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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 23rd May, 2019
Pronounced on: 01st July, 2019

+ CONT.CAS(C) 944/2018 & CM APPL. Nos. 2607/2019,
4074/2019 & 15302-15304/2019

DINESH CHANDRA MISHRA Petitioner
Through: Petitioner in Person.

versus

DR. TRILOCHAN MOHAPATRA & ANR Respondents
Through: Mr. Gagan Mathur, Advocate

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CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

1. The petitioner is an employee of the National Bureau of Plant Genetic Resources [hereinafter referred to as "NBPGR"], an institute of the Indian Council of Agricultural Research [hereinafter referred to as "ICAR"]. In this contempt petition, his allegation is that the respondents have violated a judgment of this Court dated 11.08.2017 in W.P. (C) 4127 of 2015 by passing an order dated 26.09.2018, transferring him from the headquarters of NBPGR to its farm at Isapur, New Delhi.

2. The petitioner was appointed as a Senior Technical Assistant (Tissue Culture) in NBPGR, Pusa Campus, New Delhi in the year 1994. By an order dated 02.08.2014, he was transferred from the headquarters of NBPGR at New Delhi to its Regional Station at Srinagar. The petitioner challenged the transfer order before the Central Administrative Tribunal [hereinafter referred to as “the Tribunal”] in O. A. No. 2715 of 2014. The Tribunal allowed his application by judgment dated 11.02.2015, which was then challenged by the ICAR by means of the above-mentioned writ petition (i.e., W.P.(C) 4127/2015).

3. The writ petition was disposed of vide the above mentioned judgment of the Division Bench dated 11.08.2017, holding that transfers are incidences of service and a grievance cannot be made if a transfer order is passed on administrative grounds and as per law, unless it is vitiated by arbitrariness or *mala fide* or bias or contravention of any statutory provision. The operative portion of the judgment of this Court reads as follows:

“24. Be that as it may, we find that the transfer order was passed on 2nd August, 2014, almost 3 years back. While allowing the present writ petition, we would call upon the petitioners to have a fresh look and examine whether or not the respondent is required to be posted in terms of the order dated 2nd August, 2014, or the respondent could be posted to any location, depending upon exigency, administrative requirement and keeping in mind the qualification and area of work of the respondent. In other words, we expect that the petitioners would pass a fresh posting order, as deemed appropriate and proper.

25. *With the aforesaid observations and directions, the writ petition is allowed and the impugned order dated 11th February, 2015 is quashed. OA No.2715/2014 filed by the respondent would be treated as dismissed. In the facts and circumstances of the case, there would be no order as to costs."*

4. The grievance raised by the petitioner in the present contempt petition concerns an order dated 26.09.2018, which is reproduced below:

"Office Order

The Competent authority, ICAR – NBPGR has decided to transfer Shri D C Mishra, Senior Technical Assistant (T-4) from ICAR- NBPGR, HQ, New Delhi to ICAR-NBPGR Isapur Farm, New Delhi in public interest till completion of inquiry by Internal Complaint Committee. Accordingly, Shri D C Mishra is directed to report for duty to Dr.Vijay Singh Meena, Scientist & OIC, Isapur Farm immediately.

Shri D C Mishra is stand relieved from ICAR –NBPGR, HQ, New Delhi.

*(U C Sharma)
Administrative Officer"*

5. The contention of the petitioner, who appeared in person, is that the above transfer order is in violation of the judgment of this Court, inasmuch as his qualifications and area of work have not been kept in mind by the respondent authorities. According to him, he is qualified to work only in a laboratory and not in a field/farm environment, and his area of work has always been confined to laboratory settings. The petitioner referred to the advertisement issued by the NBPGR in 1992, pursuant to which he was appointed, wherein the post advertised was

of a Senior Technical Assistant (Tissue Culture), and submitted that his present posting at the Isapur Farm of NBPGR is not commensurate with his qualifications or area of work. He also referred to guidelines issued by the ICAR dated 06.09.2016 regarding intra-Institutional transfers, and particularly to Clause B (iii) thereof, which requires that the sanctioned strength in the relevant functional group of the Institute headquarters and Regional Stations should always be kept in mind at the time of effecting the transfer of employees. A judgment of the Supreme Court in *Bharat Sanchar Nigam Limited vs. Abhishek Shukla & Anr* (2009) 5 SCC 368, was cited by the petitioner to contend that his representations from 26.09.2018 to 22.11.2018 had not been dealt with by a speaking order and were thus liable to be treated as having been admitted by the respondent.

