

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CONTEMPT APPEAL NO.7 OF 2016 in
CONTEMPT PETITION NO.322/2015(D)

APPELLANT : Namdeo Miraji Sirsat,
Aged about 82 years,
President, Siddharth Samaj Kalyan Mandal,
Hanuman Nagar, Umri, Akola.
Taluka and District Akola.

...V E R S U S...

RESPONDENT : Shrikrishna Atmaram Thorat,
Aged Major, Retired Headmaster,
R/o. Anand Garden No.2, Umri,
Guladhi Road, Akola.
Taluka and District Akola.

Shri (Dr.) Anjan De, Advocate for appellant.
Shri G.R.Sadar, Advocate for respondent sole.

CORAM : A.S.CHANDURKAR and G.A.SANAP, JJ.

DATE ON WHICH THE ARGUMENTS WERE HEARD : 10.08.2021

DATE ON WHICH THE JUDGMENT IS PRONOUNCED : 27.08.2021

JUDGMENT (Per A.S.Chandurkar, J.)

In this Contempt Appeal filed under Section 19 of the Contempt of Courts Act, 1971 (for short, the Act of 1971) the judgment dated 12.08.2016 passed by the learned Single Judge in Contempt Petition No.322/2015 is under challenge. By the said judgment it was found that the appellant had wilfully disobeyed the directions issued by this Court in Writ Petition No.476/2008 in the matter of paying arrears of salary to the respondent. The Management including the appellant herein were imposed punishment of

simple imprisonment for a period of four months and fine of Rs.2,000/-each, in default to undergo simple imprisonment for further period of fifteen days.

2. The present litigation has a checkered history and therefore it is necessary to refer to the same.

The respondent was working as a Headmaster in the school that was administered by Siddharth Samaj Kalyan Mandal, a registered public Trust. The appellant is the President of the aforesaid Trust. The services of the respondent were terminated on 31.12.2003. The respondent challenged the aforesaid order of termination by filing an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, the Act of 1977). The School Tribunal by its judgment dated 12.12.2007 dismissed the aforesaid appeal. The respondent therefore filed Writ Petition No.476/2008 before this Court. The learned Single Judge by the judgment dated 20.10.2008 was pleased to set aside the judgment of the School Tribunal and directed reinstatement of the respondent on the post of Headmaster with continuity in service and full back wages that were payable from 01.01.2004. The Management then filed Letters Patent Appeal No.63/2009 challenging the judgment of the learned Single Judge. On 12.06.2009 the aforesaid letters patent appeal came to be admitted but there was no interim relief granted to the Management. Since the directions issued in the writ petition were not complied with, the respondent filed Contempt

Petition No.26/2009. During the pendency of the those proceedings the services of the respondent were reinstated. On 26.02.2010 that contempt petition was dismissed after recording the statement made on behalf of the appellant that since the order passed in writ petition had been challenged in the letters patent appeal which was pending, the amount of back wages had not been paid to the respondent. It was observed that the order passed in the writ petition had been partly complied with by reinstating the respondent and in view of pendency of the letters patent appeal, no further action was called for in the contempt petition. By directing the appellant to pay costs of Rs.5,000/- to the respondent, the contempt petition was dismissed and the notices as issued were discharged.

3. In Letters Patent Appeal No.63/2009 that was pending, the respondent moved an application bearing Civil Application (Z) No.103/2014 praying that the Management including the appellant be directed to comply with the directions to pay back wages from 01.01.2004 to 31.10.2008. In this civil application the Division Bench on 23.03.2015 directed the appellant as well as the Management of the Trust to abide by the directions issued in Writ Petition No. 476/2008 by depositing the amount of arrears of salary within a period of eight weeks from the date of the order. On 30.06.2015 the aforesaid period was extended by two more weeks. It was ordered that if such compliance was not made by the extended period, the appeal would stand

dismissed. Ultimately on 13.07.2015 Letters Patent Appeal No.63/2009 came to be dismissed as the Management failed to comply with the directions issued on 23.03.2015 in Civil Application (Z) No.103/2014.

