

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

Present:

The Hon'ble **Justice Harish Tandon**

And

The Hon'ble **Justice Prasenjit Biswas**

MAT 12 of 2024

With

CAN 1 of 2024

CAN 2 of 2024

Bidhan Chandra Mohanta

-Versus-

Sri Siddhartha Majumder & Ors.

For the Appellant : **Mr. Sudip Ghosh Chowdhury,
Ms. Shreyeta Mitra**

For the WBCSSC : **Mr. Sutanu Kumar Patra,
Ms. Supriya Dubey.**

For the State : **Mr. Suman Ghosh,
Mr. Sankha Prasad Roy.**

Delivered on : **07.02.2025**

Prasenjit Biswas, J:-

1. The order dated 21.04.2023 passed by the learned Single Bench in CPAN 256 of 2023 arising out of WPA 2516 of 2022 is assailed in this appeal at the behest of the petitioner.

2. The appellant filed a contempt petition alleging that the respondents (herein) had not honored the direction passed by the learned Single Bench in WPA 2516 of 2002 dated 19.07.2022. The said application for contempt was disposed of by the learned Single Bench by passing the impugned order.

3. The only point involved in the present appeal is whether the learned Single Bench in exercising of the contempt jurisdiction can pass an order which runs counter to the spirit of the original order for which violation was pleaded in the contempt application.

4. This appellant /petitioner joined in the school as an Assistant Teacher on 03.09.2009 and the service of the appellant was approved by the District Inspector of Schools (S.E.), Burdwan on 23.11.2009 by issuing approval order. The appellant/petitioner applied for General Transfer through 'Utsashree Portal' for the first time on 03.08.2021 and the Head of the Institution issued 'No Objection Certificate' and forwarded it to the District Inspector of School on 28.08.2021. On the same date, the District Inspector of Schools forwarded the same to the West Bengal Central School Service Commission for further consideration. But the application praying for General Transfer by the appellant/petitioner was turned down by the Commission on 29.08.2021 on the ground of single subject teacher in the concerned school. Thereafter, this appellant applied for transfer through 'Utsashree Portal' again on different dates but all those applications have been rejected either by the Head of

the Institution or by the District Inspector of School on the self-same ground of single subject teacher in the school concerned.

5. Finding no other way the petitioner preferred a writ petition being WPA No. 2516 of 2022 before the learned Single Bench of this Court and the said writ petition was disposed of by the Court observing and directing, inter alia, that-

“The single teacher bar is no longer applicable in view of the amendment and clarification to the 2015 Rules, inter alia, on 3rd January, 2022.

The petitioner’s application for transfer shall be processed afresh and forwarded by the Head of the Department to the District Inspector of Schools within a period of two weeks from the date of communication of a copy of this order.

The Notification dated 21st December, 2021 and the time frame stipulated therein shall be strictly followed by the respondents.

The earlier rejection of transfer shall stand set aside.

With the aforesaid directions, the instant writ petition shall stand disposed of.”

6. In view of the aforesaid order passed by the learned Single Bench of this Court, this appellant/petitioner made application afresh through the portal which was duly forwarded to the District Inspector of School but shockingly no step was taken by the authority concerned intentionally which as per submission of the learned Advocate of the appellant is a willful and deliberate violation of the order passed by the Court.

7. Thereafter, an application for contempt was taken out by the appellant petitioner being CPAN 256 of 2023 by stating that the alleged contemnors have deliberately violated the direction as passed by the learned Single Bench and did not comply the said direction even after repeated pursuance on the part of the appellant and such action on the part of the alleged contemnors are contumacious and apparent indication of willful violation of the direction passed by the learned Single

Bench in WPA No. 2516 of 2022. The said application for contempt filed by the petitioner was disposed of by the learned Single Bench by passing the impugned order on 21.04.2023 by observing, inter alia that-

“A letter dated April 10, 2003 received by the Headmaster, Monteswar Sagar Bala High School, East Burdwan has been annexed to the report, the volume of the students in the school does not permit of the petitioner despite another teacher being there from the concerned subject.

In that view of the matter, this Court is not inclined to entertain the contempt application. The order of this Court dated July 19, 2022 cannot be enforced in the facts of the case.

The contempt application shall stand disposed of. Rule, if any, shall stand discharged.