6. Mr Gagan Mathur, learned counsel for the respondent submitted that, in the judgment of the Division Bench, the transfer of the petitioner was in fact upheld. Pursuant to an interim order dated 11.05.2015 passed by the Division Bench, the petitioner had been posted in the Germplasm Evaluation Division (“GED”) of NBPGR in New Delhi, and continued to be posted there even after the disposal of the writ petition by judgment dated 11.08.2015.

7. Mr. Mathur further submitted that the posting order dated 26.09.2018 had nothing to do with the earlier writ petition and was in fact passed in compliance of directions of the Internal Complaints Committee (hereinafter the “ICC”) which was investigating an allegation of sexual harassment against the petitioner. The allegation was made in August 2018 and the committee recommended his

transfer by a communication dated 24.09.2018. Mr. Mathur further contended that the present Contempt Petition was an abuse of process of court, as the petitioner had challenged the same transfer order before the Tribunal in O.A. No.4013/2018, which was rejected by an order dated 23.10.2018. Further, a writ petition challenging the order of the Tribunal was filed before this Court (W.P.(C)12520/2018) by the petitioner, which was dismissed on 26.11.2018 and a petition for review of the said order (Review Petition 449/2018) was also dismissed on 17.12.2018.

8. Having heard both parties, I am of the view that the petitioner has failed to make out any grounds for initiation of contempt proceedings. The order of this Court dated 11.08.2017 cannot be read as a mandate which operates in perpetuity and in all circumstances. The directions of the Court were with regard to the factors which the respondents were required to keep in mind while re-examining the necessity of posting the petitioner in terms of the impugned transfer order dated 02.08.2014. Pursuant to the said judgment, the respondents did not further transfer the petitioner and rather retained him in the post to which he had been posted pursuant to the Court's interim order dated 11.05.2015. In any event, the petitioner has not been able to show that the transfer order dated 26.09.2018 has been passed without "keeping in mind" the factors mentioned by the Division Bench.

9. Further, in order to satisfy the definition of "civil contempt" under Section 2(b) of the Contempt of Courts Act, 1971 any disobedience of a judgment or an order of the Court must be 'wilful'.

This requirement has been explained by the Supreme Court in *Ashok Paper Kamgar Union vs Dharam Godha and Ors.* (2003) 11 SCC 1 [in paragraph 17] in the following terms:

“..... “Wilful” means an act or omission which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose. Therefore, in order to constitute contempt the order of the Court must be of such a nature which is capable of execution by the person charged in normal circumstances. It should not require any extraordinary effort nor should be dependent, either wholly or in part, upon any act or omission of a third party for its compliance. This has to be judged having regard to the facts and circumstances of each case.....”

The aforesaid judgment has been followed by the Supreme Court *inter alia* in *All India Anna Dravida Munnetra Kazhagam vs. L.K.Tripathi & Ors.* (2009) 5 SCC 417 and *Ram Kishan vs. Tarun Bajaj & Ors.* (2014) 16 SCC 204. In the first of these judgments, the Court has referred to its observations in *Kapildeo Prasad Sah and Ors. vs. State of Bihar and Ors* (1999) 7 SCC 569, where it has been held that casual, accidental, *bona fide* or unintentional acts or genuine inability to comply with the terms of an order cannot be regarded as 'wilful disobedience'. In *Ram Krishan* (supra) the Supreme Court held that the word 'wilful' introduces a mental element and requires an assessment of the alleged contemnor's state of mind.

10. In the present case, the order passed by the respondents dated 26.09.2018 specifically refers to the proceedings pending before the Internal Complaint Committee and the consequent decision to transfer the petitioner till completion of that inquiry. The inquiry against the petitioner was commenced on 14.09.2018, when the available members of the Women's Welfare Committee and the Women's Complaint Committee recommended as follows:

“ xxxx xxxx xxxx xxxx

As evidence from the e-mail counter questioning her, it is apparent that he can harm anyone and the complainant is feeling scared and threatened, hence members of both the committees recommend that a suitable action may immediately be taken in this regard by competent authority for safeguarding the woman.”

