

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 12070 OF 2025**

1. Union of India and Others	]	
Through the Registrar General of India,	]	
Census Department, Ministry of Home	]	
Affairs, Government of India,	]	
2A, Man Singh Road, New Delhi -110 011	]	
	]	
2. Shri Mritunjay Kumar Narayan	]	
The Registrar General of India,	]	
Census Department, Ministry of Home	]	
Affairs, Government of India,	]	
2A, Man Singh Road, New Delhi -110 011	]	
	]	
3. Mr. Santosh N. Payas	]	
The Addl 5 th Joint Director and	]	
Head of Office, Directorate of Census	]	
Operations, Maharashtra, Mumbai	]	
2 nd Floor, Exchange Building, Sir Shivsagar	]	
Ramgulam Marg, Ballard Estate,	]	
Mumbai – 400 001.	]	 Petitioners.

V/s

Mrs. Shaila Shyamsunder Shringare	]	
Age 64 years, working as Data Entry	]	
Operator Data Centre, Mulund, 2 nd Floor,	]	
T Ward Municipal Office, Dev Dayal Road,	]	
Mulund (West), Mumbai 400 080	]	
Census Department, Maharashtra and	]	
residing at B-404, Rameshwar Building,	]	
Neclakantha Heights, Pokhran Road no.2,	]	
Thane (West), Pin- 400 610.	]	Respondent.

Mr. Anil Singh, Additional Solicitor General with Adv. Mr. Abhijet Joshi, Adv. Ms. Varsha Sawant, Adv. Mr. Adarsha Vyas, Adv. Ms. Rama Gupta for the petitioners.

Adv. Mr. Ramesh Ramamurthy with Adv. Mr. Saikumar Ramamurthy and Adv. Ms. Seema Sorte for the respondent.

**CORAM : SHREE CHANDRASHEKHAR, CJ &
GAUTAM A. ANKHAD, J.**

DATE : 20TH SEPTEMBER 2025.

Per, Shree Chandrashekhar, CJ

Six Original Applications vide O.A. Nos.30 of 2018, 26 of 2018, 27 of 2018, 28 of 2018, 29 of 2018 and 32 of 2018 were heard together and disposed of by a common order passed on 31st January 2024. The grievance raised by the applicants before the Tribunal was that they were not extended the benefit under 2nd ACP in PB-3 Grade Pay of Rs 5400/- which was admissible to the post of Senior Supervisor/DEOs. The said benefit was declined to the applicants on the ground that they did not possess requisite educational qualifications as per the Recruitment Rules for the post of Assistant Director (Data Centre).

2. The applicants are Senior Supervisors who were seeking a direction from the Tribunal for considering their case for grant of 2nd ACP. Before the Tribunal, the order of rejection dated 2nd September 2016 passed by the competent Authority was put to challenge. In that context, OM dated 10th October 2016 was also challenged by the applicants. The applicants in support of the aforesaid challenge laid to the order dated 2nd September 2016 and OM dated 10th October 2016 relied on "*Amresh Kumar Singh & Ors. v. State of Bihar & Ors*" 2023

SCC OnLine 496 wherein the Hon'ble Supreme Court held that the educational qualification required under the Recruitment Rules for the promotional post is not necessary for *in situ* promotion. The applicants made a submission before the Tribunal that the Original Applications filed by them may be disposed of in the light of the decision of the Principal Bench in O.A. No.2416 of 2016 titled "*Dharampal Singh & Ors. v. Union of India & Ors.*" On the other hand, the Union of India relied on the decision in "*Union of India and others v. M.V. Mohanan Nair*" (2020) 5 SCC 421 wherein the Hon'ble Supreme Court observed that the grant of financial upgradation should be strictly in terms with the norms of promotion such as bench mark, departmental examination, seniority-cum-fitness etc.