The personal appearance from the alleged contemnor is dispensed with.”

8. In the original order passed by the learned Single Bench in WPA 2516 of 2022 it was held that the single teacher bar is no longer applicable in view of the amendment and clarification to the Rules 2015, inter alia, on 3rd January, 2022 and, as such, direction was given, inter alia, that the petitioner’s application for transfer shall be processed afresh and the same shall be disposed of by the authority concerned within a period of two weeks from the date of communication of the copy of the order. It is further said by the learned Single Bench in the said order that the notification dated 21st December, 2021 and the time frame stipulated therein shall be strictly adhered to by the respondents. The learned Single Bench while disposing of the contempt application filed by the appellant travelled beyond the four corners of the original order passed in the original writ petition and modified his earlier observation about

the applicability of the transfer Rules of 2015 and virtually exercised a corrective jurisdiction like review or appeal while exercising jurisdiction in the contempt law.

9. It is profitable to the quote the observation made by a co-ordinate Bench of this Court in case of **Rupak Mandal vs. Sk. Hossain Ali & Ors.** in **MAT 2464 of 2023.**

The following paragraphs of the said decision is hereby quoted below:

“13. In Midnapore Peoples’ Cooperative Bank Limited & Others Vs Chunilal Nanda & Ors. reported in (2006) 5 SCC 399, the Apex Court in unequivocal words held that the Court cannot pass a fresh direction or further direction which runs counter to the spirit and purpose of the original order in the following. Paragraph 21 of the said judgment reads as follows:

“21. There was also no justification for the further direction by the learned Single Judge in the contempt proceedings, that too by an interlocutory order, that the complainant should immediately and forthwith be reinstated into the service of the Bank, and shall be deemed to be in the service of the Bank all through, that the employee shall not be prevented in any manner from discharging his duties and that he shall be paid all arrears of salary within four weeks, and that the suspension order shall be deemed to have been revoked. These were totally outside the scope of the proceedings for contempt and amounted to adjudication of rights and liabilities not in issue in the contempt proceedings. At all events, on the facts and circumstances, there was no disobedience, breach or neglect on the part of the Bank and its President and Secretary, to provoke the court to issue such directions, even assuming that such directions could be issued in the course of the contempt proceedings. Hence, Directions (2) and (3) and the direction relating to revocation of suspension are liable to be set aside.”

14. The same view is reiterated by a Coordinate Bench in an unreported decision rendered in *Shipra Barikdar Vs Siddhartha Mazumder & Ors.* in **MAT 1502 of 2023** decided on 11.12.2023 in the following :

“11. Undoubtedly, in any case, the learned Single Judge has decided the issue and passed direction relating to the merits of the dispute already adjudicated upon by the learned Single Judge and no appeal was preferred by the State against the said judgment. In a contempt jurisdiction, the Court is required to find out whether there is any wilful or

deliberate violation of the order and contemptuous conduct of the parties, if any. The Court may accept the explanation offered by the State in discharging the rule. The Court, however, cannot decide the matter afresh in the contempt jurisdiction on an issue already decided in the writ petition.”

*“12. On that score, we are in agreement with the submissions made by Mr. Dhar that the order impugned is beyond the jurisdiction of the learned Single Judge while deciding a contempt application. Moreover, the issue involved in the writ petition has been decided by a coordinate Bench in *Prapti Chakraborty vs State of West Bengal & Ors.* in MAT 205 of 2023 with IA No.CAN 1 of 2023 on 10th August 2023. In any event, it was not open for the State to take a stand in the contempt petition after having accepted the order and without seeking a review or recalling of the order.”*

15. The law as enunciated hereinabove leaves no ambiguity in our mind that the contempt jurisdiction cannot be exercised to modify or make a fresh investigation into a cause, which had already been decided nor can pass an order which would otherwise tantamount to review of an original order or supplanting the original order. Reverting to the case in hand, original writ petition was disposed of on the ground that there is no bar or restriction in returning or rejecting an application for transfer on the ground of single teacher in the subject. However, the contempt application came to be disposed of as the DI of Schools communicated that he is in a process of finding out the replacement and the order was to the effect that till the replacement is found out, the application for transfer should not be processed. Such direction does not appear to us in consonance with the law enunciated in the above decision rendered by the Apex Court as well as the Co-ordinate Bench and, therefore, is hereby set aside.”