4. In this backdrop the respondent on 17.10.2015 filed Contempt Petition No.322/2015 before the Division Bench. One of the prayers in the contempt petition was with regard to wilful breach of the order dated 23.03.2015 passed in Civil Application (Z) No.103/2014. On 30.11.2015 the respondent sought leave to delete that prayer. Leave was granted and the prayer with regard to non-compliance of the directions issued in Civil Application (Z) No.103/2014 came to be deleted. Since the other prayers in the civil application pertained to non-compliance of the order passed by the learned Single Judge on 20.10.2008 in Writ Petition No.476/2008, the Division Bench on 30.11.2015 directed that the proceedings to be placed before the Single Bench. Thereafter on 04.07.2016 the learned Single Judge was pleased to admit the contempt petition on being satisfied that there was wilful breach of the directions issued in Writ Petition No.476.2008. On 09.08.2016 the following charge was framed in the Contempt Petition No. 322/2015 :

“Whether the respondent no.1 Namdeo Miraji Sirsat, respondent no.2- Govind Sadashiv Palaspagar and respondent no.3-Suresh Samadhan Sawang have willfully disobeyed the directions given by this Court in the judgment given in Writ Petition No.476/2008”

Thereafter the contempt petition was heard on 12.08.2016 and the appellant was held guilty of committing civil contempt as per the provisions of Section 2(b) of the Act of 1971 and punishment in the manner stated hereinabove came to be imposed. This judgment is the subject matter of challenge in the present appeal. The execution of the order of conviction presently stands suspended. It is in the aforesaid manner that the present proceedings arise.

5. Dr. Anjan De, learned counsel for the appellant submitted that the respondent had initially filed Contempt Petition No.26/2009 alleging non-compliance of the directions issued in Writ Petition No.476/2008. After noticing that the services of the respondent had been reinstated and that the challenge to the order directing payment of back wages was pending in Letters Patent Appeal No.63/2009, the learned Single Judge had observed that in these facts no further action against the appellant was called for except for award of costs. The contempt petition was dismissed and the notices to the respondents therein were discharged. According to the learned counsel since the Court had noticed that the letters patent appeal was pending and despite the fact that the order directing payment of back wages had not been stayed, the contempt petition was dismissed. It was therefore not permissible for the respondent to again file fresh proceedings alleging contempt of the very same order passed in Writ Petition No.476/2008. The learned Judge was not correct in holding that the cause of action was continuous so as to hold the

subsequent contempt petition to have been filed within limitation. In the light of the clear order passed in Contempt Petition No.26/2009 while dismissing dismissing the same, it was not permissible for the respondent to re-agitate the breach of the order passed in Writ Petition No.476/2008 afresh based on the same cause of action. Since the order passed in the said writ petition was dated 20.10.2008, the present contempt petition filed on 17.10.2015 was barred by limitation. He referred to the provisions of Section 20 of the Act of 1971 and submitted that the period during which the letters patent appeal was pending could not be excluded while computing the period of limitation. No grounds analogous to Section 14 of the Limitation Act, 1963 had been made out by the respondent.

6. It was then submitted that the respondent had sought leave to delete prayer clause (a) in Contempt Petition No.322/2015. After such leave was granted, it would not be permissible for the respondent thereafter to make a grievance with regard to non-compliance of the directions issued on 23.03.2015 in Civil Application (Z) No.103/2014 in Letters Patent Appeal No.63/2009. The only prayer that remained in the contempt petition was with regard to non-compliance of the directions issued in Writ Petition No.476/2008 but with the dismissal of the earlier Contempt Petition No.26/2009 even that grievance could not have been made in the present contempt petition. Despite these facts the learned Single Judge proceeded

