

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.1305 of 2022

In
Civil Writ Jurisdiction Case No.248 of 2020

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In-Re, Suo Motu cognizance taken by the Court Vide Order Dated 18.07.2022 Arsing out of C.W.J.C. No.- 248 of 2020

... .. Petitioner/s

Versus

Lalit Narain Rajak, District Education Officer East Champaran, Motihari.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Shashi Bhushan Kumar Mangalam, Adv.
For the Opposite Party/s	:	Mr. Umesh Kumar Mishra, Adv.
For the State	:	Mr. Kameshwar Kumar, GP 17

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL JUDGMENT

Date : 31-01-2023

1. A Brief facts need to be noticed which culminated into the present proceedings of *suo moto* contempt against the respondent who is a retired District Education Officer of East Champaran, Motihari are as under.

2. A writ petition was preferred by one Kumari Poonam, wherein it was stated that she was appointed as a teacher at Gram Panchayat Raj, Semwapur on 01.10.2007. She obtained training and also passed Teachers Elementary Test. After about two years one Munni Kumari preferred an appeal before the District Teachers Appointment Appellate Authority, East Champaran at Motihari, which was allowed on 04.09.2012 and the petitioner's appointment was set aside with direction to appoint Munni Kumari in her place. The order was challenged before this Court in C.W.J.C. No. 9288/2012 and this Court remanded the matter to the Appellate Authority, whereafter the



District Teachers Appellate Authority decided the case on 09.01.2013 with direction to terminate the employment of Banarsi Kumar Sahani holding that he was wrongly appointed and further to appoint Munni Kumari in the place of the petitioner and Kumari Poonam in the place of Banarsi Kumar Sahani.

Accordingly, the Panchayat Secretary issued orders on 26.08.2013, appointing the petitioner who joined on 15.04.2013. The order of the Appellate Authority dated 09.01.2013 was challenged by Banarsi Kumar Sahani before this Court in C.W.J.C. No. 3530/2013 and also filed a petition before the Block Education Officer alleging the academic certificate of the petitioner being forged. The Block Education Officer on basis of the complaint referred the matter to the District Programme Officer Establishment and District Education Officer of Motihari and the salary of the petitioner was withheld with direction to appear before him with all her testimonials. She produced her certificates which were sent for verification to the Bihar School Examination Board who declared the certificates of the petitioner to be genuine. In the meanwhile, the Employment Unit of Gram Panchayat Raj, Semuapur held a special meeting and decided to terminate service of the petitioner and appoint Banarsi Kumar Sahani on 28.05.2014. The District Education Officer sought explanation from the Mukhiya as to how the petitioner services had been dispensed and Banarsi Kumar Sahani appointed in her place further directed to recover salary from Banarsi Kumar Sahani,



whereafter the District Education Officer issued another order on 11.11.2014 for issuance of payment of salary to the petitioner which would be subject to a decision of the C.W.J.C. No. 3530/2013 preferred the Banarsi Kumar Sahani. The same was withdrawn by Banarsi Kumar Sahani on 07.01.2016 and the petitioner was forced to challenge the decision of the selection committee dated 28.05.2014, whereby the petitioner was removed and Banarsi Kumar Sahani had been appointed before this Court by filing of C.W.J.C. No. 13188/2014 the same was disposed of on 28.03.2016 with liberty to approach the Appellate Authority. Another writ petition bearing C.W.J.C. No. 5996/2015, filed by Banarsi Kumar Sahani challenging the order dated 24.10.2014, by which a show cause notice was issued to the Mukhiya and Panchayat Secretary but the same was withdrawn with a statement that his grievance has been redressed. The petitioner then approached the District Appellate Authority, who vide its judgment dated 06.11.2017, disposed of the appeal of the petitioner recording a finding that the certificates of the petitioner was genuine but did not quash the decision of the selection committee dated 28.05.2014, whereby Banarsi Kumar Sahani had been appointed in place of the petitioner and the services of the petitioner had been terminated. The petitioner again approached this Court with C.W.J.C. No. 977/2018 which was decided on 02.05.2018 with direction to implement the order of the District Appellate Authority dated 06.11.2017 and directed the respondent to implement the decision of



the District Teachers Appellate Authority in letter and spirit with all consequential benefit to the petitioner. The petitioner had filed a contempt petition bearing M.J.C. No. 2980/2018 before this Court, whereafter the respondent released the salary up to July 2019 of the petitioner which was noticed by the High Court and the liberty was granted to the petitioner to approach the appropriate forum if the grievance is still not redressed. As soon as the contempt proceedings were dropped in aforesaid terms, the District Education Officer issued an order on 11.11.2019 stating that as the contempt proceedings have been dropped and it was observed that the unnecessary pressure exercised by the petitioner on the District Education Officer is unjustified with further direction that work ought not be taken from him and with further direction to the Block Education Officer that if work is taken, accountability shall be put on the In-charge Principal. It was further directed that proceedings being taken against the petitioner for unwanted behaviour.

