

HONOURABLE SRI JUSTICE P.NAVEEN RAO

CONTEMPT CASE NO.2058 OF 2018

IN

W.P.NO.21556 OF 2018

Date: 12.09.2018

In Re...

And

1. Ms. R.Rohini, District Educational Officer,
Yadagiri district.
2. Ms. B.Sarojini Devi, District Educational Officer,
Nalgonda.

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

CONTEMPT CASE NO.2058 OF 2018

IN

WRIT PETITION NO.21556 OF 2018

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. Grievance of the petitioner was that petitioner was not allowed to participate in the transfer counselling exercise by ignoring earlier service rendered in the same school.

2. Aggrieved thereby petitioner filed W.P.No.19390 of 2018. This Court by order dated 15.06.2018 made in I.A.No.1 of 2018 issued the following directions:

“Heard both sides.

Prima facie, on consideration of the provisions of Rules 5 and 6 of Telangana Teachers (Regulation of Transfer) Rules, 2018, it appears that there is merit in the contention of the learned counsel for the petitioner. The petitioner is working in the same school since 09.08.2012 and what is required by Rule 5 and 6 is, working in the same school/particular school. Thus, the petitioner is entitled to participate in the transfer counselling and also for weightage points. However, as the petitioner was not working in the same school, while she was on deputation, that particular period should be excluded in computing the entitlement points as per Rule-6. Subject to the above, the claim of petitioner shall be considered. Any decision/consideration shall ultimately abide the result of the writ petition.”

3. Contrary to the orders of this Court, the District Educational Officer, rejected the application of petitioner observing that past service cannot be counted.

4. Aggrieved thereby, petitioner filed W.P.No.21556 of 2018 praying to direct the respondents to accept the application of petitioner for transfer and permit her to submit the option for transfer by suspending the Column 8 of the DEO Verified Transfer Application-2018 dated 22.6.2018. This Court by order dated 27.06.2018, passed the following order:

“The order impugned in this writ petition on the face of directions issued by this Court in I.A.No.1 of 2018 in W.P.No.19390 of 2018 is illegal. The respondent could not have ignored the past service rendered by the petitioner when clear direction was issued by this Court and District Education Officers could not have passed the order rejecting the request of petitioner for counting past service for determination of weightage points.

Matter is adjourned to 09.07.2018 for appearance of respondents 1 and 2 and to explain the Court how such order could be passed by them. In the meantime, respondents are directed not to fill up any one of the posts in Zilla Parishad High Schools at Kuda Kuda, Durashpalli and Balemala, Suryapet mandal, Suryapet district.”

5. On 09.07.2018, this Court made the following order:

“According to learned counsel for the petitioner, even after the interim order, the past service was ignored while computing the eligibility of petitioner, as displayed in the web site dated 22.06.2018. Aggrieved by the said action, petitioner filed this writ petition. This Court by order dated 27.06.2018 while directing the appearance of respondents 1 and 2 directed not to fill up any one of the posts in Zilla Parishad High Schools at Kuda Kuda, Durashpalli and Balemala, Suryapet Mandal, Suryapet District.

Learned counsel for the petitioner placed before this Court the proceedings of the Regional Joint Director of School Education, dated 06.07.2018 showing the factum of filling up of all the posts.

Learned Government Pleader, on instructions, would submit that as in the web counselling process there was no option not to allocate any seats, therefore, allocation was

made filling up all the vacancies and could not comply with the directions of this Court.

Today the officers Ms.R.Rohini, District Educational Officer, Yadadri District and Ms.B.Sarojani Devi, District Educational Officer, Nalgonda are present. The officers state that they were in receipt of the order of this Court dated 27.06.2018.

Prima-facie, the Court is of the view that the order of this Court is violated and contrary decisions are taken.

Having regard to this conduct of the Officers *suo-moto* contempt proceedings are initiated.

Contempt case is admitted. Issue Form-I Notice to Ms.R.Rohini, District Educational Officer, Yadadri District and Ms.B.Sarojani Devi, District Educational Officer, Nalgonda.”

6. In the affidavits filed by respondents, they tender their unconditional apology for not implementing the orders of the Court in I.A.No.1 of 2018 in WP No.19390 of 2018 dated 15.06.2018. They would submit that at the request of petitioner, necessary posting orders were issued, and she joined on 02.08.2018. They would further submit that this is the first time and they may be exonerated, and they gave an undertaking that in future they would be very prompt in implementing the orders of the Court.

7. 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.

8. 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.

8.1. 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).

8.2. 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).

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

8.3. 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 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.

8.4. 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)]**.

8.5. 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.

8.6. 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.

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

10. It is seen that posting orders are issued only after this Court initiated contempt proceedings. Even the said posting orders are not in true letter and spirit of the order of the Court. At this stage, it is useful to note that reason to reject request of petitioner to include in transferring counselling process was that petitioner has not completed requisite service and therefore not liable for transfer.

11. There was no ambiguity in the interim order passed by this Court. On the same aspect, after the order of the Court, the 2nd respondent rejected claim of petitioner. She was in the knowledge of the order of Court, reasons assigned for granting order, but takes contrary decision based on her own understanding, which is contrary to the directions issued by the Court. Officer was giving more weightage to her understanding of petitioner eligibility than to the order of the court. It is thus clear that action of 2nd respondent is deliberate and wilful. By her conduct, she transgressed into judicial path and obstructed stream of justice.

⁶(2012) 4 SCC 307

Her conduct is blameworthy, wilful and deliberate. Her actions are palpable. Thus, 2nd respondent is guilty of contempt of the orders of this Court dated 22.06.2018 in IA No. 1 of 2018 in WP No. 20983 of 2018. The 2nd respondent is the nodal officer dealing with transfers in the erstwhile district units. Thus, proceedings against 1st respondent are dropped.

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

13. 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 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)].

⁷(2014) 7 SCC 280

14. 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”.

15. 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.

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*.”

⁸ (2014) 14 SCC 446

16. On this issue the Division Bench in C.C.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 SC 1197; 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).

17. 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 her apology. Having found that decision to leave out petitioner from transfer counselling process was contrary to the interim order, the contemnor was directed to appear and explain her conduct. At that stage, she ought to have taken remedial steps. On the contrary, she instructed learned Government Pleader to represent that there was no provision in the web counselling process to consider petitioner request and not to allocate any vacancy. Remedial steps were taken 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.

18. By her conduct, 2nd 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, her apology cannot purge her from imposing sentence.

19. Thus, the 2nd respondent-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 and taking note of the affidavit expressing regret to what she had done, the undertaking given by her that she would be careful in future in complying with orders of the Court, sentence of fine of 2000/- (Rupees two thousand only) is imposed. The 2nd respondent shall pay the fine within four weeks from today. Failing which she shall undergo sentence of imprisonment for a period of three (3) days. The Contempt Case is accordingly disposed of.

JUSTICE P.NAVEEN RAO

Date: 12.09.2018
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HONOURABLE SRI JUSTICE P.NAVEEN RAO



CONTEMPT CASE NO.2058 OF 2018

Date: 12.09.2018

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