to hold the appellant guilty of having committed contempt of the order passed in Writ Petition No.476/2008. Moreover, during the period from 13.12.2011 to 28.01.2013 an Administrator had been appointed to manage the affairs of the school. Various representations had been made by the Management to the Education officer to release the amount of arrears but the same was not done. Referring to the affidavit filed by the appellant in support of his defence and the application filed for seeking permission to cross-examine the respondent as well as permission to lead evidence, it was urged that same had not been considered in its proper perspective. Since the proceedings were quasi-criminal in nature, the appellant was entitled to due opportunity to substantiate his defence. He referred to the provisions of Chapter XXXIV Rule 22 (c) of the Bombay High Court Appellate Side Rules, 1960 (for short, the Rules of 1960) to urge that the notice under Form-I was not served on the appellant. Considering the fact that the appellant was an old aged person, it was submitted that no action was liable to be taken against the appellant in absence of wilful disobedience of the orders passed in the proceedings. He therefore prayed that the appeal be allowed in these circumstances.

7. Shri G.R.Sadar, learned counsel for the respondent on the other hand submitted that the contempt petition as filed was within limitation. Contempt Petition No.26/2009 was dismissed on 26.02.2010 after recording the fact that the letters patent appeal filed by the appellant was pending. This

letters patent appeal was ultimately dismissed on 13.07.2015 thereby giving a fresh cause of action to the respondent and hence the present contempt petition filed on 17.10.2015 was within limitation. It was not the case of re-agitating the same issues. On the contrary while dismissing the earlier contempt petition the learned Single Judge had noted that the letters patent appeal was pending and said factor weighed with the Court while not punishing the appellant for non-payment of arrears of the salary. Placing reliance on the decisions *Pallav Sheth Vs. Custodian and others 2001 (4) Mh L. J. 1* and *K.K.R.Nair vs. Mohan Das and another 1990 Cr. L. J. 1641* it was submitted that the present proceedings were filed within limitation. Considering the conduct of the appellant it was clear that there was wilful disobedience on the part of the appellant by failing to comply with the directions issued in Writ Petition No.476/2008. He therefore submitted that since there were no bona fides on the part of the appellant of complying with the order that had attained finality, there was no reason to interfere with the findings recorded by the learned Single Judge holding the appellant to be guilty of committing contempt.

8. We have heard the learned counsel for the parties at length and with their assistance, we have also gone through the material placed on record. This being an appeal under Section 19 of the Act of 1971 pursuant to the judgment of the learned Single Judge holding the appellant guilty of

committing civil contempt as defined by Section 2(b) of the Act of 1971, it would be necessary to keep in mind the following observations of the Hon'ble Supreme Court in ***Niaz Mohammad and others Vs. State of Haryana and others (1994) 6 SCC 322*** where in paragraph 9 it has been observed as under:

“9. Section 2(b) of the Contempt of Courts Act, 1971(hereinafter referred to as ‘the Act’) defines “civil contempt” to mean “wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court..” . Where the contempt consists in failure to comply with or carry out an order of a Court made in favour of a party, it is a civil contempt. The person or persons in whose favour such order or direction has been made can move the Court for initiating proceeding for contempt against the alleged contemner, with a view to enforce the right flowing from the order or direction in question. But such a proceeding is not like an execution proceeding under Code of Civil Procedure. The party in whose favour an order has been passed, is entitled to the benefit of such order. The Court while considering the issue as to whether the alleged contemner should be punished for not having complied with and carried out the direction of the Court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the Act while defining civil contempt, have said that it must be wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court. Before a contemner is punished for non-compliance of the direction of a Court, the Court must not only be satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was wilful and intentional.”

It will thus have to be seen as to whether there is any disobedience of an order passed by this Court and if so, whether the same is wilful and deliberate. At

the same time, the defences raised by the appellant would also have to be considered.