3. Having noticed these facts, this Court vide order dated 18.07.2022 observed that the order dated 11.11.2019 issued under the signatures of the District Education Officer inappropriately mentions that the petitioner has tried to put unjustified pressure on him and directed to stop her salary and further directed Block Education Officer not to take work from her immediately after the Court had dropped the contempt proceedings initiated against him. The Court contempt proceedings were dropped upon his giving assurance that he shall



comply with the Court's order.

4. Thus, finding that he had misled the Court in dropping the contempt proceedings initiated against him for non-compliance of orders passed by this Court wherein directions were issued to implement the District Appellate Authority's Order, *suo moto* contempt proceedings were initiated against him as he had *prima-facie* committed contempt in the face of the Court.

5. The contemnor was put to notice. Reply has been filed by the contemnor alleging that the Teacher Kumari Poonam along with her husband had mis-behaved with him and were pressurizing and the payment order had already been done till July 2019. After July 2019, she regularly pressurized the office for payment of salary for which guidelines were sought from the District Programme Officer. The contempt proceedings were dropped on 16.10.2019 when it was informed that the payment has been made. Thereafter an order was passed dated 11.11.2019 not to take work from her. A legal advice was also obtained from Government Pleader on 04.01.2020.

6. This Court on 09.01.2023 has noticed that the tenor of the reply does not reflect any apologetic behaviour of the contemnor and he does not seem to be having any remorse in passing the orders and therefore the case was adjourned to be heard on the question of punishment. The contemnor thereafter, has filed a second show cause and has prayed for unconditional apology.

7. I have considered the submission. This Court finds that the action



of the respondent is not pardonable. He has shown impertinence and contumacious attitude in not complying with the High Court's orders. Not only this, the contemnor has also proceeded to interpret the Court's order in his own manner so as to allow another person who was wrongly appointed in the place of the petitioner to continue. After the Court took a lenient view and dropped the contempt proceedings on an assurance made that the salary shall be released to the petitioner. He proceeded to pass the order dated 11.11.2019. The contemnor has in reply to the show cause notice, submitted unqualified and unconditional apology and further submitted that he has rendered unblemished service with the State Government and apologizes for any mistake committed by him during discharge of his official duties stating that the order which was issued by him was not intentional.

8. However, this Court is not satisfied with such an apology which is only a mere lip-service. Officers who hold important post in the State Government are expected to be more vigilant towards their duties and are expected to comply with the Court's orders in their true letter and spirit without any favour to any person. Their actions reveal their intentions.

9. In the present case, on account of his action, the petitioner has been harassed and made to run from pillar to post and file petitions one after the other in the High Court. The contemnor therefore, ought not be left free merely because he has retired, as it would set a wrong



example.

10. The Apex Court in the case of **T.R. Dhananjaya Vs. J. Vasudevan** as reported in **1995 (5) SCC 619** has held as under :-

“11. Question is whether it is open to the respondent to take at this stage this volte-face step. It is seen that all through the Government was a party. When the direction was given in IA No. 3 filed by the petitioner, it was not brought to our notice that the petitioner was not eligible for promotion, in contradistinction with Dasegowda, or any other. When the claim inter se had been adjudicated and the claim of the petitioner had become final and that of Dasegowda was negatived, it is no longer open to the Government to go behind the orders and truncate the effect of the orders passed by this Court by hovering over the rules to get round the result, to legitimise legal alibi to circumvent the orders passed by this Court. Thus it is clear that the officers concerned have deliberately made concerted effort to disobey the orders passed by this Court to deny the benefits to the petitioner. So, we are left with no option but to hold that the respondent has deliberately and wilfully, with an intention to defeat the orders of this Court, passed the impugned order.

12. Shri Hegde submits that the respondent-contemner was bona fide under the impression that he had to consider the inter se seniority of all the persons; he had no intention to deliberately disobey the orders of this Court and that, therefore, sentence of imprisonment may not be awarded as punishment. He also argued that the contemner is at the fag end of his career, and so, sentence of imprisonment may not be imposed.

13. Having considered these contentions and given our due consideration, we think that there is no justification to accede to the contentions raised by the learned counsel to



take a lenient view. The reasons are obvious. As stated earlier, pursuant to the orders passed by this Court the Government had passed an order directing the Corporation to implement the order. When the Corporation had passed a resolution creating a supernumerary post and to fill that post by accommodating Dhananjaya with consequential benefits, the Government was only to give effect to the order as passed by this Court on 26-7-1993. But instead of giving effect to the resolution, the Government volte-face exercised the power to see that the order is not given effect to. If the respondent had really harboured under any doubt, he would have asked for clarification. Instead, the Court was prayed for extension of time on 10-5-1995 for compliance which accordingly was given.

