs.2000-3500 (pre-revised pay scale of Rs.650-1200) from the purview of Central Ground Water Board (Group-A posts) Recruitment Rules 1987, which were repealed by the Central Ground Water Board (Group-A posts) Recruitment Rules, 1995 as illegal. They also sought for a consequential direction for inclusion of the posts of Assistant Chemists and Assistant Hydrogeologists within the purview of Central Ground Water Board (Group-A posts) Recruitment Rules, 1995 with all attendant benefits to be granted on that basis. That O.A. was decided by the C.A.T. on 19.04.1999 and against the said judgment of the C.A.T. in O.A.No.1032 of 1996 the Union of India and the Chairman, Central Ground Water Board, Ministry of Water Resources have preferred W.P.No.22349 of 1999 before this Court. The said W.P.No.22349 of 1999 was decided by this Court on 10.09.2008 by a Division Bench, interalia holding that the C.A.T. ought not to have directed to revise 1995 Recruitment Rules so as to include the benefit of Flexible Complementing Scheme for the Group-B posts. However, in view of O.M.dated 28.05.1986, the subsequent O.M. dated 09.11.1998 should be implemented by according Flexible Complementing Scheme in respect of the respondents in that case/applicants before the C.A.T. in O.A.No.1032 of 1996.

The present petitioners, inspired by the aforementioned judgment in W.P.No.22349 of 1999 have approached the C.A.T, Hyderabad Bench by instituting O.A.No.370 of 2010. That O.A. was dismissed by the C.A.T on 30.08.2010 by rejecting their prayer to extend Flexible Complementing Scheme by promoting them to the posts of Scientists – B on completion of 3 years of service in the lower cadre. Against the order of dismissal of O.A.No.370 of 2010 dated 30.08.2010, W.P.No.24452 of 2010 was instituted. That W.P.No.24452 of 2010 was decided by this Court on 30.11.2010 holding that the controversy involved in W.P.No.24452 of 2010 is squarely covered by the order dated 10.09.2008 rendered in W.P.No.22349 of 1999. Complaining that this order dated 30.11.2010 is deliberately violated, the present contempt case is instituted.

The Union of India carried the matter by way of an appeal to the Supreme Court against the judgment rendered in W.P.No.22349 of 1999. That SLP was dismissed

by the Supreme Court on 31.08.2009. In the meantime, a review application, Review WPMP.No.28475 of 2012 was moved in W.P.No.24452 of 2010. That review application was dismissed by this Court on 05.12.2012. Once again, the Union of India carried the matter by preferring a SLP against the judgment rendered on 30.11.2010 in W.P.No.24452 of 2010 as well as the order dated 05.12.2012 dismissing the Review WPMP.No.28475 of 2012 therein. This SLP also was dismissed by the Supreme Court on 01.07.2013.

In the meantime, complaining that the judgment rendered on 30.11.2010 in W.P.No.24452 of 2010 was not complied with, in spite of issuing a legal notice on 18.07.2011, C.C.No.1339 of 2011 was filed by the present petitioners. That Contempt Case was decided by a Division Bench of this Court on 02.08.2013, noting that the Ministry has taken a decision to implement the orders passed by this Court on 30.11.2010 in W.P.No.24452 of 2010 and hence this Court directed the respondents to implement the orders passed in W.P.No.24452 of 2010 dated 30.11.2010 within three (3) months. With that order C.C.No.1339 of 2011 stood disposed of.

Once again C.C.No.1950 of 2013 was instituted by these very petitioners complaining that the orders passed by this Court in W.P.No.24452 of 2010 as well as in C.C.No.1339 of 2011 have not been implemented faithfully. 2nd C.C.No.1950 of 2013 was disposed of by this Court by its order dated 04.02.2014 inter alia holding that in view of the orders dated 31.01.2014, the orders passed by this Court earlier have been complied with. However, it was added that the consequential benefits flowing from the order dated 31.01.2014 be settled expeditiously, preferably within 3 months. It is, thereafter, the present 3rd contempt case is instituted.

It would be appropriate to notice that during the pendency of the present contempt case (3rd contempt case) orders were passed on 08.07.2015 promoting the 1st petitioner herein as Scientist "Grade-D" with effect from 01.01.2012. Thus, the whole of the benefit of in-situ promotions, which the 1st petitioner herein is entitled to receive have been granted, though, however, belatedly and also with effect from 01.01.2012.

On 18.02.2015, petitioners 2 and 3 were granted in-situ promotions as Scientist 'C' with effect from 01.01.2009 and 01.01.2012 respectively. Further, on 30.09.2015 the

2nd petitioner herein was granted Flexible Complementing Scheme in-situ promotion as Scientist (Grade-D) and he was also paid the necessary monetary benefit flowing therefrom. In so far as the 3rd petitioner is concerned, he has been granted in-situ promotion to Scientist-B and Scientist-C grades and on the ground that he has not yet completed 5 years residency period, he was not accorded in-situ promotion as Scientist (Grade-D).

