

**IN THE HIGH COURT AT CALCUTTA
SPECIAL CIVIL JURISDICTION
APPELLATE SIDE
(Contempt of Court)**

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE MADHURESH PRASAD**

**CPAN 394 of 2022
CAN 1 of 2023**

**Subhra Roy
Vs.
T. Armstrong Changsan & Anr.**

Appearance:

For the Applicant : **Mr. Kallol Basu, Adv.
Mr. Suman Banerjee, Adv.**

For the Alleged Contemnors : **Mr. Kumarjyoti Tiwari, Adv.
Ms. Sayani Roy Chowdhury, Adv.**

Judgment on : **19.07.2024**

Harish Tandon , J.

The contempt application is taken out by the petitioner alleging the violation of the orders/direction passed by the Division Bench on 2nd February, 2022 in WPCT 1 of 2022. The contempt application was admitted on the first motion as the direction was passed upon the petitioner to serve the copy of the contempt application upon the alleged contemnors. After the

service was affected, the alleged contemnors appeared and an opportunity was given to file the affidavit in response to the allegation made in the contempt application. The alleged contemnor was to file an affidavit-in-opposition disclosing the stand in relation to an allegation contained in the contempt application and further response by the petitioner in the form of an affidavit is also filed.

The dispute originated on the order dated 4th November, 2020 issued by the Under Secretary (PSP-IV) & Cadre, Government of India, Ministry of External Affairs (PSP Division) reverting the petitioner to the post of a Junior Passport Assistant (Erstwhile LDC) under the provisions of fundamental Rule 31A. The petitioner challenged the said order before the Central Administrative Tribunal in OA 1153 of 2020. It is a specific stand of the petitioner before the Tribunal as well as this Court that she was appointed in the post of a Lower Division Clerk on compassionate ground w.e.f., 3rd January, 2002. The petitioner sat in the typing examination on 27.07.2007 but was found unsuccessful. Subsequently, the services of the petitioner was confirmed w.e.f., 3rd July, 2008 and thereafter, was considered for promotion to the post of Upper Division Clerk which is re-designated as Senior Passport Assistant. Despite having not passed the typing test, the petitioner was permitted to participate in the departmental examination for the promotional post of Assistant Superintendent (Group-B) and she was ranked 8th in All India Basis. The petitioner was thereafter promoted as the Assistant Superintendent (Group-B) w.e.f., 12th October, 2015. As indicated above, by an order dated 04.11.2020 the petitioner was reverted to the post

of a Junior Passport Assistant which was challenged by the petitioner before the Tribunal. The Tribunal application was finally disposed on 26.11.2021 quashing and setting aside the said order dated 04.11.2020 as the authority did not afford an opportunity of hearing to the petitioner and there is a flagrant violation of the principle of natural justice. The Tribunal ultimately passed the following directions:-

“7. In such backdrop, we set aside the orders dated 04.11.2020 and 11.11.2020 (Annexure A-9 and A-10 respectively) and direct the competent respondent authority to –

- (i) Issue a show cause notice to the applicant within 2 weeks of the date of receipt of a copy of this order. The applicant is directed to respond to such notice within a period of 15 days from the date of receipt of such notice, and, her reply will be decided upon within the next fortnight by the authorities, and, if necessary, by according a personal hearing.***
- (ii) In the event the applicant’s claim brought forward in her reply is not substantiated, the competent authority shall call the applicant for a Typewriting test within 4 weeks thereafter which the applicant is directed to attend.***
- (iii) After assessing the applicant’s performance in the Typewriting test, and, having noted the provisions of the rules/instructions as relevant for this purpose, the said authority would issue their orders in accordance with law.***
- (iv) In the event the applicant does not respond to the show cause notice within the specified time period or fails to appear at the Typewriting test, the respondent s would be at liberty to proceed in accordance with law and no further opportunities would be given to the applicant.***

- (v) Consequent to issue of the final orders by the respondent authorities, the period during which their orders dated 04.11.2020 and 11.11.2020 are being set aside, should be regularized in accordance with law.”***

The reading of the said direction passed by the Tribunal indicates that the liberty was granted to the respondent authorities to issue a show cause notice within a specified time which shall be responded to by the petitioner within fortnight therefrom and thereafter the authorities will decide the same after affording a personal hearing to the petitioner. The Tribunal further directed the authorities to permit the petitioner to appear in the typewriting test and upon assessing the performance therein, an order shall be issued by the authorities in accordance with law.

