

HONOURABLE SRI JUSTICE P.NAVEEN RAO

CONTEMPT CASE NO.1915 OF 2018

Date: 29.08.2018

Between:

Archana Jawaharlal Awasthy, w/o. Ravishanker Shukla,
Aged about 48 years, Occu: School Assistant (English)
O/o. ZPHS, Singapur, Huzerbad Mandal, Karimnagar dist.

.....Petitioner

and

The District Educational Officer, Karimnagar,
Karimnagar district.

.....Respondent



The Court made the following:

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ORDER:

Consequent to the lifting of ban on transfers, Government notified Telangana Teachers (Regulation of Transfers) Rules, 2018 (Rules, 2018) vide G.O.Ms.No.16, School Education Department, dated 06.06.2018. According to Rule 5 of Rules, 2018, Teacher who completed eight years of service in a particular school as on 31.05.2018 is liable for compulsory transfer. The list of Teachers who were liable for compulsory transfer was displayed. Their places are shown as vacant. The said Teachers were also given opportunity to exercise choice of posting. Rule 6 of the Rules, 2018 provides entitlement points on various parameters. Rule 6(II) provides ten weightage points if the employee whose spouse is working in same district in the Statement Government or Central Government or Public Sector undertakings or local bodies or Aided Institutions and employee opted for transfer. However, this option is made available only to one of the spouses. Spouse of petitioner is working as Gazetted Head Master at Zilla Parishad High School, Singapur, Huzurabad Mandal from 30.07.2015, whereas petitioner was working as School Assistant (English) in the same School in the unit of Huzurabad district, which forms part of erstwhile Karimnagar district. As husband of petitioner is working in the same district, petitioner claimed ten entitlement points under spouse category.

2. Alleging entitlement points are not granted to petitioner on the ground that in the year 2015 transfers, her husband availed entitlement points, petitioner filed W.P.No.20343 of 2018. This

Court by order dated 18.06.2018 made in I.A.No.1 of 2018 issued the following directions:

“Petitioner is working as School Assistant (English) in Zilla Parishad High School, Singapur, Huzerabad Mandal, from 20.07.2009. The petitioner is liable for compulsory transfer as per the Telangana Teachers (Regulation of Transfers) Rules, 2018.

According to learned counsel for petitioner, husband of petitioner is working as Gazetted Head Master at Zilla Parishad High School, Singapur, Huzerabad Mandal from 30.07.2015. As per Rule 6 (II) special Points (Extra points), petitioner is entitled to weightage of 10 points on spouse grounds. While so, erroneously, the weightage points are not granted to the petitioner on the ground that her husband availed the weightage points earlier. On perusal of Rule 6(II)(d), during the current counselling, only one of the spouse is entitled for spouse points. It appears that the spouse of the petitioner is not availing the benefit.

Therefore, *prima facie*, petitioner cannot be denied of weightage points on spouse grounds. The respondents are directed to consider and award weightage points to the petitioner on spouse grounds in the transfer counselling. Any such exercise should abide the result of the writ petition.”

3. Contrary to the orders of this Court, the District Educational Officer, Karimnagar passed orders on 19.06.2018 holding that petitioner is not entitled to weightage points on spouse grounds as her husband is already availed weightage points in the 2015 year transfers. Petitioner filed I.A.No.2 of 2018 praying to suspend the decision of the District Educational Officer, dated 19.06.2018. This Court by order dated 27.06.2018, suspended the same. This Court having noticed that the order of District Educational Officer dated 19.06.2018 and subsequent stand is contrary to the directions issued by this Court. District Educational Officer was directed to appear on 09.07.2018 and explain the reasons for taking the decision contrary to the order of the Court.

4. Instead of realizing the mistake committed and to rectify the mistake, learned Government Pleader was instructed to submit

before this Court that petitioner would be considered after transfer counselling is over in the left-over vacancies. Having regard to recalcitrant attitude of District Educational Officer, this Court by order dated 09.07.2018 suo-motu initiated contempt proceedings and issued notice in Form-I.