10. The aforesaid proposition of law can further be fructified from the decision of the Hon’ble Apex Court rendered in the case of **Union of India -vs- Subedar Devassy PV** reported in **(2006) 1 SCC 613** wherein the Hon’ble Apex Court held as follows::

“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 from what was

taken in the earlier decision. A similar view was taken in K.G. Derasari v. Union of India, [2001] 10 SCC 496. 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 appellants 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 appellants, the least it could have done was to assail correctness of the judgment before the higher court. The Court said it is trite law that in a contempt jurisdiction, the Court must concern itself with compliance or disobedience of order passed in the writ petition and emphasized that it cannot enlarge the scope of such order, nor can it restrict or curtail the rights of the parties already granted.”

11. In fact contempt is a matter between the court and the alleged contemnor. Any person who moves the machinery of court for contempt only brings to the notice of the Court certain facts constituting contempt of court. After furnishing such an information, he may still assist to the Court but it always be borne in the mind that in a contempt proceedings, there are only two parties namely court and the contemnor. Thus the contempt of court is not in strict sense a cause or matter between the parties inter-se but the matter between the court and the contemnor and as such the same cannot be at the discretion or benefit of the parties.

12. It is needless to say that recalling of final order passed on merits in contempt matters would amount to reviewing the earlier decision/order which had been rightly or wrongly passed on merits. The law is settled on the point that recall/ review or appeal are the statutory remedies and unless those are specifically provided/conferred

under any Act/ Rules, no such recall/modification is maintainable in contempt matters, particularly when the order has been passed on merits finally deciding the issue involved in the case. It would not be out of context to mention here that once a final order has been passed the correctness of such order cannot be examined under the contempt jurisdiction. It is well settled that the contempt court can neither sit in appeal nor examine the correctness of a resultant order.

13. Furthermore, if the impugned order is to be read as an order passed in the contempt jurisdiction, we are of the view that the learned Trial Judge erred in law in modifying a mandatory order passed in the writ jurisdiction subsequently in the contempt jurisdiction. In the contempt jurisdiction, either the power of the writ Court is to hold the contemnors in contempt or reject contempt petition. Power of modification of an order passed in contempt, which is sought, is not available to the Trial Judge.

14. In our view, scope of contempt jurisdiction is to see whether the order of the writ Court passed by the learned Single Bench has been complied with in substance or deliberately flouted leading to an inference of a “willful, deliberate and contumacious” violation of the order of which non compliance is alleged. The Court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party which alleged to have been committed deliberate default in complying with the directions in the judgment or order as we have already stated in the foregoing paragraphs. So, if the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the direction 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 reopen the original proceeding in

a manner not dealt with by the Court passing the judgment or order. So, rightness or wrongness of the order cannot be urged in contempt proceeding. 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 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. It is brought to the notice by the learned counsel appearing on behalf of the appellant that the learned Single Bench at the time of disposing of the contempt application altered his original decision and virtually sat in appeal of his previous order. We have already held that if the order had to be modified, it should have been done in exercise of jurisdiction under the review application and not under the ambit of contempt jurisdiction.

15. It is no longer *res integra* that the Court exercising contempt jurisdiction shall only see that the order is duly implemented but, in the event, if it is found that the person has committed a contempt willfully and deliberately and having no sense of remorse the Court may pass a suitable order of punishment both in criminal or civil contempt.

16. In view of the above discussion and law enunciated by the coordinate Bench of this Court as well as Hon'ble Apex Court leads no ambiguity in mind that the contempt jurisdiction cannot be exercised for a fresh investigation in a case which had already been decided nor it can pass an order which would otherwise tantamount to review of an original order or supplant the original order.

17. In view of the above facts and circumstances and discussion made above the order dated 21.04.2003 passed by the learned Single Bench in CPAN 256 of 2023 arising out of WPA 2516/2022 is set aside and direct the application being CPAN 256 of 2023 be restored to his original file and number. The learned Single Bench is requested to dispose of the application as expeditiously as possible.

18. With the aforesaid observation, the instant appeal is hereby allowed.

19. Consequently, connected applications, if any, are also disposed of.

20. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)