

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on 06.03.2020****Judgment Delivered on 19.03.2020****Contempt Case No. 1062 of 2019***{Arising out of judgment dated 08.02.2019 passed by the Division Bench in Writ Appeal No. 77 of 2019}*

- Surjeet Sen, aged about 55 years, S/o Late Shri Paritosh Sen, R/o C/o 15A, Gurukul Parisar, Kalibadi Road, Raipur, District Raipur (C.G.)

---- Petitioner**Versus**

- Vidyanath Singh, Principal/Secretary of Governing Body, Bhatkhande Lalit Kala Shiksha Samiti Gandhi Chowk, Office at Gurukul Parisar, Kalibadi Road, Raipur, District Raipur (C.G.)

---- Respondent

For Petitioner	:	Shri Yogesh Pandey, Advocate.
For Respondent	:	Dr. Shiv Kumar Shrivastava, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Justice Parth Prateem Sahu, Judge****CAV Order****Per P. R. Ramachandra Menon, Chief Justice**

1. Alleged non-compliance with the direction given by this Court vide judgment dated 08.02.2019 in Writ Appeal No. 77 of 2019 made the Appellant to approach this Court by way of this contempt of Court proceedings.
2. On issuance of notice the Respondent/contemnor has appeared and filed reply supported with an affidavit dated 16.01.2020.
3. Heard Shri Yogesh Pandey, learned counsel appearing for the Petitioner as well as Dr. Shiv Kumar Shrivastava, the learned counsel appearing for the Respondent/contmenor.

4. The cause of action takes its origin from the removal of the Petitioner from service by the Governing Body of the employer, based on the alleged resignation from the service, which was declared as illegal by the learned Single Judge of this Court in Writ Petition (S) No. 1901 of 2007. The impugned order of removal was set aside and the Petitioner was directed to be reinstated; however, declaring that he will be entitled to get only 50% of back wages, applying the principles of 'no work no pay'.
5. On challenging the denial of back wages to the extent of 50% to the writ Petitioner, by way of Writ Appeal No. 77 of 2019, it was held as per Annexure C/1 judgment dated 08.02.2019, that principle of 'no work no pay' would not be applicable to the case in hand and that Appellant was entitled to have full back wages. It was accordingly, that the appeal was allowed, directing the Respondent/employer/Governing Body to reinstate the Appellant in service within 'two weeks' from that date and that the arrears shall be paid within 'eight weeks' from the said date; simultaneously holding that, if there was any failure in clearing the dues as aforesaid, the Appellant would be entitled to get interest @ 6% per annum from the date of removal, till the date of payment.
6. Pursuant to the above verdict, the Petitioner joined the service on 25.02.2019 as borne by Annexure C/3. However, the arrears of wages were not paid. The employer/Governing Body took up the matter before Apex Court by filing SLP No. 7634 of 2019, which came to be dismissed as per Annexure C/4 order dated 29.03.2019. Though a Review Petition was filed as R.P. (C) No. 1452 of 2019 later, it also came to be dismissed by the Apex Court on 11.07.2019 as borne by Annexure R/4 produced alongwith the reply filed by the Respondent.
7. In the meanwhile, pursuant to the dismissal of the SLP, the employer/Governing Body passed Annexure R/3 resolution on 03.04.2019 to pay the arrears of wages to the Petitioner as directed by this Court. Based on the resolution, the

entire arrears payable was calculated as Rs. 32,40,276/- and a cheque bearing No. 236768 dated 05.04.2019 was prepared and the Petitioner was required to collect the same, against the acknowledgment. But since he did not turn up and he left the college without intimating the Respondent (as pleaded in paragraph 6 of the reply), the Respondent/contemnor deposited the cheque directly in account of the Petitioner on a next day *i.e.* on 06.04.2019 when the Bank was opened. This was more so, since the Respondent college was an 'evening college' and by the time the cheque was prepared on 05.04.2019, the Bank had already been closed.