5. In the affidavit filed by contemnor, he stated that ten weightage points are now awarded to the petitioner and accordingly appropriate posting was granted to her. According to deponent, inadvertently he issued speaking orders and having realized his mistake, dropped the earlier speaking orders vide proceedings dated 20.07.2018 and rectified his mistake. He would further submit that as per the option given by petitioner, she was posted to ZPHS (Girls), Huzurabad vide orders dated 03.08.2018 and she joined on 04.08.2018. He tenders unconditional apology. He would further submit that this is the first time and he may be exonerated. He gives an undertaking that in future he would be prompt in implementing the orders of the Court.

6. The Contempt of Courts Act secures confidence of the people in the administration of justice. If an order, passed by a competent court, is clear and unambiguous, disobedience or breach of such an order would amount to contempt of Court. Section 2(b) of the Contempt of Courts Act, 1971 defines 'civil contempt' to mean wilful disobedience of any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a Court.

7. Constitutional Courts have laid down principles on when to exercise contempt jurisdiction. It is emphasised that there can be no laxity, as otherwise orders of court would be the subject of mockery (**Anil Ratan Sarkar v. Hirak Ghosh**¹; **Patel Rajnikant Dhulabhai v. Patel Chandrakant Dhulabhai**²). Disobedience of orders of the Court strikes at the very root of the rule of law on which the judicial system rests.

7.1. Disobedience of an order of court, whether prohibitive or mandatory, whether made *ex parte* or upon hearing both parties, or interim or perpetual, amounts to contempt if it is calculated or tends to interfere with the administration of justice, or brings it into disrespect or disregard (**Jagarmudi Chandramouli v. K.Appa Rao**³). The power, to punish for contempt, is exercised to prevent perversion of the course of justice. (**Kapildeo Prasad Sah v. State of Bihar**⁴).

7.2. Any interference with the course of justice is an affront to the majesty of law and the conduct of interference is punishable as contempt of court. Public interest demands that there should be no interference with the judicial process, and the effect of the judicial decision should not be pre-empted or circumvented. (**Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay (P) Ltd.**,⁵).

7.3. If a party, who is fully in the know of the order of the Court or is conscious and aware of the consequences and implications of

¹ 2002(4) SCC 21

² (2008) 14 SCC 561

³ 1967(1) An.W.R.129

⁴ (1999) 7 SCC 569

⁵ (1988) 4 SCC 592

the order of the Court, acts in violation thereof, it must be held that disobedience is wilful. To establish contempt of court, it is sufficient to prove that the conduct was wilful, and that the contemnor knew of all the facts which made it a breach of the order.

7.4. The following conditions must be satisfied before a person can be held to have committed civil contempt: (i) there must be a judgment, decree, direction, order, writ or other process of a court (or an undertaking given to a court); (ii) there must be disobedience to such judgment, decree, direction, order, writ or other process of a court (or breach of undertaking given to a court); and (iii) such disobedience of the judgment, decree, direction, order, writ or other process of a court (or breach of undertaking) must be wilful. [**Patel Rajnikant Dhulabhai** (supra)].

7.5. It behoves *the court to act with as great circumspection as possible*, making all allowances for errors of judgment. It is only when a clear case of contumacious conduct, not explainable otherwise, arises that the contemnor must be punished. Punishment under the law of contempt is called for *when the lapse is deliberate* and in disregard of one's duty and in defiance of authority. Contempt proceedings are quasi-criminal in nature, and the standard of proof is the same as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/rights, including benefit of doubt. **Kanwar Singh Saini v. High Court of Delhi**⁶.

⁶(2012) 4 SCC 307

7.6. To hold a person guilty of civil contempt 'wilful disobedience' is an indispensable requirement. Whether the conduct of contemnor is deliberate and wilful can be considered by assessing the material on record and attendant circumstances.

8. Guided by the above principles, the submissions of learned Government Pleader that violation was not deliberate and willful are considered.

