

THE HON'BLE SRI JUSTICE R.KANTHA RAO

CONTEMPT CASE No.2244 of 2014

ORDER:

This contempt case is filed under Sections 10-12 of Contempt of Courts Act to punish the respondents for committing contempt by intentionally and deliberately flouting the orders granted in WPMP No.38642 of 2014 in W.P.No. 30906 of 2014 dated 16.01.2014.

2. Heard the learned counsel appearing for the petitioner and the learned Counsel appearing for the respondents 2 and 3.

3. The petitioner filed W.P.No.30906 of 2014 assailing the action of the respondents in not considering the case of the petitioner for promotion to the post of Assistant Engineer under the garb of disciplinary proceedings. In the said writ petition, the petitioner filed miscellaneous petition seeking the indulgence of this Court to direct the respondents to consider the case of the petitioner for promotion to the post of Assistant Engineer without reference to the disciplinary proceedings initiated against him. This Court passed the following interim order on 16.10.2014:

"Heard the learned counsel appearing for the petitioner and the learned standing counsel for the respondents.

Perused the judgment of the Supreme Court in State of Punjab & others vs. Chaman Lal Goyal (1995 2 SCC 570) and G.O.Ms.No.257 General Administration (SER.C) Department dated 10.06.1999.

In view of the submission made by the learned counsel appearing for the petitioner that the case of the petitioner has not been considered by the respondents for promotion on account of the pendency of the disciplinary proceedings, there shall be interim direction to respondents 1 and 2 to consider the case of the petitioner for promotion subject to his eligibility, in terms of the aforesaid judgment and G.O.Ms.No.257 dated 10.06.1999, in accordance with law."

4. The present contempt case is filed to punish the respondents for their willful disobedience in not implementing the orders passed by this Court.

5. The respondents filed counter stating that after passing of the orders by this Court, the case of the petitioner was considered in the light of *the judgment of the Supreme Court in State of Punjab & others vs. Chaman Lal Goyal (1995 2 SCC 570) and G.O.Ms.No.257 General Administration (SER.C) Department dated 10.06.1999* and the request of the petitioner for promotion was considered and the same was rejected as the charges framed against the individual are of moral turpitude, misappropriation, embezzlement and grave dereliction of duty and also in view of the fact that he is facing criminal prosecution.

6. Now the point for consideration is whether the respondents are guilty of contempt of the interim orders passed by this Court.

7. This Court passed the interim order only to consider the case of the petitioner in the light of *the judgment of the Supreme Court in State of Punjab & others vs. Chaman Lal Goyal (1995 2 SCC 570) and G.O.Ms.No.257 General Administration (SER.C) Department dated 10.06.1999*. Therefore, the order only obligates the respondents to pass an order on merits as to the petitioner's entitlement for promotion in the light of the judgment of the Supreme Court and the G.O. relied on by the petitioner.

8. Along with the counter-affidavit, the respondents filed *G.O.Ms.No.257 General Administration (SER.C) Department dated 10.06.1999* whereunder para 6 of the G.O. shows that '*the appointing authority should consider and decide that it would not be against public interest to allow adhoc promotion to the officer concerned and this shall be decided with reference to the charge under enquiry. If the charge is one of moral turpitude, misappropriation, embezzlement and grave dereliction of duty then the appointing authority should consider as not in the public interest to consider adhoc promotion to*

such charged officer.' The said G.O. prescribes certain guidelines for consideration of promotions in respect of employees who are facing departmental enquiries and also criminal proceedings. The respondents considered the case of the petitioner in the light of the said G.O. and rejected the case of the petitioner for promotion.

