

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Aniruddha Roy

WPCRC 216 of 2016

in

WPA 33136 of 2013

Saranan Saha

Vs.

Mr. Sridhar Pramanik,

The District Inspector of School (S.E.) Purba Bardhman

For the Petitioner:

**Mr. Sudip Deb, Adv.,
Ms. Ipsita Ghosh, Adv.**

For the Alleged Contemnor:

Ms. Chaitali Bhattacharya, Adv.

Reserved on:

14.07.2023

Judgment on:

25.07.2023

ANIRUDDHA ROY, J.:

1. This contempt proceeding arose from an **order dated November 27, 2013** passed by a Coordinate Bench in a Writ Petition being **W.P. No. 33136 (W) of 2013**. Rule was issued by the coordinate bench on June 14, 2016. The contempt proceeding had been taken up for final disposal.

Facts:-

2. The facts relevant to adjudicate upon this proceeding were not much.

3. The order dated November 27, 2013 **Annexure P-1 at page 21 to the writ petition** was passed by a coordinate bench disposing of the writ petition with the following observation and direction:-

*“It appears that the case of the writ petitioner should be considered and decided by the concerned D.I **taking note of the fact that the writ petitioner has been working in the said school since 2001. Accordingly the concerned D.I. is directed to decide the case of the petitioner upon giving an opportunity of hearing to the writ petitioner and/or his authorized representative and allowing him to produce relevant circular, documents, judgment in support of his case,** within six weeks from date of communication of this order and pass a reasoned order and the same be communicated within two weeks from date of passing such order. Till such decision is taken status quo should be maintained as regards service of the writ petitioner.*

The writ petition is allowed”.

4. Pursuant to and in terms of the said direction of the coordinate bench, the District Inspector of Schools (SE), the alleged contemnor had disposed of the case of the writ petitioner by its reasoned **order dated May 27, 2014, Annexure ‘B’ at page 27** to the writ petition, with the following observation:-

“The petitioner Saranan Saha, Sudip Mondal the Secretary of the school and Tanmoy Kumar Pandit, Teacher-in-Charge of the school are preset in time of hearing.

The petitioner states that he has been working as an organizer group ‘D’ staff of the school with effect from 24/07/2001. He claimed employment on permanent basis in the post of group ‘D’ staff.

Observation

- 1. The school was recognized as four class Junior High School with effect from 1984 and upgraded as X Class High School with effect from 01/03/2010. As per rules there are two posts for group ‘D’ in a recognized Secondary School. One post has already been filled up by Tapan Baidya on 12/12/2012*

through School Service Commission as per school authorities pray vide P.P No.89, dated 13/12/2010.

2. *There is no group 'D' vacant post in the school as per staff pattern. The then Secretary of the school issued appointment letter to the petitioner without maintaining recruitment rules. the school authority cannot appoint any candidate without observing and violating Govt. rules.*
3. *The petitioner has been serving with effect from 24/07/2001 against an unsanctioned post.*

In this circumstances the petitioner's claim for appointment in the post of group 'D' staff in the school cannot be considered.

Thus the matter is disposed of.

All concerned are being informed accordingly".

5. The petitioner contended that the alleged contemnor while deciding the case of the petitioner in **wilful disobedience** of the said order dated November 27, 2013 had passed the reasoned order dated May 27, 2014 by not complying the directions of the coordinate bench in the manner and mode the alleged contemnor was directed to decide the case of the petitioner. Hence the petitioner filed the contempt proceeding.

Submissions:-

6. Ms. Ipsita Ghosh, learned advocate led by Mr. Sudip Deb learned counsel appearing for the petitioner placed the order of the coordinate bench dated November 27, 2013 and submitted that while disposing of the writ petition the coordinate bench directed the alleged contemnor to decide the case of the petitioner with the following directions:

- (i.) **To take note of the fact that the petitioner had been working in the said school since 2001 and;**
- (ii.) **To allow the petitioner to produce relevant circular, documents and judgment in support of his case and then to pass a reasoned order.**

7. Ms. Ipsita Ghosh learned advocate for the petitioner then placed the reasoned order dated May 27, 2014 passed by the alleged contemnor and submitted the said reasoned order on the face of it, would ex facie demonstrate that the alleged contemnor while deciding the case of the petitioner did not consider that the petitioner had been working in the said school since 2001 and also the relevant circular, documents and judgment in support of his case which were produced and relied upon by the petitioner before the alleged contemnor. She further submitted that, the a plain reading of the reasoned order passed by the alleged contemnor would show that the directions made by the coordinate bench as mentioned above were not acted upon and thus, the alleged contemnor is guilty of civil contempt.
8. Referring to **Sub-Section (b) to Section 2 of the Contempt of Courts Act, 1971** (for short, the **said Act**) learned counsel for the petitioner submitted that **Civil Contempt** means **Wilful Disobedience** to any judgment, decree, direction or order of a Court. She submitted that, on a plain reading of the said order dated May 27, 2014 passed by the alleged contemnor, it appeared that knowingly and wilfully the alleged contemnor did not comply with the direction of the coordinate bench in willful disobedience by not considering that the

petitioner had joined the school in 2001 as also by not considering the relevant circular, document and judgment produced by the petitioner in support of his case.