9. It is seen that earlier orders were withdrawn only after this Court initiated contempt proceedings. At this stage, it is useful to extract the reason assigned by contemnor in rejecting request of petitioner after interim orders of this Court. It reads as under:

"... As per the G.O. vide reference 3rd cited in Rule No.6 of II (c) "ten (10) points for Head Masters Gr.II (Gazetted)/Teacher, whose spouse if working in State Government or Central Government or Public Sector Undertaking of Local Body or Aided Institutions in the same district and opted for transfer nearer to and towards the place of working of his/her spouse, benefit of spouse point shall be applicable to Head Master/Head Mistress Gr II (Gazetted) once in (5) years and Teacher once in (8) years and entry shall be made in this regard in the Service Book. A copy of certificate issued by the competent authority should be enclosed to the application to consider cases under this category and (d) "only one of the spouse is entitled for spouse points if both are working as teacher or Head Master Grade II (Gazetted) in the same district".

In view of the above the petitioner spouse was already availed spouse points in July 2015 transfer counselling which the (5) years are not completed.

Therefore the request of the petitioner is not feasible to consider at this juncture as per the above G.O. Hence her appeal is considered, examined with rules and rejected.

(emphasis supplied)

10. There was no ambiguity in the interim order passed by this Court. Court was specifically dealing with entitlement of a Teacher to claim weightage points on spouse ground. On the same aspect,

after the order of the Court, the contemnor rejected claim of petitioner. Contemnor was in the knowledge of the order of Court, reasons assigned for granting order, but takes contrary decision based on his own understanding of concerned rule, which is contrary to the directions issued by the Court. Officer was giving more weightage to his understanding of the concerned rule than to the order of the court. It is thus clear that action of contemnor is deliberate and wilful. By his conduct, he transgressed into judicial path and obstructed stream of justice. His conduct is blameworthy, wilful and deliberate. His actions are palpable. Thus, contemnor is guilty of contempt of the orders of this Court dated 18.06.2018 in IA No.1 of 2018 in WP No.20343 of 2018.

11. In the facts of this case, as noted above, whether offering apology is *bona fide* to purge the contemnor from contempt is next considered.

12. Section 12(1) of the Contempt of Courts Act, and the explanation thereto, enables the Court to remit the punishment awarded for committing contempt of Court on an apology being made to the satisfaction of the Court. While an apology should not be rejected if the accused makes it *bona fides*, a conduct which abuses, and makes a mockery of, the judicial process of the Court must be dealt with iron hand (**Bal Kishan Giri v. State of U.P.**,⁷). An apology can neither be a defence nor a justification for an act which tantamount to contempt of Court. An apology can be accepted in cases where the conduct, for which the apology is given, is such that it can be “ignored without compromising the

⁷(2014) 7 SCC 280

dignity of the court”, or it is intended to be evidence of real contrition. It should be sincere. Apology cannot be accepted in case it is hollow, there is no remorse, no regret, no repentance, or if it is only a device to escape the rigour of the law. Such an apology is merely a “paper apology”. [**Bal Kishan Giri** (supra)].

13. In **Bal Kishan Giri** (supra), Supreme Court held as under:

“16. Sub-section (1) of Section 12 of the Act and the Explanation attached thereto enables the court to remit the punishment awarded for committing the contempt of court on an apology being made to the satisfaction of the court. However, an apology should not be rejected merely on the ground that it is qualified or tendered at a belated stage if the accused makes it *bona fide*. A conduct which abuses and makes a mockery of the judicial process of the court is to be dealt with iron hands and no person can tinker with it to prevent, prejudice, obstruct or interfere with the administration of justice. There can be cases where the wisdom of rendering an apology dawns upon only at a later stage. Undoubtedly, an apology cannot be a defence, a justification, or an appropriate punishment for an act which tantamounts to contempt of court. An apology can be accepted in case where the conduct for which the apology is given is such that it can be “ignored without compromising the dignity of the court”, or it is intended to be the evidence of real contrition. It should be sincere. Apology cannot be accepted in case it is hollow; there is no remorse; no regret; no repentance, or if it is only a device to escape the rigour of the law. Such an apology can merely be termed as “paper apology”.