3. Having considered the rival submissions and the decision in "*Amresh Kumar Singh*", the Tribunal formed an opinion that O.A. Nos.30 of 2018, 26 of 2018, 27 of 2018, 28 of 2018, 29 of 2018 and 32 of 2018 may be disposed of with a direction to the respondents to consider the case of the applicants for 2nd ACP/MACP for the post of Assistant Director. The Tribunal, therefore, passed the following order with a direction to the respondents to consider the applicants' claim in a time-bound manner for grant of 2nd ACP/MACP in the light of the decisions in "*Amresh Kumar Singh*" :-

"8. Be that as it may. In view of the decisions of the Hon'ble Apex Court and the Principal Bench, we are of the considered opinion that the present OAs can be disposed of with a direction to the respondents to consider the case of the applicants for grant of 2nd ACP/MACP for the post of Assistant Director in the light of the decisions of the Hon'ble Apex Court and the Principal Bench. The respondents may consider the cases in a time bound fashion within a period of four months from the date of receipt of a copy of this order."

4. Alleging willful and intentional violation of the order dated 31st January 2024, a proceedings under the Contempt of Courts Act,

1971 was laid before the Tribunal vide CP No.227 of 2024 filed in O.A. No.30 of 2018. In the proceedings of CP No.227 of 2024, the Tribunal passed an order on 8th August 2025 directing physical presence of 2nd respondent-proposed contemnor who was arrayed as respondent no.2. In the said order, the Tribunal referred to the order of contemnor-respondent no.2 passed in purported compliance of the said order in paragraph no. 7 of which there is a reference of advice taken by the contemnor-respondent no.2 from the Nodal Department for implementation of the order passed by the Tribunal and held that he has passed the rejection order in clear violation of the order passed by the Tribunal. The order dated 8th August 2025 by which the contemnor-respondent no.2 has been directed to remain present before the Tribunal for framing of charge reads as under:-

“4. From this order, it is seen that in paragraph 7, the contempt authority has sought the advice of the nodal department and on the advice of nodal department, he has passed the order and declined to grant 2nd ACP. This order clearly shows that, in violation of the directions issued by this Tribunal, the respondents have passed the order, that too after relying on the advice of the nodal department. This is in total violation of the order passed by this Tribunal. Hence, the competent authority i.e., contemnor no.2 is directed to remain present before this Tribunal for framing of charge.”

5. The Union of India through the Census Department, Ministry of Home Affairs and its Officers has challenged the order dated 8th August 2025 with the following prayers:-

“a. This Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in nature of Certiorari or any other appropriate Writ order or direction quash and dismiss the Contempt Petition No. 227 of 2024 pending before Central Administrative Tribunal Mumbai.

b. Without prejudice to prayer clause a) however, in the alternative Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in nature of Certiorari or any other appropriate Writ order or direction examining the legality, validity and propriety of the impugned Order dated 08.08.2025 passed by the Learned C.A.T., Mumbai Bench in CP No. 227 2024 and be pleased to quash and set aside the same.

c. Pending hearing and final disposal of the present Writ petition, this Hon'ble Court be pleased to stay the proceedings in CP No. 227 of 2024 pending before the Central Administrative Tribunal Mumbai.

d. Pending hearing and final disposal of the present Writ petition, this Hon'ble Court be pleased to stay the effect and operation of the impugned Order dated 08.08.2025 passed by the Learned C.A.T., Mumbai Bench in CP No. 227 of 2024."

e. This Hon'ble Court be pleased to grant such other and further relief(s) as the Hon'ble Court may deemed fit and appropriate in the facts and circumstances of the case."

6. Mr. Anil Singh, the learned Additional Solicitor General referred to the procedure laid down under the Contempt of Courts (CAT) Rules, 1992 (in short, the Rules of 1992) and submits that the order dated 8th August 2025 was passed by the Tribunal overlooking the procedure prescribed thereunder. The learned Additional Solicitor General relied on the decision in "*J. S. Parihar v. Ganpat Duggar & Ors*" (1996) 6 SCC 291 to submit that the order of rejection passed by the contemnor-respondent no.2 gives rise to a fresh cause of action and, howsoever erroneous that order may be, the same could not have been made a basis for initiating contempt proceedings against the contemnor-respondent no.2.