By a further communication dated 24.09.2018, the Internal Complaints Committee recommended the transfer of the petitioner to any other workplace, to bring immediate relief to the aggrieved. In the light of the proceedings before the ICC and its categorical recommendation that the petitioner be transferred, pursuant to which the order dated 26.09.2018 has been passed, I am of the view that it is not possible to characterise the actions of the respondent as 'wilful disobedience' of the Court's order dated 11.08.2017.

11. The petitioner's reliance upon the judgment of the Supreme Court in *Bharat Sanchar Nigam Limited* (supra) is wholly misplaced. The said judgment affirms an order of the Allahabad High Court dated 01.02.2005 wherein reliance was placed on a counter affidavit filed by the respondent therein and the denial was not found to be in accord

with Order VIII Rule 5 of the Code of Civil Procedure. Similar principles do not apply to dealing with representations and correspondence *inter partes*.

12. Mr. Mathur is also right in submitting that the present contempt petition is an afterthought and an abuse of process. The petitioner's substantive challenge to the transfer order dated 26.09.2018 has already been dismissed by the Tribunal vide an order dated 23.10.2018 with the following observations:

“2. A bare perusal of the above order shows that on receipt of complaint of sexual harassment, the respondents have decided to proceed against the applicant and in the interest of ensuring that the inquiry is not vitiated, they have shifted the applicant from his present place of posting, i.e. ICAR – NBPGR, HQ, New Delhi to ICAR – NBPGR, Issapur Farm, New Delhi in public interest till completion of the inquiry by the internal Complaints Committee. Quite clearly, the applicant has only been transferred from one place of posting to another within Delhi itself. Hence, we do not find any reason to interfere with this transfer order and the OA is dismissed being bereft of any merits. MA seeking interim relief also stands dismissed. No costs.”

13. This order was challenged by the petitioner in W.P.(C) 12520 of 2018. In the said petition, the earlier proceedings (W.P.(C) 4127/2015) were also mentioned, and it was contended that the petitioner's claim had been “endorsed” by this Court. However, the contentions of the petitioner were not accepted, and the Tribunal's order dated 23.10.2018 was upheld. The observations of the Division Bench in this regard are as follows:

“ xxxx xxxx xxxx xxxx

The Tribunal rejected the said original application observing that the transfer has been made in the interest of ensuring that the inquiry is not vitiated. The transfer was effective from one place to another place of work in Delhi itself. The petitioner, who appears in person, submits that no request was made by the complainant to seek the transfer of the petitioner during the pendency of the inquiry. In our view, there is no merit in this submission; firstly, the right of the employer to transfer the employee who is facing inquiry, or even otherwise, is not dependent upon such a request being made by the complainant; and, secondly, counsel for the respondent, who appears on advance notice, points out that such a request has indeed been made on 14.09.2018.

The petitioner has also sought to urge that no inquiry is called for in the facts of the present case since the petitioner has already tendered apology for the conduct alleged against him. In our view the mere tendering of apology is no ground to drop the proceedings. The proceedings have to be taken to a logical conclusion and it shall be for the competent authority to examine the conduct of the petitioner and recommend appropriate action in the matter. We find no merit in the present petition and the same is accordingly dismissed along with pending applications.”

14. The petitioner further sought a review of this order by filing Review Petition 449 of 2018, but his application was declined vide order dated 17.12.2018.

15. It appears that the present contempt petition was filed by the petitioner on 14.12.2018, i.e., only after the dismissal of the aforementioned writ petition. In the circumstances, this contempt petition is, in fact, an indirect attempt by the petitioner to revive his

challenge to the transfer order dated 26.09.2018, which has already failed before the Tribunal and before this Court. In fact, the prior proceedings have been entirely suppressed by the petitioner in the contempt petition, except in the prayer clause when he has sought summoning of the records of W.P.(C) 12520/2018. Such suppression in a contempt petition indicates an attempt to abuse the process of Court, and deserves to be strongly deprecated.

16. For the reasons aforesaid, the contempt petition is dismissed, along with the pending applications. The petitioner will pay costs of ₹5,000 to each of the respondents, through their counsel, and file an affidavit of compliance within four weeks from today.

JULY 01, 2019

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PRATEEK JALAN, J.

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