9. The appellant has challenged the tenability of the contempt petition principally on two counts namely, that Contempt Petition No.322/2015 was filed beyond the period of limitation prescribed by Section 20 of the Act of 1971 and secondly, in view of the fact that Contempt Petition No.26/2009 raising the grievance with regard to non-compliance of the directions issued in Writ Petition No.476/2008 was dismissed on 26.02.2010, Contempt Petition No.322/2015 filed subsequently making a similar grievance was not maintainable. These objections can be considered at the outset. The record indicates that Writ Petition No.476/2008 was decided on 20.10.2008. The judgment delivered therein was challenged in Letters Patent Appeal No.63/2009 by the Management. That letters patent appeal was admitted but no interim relief was granted to the Management. Admittedly, Contempt Petition No.26/2009 was filed by the respondent complaining of non-compliance of the directions issued in Writ Petition No.476/2008. As the respondent was reinstated in service, his grievance with regard to payment of back wages survived. On 26.02.2010 it was urged on behalf of the appellant that Letters Patent Appeal No.63/2009 was admitted on 12.06.2009 and for that reason the Management had not paid the back wages to the respondent. This fact was taken into consideration and for the said reason the Court did

not find it necessary to initiate any further action against the Management. The following observations in the order dated 26.02.2010 in Contempt Petition No.26/2009 would make the aforesaid position clear :

“....

As regards the issue of back wages, Mr. Anjan De, the learned counsel for the respondents submits that these respondents have already preferred L.P.A.No.63 of 2009 which has been admitted on 12th of June, 2009. For that reason, these respondents have not paid the back wages to the petitioner.

Considering these facts and circumstances of the case and in particular compliance of the order as regards handing over the charge of the school to the petitioner as headmaster and pendency of the Letters Patent Appeal, in my opinion, no further action against the respondents is called for in the present proceedings except for award of costs. Respondents no.1 and 3 are directed to pay costs quantified at Rs.5,000/- each to the petitioner. The contempt petition is dismissed. The notices issued to respondents no.1 and 3 are discharged.”

It is thus clear that on account of pendency of the letters patent appeal the learned Single Judge did not find it proper to invoke contempt jurisdiction in the said proceedings.

10. When Letters Patent Appeal No.63/2009 was pending the respondent moved Civil Application (Z) No.103/2014 on 09.03.2015 in the light of the fact that the respondent retired from service on 28.01.2013. The Division bench on 23.03.2015 found that the directions to pay back wages in Writ Petition No.476/2008 had not yet been complied with and hence

directed the Management including the appellant to abide by those directions and deposit the amount of arrears of salary with this Court within a period of eight weeks from the date of the order. This time to deposit the arrears was extended by further period of two weeks by way of last chance on 30.06.2015. It was made clear that if the said order was not complied with the letters patent appeal would be dismissed. Ultimately on 13.07.2015 the Court found that the order dated 23.03.2015 directing the Management including the appellant to deposit the arrears within time granted had not been complied with and hence it proceeded to dismiss Letters Patent Appeal No.63/2009 for non-compliance of the order dated 23.03.2015. It is thereafter that on 17.10.2015 Contempt Petition No.322/2015 came to be filed making the grievance that the judgment in Writ Petition 476/2008 as well as the directions issued on 23.03.2015 in Letters Patent Appeal No..63/2009 had not been complied with.

11. According to the learned counsel for the appellant since Writ Petition No.476/2008 was decided on 20.10.2008, Contempt Petition No. 322/2015 filed on 17.10.2015 was barred by limitation in view of provisions of Section 20 of the Contempt of Courts Act, 1971. In other words, as the period of more than one year had elapsed from the adjudication of Writ Petition No.476/2008, the contempt petition filed thereafter was not maintainable. In this regard, it is to be noticed that though Writ Petition