Therefore, the question that falls for our consideration is whether in-situ promotions accorded to the petitioners herein with effect from certain dates instead of from an earlier date claimed by them and in particular not according promotion to the 3rd petitioner as Scientist-D would amount to contemptuous conduct on the part of the respondents, deserving punishment.

The entire basis for the claim of the petitioners herein is that the Flexible Complementing Scheme has been introduced even in the Scientific departments through Office Memorandum dated 28.05.1986 of the Ministry of Science and Technology. Paragraph NO.2 of the said O.M. dated 28.05.1986, brings out very clearly that Flexible Complementing Scheme providing in-situ promotions to Scientists, whose work is found to be satisfactory, was introduced earlier in the Scientific Departments. But however, was restricted to the grades: Rs.700-1300, Rs.1100-1600 and Rs.1500-2000. It was not in doubt that the petitioners were not fitted in any of those scales of pay and on the other hand they were in the scale of pay of Rs.650-1200 and the posts held by them were classified as Group-B Gazetted posts. Therefore, the Ministry has extended the benefit of in-situ promotion to those in the scale of Rs.650-1200 also. The relevant decision spelt out in paragraph No.2 of O.M.No.28.05.1986 reads as under:

“..... Having regard to the fact that in some scientific departments there has been induction of scientists in the scale of Rs.650-1200. It has been decided to introduce Flexible Complementing beginning with the Rs.650-1200 where this also serves as a direct recruitment grade. It has also been decided to extend the Flexible Complementing Scheme up to the scale of Rs.2500-3000. There will be no restriction as regards percentages and full flexibility will be available in all the grades up to Rs.2500-3000; proven merit and records of research will be the only criteria. A minimum residency of 5 years in each grade will be required for promotion under flexible complementing.”

(For a better grasp the emphasis is brought out)

Thus, it is beyond doubt that for such of those employees/scientists in the Pay band of Rs.650-1200 have been extended the benefit of Flexible Complementing Scheme through O.M. dated 28.05.1986, at par with those who were granted earlier the benefit of such Flexible Complementing Scheme, in the scale of Rs.700-1300, Rs.1100-1600 and Rs.1500-2000. This was the reason why the Division Bench which decided W.P.No.22349 of 1999 found the direction of the C.A.T to introduce the posts of Assistant Chemists and Assistant Hydrogeologists in Group-A service rules as unsustainable. But for O.M dated 28.05.1986, the Assistant Chemists and Assistant Hydrogeologists in Group-B service are not eligible for Flexible Complementing Scheme benefits, which were available only to those in the pay scale of Rs.700-1300 and above, which posts are included in Central Ground Water Board are included in Group – A service.

Office Memorandum dated 09.11.1998 was issued by the Ministry of Personnel, Public Grievances and Pensions, in the context of dealing with the recommendations made by the V Central Pay Commission. It will be relevant to notice that the V Central Pay Commission proposed to modify the existing Flexible Complementing Scheme including therein the departments of Space, Atomic Energy and Defence Research Development Organization (DRDO) without any special dispensation for any individual department. This recommendation of the V Central Pay Commission has not been accepted by the Government of India and consequently the existing scheme of merit based promotion system covering Groups A, B & C personnel, as presently applicable in the Department of Atomic Energy, the Department of Space and the DRDO was ordered to be continued. Further, the recommendation of the V Central Pay Commission to define “scientific administrators” has been accepted by making it clear that the Flexible Complementing Scheme should be applicable only to scientists and technologists holding scientific post in scientific and technology departments and who are engaged in scientific activities and services. For achieving this objective, the Scientific and Technological institutions have been prescribed in Annexure I to this Office Memorandum dated 09.11.1998. Further, the revised assessment procedure, which shall be followed henceforth by all Scientific Ministries/Departments have

been specified
in Annexure II.

In paragraph No.3 of this Office Memorandum, it is spelt out that all the posts covered under the Flexible Complementing Scheme shall carry uniform scales of pay, designations and the minimum residency period linked to performance. The residency period linked to performance for Scientist-B was prescribed as '3' years, for Scientist – C and D, it is '4' years and for Scientist – E and F, it was '5' years. However, immediately after this statement of prescribing minimum residency period, it is specified that in order to give immediate effect to the decision contained in this paragraph, an umbrella notification has been issued vide G.S.R.No.660 (E) dated 09.11.1998. It should also to be noted that in paragraph No.7 of this Office Memorandum dated 09.11.1998 it is spelt out that “the relevant provisions of Department of Science & Technology Office Memorandum No.A.42014/2/86 – Admn.1 (A) dated 28th May, 1986 stand amended to the extent the provisions of this Office Memorandum are at variance with the provisions of the said Office Memorandum.”