7. In short, the submission made at the Bar is that the proceedings in CP No.227 of 2024 are not maintainable and the Tribunal could not have passed the order of physical presence of contemnor-respondent no.2 vide order dated 8th August 2025.

8. On the other hand, supporting the aforesaid direction issued by the Tribunal, Mr. Ramesh Ramamurthy, the learned counsel for the respondent refers to the decisions of this Court and the decision by the Delhi High Court in "*Union of India & Ors v. Dharampal Singh & Ors*" W.P.(C) 2925/2024 and submits that the decision of the Tribunal in O.A. No.30 of 2018 and analogous cases has a foundation in law in the said decisions and, in particular, the

decision of the Hon'ble Supreme Court in "*Amresh Kumar Singh*". The learned counsel for the respondent submits that the decision in "*Amresh Kumar Singh*" has been followed by this Court in Writ Petition No. 2032 of 2025 titled "*Union of India v. Mrs. Sheetal S. Keni*" and Writ Petition No.4300 of 2025 titled "*Union of India & Ors v. Mrs. Amruta A Pansare & Ors.*" and the contemnor-respondent no.2 apparently flouted the direction of the Tribunal to consider those decisions for deciding the claim of the applicants.

9. The Contempt of Courts Act, 1971 defines "civil contempt" under clause (b) to section 2 to mean wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court. The expression "wilful disobedience" has been interpreted to mean intentional disobedience by the contemnor so as to flout the order or judgment of the Court. It means a deliberate, intentional, and conscious refusal to obey a rule, order or instruction without a justifiable excuse or good reason. It signifies a purposeful act of defiance and excludes accidental, unintentional or genuinely mistaken actions. Now this is too well settled that even in a case where the breach is admitted by the proposed contemnor, the complaining party has to establish that the breach was wilful and intentional.

10. When the proceedings in CP No.227 of 2024 is examined in the background of the aforesaid proposition in law and the Rules of 1992, we find that the Tribunal did not follow the procedure laid down under the Rules of 1992. On 28th November 2024 which was the first date of hearing of CP No.227 of 2024, the Tribunal issued notice to the contemnor/respondents without recording its *prima facie* satisfaction as required under Rule 8 of the Rules of 1992. The

said Rule provides that if the Bench is satisfied that a *prima facie* case has been made out, it may direct issue of notice to the respondent otherwise, it shall dismiss the petition or drop the proceedings. This is a matter of record that no substantial progress in CP No.227 of 2024 was recorded in the proceedings thereunder before the order dated 8th August 2025 directing the contemnor-respondent no.2 to remain physically present before the Tribunal came to be passed. This is also important to note that Rule 10 of the Rules of 1992 provides that unless ordered otherwise the proposed contemnor is permitted to appear through an advocate in the case of civil contempt.

11. Before requiring the contemnor-respondent to remain present for framing the charge, the Tribunal was required to reflect on the show-cause reply filed by the contemnor-respondent no.2 and to form an opinion that the explanation offered by the contemnor-respondent no.2 is untenable and a case for proceeding further under the Contempt of Courts Act is made out. No such finding has been recorded by the Tribunal in the order dated 8th August 2025 or in the previous proceedings before it. This is also quite surprising that the Tribunal takes note of paragraph no.7 in the order of rejection passed by the contemnor-respondent no.2, that it was on the advice of the Nodal Department that the contemnor-respondent no.2 proceeded to reject the representation of the applicants, yet decided to proceed against the contemnor-respondent no.2.