No.476/2008 was decided on 20.10.2008, that judgment was challenged in Letters Patent Appeal No.63/2009. On account of pendency of the said letters patent appeal after being admitted, the Court did not find it proper to exercise contempt jurisdiction with regard to payment of back wages in Contempt Petition No.26/2009. In the said letters patent appeal on 23.03.2015 another opportunity was given to the Management including the appellant to deposit the amount of arrears within a period of eight weeks. This time was extended by two more weeks and the same ultimately expired on 13.07.2015 when Letters Patent Appeal No.63/2009 was dismissed for non-compliance of the directions issued on 23.03.2015. It is clear that in the earlier contempt petition, the Court did not exercise its jurisdiction to proceed against the appellant for non-compliance of the directions issued in Writ Petition No.476/2008 specifically on the ground that Letters Patent Appeal No.63/2009 was pending. In the letters patent appeal further opportunity was given to the appellant to clear the amount of arrears. These directions therefore gave a fresh cause of action to the respondent to urge that the order passed in Writ Petition No.476/2008 had not been complied with. In other words, the directions issued on 23.03.2015 to pay the amount of arrears within stipulated time enured to the benefit of the respondent. The Management as well as the appellant herein were thus bound to comply with those directions issued by the Division Bench. Since the order dated 23.03.2015 passed in Letters Patent Appeal No.63/2009 gave a fresh cause of

action to the respondent and as those directions were not complied with, Contempt Petition No.322/2015 filed on 17.10.2015 was within limitation of one year from the issuance of aforesaid directions. We thus find that the contempt petition was filed within prescribed period of limited. Merely because the directions issued on 23.03.2015 in Letters Patent Appeal No.63/2009 pertain to compliance of the judgment dated 20.10.2008 in Writ Petition No.476/2008, the same would not mean that the period of limitation started running on 20.10.2008. With the passing of the order dated 23.03.2015 and granting time of eight weeks to the Management including the appellant to clear the arrears of salary, it was always open for the respondent to contend that non-compliance of these directions gave him a cause of action to initiate contempt action against the appellant.

Since it has been found that Contempt Petition No. 322/2015 as filed on 17.10.2015 was within a period of one year from the issuance of the directions in Letters Patent Appeal No.63/2009 on 23.03.2015 to comply with the order dated 20.10.2008 in Writ Petition No.476/2008, it is held that the said contempt petition was filed within limitation and is not barred under Section 20 of the Act of 1971.

12. The other ground of challenge to the tenability of contempt petition no.322/2015 was that since the learned Single Judge in earlier Contempt Petition No.26/2009 had not initiated any action for disobedience of the

order passed in Writ Petition No.476/2008 and had in fact dismissed that contempt petition, the subsequent contempt petition making a similar grievance was not tenable. This objection also does not commend acceptance for the simple reason that the learned Single Judge in Contempt Petition No.26/2009 had recorded in clear terms that since the Management had preferred Letters Patent Appeal No.63/2009 for challenging the judgment in Writ Petition No.476/2008, that was the reason for not paying the back wages. The contempt petition was dismissed after specifically referring to the pendency of the letters patent appeal. Thus, the submission made on behalf of the appellant that there was justifiable reason for not paying the back wages on account of pendency of the letters patent appeal was found to be sufficient for not proceeding against the Management including the appellant in the contempt jurisdiction. The order dated 26.02.2010 in that regard is clear and it is only on account of pendency of the letters patent appeal that the learned Single Judge did not go into the question of wilful disobedience of the direction to pay back wages. Having succeeded in persuading the Court not to initiate action against it for non-compliance of the directions issued in Writ Petition No.476/2008 on account of pendency of Letters Patent Appeal No.63/2009, it would not lie in the mouth of the appellant that the respondent is not entitled to make any grievance whatsoever in the context of non-compliance of the directions issued in Letters Patent Appeal No.63/2009. As noted above, by granting time to the Management including the appellant

on 23.03.2015 to pay the amount of back wages, a fresh cause of action was furnished to the respondent and he was entitled to make a grievance on failure to receive back wages despite such directions. On one hand the appellant precluded the Court from going into the aspect of the wilful disobedience of the directions issued in Writ Petition No.476/2008 in the earlier contempt petition on the ground that the letters patent appeal was pending and now the attempt on the part of the appellant is to challenge the tenability of the present proceedings on the ground that such cognizance was not taken earlier. We do not find any legal justification whatsoever in this contention of the appellant. It is thus found that Contempt Petition No.322/2015 was maintainable and was rightly entertained by the learned Single Judge.

