

(2020) 02 J&K CK 0053

In the Jammu And Kashmir High Court

Case No : Contempt Petition No. 738 Of 2018, Service Writ Petition No. 844 Of 2015

Abdul Khaliq And Others

APPELLANT

Vs

Anuradha Gupta. Director School Education And Another

RESPONDENT

Date of Decision : 18-02-2020

Acts Referred:

Contempt Of Courts Act, 1971 — Section 2(b)

Citation : (2020) 02 J&K CK 0053

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : M.I. Sherkhan, Seema Shekhar

Final Decision : Disposed Of

Judgement

1. Present contempt petition is filed for initiation of contempt proceedings against the respondents for non-compliance and disobedience of judgement

dated 12.03.2018 passed in CPSW No. 279/2015 (in SWP No. 844/2015) on the grounds taken therein.

2. Brief facts of the case are that Writ Petitioners earlier filed SWP No.2607/2001, which came to be disposed of on the statement made by the

learned Government Advocate that the respondents would consider the claim of the petitioners as Class IV employees against the available vacancies.

The Government issued order No.440-Edu of 2010 dated 13.05.2010 and Director School Education was directed to issue appointment letters after

verification and for implementation of judgments. It is contended that the respondents implemented the judgment passed in SWP No.2607/2001 and in

SWP No. 673/2008 along with other clubbed writ petitions and the main file was titled as Adhil Akhter and others v. State of J&K and others. Being

aggrieved of such directions, the State went in appeal which stood disposed of on 30.07.2009, the operative part of which is reproduced hereunder:

“In the circumstances, for all practical purposes, it must be deemed that by way of a policy decision, the State Government created 417 more posts

and in those posts, by the order dated 04.04.2003 those 417 persons, who were permitted to work on temporary basis by the order dated 11.04.2002,

were regularized. In consequence thereof, it must be deemed that there are still 417 posts available. The number of writ petitioners is less than 417.

Accordingly, all of them can be accommodated. There will, therefore, be no occasion to take recourse to upsetting the orders of the Government

dated 11.04.2002 and 04.04.2003.

In the circumstances, the exercise to be undertaken in terms of the judgment and order under appeal be completed within a period of six months from

today and to that extent the judgment and order under appeal is modified with clarifications.”

3. Subsequently, the writ petitioners filed another writ petition bearing SWP No.844/2015, which also came to be disposed of vide judgment dated

18.03.2015, whereby it is observed:-

“In the aforesaid background this petition is disposed of with a direction to the respondent No.2 (Director School Education, Jammu), to accord

consideration to the case of the petitioners in the light of the said Government order, if not already accorded. In case their cases have already been

considered, result of same shall be conveyed to them; and in case not considered then respondents shall accord consideration to their cases and to

convey the result thereof to them within a period of three weeks from the date copy of the order is served upon them.”

4. For implementation of the aforesaid order dated 18.03.2015 passed in SWP No.844/2015, the writ petitioners preferred contempt petition bearing

CPSW No.279/2015, which came to be disposed of vide Order dated 12.03.2018 observing as under:-

“In view of the aforesaid submission, the contempt petition is disposed of with the direction to the Chief Education Officer, Poonch to issue the

orders of appointments in favour of the petitioners in the light of the order dated 13.05.2010 as well as order dated 18.05.2016. Needless to state that

the orders shall be issued subject to the conditions mentioned in the aforesaid

orders. Let the aforesaid exercise be carried out within six weeks from today. Accordingly, the contempt petition is disposed of.â??

5. Writ Petitioners have now filed the present contempt petition seeking implementation of order dated 12.03.2018 passed in CPSW No.279/2015 (in SWP No.844/2015).

6. The statement of facts stands filed on behalf of respondents, wherein it is stated that in compliance to the directions passed by this Court in SWP

No.844/2015, the then Director School Education, Jammu, vide communication dated 18.05.2016 directed the Chief Education Officer, Poonch, to

implement the orders of the Court after proper verification as per the sanction accorded in terms of the Govt. Order No.440-Edu of 2010 dated

13.05.2010. It is contended that the Chief Education Officer, Poonch, vide communication dated 14.01.2017 submitted that the names of the

petitioners in SWP No.844/2015 did not figure in the approved list, attached with the Government Order No.440-Edu of 2010 dated 13.05.2010. It is

also contended that contempt petition, being CPSW No. 279/2015, filed for non-compliance of the order dated 18.03.2015, was disposed of vide order

dated 12.03.2018. The petitioners have again approached this Court by filing the present contempt petition. It is contended that in due deference to the

directions of the Court, the case of the petitioners was examined and considered as per rules and it was found that the names of the petitioners did not

figure in the approved list attached with the Govt. Order No.440-Edu of 2010 dated 13.05.2010 as such, stands rejected. With these submissions, it is

prayed by respondents that since judgment/order passed by this Court in SWP No.844/2015 & CPSW No.279/2015 stand complied with in letter and

spirit, the instant contempt petition may be dismissed.