12. In a contempt proceedings which is quasi-criminal in nature, the Court should not proceed where the facts are hazy and not very clear. The Court may not also proceed in a matter where a stand has been taken by the proposed contemnor that it has taken an

advice of the department or superior and acted thereunder. The ACP Scheme is formulated by the Employer for providing financial up-gradation to its employees to avoid frustration in the cadre. The ACP Scheme contains several conditions on fulfillment of which an employee becomes entitled for financial up-gradation. There is no reference to the Scheme framed by the Employer in the order dated 31st January 2024 and merely referring to the decision in “*Amresh Kumar Singh*” and the order passed by the Principal Bench in OA No.2416 of 2016, a direction was issued to the contemnor-respondent no.2 to consider the claim of the applicants in terms of those decisions. In our opinion, a direction to consider, even if not complied by the Authority, shall not entail a proceedings under the Contempt of Courts Act. Notwithstanding the fact that the direction of the Tribunal contained in the order dated 31st January 2024 has been complied by the contemnor-respondent no.2, the Tribunal proceeded in the matter in complete ignorance of the law on the subject and the procedure laid down under the Rules of 1992. In “*J. S. Parihar*”, the Hon’ble Supreme Court has observed as under:-

“6. The question then is whether the Division Bench was right in setting aside the direction issued by the learned single Judge to redraw the seniority list. It is contended by Mr. S.K.Jain, learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three benches, the learned Judge cannot come to a conclusion whether or not the respondent had willfully or deliberately disobeyed the orders of the Court as defined under Section 2(b) of the Act. Therefore, the learned single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2-7-1991. Subsequently promotions came to be made. The question is whether seniority list is open to review in the contempt proceedings to find out, whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the

Court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the willful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the single Judge; the Division Bench corrected the mistake committed by the learned single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned single Judge when the matter was already seized of the Division Bench.”

13. In view thereof, the order dated 8th August 2025 is liable to be set aside.

14. Ordered accordingly.

15. However, we are not inclined to leave the matter as it is and exercising powers under Article 226 of the Constitution of India would quash the proceedings under CP No.227 of 2024 which, in our opinion, is a clear abuse of the process of law.

16. The powers of the writ Court under Article 226 of the Constitution of India are exercised in furtherance of justice and for public cause. This power is also exercised where the Court finds that a party has abused the process of the Court or law. The expression “abuse of the process of Court” has many meanings with its construction often influenced by its context. The Courts have inherent powers to prevent abuse of the process of Court and to otherwise secure the ends of justice for proper discharge of functions and duties imposed upon the Courts by law. The inherent powers of the High Courts are inherent in their constitution. All

such powers are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). The authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority, the Court has power to prevent abuse. In exercise of such powers, the Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice. Such proceedings may also amount to an abuse of the process of Court where the proceedings are absolutely groundless.

17. A case for contempt cannot be held to have been made out even though there may be disobedience if the same does not reflect that it has been a conscious and wilful disobedience. Moreover, non-compliance of the same cannot be held to be wilful disobedience of the order so as to make out a case of contempt if an order is capable of more than one interpretation. It is not enough that there should be some technical contempt of Court but it must be shown that the act of contempt would otherwise substantially interfere with the due course of justice. In “*Ashok Paper Kamgar Union v. Dharam Godha and Others*” (2003) 11 SCC 1, the Hon’ble Supreme Court observed that the expression ‘wilful disobedience’ means an act or omission done voluntarily and intentionally. It was held that willfulness signifies deliberate action done with evil intent and bad motive and purpose. Over the years, this has been the experience of the Courts that the proceedings under the Contempt of Courts Act, 1971 have

been misused by the parties and inferior Tribunals unmindful of the law on the subject proceed to take cognizance of the matter and sometimes pass orders like the order dated 8th August 2025. This is one such case where we find that the process of the Court has been misused and, accordingly, the proceedings in Contempt Petition No.227 of 2024 are quashed. Consequently, Writ Petition No. 12070 OF 2025 is allowed.

[GAUTAM A. ANKHAD, J.]

[CHIEF JUSTICE]

BHARAT
DASHARATH
PANDIT

Digitally signed by
BHARAT
DASHARATH
PANDIT
Date: 2025.09.25
11:55:10 +0530