Thus, the whole question revolves around the field of coverage of Office Memorandum dated 09.11.1998.

Sri G.Vidya Sagar, learned Senior Counsel appearing for the petitioners, would urge that in view of paragraph No.7 making it clear that the Office Memorandum dated 28.05.1986 stands amended to the extent indicated in Office Mmorandum dated 09.11.1998, the residency period as prescribed in this Office Memorandum should be followed, but not the period specified in Office Memorandum dated 28.05.1986, whereas Sri K.M.Nataraj, learned Assistant Solicitor General, would urge that the scheme relating to revised assessment procedure spelt out in Annexure-II to this Office Memorandum is what is relevant to the case of the petitioners but not the entire contents of Paragraph No.3 of Office Memorandum dated 09.11.1998. Sri K.M.Nataraj, learned Assistant Solicitor General, would further add that in paragraph No.3 the Government of India clearly brought out that an umbrella notification has been issued Vide G.S.R.No.660 (E) dated 09.11.1998 to give statutory enforceability to the contents of paragraph No.3 of Office Memorandum dated 09.11.1998 and the petitioners herein are not covered by the sweep of rules promulgated through G.S.R.No.660 (E) dated 09.11.1998. Hence, this contempt case deserves to be

dismissed.

Sri G.Vidya Sagar, learned senior counsel, would fairly concede that the cases of the petitioners or for that matter the cases of those who are covered by W.P.No.22349 of 1999 are not covered by the sweep of rules promulgated under the proviso to Article 309 of the Constitution of India as notified through G.S.R.No.660 (E) dated 09.11.1998. Clearly those rules deal with Group – A services and the petitioners do not belong to Group – A services.

The only question that remains to be considered is Whether the sweep of Office Memorandum dated 09.11.1998 is intended to cover the wholesale amendment to the area covered by Office Memorandum dated 28.05.1986 or it would have a narrow applicability.

The answer to this question is not free from doubt. If paragraph No.7 of Office Memorandum dated 09.11.1998 is independently taken into account and consideration, it might appear as if the whole contents of Office Memorandum dated 09.11.1998 should be treated as an intended amendment to what is contained in Office Memorandum dated 28.05.1986. If that were to be the intention of the Government of India, there would not have been any necessity for them to refer to the notification G.S.R.No.660 (E) dated 09.11.1998 in paragraph No.3 of this Office Memorandum dated 09.11.1998, in as much as Office Memorandum dated 28.05.1986 covers both Group-A and Group-B Scientific officers and Technologists.

In view of the contents of paragraph No.3 of Office Memorandum dated 09.11.1998 specifically advertng to G.S.R.No.660 (E) dated 09.11.1998, the view canvassed by Sri K.M.Nataraj, learned Assistant Solicitor General, that the contents of paragraph No.3 of the Office Memorandum dated 09.11.1998 will be applicable to Group-A servants alone cannot be brushed aside lightly. It all depends upon the construction which is liable to be placed on the contents of Office Memorandum dated 09.11.1998. That would be a part of substantial adjudication of the lis itself. That having not been done by any Court, it will not be fair for us to construe that the action of granting in-situ promotions to the petitioners as Scientists – B, C and D, as the case may be, with effect from specified dates as a deliberate and willful violation of the orders passed by this Court amounting to contemptuous conduct. Further, while exercising jurisdiction under Article 215 of our Constitution, the adjudicatory power and jurisdiction available, a substantial one at that, can not be telescoped. When

once the respondents have passed an order on 30.09.2015 according benefits to the petitioner Nos.2 and 3 also as per the eligibility as determined by the respondents, we feel that there was a faithful compliance at long last with the directions issued by this Court in W.P.No.24452 of 2010. In view of the possible confusion prevailing in the minds of the respondents though the delay that occurred till 30.09.2015 for implementing the judgment is an unreasonable period consumed but yet that alone should not lead to an inevitable conclusion that the respondents have acted with deliberate intent to violate the orders of this Court, for them to be penalized.

We are, therefore, of the opinion that by 30.09.2015, the judgment rendered by this Court in W.P.No.24452 of 2010 on 30.11.2010 and the review order dated 05.12.2012 stood implemented.

Hence, we dismiss this contempt case duly discharging the notice issued earlier. Accordingly, the contempt case is dismissed. No costs.

However, we hope and trust that the Government of India would not take such a long time for implementing the writs issued by this Court henceforth.

The miscellaneous applications, if any shall also stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

07.12.2015
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