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

+ **CONT.CAS(C) 734/2024 & CM APPL. 26576/2024**

SANDEEP KUMAR YADAV

..... Petitioner

Through: Mr. Setu Niket, Ms. Esha Mazumdar,
Advocates (M:9873109672)

versus

**NARESH KUMAR CHIEF SECRETARY GNCT OF DELHI &
ORS.**

..... Respondents

Through: Mrs. Avnish Ahlawat, SC-GNCTD
with Mr. N.K. Singh, Ms. Laavanya
Kaushik, Ms. Aliza Alam, Mr.
Mohnish Sehrawat, Advocates
(M:9313964463)

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Date of Decision: 6th May, 2024

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

CM APPL. 26576/2024 (For Exemption)

1. Exemption allowed, subject to just exceptions.
2. Application is disposed of.

CONT.CAS(C) 734/2024

3. The present petition has been filed alleging willful disobedience of the judgment dated 17th August, 2023 passed by the Division Bench of this Court in *W.P.(C) 9422/2023*.
4. Learned counsel for petitioner submits that despite clear directions by the Division Bench of this Court to consider the case of the petitioner sympathetically and the earlier punishment imposed upon the petitioner



having been considered to be disproportionate, the respondents have again imposed the same punishment upon the petitioner.

5. She submits that the order dated 14th February, 2024 issued by the respondents, purportedly in compliance of the judgment dated 17th August, 2023, is not in terms of the directions passed by the Division Bench of this Court vide judgment dated 17th August, 2023. Thus, she submits that respondents are in clear contempt of the aforesaid judgment.

6. Per contra, learned counsel for respondents submits that pursuant to the directions passed by the Division Bench as aforesaid, a fresh order dated 14th February, 2024 has been issued, wherein, it has been held that the punishment imposed upon the petitioner earlier is justified and no reason/ground to interfere with the earlier punishment order, has been found.

7. Having heard learned counsels for the parties, at the outset, it is relevant to refer to the judgment dated 17th August, 2023 passed by the Division Bench, relevant portion of which, reads as under:

“xxx xxx xxx

19. In the present case, the doctrine of proportionality, in the context of imposition of punishment is attracted, since a fear psychosis on mass scale was generated due to COVID-19 pandemic, without any standard regimen of treatment and also wide scale restrictions on movement were imposed with compulsory quarantine measures. The petitioner could not initially attend the office w.e.f. April 21, 2020 after being granted official special rest from April 18, 2020 to April 20, 2020, since he was placed in compulsory quarantine w.e.f. April 19, 2020 for a period of four weeks on reaching his hometown at Alwar, Rajasthan. Also, the absence of the petitioner on medical grounds requires a considerate view, since the medical prescriptions have not been challenged. The penalty of forfeiture of one year approved service by the Disciplinary Authority in the facts and circumstances is disproportionate, since it is not a case of repeated absenteeism by the petitioner. In view of above, the penalty imposed upon the petitioner by the Disciplinary Authority and upheld by the



Appellate Authority as well as the order passed by the Tribunal, is liable to be set aside.

The facts and circumstances in Harender Singh vs. GNCT of Delhi and Ors., W.P.(C) 3238/2017, relied by the learned counsel for the respondents are distinguishable, since the petitioner in the said case failed to join/report for duty even though a notice was served calling upon him to join the duties and despite the same remained absent for the period October 24, 2006 to October 01, 2008 i.e. for a period of about little less than two years. Further, there were no special circumstances of COVID-19 pandemic as adverted to in the present case.

20. For the foregoing reasons, the matter is remanded back to the Disciplinary Authority to pass fresh orders with regard to the punishment imposed on the petitioner, keeping in perspective that the petitioner initially remained under quarantine due to COVID-19 pandemic and, thereafter, the absence was on medical grounds, duly supported by prescriptions. The Disciplinary Authority is expected to take a reasonable and sympathetic view, in the facts and circumstances of the present case. The petition is accordingly disposed of. In the facts and circumstances, no order as to costs. Pending applications, if any, also stand disposed of."

8. Perusal of the aforesaid judgment clearly shows that learned Division Bench had held that penalty of forfeiture of one year approved service by the Disciplinary Authority, in the facts and circumstances of the case, is disproportionate. Thus, the penalty imposed upon the petitioner by the Disciplinary Authority, as upheld by the Appellate Authority, was held liable to be set aside. Thus, the matter was remanded back to the Disciplinary Authority to pass a fresh order, with regard to the punishment to be imposed upon the petitioner.

