

**IN THE HIGH COURT AT CALCUTTA
SPECIAL CIVIL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Partha Sarathi Sen

**CPAN 933 of 2016
with
IA No.: CAN 1 of 2018 (Old No.: CAN 3906 of 2018)
in
WP.CT 419 of 2012**

**Asish Bhaumik
Vs.
Mr. Anil Kumar Sinha, Director,
Central Bureau of Investigation & Ors.**

For the petitioner : Mr. Achintya Kumar Banerjee
Mr. Raghunath Chakraborty

For the alleged contemnors : Mr. Tarun Jyoti Tewari
Ms. Kausiki Bose

Heard & Judgment on : July 9, 2024

DEBANGSU BASAK, J.:-

1. Two contempt petitions are taken up for analogous hearing as they relate to allegations of violations of the interim order and final order in the same proceeding.
2. Petitioner alleges violation of an interim order passed by a Division Bench dated November 7, 2013 in one of the contempt petitions. Petitioner also complains of violation of the order dated April 4, 2016 passed by the Division Bench in the same proceeding. Order dated April 4, 2016 is the final order.
3. Learned Advocate appearing for the petitioner submits that, the High Court directed absorption of the petitioner. Such order was not complied with. Petitioner is entitled to be absorbed to the post of Constable under the Central Bureau of Investigation (CBI) from the date when the colleagues of the petitioner were granted such appointment. He submits that, the petitioner was ultimately absorbed on September 19, 2019. Petitioner is being denied requisite benefits of the absorption from the earlier date.
4. Learned Advocate appearing for the petitioner contends that, when there is a contempt eminent, if an action is taken by a person knowing about the same, he is also guilty under the Contempt of Courts Act, 1971. In support of such contention, he relies upon ***(1969) 2 Supreme Court Cases 734 (A.K. Gopalan and Another vs. Noordeen).***

5. On the issue that an interim order is equally enforceable, learned Advocate appearing for the petitioner relies upon **(1997) 3 Supreme Court Cases 443 (Tayabbhai M. Bagasarwalla and Another vs. Hind Rubber Industries Pvt. Ltd. And Others).**
6. With regard to the restitutive power of a Court, learned Advocate appearing for the petitioner relies upon **(1996) 4 Supreme Court Cases 622 (Delhi Development Authority vs. Skipper Construction Co.(P) Ltd. and Another)** as also **(2017) 5 Supreme Court Cases 506 (Baranagore Jute Factory PLC. Mazdoor Sangh (BMS) and Others vs. Baranagore Jute Factory PLC. and Others).**
7. Contemnors are represented.
8. Petitioners in the two contempt petitions complained of violation of order dated November 7, 2013 which is an interim order as also the order dated April 4, 2016 which is the final order of the Division Bench disposing of the writ petition directed against an order passed by the administrative tribunal.
9. Indisputably, interim order dated November 7, 2013 merged into the final order dated April 4, 2016. The directions contained in the final order of the Division Bench dated April 4, 2016 are as follows:

“12. Therefore, we find no reason why the petitioner has been denied the absorption. There is no dispute that he has completed 4 years on deputation in the CBI which is one of the

criteria required as per the guidelines of 2009. It is not possible to fathom the reason for denying the petitioner this relief when others who are similarly placed have been granted the relief. Furthermore there is no material on record to suggest that the petitioner's service with the CBI was marred by any misconduct on his part. In these circumstances we are of the opinion the respondents have discriminated against the petitioner illegally and without any justifiable reason.

13. The impugned order of the Tribunal is therefore quashed and set aside. The petition is allowed. The respondents will consider absorbing the petitioner in the CBI, Kolkata in the light of our observations. An appropriate order to that effect shall be passed by the respondents within eight weeks from today."

10. A Special Leave Petition was carried against such judgment and order dated April 4, 2016 of the Division Bench. In such Special Leave Petition, an interim order dated July 29, 2016 was passed. In such interim order, issue of salary was kept open to be considered in light of the counter-affidavit and rejoinder affidavit. Such Special Leave Petition was dismissed on January 5, 2018 by holding that, the Supreme Court did not find any merit in the same.
11. The direction contained in the judgment and order dated April 4, 2016 of the Division Bench is one of absorption of the petitioner. Petitioner was absorbed on September 19, 2019. Justification for the delay between the period of disposal of the Special Leave Petition on January 5, 2018 till the date of absorption on September 19, 2019 is that, CBI sought for 'No

Objection Certificate' from the parent organization at which the petitioner was working and that the same was received late.

12. Learned Advocate appearing for the petitioner, however, contends that, the CBI delayed the absorption and, therefore, the appellant is entitled to all benefits from an earlier date.
13. The judgment and order dated April 4, 2016 of the Division Bench in which the interim order dated November 7, 2013 merged into, required the authorities to absorb the writ petitioner, which the authorities did. Essentially, in the present case, two applications under the Contempt of Courts Act, 1971 are for the service benefits that, the petitioner may receive consequent upon such absorption.
14. As a Court, deciding contempt petitions, we are required to return a finding as to whether, the acts complained of were in willful or contumacious violation of the orders passed by the Court or not. Contempt of Court jurisdiction is required to be sparingly used.
15. In the facts and circumstances of the present case, the authorities preferred a Special Leave Petition against the judgment and order dated April 4, 2016 requiring absorbing the petitioner. Such Special Leave Petition was finally disposed of on January 5, 2018. Thereafter, requisite steps were taken *albeit* in a delayed manner, as contended on behalf of the petitioner, to conclude the absorption of the petitioner at the subject post. However, in the factual matrix obtaining, we are not in a position to

return a finding that the respondents acted in willful or deliberate or in a contumacious manner with regard to either in the interim order passed by the High Court or the final order which the interim order has merged or of any order of the Hon'ble Supreme Court.

16. Since, the essential jurisdictional fact is unavailable, in the facts and circumstances of the present case, for us to assume jurisdiction, we are afraid, we are not in a position to assume jurisdiction under the Contempt of Courts Act, 1971 or under Article 215 of the Constitution of India.
17. ***A.K. Gopalan and Another (Supra)*** was rendered in the context of a contempt of Court proceeding. The majority view was that, one of the contemnors was not guilty of the act of contempt complained of while the other was. In the facts of the present case, there was no eminent violation which can be set up successful in the realm of Contempt of Courts Act.
18. In ***Delhi Development Authority (supra)***, it was held that, an interim order, pending the final decision is equally enforceable. As noted above, we are not in a position to hold that, the respondents are in willful or contumacious violation of the orders.
19. In ***Delhi Development Authority (supra)*** and ***Baranagore Jute Factory PLC. Mazdoor Sangh (BMS) and Others (supra)*** the restitutive

powers of a Court were recognized. Again, such factual situations are not obtaining in the present case.

20. In such circumstances, we find no merit in the two contempt petitions.

21. **CPAN 933 of 2016** and **CPAN 2374 of 2014** in **WP.CT 419 of 2012** along with all connected applications are dismissed without any order as to costs.

22. We clarify that the parties are at liberty to agitate their respective points of view with regard to the service entitlement of the petitioner before an appropriate forum, if raised in accordance with.

(Debangsu Basak, J.)

23. I Agree.

(Partha Sarathi Sen, J.)

(AD)