13. There is yet another reason to hold that Contempt Petition No. 322/2015 as filed was tenable. The order passed in Writ Petition No.476/2008 was challenged in Letters Patent Appeal No.63/2009. That letters patent appeal was dismissed for non-compliance of the order dated 23.03.2015 and not on merits. In other words, the order passed in the writ petition did not merge with the order passed in the letters patent appeal. Therefore, there were no fresh directions issued in the letters patent appeal except for extending the time to comply with the orders passed in Writ Petition No.476/2008. The order that was to be complied with was the one

passed in Writ Petition No.476/2008. Hence in Contempt Petition No.322/2015 the grievance as regards its non-compliance was rightly raised. It is in that context that the deletion of the prayer clause (a) in Contempt Petition No.322/2015 by the order dated 30.11.2015 has to be viewed. Prayer clause (a) sought to make grievance with regard to non-compliance of the directions issued in Civil Application (Z) No.103/2014 on 23.03.2015 as passed by the Division Bench. With the deletion of that prayer the contempt petition was entertained by the learned Single Judge in the context of non-compliance of the directions issued in Writ Petition No.476/2008. The direction to comply with the order passed in Writ Petition No.476/2008 as passed by the Division Bench continued to operate. For the aforesaid reasons we find that Contempt Petition No.322/2015 was maintainable.

14. Yet another objection raised by the appellant is of the appellant not being granted opportunity to cross-examine the respondent and lead evidence to substantiate his defence that was sought by filing Civil Application No.83/2016. Perusal of the said application seeking permission to cross-examine the respondent indicates that it was the stand of the appellant that one post of teacher was kept vacant in the school and as the salary for that post was not drawn during the relevant period, the respondent was entitled to receive that amount from the Education Department. Another aspect referred to was with regard to appointment of an Administrator from the year 2011 to

2013. The learned Single Judge while considering that application found that the stand of the appellant that neither the Administrator had taken any steps in the matter nor had the respondent submitted the bills to the Education Department to claim the arrears of salary was not the reason to permit the appellant to lead evidence and cross-examine the respondent. It was found that since the directions issued in Writ Petition No.476/2008 were clear and as the liability has been saddled on the appellant as President as well as the Management and the Headmaster of the school, there was no justification on the part of the appellant to seek permission to lead evidence on these aspects.

15. In this regard, the learned counsel for the appellant sought to rely upon the provisions of Chapter XXXIV Rule 22 of the Rules of 1960. Perusal of Rule 22 indicate that a person charged with contempt can file an affidavit in support of his defence on the date fixed for his appearance or on such other date as may be fixed by the Court in that behalf. Under sub-clause(c) of Rule 22, if such person does not plead guilty the Court can determine the matter on charge either on the affidavits filed or after taking such further evidence as it deems fit. It is thus clear that it is open for the Court to proceed with the contempt proceedings on the basis of the affidavits filed by the parties or it can also permit taking such further evidence as it deems fit. As stated earlier in the application filed by the appellant for permission to cross-examine the respondent and for permission to lead evidence, it was stated that for