The petitioner challenged the said order of the Tribunal before this Court in WPCT 1 of 2022 feeling aggrieved by the aforesaid orders or directions passed therein in relation to an issuance of the show cause notice and participation in the typewriting test. The writ petition was finally disposed of on 2nd February, 2022 with categorical finding that upon quashing and setting aside the order dated 04.11.2020 whereby and whereunder, the petitioner was reverted to the post of Junior Passport Assistant, the logical inference drawn therefrom is that the petitioner should be treated to be placed in a post which she held at the time of passing the said order meaning thereby Assistant Superintendent (Group-B) till the time the proceeding to be initiated upon issuance of the show cause is not finally decided. Further direction was passed upon the authorities to pay the salary attached to the post which she held before the order relegating her to the

original post was passed and the differential amount shall be paid within three weeks from date. It was categorically observed by the Division Bench that no interference is made to an ultimate decision of the Tribunal which leaves no ambiguity that the authorities were mandated to issue a show cause and on a response given by the petitioner shall take a final decision as permissible in law.

The contempt application was filed on an allegation that despite the directions/order passed by this Court for payment of the salary attached to the post held by the petitioner at the time of the order of reversion dated 04.11.2020, the same was not paid. However, at the time of an argument a little shift is made from the pleadings made in the contempt application to the extent that all subsequent correspondences issued to the petitioner in the capacity of the Junior Passport Assistant is in flagrant violation of an order dated 02.02.2022 wherein the Division Bench of this Court categorically observed that the petitioner shall be posted in a post which she held as on 04.11.2020 i.e., an order of reversion. In other words, it is sought to be contended that all such correspondences must be addressed treating the petitioner to the post of Assistant Superintendent (Group-B) and, therefore, the alleged contemnors have acted in gross violation of the said order and such act and conduct must be construed as contumacious one.

The affidavit filed by the alleged contemnor no. 2 is silent on the above score probably for the reason that there was no pleading in this regard in the contempt application. However, the Counsel for the alleged contemnor in

the course of hearing submits that there was a mistake committed by the authorities which is unintentional and cannot be said to be deliberate and wilful in this regard. The affidavit filed by the alleged contemnor no. 2 would further reveal that in compliance of a direction/order passed by the Tribunal, the show cause was issued on January 25, 2022 which was duly replied by the petitioner. Subsequently, the Ministry issued a final order on 14.03.2022 rejecting her representation against deconfirmation and reversion to the post of Junior Passport Assistant. It is a specific stand of the said alleged contemnor that pursuant to the order passed by the Division Bench of this Court, the differential amount as directed have been paid to the petitioner. It is further disclosed in the said affidavit that the further opportunity was given to the petitioner to appear for the typing test to be conducted on January 24, 2022 and the petitioner was declared successful therein. Subsequently, the petitioner has been promoted to the post of Senior Passport Assistant and the charge has been taken by the petitioner. It is thus stated that all the paraphernalia required under the statutory Rules having been followed, the petitioner has been subsequently promoted; there is no element of contempt attributed to the conduct of the alleged contemnors.

For the purpose of the record it is made clear that addressing the petitioner as Junior Passport Assistant and not as Assistant Superintendent is brought in the affidavit-in-reply subsequently filed was conspicuously absent in the contempt application which was restricted to the allegation as to non-payment of the differential amount of salary. The petitioner tried to

enlarge the scope of the contempt jurisdiction taking a plea in the said affidavit-in-reply that the compliance as pleaded in the affidavit-in-opposition is bereft of the statement that the due process was duly followed nor any approval of the appropriate authority was obtained for implementation of the direction of the Court before issuing such order.

Before we proceed on the backdrop of the facts as discerned from the respective pleadings it is an ardent duty of the Court to recapitulate the scope and jurisdiction exercised by the High Court in relation to the contempt of its own order. The power to punish for contempt of its order is not only enshrined in the Constitution of India but also under the Contempt of Courts Act, 1971. Though the power of contempt is also conferred upon the Tribunal both under the Constitution and the Act yet the Court while exercising such jurisdiction confined its scrutiny to the salutary fact whether there has been a wilful and deliberate disobedience of an order amounting to the commission of a contempt which should not venture upon a mechanical application of mind. The consideration should be restricted to an unambiguous order or direction passed by the Court which establishes a nexus with the alleged contumacious act. As a corollary effect, the Court should restrict its consideration within the four corners of the orders/directions passed and the alleged contumacious act done by a person and should not travel beyond the periphery thereof. The power to punish for contempt is a special and rare power exercised both under the provisions of the Constitution and the Contempt of Courts Act and therefore, to be exercised with great care and caution. The order which is