9. After the remand of the matter, the respondents have issued a fresh order dated 14th February, 2024, wherein, it has been held as follows:

"xxx xxx xxx

It is worthwhile to mention that during Covid-19 pandemic, entire humanity was at stake and police personnel being the frontline warriors were supposed to remain present at their duty places to



serve/help the public with utmost dedication. Under those Circumstances, it was expected from each police personnel including Const. (Now HC) (Exe.) (F.R.) Sandeep Kumar Yadav to show high sense of responsibility and morality to help the people to come out of the crisis. However, Const. (Now HC) (Exe.) (F.R.) Sandeep Kumar Yadav had shrunk of his responsibilities and remained absent for such a long period during that crucial time.

In view of the above detailed discussion, I, Devesh Kumar Mahla, IPS, Deputy Commissioner of Police, New Delhi District, New Delhi feel that the punishment of forfeiture of one year approved service permanently entailing proportionate reduction in pay with absence period as 'not spent on duty', imposed upon Const. (Now HC) (Exe.) (F.R.) Sandeep Kumar Yadav No. 1132/ND (PIS No.29100519) by the then Disciplinary Authority vide order No. 1793-1808/HAP/NDD (D-I), dated 29.05.2021 is justified and there is no reason/ground to interfere with the punishment order.

xxx xxx xxx”

10. A reading of the aforesaid order passed by the respondents shows that after the remand of the matter, the case of the petitioner has been considered afresh by the respondents and a fresh order dated 14th February, 2024 has been passed.

11. Though it is the contention of the learned counsel for petitioner that the aforesaid order dated 14th February, 2024, cannot be considered as compliance of the judgment dated 17th August, 2023, however, this Court in the present proceedings, cannot go into the merits of the order passed by the respondents.

12. It is also to be noted that this court, in the contempt proceedings, cannot comment on the rightfulness or wrongfulness of the order passed by the respondents. Thus, Supreme Court in the case of **Prithawi Nath Ram Versus State of Jharkhand and Others, (2004) 7 SCC 261** has held as under:



“xxx xxx xxx

5. While dealing with an application for contempt, the court is really concerned with the question whether the earlier decision which has received its finality had been complied with or not. It would not be permissible for a court to examine the correctness of the earlier decision which had not been assailed and to take a view different than what was taken in the earlier decision. A similar view was taken in *K.G. Derasari v. Union of India* [(2001) 10 SCC 496 : 2002 SCC (L&S) 756] . The court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order. If there was no ambiguity or indefiniteness in the order, it is for the party concerned to approach the higher court if according to him the same is not legally tenable. Such a question has necessarily to be agitated before the higher court. The court exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the court passing the judgment or order. Though strong reliance was placed by learned counsel for the State of Bihar on a three-Judge Bench decision in *Niaz Mohd. v. State of Haryana* [(1994) 6 SCC 332] we find that the same has no application to the facts of the present case. In that case the question arose about the impossibility to obey the order. If that was the stand of the State, the least it could have done was to assail correctness of the judgment before the higher court. The State took diametrically opposite stands before this Court. One was that there was no specific direction to do anything in particular and, second was what was required to be done has been done. If what was to be done has been done, it cannot certainly be said that there was impossibility to carry out the orders. In any event, the High Court has not recorded a finding that the direction given earlier was impossible to be carried out or that the direction given has been complied with.

xxx xxx xxx

8. If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach the court that passed the order or invoke jurisdiction of the appellate court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong, the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. While dealing with an application for contempt the court cannot



traverse beyond the order, non-compliance with which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible. In that view of the matter, the order of the High Court is set aside and the matter is remitted for fresh consideration. It shall deal with the application in its proper perspective in accordance with law afresh. We make it clear that we have not expressed any opinion regarding acceptability or otherwise of the application for initiation of contempt proceedings.

xxx xxx xxx”

(Emphasis Supplied)

13. In view of the aforesaid, the present petition is disposed of.

14. However, liberty is granted to the petitioner to challenge the aforesaid order dated 14th February, 2024 passed by the respondents in appropriate proceedings.

MINI PUSHKARNA, J

MAY 6, 2024

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