

**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 No. 397 Of 2024
With
CAN 2 of 2024**

**Parimal Sing
-Versus-
Saumitra Mohan & Anr.**

For the Appellant : **Mr. Ujjwal Roy, Adv.**

For the State : **Mr. Supriyo Chattopadhyay, AGP,
Ms. Iti Dutta, Adv.**

For the Central School
Service Commission : **Mr. Sourav Mitra**

Delivered on : **09.01.2025**

Prasenjit Biswas, J:-

1. The appellant before this Court is aggrieved by an order dated 17th February, 2023 passed by the learned Single Bench of this Court in CPAN No. 1259 of 2022 arising out of WPA No. 5920 of 2022.

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 No. 5920 of 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 the allegation of the violation was pleaded in the contempt application.

4. Being aggrieved and dissatisfied with the conduct of the respondents by returning/refusing the application of this appellant/petitioner made through 'Utsashree Online Portal' and also against refusing his subsequent application for not considering his prayer for general transfer to any school close to his residence. The petitioner preferred a writ petition being WPA 5920 of 2022 before the learned Single Bench of this Court. The said writ petition was disposed of by the Court observing and directing interalia that-

"The petitioner is aggrieved that his application for transfer has been rejected on the ground that he is the only teacher (single teacher) for the subject being taught in the concerned School. The single teacher bar is no longer applicable in view of the amendment and clarification to the 2015 Rules, inter alia, on 3rd January, 2022.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.

In view of the aforesaid order passed by the learned Single Bench the appellant/applicant made application afresh and the said application was duly

forwarded by the School Authority to the District Inspector of Schools concern but it did not forward the application of this petitioner to the School Service Commission as per provisions of the Transfer Rules of 2015 and the notification dated 21st December 2021 within the time frame mentioned therein.

5. Finding no other way this appellant/petitioner took out an application for contempt being CPAN No. 1259 of 2022 by stating that the alleged contemnors have deliberately violated the direction as passed by the Hon'ble Single Bench and not complied with the said direction even after repeated pursuance on the part of the appellant and such action on the part of the alleged contemnors are contemptuous and apparent indication of willful violation of the direction passed by the learned Single Bench in WPA No. 5920 of 2022. The said contempt application filed by the appellant/petitioner was disposed of by the learned Single Bench by passing the impugned order on 17.02.2023 by observing interalia that-

“The unilateral transfer of a teacher, albeit not coming under the 2015 Rules without making a local arrangement to replace him/her, would cause immense hardship and prejudice to the students in question.

In the above circumstances, while it is indeed true that the 2015 Rules requiring local arrangement, cannot be strictly applied to the petitioner, the conduct of the District Inspector of Schools in attempting to look for a teacher in place and stead of the petitioner cannot seriously be faulted.

In the above circumstances, this Court is of the view that the action of the District Inspector of Schools, being in the interest of the students on the school, must be approved by this Court.

The District Inspector of Schools shall continue to make efforts to look for a replacement teacher, as he has already done. If such replacement teacher is found, the District Inspector of Schools shall process the petitioner's

application for transfer and forward the same to the School Service Commission, offline.”

6. In the original order passed in WPA 5920 of 2022 dated 19th July, 2022 the learned Single Bench held that the bar of application for transfer of a school teacher being not applicable in the instant case of the appellant and directed this appellant to apply afresh and direction was also given upon the respondent/head of the department of the school to forward the application made by the appellant to the District Inspector of Schools. The respondents were further directed to act strictly adhering to the terms of notification dated 21st December, 2021. The learned Single Bench while disposing of the contempt application filed by the appellant travelled beyond the four corners of the original order as passed in the 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.

7. At the time of hearing the attention of this Court is drawn by the learned Counsel appearing on behalf of the appellant to the decision rendered by a Co-ordinate Bench of this Court in **MAT 2464 of 2023** in **Rupak Mandal Vs. Sk. Hossain Ali & Anr.** decided on 29th July, 2024.

8. In the aforesaid decision the Co-ordinate Bench of this Court referred decision of the Hon’ble Apex Court rendered in **Midnapore Peoples’ Cooperative Bank Limited & Others Vs. Chunilal Nanda & Ors.** reported in **(2006) 5 SCC 399** and an unreported decision by a Coordinate Bench of this Court in **Shipra Barikdar Vs. Siddhartha Mazumder & Ors.** in **MAT 1502 of 2023** decided on 11.12.2023 and observed at paragraphs 13,15 and 15 as under:

*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 direction, even assuming that such direction 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

willful 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 submission 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”.

9. There could be no quarrel with the proposition that in exercising the contempt jurisdiction the Court will not travel beyond the original judgment and direction neither would it be permissible for the Court to issue any supplementary or incidental directions which were not to be found in the original judgment and order. The Court should only concern with the willful or deliberate noncompliance with the direction issued in the original judgment and order and should only concern with the contempt of the order passed by the Court. In this case learned Single Judge had altered his decision made in the writ petition vide WPA 5920 of 2022 and virtually sat in appeal of his previous order. If the order has to be modified it should have been done in exercise of jurisdiction under the review application and not under the ambit of contempt jurisdiction.

10. In **Midnapore Peoples' Cooperative Bank Limited & Others (supra)** the Hon'ble Apex Court observed and held that the Court cannot act as an original or appellate Court for determination of the dispute between the parties while exercising contempt jurisdiction and confine to the question whether there is deliberate and contumacious violation of the order passed. In the present case the learned Single Bench of this Court erred in law in entering into question involved in the writ petition and modified its own direction in the order passed in the writ petition. The learned Single Bench in deciding the contempt application has virtually passed an order which, in fact, disturb the integrity of the original order passed in the writ petition. In a contempt jurisdiction the Court is required to be finding out only whether there is any willful or deliberate violation of the order and contemptuous conduct of the party, if any. The Court may accept the explanation offered by the alleged contemnors in discharging the rule or may not accept the explanation offered by them. The Court, however, cannot decide the matter afresh

in the contempt jurisdiction on an issue which was already decided in the writ petition. Power of modification of an order passed in contempt, which is sought, is not available to the learned Single Judge.

11. The aforesaid proposition of law can further be fructified from the decision of the Hon'ble Apex Court in case of **Union of India Vs. Subedar Devassy PV** reported in **(2006) Supreme Court Cases 613**. It is profitable to quote the relevant paragraphs of the said report wherein the 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. 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 the 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, we find that the same has not 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 emphasised that it cannot enlarge the scope of such order, nor can it restrict or curtail the rights of the parties already granted.

12. In our view, the scope of contempt jurisdiction is to see whether the order of the Writ Court 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 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 reopen the original proceeding in a manner not dealt with by the court passing the judgment or order. 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. This

Bench noted that the Single Judge had altered his original decision in contempt application, virtually sitting in appeal of his previous order. Moreover, if the order had to be modified, it should have been done in exercise of jurisdiction under the review application filed by the respondents and not under the ambit of contempt jurisdiction.

13. In view of above facts and circumstances and discussions made above we set aside the order dated 17.02.2023 passed by the learned Single Bench in CPAN No. 1259 of 2022 arising out of WPA No. 5920 of 2022 and direct the application being No. 1259 of 2022 be restored to its original file and number.

14. The learned Single Judge is requested to dispose of the application as expeditiously as possible.

15. With the aforesaid observations the instant appeal is hereby allowed.

16. Consequently, connected application if any are also disposed of.

17. 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.)