9. Mr. Sudip Deb learned counsel for the petitioner, with the leave of Court submitted that, the contempt jurisdiction is a powerful weapon in the hands of the Court of law to protect the majesty of the Court to ensure that the order and direction of the Court is carried out in its strict sense and for such purpose the order of the Court should be read in its entirety and not in piecemeal. In support, the learned counsel had relied upon the following decisions of the Hon'ble Supreme Court:

(i) In the matter of: Ram Kishan vs. Tarun Bajaj and Ors, reported at (2014) 16 SCC 204 and;

(ii) In the matter of: Sushila Raje Holkar vs. Anil Kak (Retired), reported at (2008) 14 SCC 392.

10. She then submitted that, mere disobedience by a party to civil action of a specific order made by the Court is civil contempt for the reason that it is for the sole benefit of the other party to the civil suit. In the event, the order of Court is not complied, the administration of justice would be undermined, if order of a competent court of law is permitted to be disregarded. In support she relied upon a decision of the Hon'ble Supreme Court ***In the matter of: Kanwar Singh Saini vs. High Court of Delhi, reported at (2012) 4 SCC 307.***

11. In view of the above, the learned counsel for the petitioner submitted that, it is a clear case of civil contempt and the alleged contemnor shall be proceeded accordingly for contempt of this Court.
12. Ms. Chaitali Bhattacharya, learned counsel appearing for the alleged contemnor placed the said order dated May 27, 2014 passed by the alleged contemnor and submitted that there was a specific recording and finding of the fact that the petitioner had been serving w.e.f. July 24, 2001 against an unsanctioned post. She submitted that it was, thus, incorrect to allege that the alleged contemnor while passing the said order acted in wilful disobedience of the order passed by the coordinate bench.
13. Learned counsel for the alleged contemnor then submitted that, on a plain reading of the said order passed by the alleged contemnor, it would be evident that, the materials placed before him by the petitioner were duly considered and on the basis thereof, he arrived at his finding. She further submitted that, the relevant post was filled up in 2012, prior to the writ petition being filed, through regular process of recruitment. Whereas, the petitioner was appointed against an unsanctioned post.
14. Learned counsel for the alleged contemnor further submitted that, in strict compliance of the directions made by the coordinate bench, the alleged contemnor had considered the case of the petitioner and after considering all the relevant materials, passed the said order dated May 27, 2014. There was no wilful disobedience of the order of the coordinate bench on the part of the alleged contemnor. Hence, no contempt lies against the alleged contemnor.

15. Ms. Chaitali Bhattacharya then placed the judgments relied upon on behalf of the petitioner and submitted that those judgments were of no assistance to the petitioner and on the contrary they supported the case of the alleged contemnors.
16. She submitted that the said contempt proceeding is totally devoid of any merit and should be dropped.

Decision:-

17. After considering the rival contentions of the parties and upon perusing the materials on record , this Court at the outset thought it fit to discuss a little as to the scope of a contempt proceeding and the jurisdiction of the Court.
18. Contempt proceeding is a **quasi criminal** proceeding. A court while exercising its contempt jurisdiction must be extremely **cautious and judicious**, since the consequence and result for holding contempt against the contemnor would be **imprisonment** of the contemnor. Therefore, the **standard of proof** required in a contempt proceeding shall be **beyond all reasonable doubt**. To adjudication upon whether an order of Court is disregarded or flouted in **wilful disobedience**, the conduct of the alleged contemnor including his/her intension and mental process would be of extreme importance.
19. The definition of civil contempt is quoted below:

“2.Definitions.-

.....

 (a)

(b) "civil contempt" means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of any undertaking given to a court;"

20. From the above definition of **Civil Contempt**, the first thing that needs to be ascertained by a Court is whether there was any wilful disobedience to any order of the Court. The law of contempt has to be strictly interpreted and the requirement of that law must be strictly complied with before any person can be committed for contempt, considering the punishment to be imposed for contempt.
21. From a plain reading of the order dated May 27, 2014 **Annexure P-2 at page 27** to the contempt application passed by the alleged contemnor it would be evident that while deciding the case of the petitioner, the alleged contemnor had taken into account that the petitioner had been serving the school **w.e.f. July 24, 2001, so the direction of the coordinate bench upon the alleged contemnor to take into account that the petitioner had been working in the said school since 2001 was complied with.** The order passed by the alleged contemnor did not specify as to whether the petitioner had produced relevant circular, document and judgment in support of his case before the alleged contemnor for his consideration, while he was deciding the case of the petitioner. There is no scope for any trial in a contempt proceeding. The jurisdiction of Court while adjudicating upon a contempt proceeding is extremely narrow and limited. The court will only look into the direction/order passed by the Court where from the contempt was alleged and the act and

conduct of the alleged contemnor in the light of such direction/order passed by the Court and not beyond. From the record, even if, it appeared that the petitioner had produced the relevant rules, regulations and judgment before the alleged contemnor while deciding the case of the petitioner then also it would be deemed that they were considered and the reasoned order was passed by the alleged contemnor. For not mentioning those relevant rules, regulations and judgment would at best amount to a negligent and careless act or omission on the part of the alleged contemnor. In the adjudication process, if any **doubt** arose in the mind of the Court with regard to wilful disobedience of the direction/order of the Court, the benefit of doubt shall always be weighed in favour of the alleged contemnor.

22. ***In the matter of Ram Kishan (supra)*** the Hon'ble Supreme Court had held as under:

“11. The contempt jurisdiction conferred on to the law courts power to punish an offender for his willful 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 judicatory is undetermined. 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 rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities.

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, bonafide 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”.

23. ***In the matter of: Sushila Raje Holkar (supra)*** the Hon’ble Supreme Court had observed as under:

“23. A proceeding under the Contempt of Courts Act has a serious consequences. Whether the alleged contemnor had willfully committed breach of the order passed by a competent court of law or not having regard to the civil/evil consequences ensuing therefor requires strict scrutiny. For the said purpose, it may be permissible to read the order of the court in its entirety. The effect and purport of the order should be taken into consideration. Whereas the court shall always zealously enforce its order but a mere technicality should not be a ground to punish the contemnor. A proceeding for contempt should be initiated with utmost reservation. It should be exercised with due care and caution. The power of the court in imposing punishment for contempt of the court is not an uncontrolled or unlimited power. It is a controlled power and restrictive in nature. A contemnor, thus, may be punished only when a clear case for contumacious conduct has been made out”.

24. ***In the matter of: Kanwar Singh Saini (supra)*** there was a wilful breach of undertaking given to a Court within the meaning of the second **Limb** of the definition of Sub-Section (b) to Section 2 of the said Act. However, such is not the case in the facts of the instant contempt proceeding. In the instant

contempt proceeding there was no charge made by the petitioner with regard to breach of any undertaking by the alleged contemnor. Hence, the ratio laid down ***In the matter of: Kanwar Singh Saini (supra)*** would be of no assistance to the petitioner.

25. To punish a contemnor as provided under the said Act, the ***disobedience*** alleged against such contemnor must be established to be ***wilful*** beyond all reasonable doubt. The expression ***wilful*** as mentioned in Sub-Section (b) to Section 2 of the Act introduces a mental element and hence, the mental process and mind of the alleged contemnor must be considered at the threshold. The expression means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences thrown there from. The expression excludes casual, accidental, bona fide or unintentional Act or genuine inability. The expression would not include any involuntary or negligent act. A ***wilful*** Act on the part of the alleged contemnor should be differentiated from an act done carelessly, heedlessly, inadvertently and the same would not include any act on the part of the alleged contemnor done negligently or involuntarily.
26. In the light of the above discussions, this Court had assessed the order dated May 27, 2014 passed by the alleged contemnor and this Court was of the firm view that, there was ***no wilful disobedience*** on the part of the alleged contemnor. He might have, at the highest, acted carelessly and negligently and passed the reasoned order. It is equally true, as discussed above, that on the face of it the order passed by the alleged contemnor did not specify as to

whether the petitioner had produced the relevant circular, document and judgment in support of his case. Scrutiny of the correctness, veracity or accuracy of the said order passed by the alleged contemnor is not within the domain of the contempt jurisdiction of this Court.

27. In view of the foregoing discussions and reasons and on the overall assessment of the conduct of the alleged contemnor, this Court in its considered view found that, there was no contempt committed by the alleged contemnor. No contempt proceeding can be initiated against the alleged contemnor.
28. It is, however, made clear that this Court has not gone into the assessment of the correctness and the merit of the said order dated May 27, 2014 passed by the alleged contemnor.
29. Resultantly, this contempt proceeding, **WPCRC 216 of 2016** stands **dropped**.
30. The application stands **dismissed**, without any order as to costs.
31. **RULE** issued stands discharged.

(Aniruddha Roy, J.)