

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CONT No. 166 of 2015

1. Pramod Kumar Pathak S/o Rajendra Pathak, aged about 43 years, Sahayak Grade- I, Sthapna Chhattisgarh High Court Bilaspur, R/o- Jasmeen-125, Face-2, Aasma City Home Sakri, Bilaspur Chhattisgarh

---- Petitioner

Versus

1. Shri Ashok Kumar Panda, Registrar General, Chhattisgarh High Court, Bodri, Bilaspur Chhattisgarh
2. Shri R.C.S. Samant, The Then Incharge Ragistar General, Chhattisgarh High Court, Bodri, Bilaspur Chhattisgarh, At Present District and Sessions Judge Raipur, Chhattisgarh
3. Shri Arvind Shrivastava, The Then Registrar General, Chhattisgarh High Court, Bilaspur (Retired District and Sessions Judge Raipur, District Raipur) Present Address- R-2/8 Ramavalley, Raipur Road, Bilaspur, Chhattisgarh

---- Respondents

For Petitioner – Shri Sunil Kumar Soni, Advocate.
For Respondents 1 and 2 – Shri Prafull N. Bharat, Advocate
For Respondent No.3 – Shri Arvind Shrivastava in person.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

01/02/2017

1. Heard the matter on admission.
2. As per brief facts, Hon'ble Division Bench of this Court had disposed of W.P.No.3926/2005 vide order dated 19-10-2011. In the said order vide para 20 and 21 which are operative part of the said order, the Division Bench directed, which are reproduced below for relevance :-

“20. On the basis of aforesaid discussions, we hold that the words “..... subject to the condition that he will be given seniority, from the date he has been holding the post of on deputation or the date from which he has been appointed on a regular basis to the same or equivalent grade in his **present department whichever is later**” of clause (c) of Rule 12 (2) of the Rules of 1961 are liable to be struck being absured and non-est in the eye of law and accordingly, the same are hereby struck down.

21. The respondent No.1 is to prepare and publish a fresh gradation list of the Assistant Grade-III counting seniority of the petitioners in accordance with the existing rules, that is to say, after excluding the part of clause (c) of the Rule 12(2) which has been struck down by this order."

3. The petitioner thereafter filed the instant contempt case and prayed that this Court to initiate proceedings of contempt against the respondents as they have not complied with the order passed by the Division Bench dated 19-10-2011 wholly, also prayed that the Court may proceed against the respondents for the contempt.

4. As this is the matter arises out of the petition under Article 215 of the Constitution of India and Sections 10 and 12 of the Contempt of Courts Act, 1971, it is submitted on behalf of the petitioner that the order of the Division Bench had not been complied with as a whole, on the other hand, written response of the respondents goes to show that they have complied with the order but directions of the division Bench is not complied with. Learned counsel for the petitioner draws the attention of this Court for Annexure-C-4 which is said to be internet copy (the said C-4 is not an authenticated copy issued under any authority, not having any signature, seal and authentication). It is submitted that in the list prepared by the High Court for Assistant Grade-III in the remark column for petitioner it is mentioned that the petitioner is appointed in District Establishment and absorbed on this establishment w.e.f. 28-04-2004, learned counsel would submit that though as directed by the Division Bench the period rendered in the district establishment was not taken in account for the petitioner. With this, the contemnors have not complied with the order passed by the Division Bench. Contemnor R-1 and R-2 also admits in their reply at para 13 that the seniority is given to the petitioner vide order dated 28-04-2004. Learned counsel would further submit that in para 9 of the order it is mentioned that the word "parent department" is substituted for the word "present department" and

also the word "whichever is earlier" is substituted for the word "whichever is later". Learned counsel for the petitioner also draws the attention of this Court for para 18 of the order of the Division Bench, in said para argument advanced on behalf of the respondents that the petitioner cannot claim seniority from the date of appointment on deputation has no force. Learned counsel also draws attention of this Court for the internal appreciation on note sheet of the Additional Registrar (Establishment) of the High Court, copy of said note sheet is said to be received under the provision of RTI Act, 2005 (as the Additional Registrar of the High Court is not High Court within the meaning of Article 229 of the Constitution of India, with this, any recommendation of the Officer of the High Court cannot held as direction of the High Court).