7. Heard learned counsel for the parties and perused the record.

8. From bare perusal of communication dated 18.05.2016 addressed by Director School Education, Jammu, to Chief Education Officer, Poonch, it

transpires that pursuant to court order passed in CPSW No.279/2015, respondent no.1 had directed respondent No.2 for proper verification of the

petitioners as per the sanction accorded in terms of Govt. Order No.440-Edu of 2010 dated 13.05.2010 and get the compliance report filed in the

contempt petition. In response to communication dated 18.05.2016, respondent No.2 vide his communication No.CEO/P/Legal/30018 dated 14.01.2017

has mentioned that on perusal of the approved list it is clear that the names of the petitioners in SWP No.844/2015 and CPSW No.279/2015 do not

figure in the approved list of Annexure-A to the Govt. order No.440-Edu of 2010 dated 13.05.2010.

9. Perusal of order dated 20.04.2019 issued by respondent No.1 and annexed with statement of facts, also reveals that the petitioners in the present

contempt petition, i.e., CPSW No.738/2018 (in SWP No.844/2015) do not figure in the approved list attached with Government Order No.440-Edu of

2010 dated 13.05.2010. It is also stated that the case of the petitioners was examined/considered strictly as per the rules governing the field and it has

been found that the names of the petitioners in the writ petitions did not figure in the approved list attached with the Government Order No.440-Edu of

2010 dated 13.05.2010. Therefore, after consideration/examination, their case was found to be not in consonance with the rules and also devoid of any

merit, and thus the claim of the petitioners was rejected.

10. In the above backdrop, it is pertinent to mention here that to hold respondents or anyone of them liable for contempt, this Court has to arrive at a

conclusion that the respondents have wilfully disobeyed the order of this Court. The exercise of contempt jurisdiction is summary in nature and an

adjudication of the liability of the alleged contemnor for wilful disobedience of the Court is normally made on admitted and undisputed facts. Reference

in this regard may be made to Noor Saba Vs. Anoop Mishra & another reported in 2013 0 Supreme (SC) 809.

11. In Kapildeo Prasad Sah & Ors. Vs. State of Bihar & Ors., reported in 1999 0 Supreme (SC) 926, it is held as under:-

“9. For holding the respondents to have committed contempt, civil contempt at that, it has to be shown that there has been wilful disobedience of

the judgment or order of the court. Power to punish for contempt is to be resorted to when there is clear violation of the court’s order. Since

notice of contempt and punishment for contempt is of far reaching consequence, these powers should be invoked only when a clear case of wilful

disobedience of the court’s order has been made out. Whether disobedience is wilful in a particular case depends on the facts and circumstances

of that case. Judicial orders are to be properly understood and complied. Even negligence and carelessness can amount to disobedience particularly

when attention of the person is drawn to the court's orders and its implication. Disobedience of court's order strikes at the very root of rule of

law on which our system of governance is based. Power to punish for contempt is necessary for the maintenance of effective legal system. It is

exercised to prevent perversion of the course of justice.

12. In *Suresh Estate Pvt. Ltd. & others Vs. Municipal Corporation of Greater Mumbai and others*, reported in 2008 0 Supreme (SC) 185 2it, is held as

under:-

12. The above discussion makes it very clear that there is no wilful disobedience of any of the directions issued by this Court while disposing of the appeal filed by the petitioners. This Court does not find that the respondents are guilty of wilful disobedience to the judgment rendered by this Court.

As no case for initiating proceedings for civil contempt is made out by the petitioners against the respondents, the instant application cannot be entertained and is liable to be dismissed.

13. In *M/s Ashok Paper Kamgar Union and others Vs. Dharam Godha & others*, reported in 2003 0 Supreme (SC) 856, it is held as under:-

17. Section 2(b) of Contempt of Courts Act defines civil contempt and it means wilful disobedience to any judgment, decree, direction, order, writ

or other process of a Court or wilful breach of undertaking given to a Court. Wilful means an act or omission which is done voluntarily and

intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done,

that is to say with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or

purpose. Therefore, in order to constitute contempt the order of the Court must be of such a nature which is capable of execution by the person

charged in normal circumstances. It should not require any extra ordinary effort nor should be dependent, either wholly or in part, upon any act or

omission of a third party for its compliance. This has to be judged having regard to the facts and circumstances of each case.

14. In view of above discussion and after applying the ratio of aforementioned judgments handed down by Hon'ble Supreme Court, this Court is of

the firm view that liability for contempt petition arises only on wilful disobedience and can be made only on the basis of admitted and undisputed facts.

Contempt petitioners changing stand and raising fresh dispute, adjudication of such disputes is not permissible in contempt jurisdiction. It is made clear that the Court I contempt jurisdiction has to consider only whether the direction or judgment of the Court passed in regular proceedings has been complied with or not. Since the respondents have considered the case of the petitioners in terms of the directions issued by this Court, therefore, the only remedy available to the petitioners is to throw challenge to the said consideration order. This Court cannot go beyond the directions contained in the order, disobedience whereof is complained.

15. For the forgoing reasons, the contempt petition is closed. Rule, if any, issued is hereby discharged. However, the petitioners are at liberty to challenge the consideration order if they so advised.