14. In **Gupta, T.C. v. Bimal Kumar Dutta and others**⁸, Supreme Court held as under:

“10. A contempt action being in the nature of quasi-criminal proceeding the degree of satisfaction that must be reached by the court to hold a person guilty of commission of contempt would be akin to what is required to prove a criminal charge, namely, proof beyond reasonable doubt. The order of the court in respect of which violation is alleged must, therefore, be clear, unambiguous and unequivocal and defiance thereof must be apparent on the very face of the action with which a contemnor is charged. An interpretation of the terms of court's order in respect of which disobedience is alleged would not be appropriate while dealing with a charge of contempt.

11. In an earlier part of the present order, we have noticed the unqualified and unconditional apology tendered by the appellant before the High Court in the event his explanations were to be found unacceptable. The Explanation to Section 12 of the Contempt of Courts Act, 1971, makes it clear that an apology tendered by a contemnor should not be rejected merely on the ground that it is qualified or conditional so long it is made *bona fide*. In his reply, the appellant, after offering his explanations, had tendered his unconditional and unqualified apology in the event the explanations did not commend for acceptance of the High Court.

⁸ (2014) 14 SCC 446

12. In the decision rendered in *O.P. Sharma v. High Court of P&H* [(2011) 6 SCC 86 : (2011) 3 SCC (Civ) 218 : (2011) 2 SCC (Cri) 821 : (2011) 2 SCC (L&S) 11] , this Court has already held that in view of the Explanation to Section 12 of the Contempt of Courts Act an apology ought not to be rejected only on the ground that it is qualified so long as it is made bona fide. In the present case there is nothing on record to suggest that the unqualified and unconditional apology tendered by the appellant in his reply before the High Court was actuated by reasons that are not bona fide.”

15. On this issue the Division Bench in CC No.1974 of 2016 reviewed entire case law. Division Bench observed as under:

“The next question which necessitates examination is whether the apology tendered by the respondent-contemnor merits acceptance. It is no doubt true that the respondent-contemnor has sought pardon, and has tendered his unconditional apology. Section 12(1) of the Contempt of Courts Act, and the Explanation thereto, enables the Court to remit the punishment awarded for committing contempt of court on an apology being made to the satisfaction of the Court. While an apology should not be rejected if the accused makes it *bona fide* a conduct which abuses, and makes a mockery of, the judicial process of the Court must be dealt with an iron hand. (**Bal Kishan Giri v. State of U.P., -(2014) 7 SCC 280**). An apology can neither be a defence nor a justification for an act which tantamounts to contempt of court. An apology can be accepted in cases where the conduct, for which the apology is given, is such that it can be “ignored without compromising the dignity of the court”, or it is intended to be evidence of real contrition. It should be sincere. Apology cannot be accepted in case it is hollow, there is no remorse, no regret, no repentance, or if it is only a device to escape the rigour of the law. Such an apology is merely a “paper apology”. (**Bal Kishan Giri**).

An apology tendered is not to be accepted as a matter of course, and the court is competent to reject the apology and impose the punishment recording reasons therefor. (**Bal Kishan Giri**). If the apology is found to be without real contrition and remorse, and to have been tendered merely as a weapon of defence, the court may refuse to accept it. If the apology is offered at the time when the contemnor finds that the court is going to impose punishment, it ceases to be an apology and becomes an act of a cringing coward. (**Bal Kishan Giri; Debabrata Bandhopadhyaya v. State of W.B.; Mulk Raj v. State of Punjab- AIR 1972 SC1197, Hailakandi Bar Assn. v. State of Assam-AIR 1996 SC 1925, C. Elumalai v. A.G.L. Irudayaraj-AIR 1009 SC 2214 and Ranveer Yadav v. State of Bihar-(2010)11 SCC 493**). A mere statement of apology by the contemnor before the court would hardly amount to his purging himself of contempt. The Court must be satisfied of the genuineness of the apology. If the court is so satisfied, and on this basis accepts the apology as genuine, it should pass an order holding that the contemnor has purged himself of contempt. (**Pravin C. Shah v. K.A. Mohd. Ali-(2001) 8 SCC 650**).