unambiguous and admits no second interpretation, if violated, may expose a person liable to be punished under Contempt of Courts Act and not when it is capable of two interpretations and the person having adopted one which is plausible and possible. In support of the above, the reliance can be safely placed upon the judgment of the Apex Court in ***Sudhir Vasudeva, Chairman & Managing Director, Oil & Natural Gas Corporation Ltd. & Ors. vs. M. George Ravishekar & Ors., reported in (2014) 3 SCC 373*** wherein the Apex Court succinctly highlighted the scope and exercise of jurisdiction of contempt in the following:

“19. The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self-determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. The Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self-evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or wilful violation of the same. Decided issues cannot be reopened; nor can the plea of equities be considered. The Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to

what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above. The above principles would appear to be the cumulative outcome of the precedents cited at the Bar, namely, Jhareswar Prasad Paul v. Tarak Nath Ganguly, V.M. Manohar Prasad v. N. Ratnam Raju, Bihar Finance Service House Construction Coop. Society Ltd. v. Gautam Goswami and Union of India v. Subedar Devassy PV.”

The ratio of law as above is reiterated by the Apex Court in a subsequent decision rendered in ***K. Arumugam vs. V. Balakrishnan & Ors., reported in (2019) 18 SCC 150***, on a proposition of law that the contempt should not be pursued in the event order is found to be unambiguous. The reliance can be placed upon a judgment of the Apex Court in case of ***Tamilnad Mercantile Bank Shareholders Welfare Association (1) vs. Tamilnad Mercantile Bank Ltd., reported in (2008) 15 SCC 529*** in the following:

“9. It is now well settled that when an order is ambiguous and was reasonably capable of more than one interpretation, a proceeding for contempt would not be maintainable (see State of Bihar v. Rani Sonabati Kumari).”

Tested on the anvil of the law as enunciated in the above reports, let us consider the case made out by the petitioner whether any contumacious act can be perceived from the stand of the alleged contemnors. It is beyond the cavil of doubt that the Division bench expressly observed that the moment the order of reversion dated 04.11.2020 was set aside, as a corollary effect, putting the petitioner to its original position held at the time

of passing the said order, is inevitable. Having observed so, the Division Bench passed a direction upon the authorities to pay the salary attached to the post held by the petitioner before the order relegating her to the original post was passed and in the event the payment is made, the differential amount shall be paid within three weeks from date. The observations made by the Court which lead to an ultimate direction passed in the legal proceeding is a basis of such ultimate direction and should be construed in such perspective. It is undisputed that the differential amount as directed in the order has been paid to the petitioner and, therefore, the original case pleaded in the contempt application does not, on the face of it, leads to an inference that there has been a wilful and deliberate violation of the order by the alleged contemnors. However, a departure is sought to be made on the basis of the correspondences issued to the petitioner by the authorities designating her as a Junior Passport Assistant which according to the Counsel for the alleged contemnor was a mistake though there was no deliberate attempt to flout and/or violate the order passed by the Court. The fact discerned from the pleadings as well as the stand of the parties are manifestly clear to the effect that that a show cause notice was issued to the petitioner which was duly replied to and ultimately, the authority did not found the explanation so offered to be satisfactory. It gives a fresh cause of action in the event the petitioner still feels that the said order is not a legally sustainable for which the contempt jurisdiction should not be extended to make a roving enquiry and, therefore, an appropriate forum may be approached in this regard.

As discussed above, the petitioner successfully passed the typewriting test and is promoted to the post of a Senior Passport officer and have further joined the said post. Mere addressing the petitioner as a Junior Passport Officer in all such correspondences which according to the alleged contemnor was unintentional and *bona fide* mistake does not invite this Court to take a serious view thereupon or such mistake being deliberate and intentional. The authorities must be cautious in their act and the conduct and must strictly adhere to the observations made in the judicial orders. The authorities are put to caution that they should be vigilant and careful in making any correspondences in such a manner which may remotely impinge upon the directions/observations passed in the judicial order. Since we do not find any element of contumacious act attributable to the conduct of the alleged contemnors, the contempt application fails and is accordingly dismissed.

No order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

(Harish Tandon, J.)

I agree.

(Madhuresh Prasad, J.)