8. Alleging that the Respondent had not complied with the direction to pay the arrears within the stipulated time and that the amount was deposited only on 06.04.2019, it was contended as beyond time and that the Petitioner was entitled to get 6% interest for the entire amount from the date of removal, till the date of payment; which was claim for as per Annexure C/7 representation dated 18.04.2019, followed by Annexure C/9 representation dated 27.04.2019 and Annexure C/10 representation dated 06.06.2019; lest it should lead to contempt of Court proceedings. The Respondent/contemnor replied as per Annexure C/11 dated 15.06.2019, that they had complied with the direction within time, as the period of 'eight weeks' ordered in the judgment dated 08.02.2019 expired only on 06.04.2019 (Annexure C/11). On receipt of said letter, the Petitioner issued an Annexure C/12 letter dated 02.07.2019 pointing out that the Respondent/contemnor had violated the order of this Court and hence the act was contumacious; in turn, moving this Court by filing the above case for proceeding against the Respondent/contemnor for the offence under Section 12 of the Contempt of Court Act, 1971, read with Section 215 of the Constitution of India.
9. During the course of hearing, the learned counsel for the Petitioner asserted with reference to the version given in paragraph 14 of the petition that the

period of 'eight weeks' granted by this Court on 08.02.2019 meant only '56 days' which expired on 05.04.2019 and since the amount was deposited only on 06.04.2019, it was belated and hence it was liable to carry 6% interest for the whole amount and further that it was contumacious, to be proceeded against. This was sought to be rebutted by the learned counsel for the Respondent/contemnor pointing out that, even according to the Petitioner, as per his letter dated Annexure R/5 dated 26.03.2019 addressed to Respondent/contemnor, the Respondent/contemnor was alerted that the last date for complying with the verdict was '06.04.2019'. Since the Respondent/contemnor had admittedly deposited the cheque amount on 06.04.2019, the present proceeding is nothing, but an abuse of the process, being contrary to the Petitioner's own version in Annexure R/5; submits the learned counsel.

10. The primary question is to be considered whether there is any contumacious action on the part of the Respondent/contemnor showing the act of willful disobedience, so as to proceed against the contemnor and punish him in accordance with the relevant provision of law.
11. Going by the sequence of events, the resolution taken on 03.04.2019 by the Governing Body of the employer, the cheque was prepared on 05.04.2019 and it deposited on the next date *i.e.* on 06.04.2019, clearly demonstrating that there is nothing contumacious act on the part of the Respondent/contmenor in giving an effect to the direction given by this Court and as such, the contempt of Court proceedings are not maintainable.
12. Considering the question whether the Petitioner is entitled to have the benefit of interest @ 6% ordered by this Court, if the order was not given effect to on time, admittedly 'eight weeks' time was granted by this Court on 08.02.2019. Even as admitted by the Petitioner in paragraph 14 of the contempt of Court

proceedings it consists of '56 days' and according to the Petitioner, it expired on '05.04.2019'. This Court finds it difficult to accept the said version, as illustrated below:

“Judgment in writ appeal was on 08.02.2019”

1 st week	ends on 15.02.2019
2 nd week	ends on 22.02.2019
3 rd week	ends on 01.03.2019
4 th week	ends on 08.03.2019
5 th week	ends on 15.03.2019
6 th week	ends on 22.03.2019
7 th week	ends on 29.03.2019
8 th week	ends on 07.04.2019
Total	56 days”

13. 'Eight weeks' means, eight clear weeks, which normally will not include the date of judgment. Even if the date of passing the judgment 08.02.2019 is also taken into consideration, the period of 'eight weeks' will still end only on '06.04.2019'; on which day the cheque dated 05.04.2019 was deposited in the Bank of Petitioner. It appears that the Petitioner lost the sight of the fact that the judgment was passed by this Court in the month of 'February 2019' and further that 'February 2019' was having only 28 days, which presumably made the Petitioner to launch this litigation by way of contempt proceedings, indirectly to pressurize the Respondent/contemnor to pay interest @ 6% as well, for the whole amount of Rs. 32,40,276/-.
14. In the above circumstances, we find that there is absolutely no merit in the contempt of Court proceedings. It stands dismissed accordingly.

Sd/-
(P. R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge