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

Judgment reserved on: 22.09.2023

Judgment pronounced on: 19.12.2023

+ **CONT.CAS(C) 1043/2022, CM APPL. 26408/2023**

DR BRAHMA DEO

..... Petitioner

Through: Petitioner-in-person

versus

MR VIJAY SAMPLA AND OTHERS

..... Respondents

Through: Mr. TP Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

JASMEET SINGH (J)

1. The present petition has been filed for initiation of contempt proceedings for wilful and deliberate disobedience of the order dated 06.09.2022 of this court passed in CM(M) 912/2022, wherein it was directed as under:

“ 3. As such, this Court can do no more, in the present matter, than to request the learned NCSC to examine the grievances of the petitioner and, in case any recommendations have been issued by them, which are not being complied with, and the compliance of which can be ensured under the applicable rules of procedure and office memoranda, to take all efforts in that direction.

4. This Court is not expressing any opinion on whether the learned NCSC is empowered to enforce the



recommendations made by it, as Dr. Brahma Deo has not been able to elucidate clearly any extant rules, regulations or office memoranda which empowers the learned NCSC in that regard. Nonetheless, as Dr. Brahma Deo appears in person, the Court, as already noted, requests the learned NCSC to examine his grievance, and take action thereon as permissible under rules, regulations or office memoranda, which may be applicable in his case.

5. For the said purpose, the learned NCSC is requested to grant an audience to Dr. Brahma Deo on 16th September 2022, so that he is able to properly apprise the learned NCSC of his grievances which, this Court is sanguine, the learned NCSC would examine and address in accordance with law.”

2. The respondents, i.e. Chairman, Vice Chairman, Members and Secretary of the National Commission for Scheduled Castes (‘NCSC’), were directed to grant a hearing to the petitioner on 16.09.2022 to address his grievances. The petitioner submits that though the hearing was given, the petitioner was not allowed to put his grievances entirely and effectively. In addition, it is also alleged that the NCSC is not taking action in accordance with the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995.
3. Hence, the present petition.
4. The brief facts, as alleged by the petitioner, are that the petitioner is of the rank of the Additional Director in the Medical and Health Services, UP presently posted at Kannauj, UP. During his tenure, he submits that he had gone through severe harassment at the hands of the Principal



Secretary, Medical and Health, UP ('P.S.M&H') for petitioner's refusal to prepare fake gunshot injury reports for fake encounters by U.P. police dated 15.05.2005 and 31.12.2008.

5. The petitioner submits that the incidents directly involves P.S.M&H, UP, Mr. NC Prajapati and Deoki Nandan, both Ex Principal S.N. Medical College., Agra ('S.N.M.C.') who illegally relieved him from his post of Casualty Medical Officer, S.N.M.C., Agra on account of the abovesaid refusal in terms of incident dated 15.05.2005 and the petitioner was attached to the office of Additional Director, Medical and Health, Agra *vide* office order dated 30.06.2005. However on arrival, the Additional Director, Medical and Health, Agra refused to allow the petitioner to join the office as per office order dated 30.06.2005. The petitioner was also not permitted to re-join his previous office, i.e. the Casualty Medical Officer, S.N.M.C Agra.
6. The petitioner submits that he raised his grievance before the Principal Secretary Medical and Health, UP and DG Medical and Health and Medical Education, UP regarding the same however to no avail.
7. In these circumstances, the petitioner approached the High Court of Judicature, Allahabad, whereafter the petitioner was restored as the Casualty Medical Officer, SNMC Agra and office order of 30.06.2005 was quashed.
8. The petitioner submits that even though the office order was quashed, he was still not permitted to continue the services and no salary was paid during this period. In such circumstances, the petitioner made series of complaints to the P.S.M&H, DG. Medical Education and Medical Health, which remained unheard/undecided and on the



contrary, the petitioner was transferred from SNMC Agra to C.M.O, Manipuri on 27.04.2006.

9. The Petitioner approached the State SC/ST Commission on whose order dated 23.05.2007, the transfer order dated 27.04.2006 was cancelled on 12.09.2007 and the petitioner re-joined duty as Casualty Medical Officer, SNMC, Agra. Thus, it is submitted that the petitioner was not allowed to perform his duty and was deprived of his salary since 01.07.2005 to 12.09.2007.
10. The petitioner submits that on 31.12.2008, Mr. NC Prajapati pressurised the petitioner to prepare a fake gunshot injury report for a fake encounter despite no injury of any type suffered by the police officials. Since the petitioner refused to do so, it is alleged that there was harassment of the petitioner by Mr. NC Prajapati. Hence, the petitioner made a complaint dated 07.05.2009 before the respondent/NCSC.
11. The petitioner submits that on 12.11.2012, Dr. Rekha Verma, VC, NCSC recommended lodging of FIR under rule 12(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995. However, the same was closed on 21.06.2016.
12. The petitioner further submits that the salary of the petitioner was to be released on account of order dated 02.05.2008 by P.S.M&H.
13. The petitioner has further submitted that the real seniority number of the petitioner was downgraded to 8098 from 7495(A) which resulted in the promotion of the petitioner in level 3 being done in December 2008 instead of June 2003; and promotion in the level 4 being done on 11.02.2009 instead of 11.02.2008.



14. The petitioner has also raised his grievance with regard to (i) adverse entry given on 19.08.2016 to the petitioner, (ii) declared unfit for promotion on 19.08.2016, (iii) transfer of the petitioner was also recommended on 22.08.2016. (iv) Charge of AD Agra was snatched illegally, (v) Transfer of the petitioner from Agra to Kannauj on 16.8.2017, (vi.) Issue of show cause notice under rule 10(2) of the UP Government Servant (Discipline & Appeal) 1999, (vii). Petitioner illegally restrained from performing his duty since September 2017 till date, in order to deprive him from his salary for last 66 months i.e. 5½ years.
15. What appears from the above facts is that the petitioner has three major grievances: a. Non-initiation of action against allegations raised by the petitioner; b. Non-payment of salary; c. Non-promotion of the petitioner.
16. The respondents in the short affidavit dated 24.12.2022 stated that as per the order dated 06.09.2022, the Commission was to grant an audience to the petitioner on 16.09.2022 and the same was done. It is after duly hearing the petitioner and taking into account his representation dated 10.09.2022, the matter/case has been closed on account of it being devoid of merit. Therefore contempt action, as alleged, is not maintainable.
17. This court on 06.01.2023 observed that the Commission has not complied with the order dated 06.09.2022 since it has failed to pass a reasoned speaking order while deciding the case of the petitioner. In this view, the respondents were directed to pass a speaking order on the issues raised by the petitioner.



18. The respondent in compliance have placed on record Minutes of Meeting (Revised) dated 16.02.2023, the operative portion reads as under:-

“Brief fact of the case is that the petitioner submitted a representation and stated that due to wrong fixation of seniority he was not promoted in the next grade whereas his juniors were promoted in 2003. The department has revised his seniority in 17.02.2008 therefore he lost 5.5 years and he was promoted in 2008 in level 3 and his juniors were promoted to level 4 in 2008. The matter was taken up with principal Secretary, Medical and Health, Lucknow, UP. The Principal Secretary has sent a reply and stated that a review DPC was held on 20.11.2012 and Dr. Brahm Dev was promoted at level 3 from 15.04.2005 from the date his junior was promoted and further he was promoted notionally from level 3 to level 4 on 11.02.2008.

The Commission vide minutes of hearing dated 21.06.2016 made the following observation

"The case was taken up Principal Secretary, Medical and Health is present. Petitioners is not present. The Petitioner has been posted as JB Agra and promotion have been issued. The main grievance has been redressed. However he wants action should be taken against the then Principal one of the Principal (Dr. Davki Nandan) is dead. Allegation against Dr. NC Prajapati has not been found correct.

The Petitioner was aggrieved by the order of the Commission dated 21.06.2016. The Petitioner was again heard on 29.10.2018 and The Commission in the presence of Petitioner and Addl. Chief Medical Officer,



G.B Nagar, UP made the following observations and recommendations.

"The Commission advised the Department to consider and examine all the points raised by the petitioner in his various representations before the Commission and resolve the grievance of the petitioner as per rules. The Commission observed that the recommendations made by the state Commission, Uttar Pradesh Scheduled Caste and Scheduled Tribes Commission. Indira Bhawan, Ashok Marg, Lucknow be implemented by the competent authority, the salary of the Petitioner be released and other grievances also be settled redressed as per rules. The action taken report in this regard be submitted within one month.

Thus, the Commission has made the necessary recommendations in the complaint filed by the petitioner. It is pertinent to mention that as per para 3 (hearing methodology) of the minutes of meeting of NCSC's Directors held on 11.02.2016 it was decided that

"Once the recommendations of the Commission are issued, NCSC role ends and the Action Taken Report need not be called for the forwarding letter sending the recommendation should be modified and for prompt/time bound action' substituted for "ATR may be submitted in the letters"

The Commission has examined the grievance of the petitioner and action permissible under rules, regulations or office memorandum has been taken. The Commission finds no substance and merit in the plea of the petitioners.

Accordingly the matter stands closed. ” ”



19. What is evident from the above minutes is that all the three grievances raised by the petitioner have been decided by the respondent commission. The petitioner's seniority has been revised, the payment of salary due has been directed to be released and the grievance of the petitioner against the P.S.M&H has been examined. In these circumstances, I am of the view that there is no intentional and malafide disobedience, as alleged.
20. The respondents have granted a hearing to the petitioner on the day as directed and a speaking order has been passed in this regard. This court in contempt jurisdiction cannot determine the legality or the illegality of the action taken by the respondent.
21. In contempt jurisdiction, the courts are confined to the four corners of the order of which contempt is alleged and cannot travel beyond the order. Reliance is placed upon the dicta of the Hon'ble Supreme Court in *Jharieswar Prasad Paul and Anr. v. Tarak Nath Ganguly and Ors.*, (2002) 5 SCC 352 the operative portion of which reads as under:-

“11. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law, since the respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined. The Contempt of Courts Act, 1971 has been introduced under the statute for the purpose of securing the feeling of confidence of the people in general for true and proper administration of justice in the country. The power to punish for contempt of court is a special power vested under the Constitution



in the courts of record and also under the statute. The power is special and needs to be exercised with care and caution. It should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct. It is to be kept in mind that the court exercising the jurisdiction to punish for contempt does not function as an original or appellate court for determination of the disputes between the parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition, be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which is alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order. If this limitation is borne in mind then criticisms which are



sometimes levelled against the courts exercising contempt of court jurisdiction “that it has exceeded its powers in granting substantive relief and issuing a direction regarding the same without proper adjudication of the dispute” in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the judgment or order passed in the contempt proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended to maintain the majesty and image of courts.”

22. For the above reasons, I find no merit in the contempt petition and the same is dismissed. If the petitioner is aggrieved by the action/decision taken by way of Minute of Meeting (Revised) dated 16.02.2023, he is at liberty to raise challenge the same in accordance with law.

JASMEET SINGH, J

DECEMBER 19th, 2023/DM