.....

An apology is not intended to operate as a universal panacea. (**M.Y. Shareef v. Judges of Nagpur High Court- AIR 1995 SC 19; Pravin C. Shah; T.N. Godavarman Thirumulpad (102) v. Ashok Khot(2006) 5 SCC 1**). It is not a weapon of defence forged to purge the guilty of the offence, but is intended to be evidence of real contrition, the consciousness of a wrong done, of an injury inflicted, and the earnest desire to make such reparation as lies in the wrongdoer’s power. (**Delhi Development Authority v. Skipper Construction-(1995) 5 SCC 507**). Only then is it of any avail in a court of justice. Unless that is done, not only is the tendered apology robbed of all grace but it also ceases to be a full and frank admission

of a wrong done, which it is intended to be. (**Hiren Bose, Re-AIR 1969 Cal 1; Patel Rajnikant Dhulabhai-(2008) 14 SCC 561**). The apology tendered by the contemnor, to be accepted by the Court, should be a product of remorse. (**M.C. Mehta v. Union of India-(2003) 5 SCC 376**). Public interest demands that when a person has interfered with the judicial process, the judicial decision should not be pre-empted or circumvented merely by a conditional or an unconditional apology. While it is open to the Court, in an appropriate case, to accept an unconditional apology based on the factual position, dropping the proceeding of contumacious acts deliberately done, after accepting the apology offered, would be a premium for the flagrant abuse of the judicial process. (**Ram Autar Shukla- 1995 Supp (2) SCC 130**).

In **L.D. Jaikwal v. State of U.P- (1984) 3 SCC 405.**, the Supreme Court observed:-

“.....We are sorry to say we cannot subscribe to the “slap—say sorry—and forget” school of thought in administration of contempt jurisprudence. Saying “sorry” does not make the person taking the slap smart less upon the said hypocritical word being uttered. Apology shall not be paper apology and expression of sorrow should come from the heart and not from the pen. For it is one thing to “say” sorry—it is another to “feel” sorry.....”
(emphasis supplied).

16. In the facts of this case also, it is seen that apology offered is not sincere and *bona fide*. It is clear from facts on record that it is made only to escape the consequence of deliberate and willful disobedience of the order of the Court. The conduct of contemnor as noted above cannot be ignored while considering his apology. Having found that order dated 19.06.2018 was contrary to the interim order, the contemnor was directed to appear and explain his conduct. At that stage, he ought to have taken remedial steps. On the contrary, he instructed learned Government Pleader to represent that petitioner would be considered in left over vacancies and the order dated 19.06.2018 was not withdrawn, which was in violation of the directions of the Court. Said order was withdrawn only after contempt case was admitted and notice in Form-I was issued. As noted by Division Bench, the observations of Supreme Court in **Ram Autar Shukla** (cited supra) dropping the proceedings of contumacious act deliberately done after accepting

apology offered would be a permission for flagrant abuse of judicial process. Observations of Supreme Court in **L.D.Jaikwal, ‘slap-say sorry-forget cannot be accepted’** aptly apply to this case. Thus, apology offered by contemnor is rejected.

17. By his conduct respondent-contemnor has interfered with the administration of justice, made mockery of the order of this Court. It is an affront to the majesty of law. No leniency can be shown for wilful and deliberate disobedience. Thus, his apology cannot purge him from imposing sentence.

18. Thus, the contemnor is held guilty of contempt. However, taking due note of the fact that after receipt of notice in contempt contemnor has taken remedial steps granting appropriate posting in compliance of the order of the Court and taking note of the affidavit expressing regret to what he had done, which Court considers as genuine, the undertaking given by him that he would be careful in future in complying with orders of the Court sentence of fine of 2000/- (Rupees two thousand only) is imposed. The respondent shall pay the fine within four weeks from today. Failing which he shall undergo sentence of imprisonment for a period of three (3) days. The Contempt Case is accordingly disposed of.

JUSTICE P.NAVEEN RAO

Date: 29.08.2018
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