5. Learned counsel for the petitioner placed reliance on Civil Case No.1066 of 2000, **Union of India and Ors. V. Subedar Devassy PV**, though is not in a position to refer citation, however he had submitted copy of the same said to be obtained from the website Indian Kanoon, wherein, Hon'ble the Apex Court vide judgment dated 10-01-2006 held that :-

"If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach the court that passed the order or invoke jurisdiction of the appellate court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong, the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. While dealing with an application for contempt the court cannot traverse beyond the order, non-compliance with which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible."

6. Learned counsel for the petitioner further placed reliance on the matter of

The Tata Iron And Steel Company Vs. Ramniwas Poddar And Ors. (AIR

1989 Cal 375) and relied on para 9 of the said order which is reproduced below:-

"9. In the affidavit in reply filed through the petitioner's principal officer A. K. Bhaduri the petitioner specifically alleged that the respondent 4 has full knowledge of the act of contempt as would be evident from Annexure 'A' to this affidavit in reply. He has also expressly taken the point in his affidavit in reply that Section 20 of the Contempt of Courts Act, 1971 is ultra vires as it overrides and offends against the provisions of Article 215 of the Constitution."

7. It is submitted on behalf of the petitioner that as the order has not been complied with, this Court may initiate proceedings of contempt against the respondents and further to comply with the order passed by the Division Bench.

8. Perused the record, reply and rejoinder filed by the parties.

9. It is mentioned in the written response on behalf of the respondents that the respondents had complied with the order passed by the Division Bench, hence, any matter against the Contempt of Courts Act may not be initiated against the respondents.

10. On minute examination of the entire matter, it appears that vide order dated 19-10-2011, operative part is only on para 20 and 21 of the order. Any other appreciation though discussed in para 18 and para 9 may not be taken as directions of this Court. If there is any ambiguity or any incomplete direction, it was open to the petitioner to file a petition for modification before the said Bench. In absence of any such exercise in the considered view of this Court, now this Court cannot go beyond para 20 and 21 of the order. Also as per the response filed on behalf of the respondents, they have complied with the order. Even apart, the contemnors are not the High Court within the meaning of Article 229 of the Constitution of India, they are authorities who has to act under the instructions and directions of the High Court defined under the Constitution of India. Any note of the Additional Registrar may not be termed as opinion of the High Court unless

and until the said observation and opinion is accepted by the High Court and as per relevant provisions for the matter, the High Court includes Chief Justice and the Judges of the High Court. In the preset matter the petitioner failed to appreciate that the respondents not acted as per the jurisdiction given to them, as per jurisdiction the respondents may only take up the matter to the High Court under the relevant rules and provisions and it is the High Court who takes the decision authorized under the Constitution of India and the respondents are merely authorized to carry out the decision taken by the High Court. In the present matter whatever seniority fixed by the High Court was communicated under the compliance of their duty by the officer of the High Court and in the considered view of this Court the respondents cannot be questioned, charged, convicted for any of the act not within their lawful authority to perform and also as per submission whatever the seniority list prepared under the authority of the High Court, the respondents have acted under the relevant authority to publish or to communicate. in the present matter no any authenticated seniority list was shown, if any seniority list prepared under the authority of the High Court, there must be some memo number or something because the High Court does not publish seniority list in the website without any memo number, issuance date and the authority who had issued the said list under the authority of the High Court. The Annexure C-4 cannot be held as an authenticated seniority list prepared, despite this fact, as per submission of the respondents they have complied with the order under the authority and published the said list.

11. Upon consideration of the entire matter and facts, this Court is of the considered view that the petitioner failed to demonstrate prima facie any material against the respondents that they have made any contempt of the Court and also failed to demonstrate that they are the authority to take decision on behalf of the High Court as they are not High Court, they are the compliance agency, list prepared if at all under the authority of the High Court. The case law cited is of no

relevance in the matter.

12. Consequently, as the present Contempt case has no substance, the same is dismissed at the motion stage itself.

13. Petition dismissed.

Sd/-
(Chandra Bhushan Bajpai)
Judge