9. The learned counsel for the petitioner relied on certain judgments in support of his contention. In **MOHD. IQBAL KHANDAY v. ABDUL MAJID RATHER**^[1] the Supreme Court held as follows:

“Right or wrong, the order has been passed. Normally speaking, it cannot be gainsaid that the order ought to have been obeyed but it appears that there are insuperable difficulties in implementing the order. First is that the post of Associate Professor, according to the respondent, is a selection post. Secondly, the mere seniority, even if that is assured in favour of the respondent, would not be enough to gain such a promotion. Thirdly, the specific order of the Government was to exclude the period of deputation on foreign assignment from reckoning the duration of the teaching experience of the respondent. Therefore, the respondent did not possess the requisite qualification. Fourthly, such necessary qualifications seem to be mandatory under the rules. That being the position to accord such a promotion, will be violative of the rules. Fifthly, the promotion could be granted only by the Public Service Commission and not by the appellant.”

10. In **E.T. SUNUP v. C.A.N.S.S. EMPLOYEES ASSOCIATION AND ANOTHER**^[2] the Supreme Court held that when there is deliberate attempt on part of bureaucracy to circumvent the order of Court and stick to their stand which amounts to clear violation of Court's order and the appellant is guilty of flouting court's order. In **SECURITIES AND EXCHANGE BOARD OF INDIA v. SAHARA INDIA REAL ESTATE CORPORATION LIMITED AND**

OTHERS^[3] the Supreme Court held that non-compliance with judicial orders shakes the very foundation of judicial system and undermines the rule of law which Supreme Court is bound to honour and protect and this is essential to maintain faith and confidence of the people in judiciary. In

C. SADHANANDAM v. PROF. RAMA MURTHY AND OTHERS^[4] the Supreme Court held as follows:

“High Court setting aside the appointment of third respondent as lecturer, on the ground that he obtained less than the qualifying marks and claims of the petitioner who is duly qualified have been ignored – University Authorities made a pretence of complying with the directions of High Court by relieving the third respondent on the said post but again appointed him on temporary basis, though he is less qualified when compared to the petitioner, without any advertisement inviting applications and without even an application by the third respondent – Amounts to playing fraud on the court and an offence under the Contempt of Courts Act.”

11. The judgments relied on by the learned counsel appearing for the petitioner are not applicable to the facts of the present case.

12. In the instant case, this Court only directed the respondents to consider the case of the petitioner for promotion in the light of the judgment of the Supreme Court and the said G.O. This Court did not specifically direct the respondents to promote the petitioner pending departmental proceedings. In the decision **1st cited supra**, the Supreme Court said that if the university official finds himself difficult to implement the order the court, he should approach appellate authority against the order, but he cannot ignore the order and plead difficulties of implementation at the time contempt proceedings are initiated and consequently, the Supreme Court directed the university official to tender an unconditional apology before the High Court for

the lapses.

13. In the instant case, there is no ambiguity in the order passed by this Court for the respondents to seek a clarification. This Court only directed the respondents to consider the case of the petitioner in the light of the aforesaid judgment of the Supreme Court and the said G.O. The respondents at length examined the case of the petitioner and passed an order on merits rejecting the case of the petitioner. This Court in a contempt case has to only find out whether there is any willful disobedience on the part of the respondents in complying with the order passed by this Court. When the Court specifically directs the respondents to promote the petitioner and the respondents did not comply with the said orders, this Court can punish the respondents on the ground that they erroneously rejected the case of the petitioner for promotion.

14. In the contempt proceedings, this Court is not supposed to examine the correctness of the order passed by the respondents but can only examine whether there is any willful disobedience on the part of the respondents.

15. Having gone through the aforementioned facts, this Court is of the considered view that since the respondents passed an order on merits, the remedy open to the petitioner is only to challenge the order passed by the respondents. Instead the petitioner asked this Court to punish the respondents for willful disobedience of the orders passed by this Court which is legally untenable.

16. For the foregoing reasons, the contempt case is dismissed. Miscellaneous petitions, if any, pending in this case shall stand closed.

R.KANTHA RAO,J

Date:23.12.2015
ccm

THE HON'BLE SRI JUSTICE R.KANTHA RAO

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[\[1\]](#) AIR 1994 SC 2252

[\[2\]](#) 2004(8) Supreme 298

[\[3\]](#) (2014) 2 SCC (Cri) 618

[\[4\]](#) 1997(4) ALD 225 (D.B.)