demonstrating that the contempt petition had been filed malafidely and intentionally to harass the appellant it was necessary to cross-examine the respondent herein and lead evidence of the appellant and his witnesses. The appellant intended to bring on record the correspondence and the in-action of the Education officer as well as that of the Administrator. The learned Single Judge found, considering the nature of defence raised and in the light of the undisputed facts on record the prayer for cross-examining the respondent and for leading evidence had no substance. We do not find that the appellant has been deprived of raising appropriate defences. The directions issued in Writ Petition No.476/2008 are clear by which the appellant along with the Manager and Head Master were directed to pay the amount of back wages to the respondent. The opportunity to make the payment was extended from time to time and with that order attaining finality, there was no justification in raising the defence that as the steps were not taken to send the salary bills to the Education Department the arrears could not be paid. No liability was fixed on the Education Department to make that payment and if at all it was permissible, the Management including the appellant could have paid the back wages and then sought reimbursement of that amount. We therefore do not find that by refusing the request to cross-examine the respondent and lead evidence, any prejudice has been caused to the appellant nor has any prejudice been pointed out.

16. As regards the contention that notice in Form-I as prescribed by the Rules of 1960 was not served on the appellant, even that plea does not deserve acceptance as no prejudice has been caused to the appellant. Notice in Form-I is in the nature of show cause notice as to why action under the Act of 1971 should not be taken against the alleged contemnor. On 04.07.2016 notice under Form-I was directed to be issued to the appellant and other two parties. It was made clear that the charges would be framed on 15.07.2016. The proceedings were adjourned on 15.07.2016 on the request made on behalf of the appellant to 18.07.2016. On 18.07.2016 again at the request made on behalf of the appellant the proceedings were adjourned to 05.08.2016. On that date further time was granted to the appellant to file affidavit by 08.08.2016. The parties were put to notice that the charges would be framed on the next date. On 09.08.2016 after considering the affidavit filed by the appellant the Court proceeded to frame charge against the parties. No grievance was raised at that stage that actual notice in Form-I was not served on the appellant though he was present in Court on the said date. It is thereafter that on hearing the learned counsel for the parties, the proceedings were decided on 12.08.2016. It is clear from the record that pursuant to the order dated 04.07.2016 the appellant in response to the charge filed his affidavit. It is thus clear that full opportunity was granted to the appellant and the charge was framed on 09.08.2016 after considering the response of the appellant dated 18.07.2016. Hence the appellant had full knowledge of the

material against him and was heard before framing of the charge and thereafter also. Hence nothing much would turn on the technical contention of the learned counsel for the appellant that the actual notice under Form-I of Rules of 1960 was not served on the appellant. The appellant had full knowledge of the material on the basis of which the charge was framed. Due opportunity was given to the appellant and after he responded to the same, the proceedings were decided. Hence this contention also does not deserve acceptance.

17. Various objections to the tenability of the contempt petition having been considered and adjudicated, it would be necessary to consider as to whether the breach of the directions issued on 20.10.2008 in Writ Petition No.476/2008 by the appellant is wilful and deliberate. In this regard, it is to be noted that in the aforesaid writ petition, this Court on 20.10.2008 had directed the management including the appellant to reinstate the respondent in service on the post of Headmaster and also pay him salary from 01.01.2004 till his reinstatement. The said directions therefore were required to be complied from the date of the judgment itself as the request for staying the effect of the judgment was not accepted. In Contempt Petition No.26/2009 the order directing reinstatement of the respondent was shown to have been complied in February, 2010. As noted above, in view of pendency of Letters Patent Appeal No.63/2009 the learned Single Judge did not proceed further

to exercise contempt jurisdiction. It is necessary to note that the order directing payment of back wages was not stayed by the Division Bench and in fact the prayer for stay came to be rejected on 12.06.2009. Thus in effect the management including the appellant were obliged to comply with the directions issued on 20.10.2008 throughout. Considering the failure to comply with the directions, the Division Bench in Civil Application (Z) No.103/2014 on 23.03.2015 granted further time of eight weeks to the management including the appellant to deposit the amount of arrears. This time was thereafter extended. Ultimately on 13.07.2015 that Letters Patent Appeal was dismissed for not complying with the directions issued on 23.03.2015. The aforesaid position thus indicates that despite grant of time of eight weeks which was thereafter extended till 13.07.2015, the amount of back wages was not paid to the respondent. The respondent was thus required to file Contempt Petition No. 322/2015 and despite the notice being issued, the appellant failed to comply with those directions. It was open for the appellant to have complied with the directions atleast during the pendency of the said contempt petition before the learned Single Judge. The record indicates that opportunity was granted to the appellant to purge the contempt. Ultimately on 12.08.2016 that contempt petition came to be disposed of by holding the appellant guilty of having committed “civil contempt” as defined by Section 2(b) of the Act of 1971.