14. Question is whether there is any extenuating circumstance to show leniency in imposing the sentence. Considering the question in this backdrop, we are of the opinion that there is no extenuating circumstance at all, as after promoting Venkatesh, nothing at all could have reasonably stood in the way of the petitioner to get appointed to the supernumerary post of Additional Chief Engineer created by the Corporation. It is only the defiant attitude of the Government which derived him that post.

15. Accordingly, while finding the respondent guilty of committing contempt, we sentence him to undergo simple imprisonment for one month. In addition, the Government is directed to give effect to the resolution passed by the Corporation with all the consequential benefits as ordered earlier. The contempt petition is ordered accordingly.”

The Apex Court in the case of **Ram Kishan Vs. Tarun Bajaj & Ors.**

as reported in **2014 (16) SCC 204** has held as under :-

“11. The contempt jurisdiction conferred on to the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the



majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi-criminal in nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities. (Vide V.G. Nigam v. Kedar Nath Gupta [V.G. Nigam v. Kedar Nath Gupta, (1992) 4 SCC 697 : 1993 SCC (L&S) 202 : (1993) 23 ATC 400] , Chhotu Ram v. Urvashi Gulati [Chhotu Ram v. Urvashi Gulati, (2001) 7 SCC 530 : 2001 SCC (L&S) 1196] , Anil Ratan Sarkar v. Hirak Ghosh [Anil Ratan Sarkar v. Hirak Ghosh, (2002) 4 SCC 21] , Bank of Baroda v. Sadruddin Hasan Daya [Bank of Baroda v. Sadruddin Hasan Daya, (2004) 1 SCC 360] , Sahdeo v. State of U.P. [Sahdeo v. State of U.P., (2010) 3 SCC 705 : (2010) 2 SCC (Cri) 451] and National Fertilizers Ltd. v. Tuncay Alankus [National Fertilizers Ltd. v. Tuncay Alankus, (2013) 9 SCC 600 : (2013) 4 SCC (Civ) 481 : (2014) 1 SCC (Cri) 172] .)

12. *Thus, in order to punish a contemnor, it has to be established that disobedience of the order is “wilful”. The word “wilful” introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. “Wilful” means knowingly intentional, conscious, calculated and deliberate with full knowledge of*



consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a “bad purpose or without justifiable excuse or stubbornly, obstinately or perversely”. Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. “Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct.” (Vide S. Sundaram Pillai v. V.R. Pattabiraman [S. Sundaram Pillai v. V.R. Pattabiraman, (1985) 1 SCC 591] , Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararao [Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararao, (1989) 4 SCC 255 : AIR 1989 SC 2185] , Niaz Mohammad v. State of Haryana [Niaz Mohammad v. State of Haryana, (1994) 6 SCC 332 : AIR 1995 SC 308] , Chordia Automobiles v. S. Moosa [Chordia Automobiles v. S. Moosa, (2000) 3 SCC 282] , Ashok Paper Kamgar Union v. Dharam Godha [Ashok Paper Kamgar Union v. Dharam Godha, (2003) 11 SCC 1] , State of Orissa v. Mohd. Illiyas [State of Orissa v. Mohd. Illiyas, (2006) 1 SCC 275 : 2006 SCC (L&S) 122 : AIR 2006 SC 258] and Uniworth Textiles Ltd. v. CCE [Uniworth Textiles Ltd. v. CCE, (2013) 9 SCC 753] .)”

11. In view of above, as this Court has already held the contemnor



guilty of contempt of Court for which he deserves to be punished in terms of the **Section 12(3) of the Contempt of the Court’s Act, 1971**. Taking into consideration, the disrespect shown by the contemnor to the orders passed by this Court from time to time as noticed above, he does not deserve any sympathy but considering that he has retired which is an extenuating circumstance and punishment should not be severe; therefore, in the interest of purity of administration of justice, the respondent is punished with imprisonment of two days of Civil Jail with fine of sum of Rs. 50,000 (Fifty Thousand) to be paid to the petitioner. The contemnor is directed to be arrested and sent to Central Jail, Beur Patna.

(Sanjeev Prakash Sharma, J)

sachin/-

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Later on After pronouncing of the judgment, the counsel for the contemnor raised for suspending the sentence as there is a right of appeal existing in the **Section 19** in the **Contempt of the Court’s Act 1971**, which provides for suspension of sentence passed by the Court. This Court deems it appropriate to suspend the sentence for one week for allowing the contemnor to file an appeal subject to submitting surety of the sum of Rs. 20,000 to the satisfaction of the Registrar General, Patna High Court.

(Sanjeev Prakash Sharma, J)

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