It is thus clear that the aforesaid events clearly indicate non-compliance of the directions issued in Writ Petition No.476/2008 on 20.10.2008 by the appellant is wilful and deliberate. No attempt has been made by the appellant to pay the amount of arrears except for raising a plea that for some period an Administrator was appointed from 13.12.2011 to 28.02.2013 and hence the Education Department ought to have paid the amount of back wages. The directions issued in the said writ petition are clear and it is the management including the appellant who were required to pay the amount of arrears of salary. A finding has also been recorded by the learned Single Judge that no steps were taken to pay the respondent the amount of arrears of salary. Similarly, despite opportunity, no attempt was made to purge the said disobedience. Thus in the light of the entire material on record, we have no hesitation in coming to the conclusion that there has been wilful disobedience at the instance of the appellant with regard to the order passed in Writ Petition No.476/2008 dated 20.10.2008. The same thus amounts to civil contempt as defined by Section 2 (b) of the Act of 1971. Despite opportunity and passage of time during the pendency of these proceedings the appellant has not shown any remorse nor has made any attempt to pay the amount of arrears of salary. We are thus satisfied that the learned Single Judge has rightly held the appellant guilty of having committed contempt on account of wilful disobedience of the order passed in Writ Petition No.476/2008.

18. Having found that the appellant has been rightly held guilty of committing civil contempt, we find that the appellant has been sentenced to suffer simple imprisonment for a period of four months and has been directed to pay fine of Rs.Two thousand, in default to undergo simple imprisonment for a further period of 15 days. In the appeal, it has been stated that the appellant is aged about 85 years and suffering from various ailments. In the light of these facts, the present proceedings were adjourned to 30.07.2021 to enable the learned counsel for the appellant to obtain instructions from the appellant as to whether the appellant intended to comply with the directions as issued even now. The appellant has filed additional submissions supported by his affidavit on 05.08.2021 reiterating that the amount of arrears of salary ought to have been recovered from the Education Officer since the institution is receiving grants. Considering the age of the appellant, we had not insisted on his presence in the Court due to the prevalent pandemic situation when hearing of the appeal was undertaken. We thus find that the appellant is not desirous of complying with the directions issued way back on 20.10.2008 even today. However considering the advanced age of the appellant, while maintaining the finding recorded by the learned Single Judge that the appellant was guilty of having committed civil contempt, we are inclined to reduce the punishment imposed on the appellant to one month of simple imprisonment from the period of four months as imposed in the contempt

petition. We also note that there has been no apology tendered by the appellant and the defences as stated above continue to be reiterated.

19. In that view of the matter, the following order is passed :

(i) The finding recorded in Contempt Petition No.322/2015 on 12.08.2016 holding the appellant guilty of having committed civil contempt is maintained.

(ii) The appellant is punished for committing contempt with simple imprisonment for a term of one month along with fine of Rs.Two thousand, in default to undergo simple imprisonment for further period of 10 days.

(iii) The appellant shall pay costs of Rs.Ten thousand to the respondent within a period of four weeks from today.

20. Subject to aforesaid modifications in the order dated 12.08.2016 in Contempt Petition No. 322/2015, Contempt Appeal No.7/2016 stands dismissed.

The judgment shall operate after a period of four weeks from today.

JUDGE

JUDGE