

(1987) 04 RAJ CK 0040

In the Rajasthan High Court

Case No : Civil Contempt Petition No. 18 of 1987 and Anr No. 17 of 1987

Arun Kumar Tavekar

APPELLANT

Vs

Ranjeet Mathur and Others

RESPONDENT

Date of Decision : 22-04-1987

Acts Referred:

Administrative Tribunals Act, 1985 — Section 28
Constitution of India, 1950 — Article 226, 227, 323
Contempt of Courts Act, 1971 — Section 10, 11, 12, 3

Citation : (1988) 1 WLN 342

Hon'ble Judges : P.C. Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.C. Jain, J.—In both the contempt petitions identical questions of law and fact are involved, therefore, they are disposed of by this common order For the sake of convenience, the facts of S.B. Contempt Petition No 17/1987, are taken into consideration.

2. This is a petition u/s 12 read with Section 10 and 11 of the Contempt of Courts Act, 1971, for committing respondents No 1, 2 and 3 for contempt for violating the order dated 17th October, 1986, passed by this Court.

3. The petitioner filed a writ petition before this Court under Article 226 of the Constitution of India. The contention of the petitioner was that he was not appointed on the post of Senior Clerk as per the selection letter dated 12th September, 1985, whereas many persons lesser in merit than the petitioner were appointed. This Court on 17th October, 1986, passed the following Order.

Issue notice of the stay petition. In the meantime, the petitioner shall be given appointment-as a Senior Clerk in accordance with his merit in case any person lower in merit than him has been appointed.

4. The case of the petitioner in this petition is that after passing of the order

dated 17th October, 1986, the petitioner submitted a certified copy of the stay order to the Sr. DPO. Western Railway, Jaipur and also sent a copy of the same to the General Manager, Western Railway and also to the Railway Service Commission Ajmer. But instead of appointing the petitioner on the post of Senior Clerk, the Senior DPO, Jaipur has refused to give appointment to the petitioner by letter dated 28th October, 1986. In spite of the notice dated 18th December, 1986, for complying with the order dated 17th October 1986 the respondents have not given any appointment to the petitioner and, thus, the respondents have committed the contempt of this Court. The respondents have submitted a reply to the contempt petition. The respondents have tried to justify the order on merit and have submitted that they have not done any wrong. The case of the respondents is that the writ petition filed by the petitioner is not maintainable in view of the jurisdiction of the Central Administrative Tribunal which is competent to deal with the service matters, including the matter relating to recruitment; and, thus, the order passed by this Court was without jurisdiction. It is also submitted by the respondents that no person junior to the petitioner was appointed as UDC by Jaipur Division. Each Division makes appointment as per the merit-order amongst those candidates selected and recommended for appointment on Jaipur Division. Since none of the candidates relating to the merit list of 191 persons issued by the Railway Service Commission. Ajmer was appointed on Jaipur Division, the respondents did not in any way have disobeyed the orders of this Court.

5. I would not like to go deep into the merit of the reply filed by the respondents. Suffice it to do say that the respondents have not complied with the order of the Court. Even in case it was not possible for them to give appointment, they could have approached this Court for modification of the order immediately. A merit list of persons was issued by the Railway Service Commission on 1st August, 1985, in which the name of the petitioner appeared at 33. It is also true (that the petitioners in both the writ petitions have not been appointed on the post of senior clerk, but many persons whose names appeared much below in the merit list i.e. at No. 154, 133, 105, 145, 136, 75, 78 and 79, have been appointed in various divisions of Western Railway. Thus as per the petitioner's case, it is clear that the respondents appointed many persons whose names appeared much below in the merit list, and it was on this account that this Court on 17th October, 1986, passed the aforesaid order. It is thus, factually correct that the petitioner has not been appointed in pursuance of the order passed by this Court. I do not find any merit in the reply filed by the respondents. Thus, it is a case where the respondents have failed to comply with the order of this Court and, hence, a clear case of contempt is made out. It is a rule that so long as there is an order by the Court which requires compliance, the party against whom the order passed, is liable for contempt for the disobedience of such order; whether the order is valid or irregular it has to be obeyed unless it is vacated.

6. The respondents in the contempt petition have raised objections that the writ petition filed by the petitioner is not maintainable in view of the jurisdiction of

the Central Administrative Tribunal in the matter of service matters relating to recruitment under the provisions of the Administrative Tribunal Act, 1985. In short, the submission of Shri Bapna, learned Counsel for the respondents, is that Section 28 of the said Act provides for exclusion of jurisdiction of court including the High Court in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any Service or persons appointed to a Service or post, and, since the matter involved in the writ petition relates to the matters provided under the provisions of the said Act & is within the powers of the Tribunal constituted under the said Act. jurisdiction of the High Court was completely ousted and consequently this Court had no jurisdiction in the matter and thus the order passed by this Court was completely without jurisdiction. In *S P. Sampath Kumar v. Union of India* AIR 198 SC 386 and *J.B. Chopra and Ors v. Union of India & Ors.* 1986 (4) SVLR 216, the Supreme Court held that the jurisdiction of the High Court stands ousted by virtue of enactment of the Administrative Tribunals Act, 1985. While dealing with this subject, the Supreme Court observed that it is difficult to contend that Article 323 which permits a law to exclude the jurisdiction of the High Court under Articles 226 and 227, is violative of the basic structure and doctrine and thus is outside the constitutional power of Parliament, if it provides for an efficacious alternative institutional mechanism or authority for judicial review. The Supreme Court upheld the validity of Section 28 of the Administrative Tribunals Act which excludes the jurisdiction of the High Court in service matters specified in Section 28 of the said Act. Thus, the subject matter involved in the writ petition falls within the purview of the said Act and, in view of Section 28 of the said Act, this Court has no jurisdiction to deal with the service matters.

7. There is no dispute that the subject-matter of the writ petition is a service matter within the definition of "service matters" as defined in Section 3(q) of the Act. Shri Soni, learned Counsel for the petitioner, placed reliance on *Kruthiventi Kutumba Rao Vs. Muthi Venkata Subba Rao and Others*, to contend that even if the Court had no jurisdiction to issue, the party against whom the order is passed is under an obligation to obey it and the Court will have the power to punish the person for contempt. In my opinion, this ruling does not support Shri Soni. The proposition of the ruling is that an order passed by the Court, whether it is legal or irregular, is to be obeyed unless it is vacated. It is true that any order passed by the Court having no jurisdiction is a nullity. It is also true that mere absence of territorial or pecuniary jurisdiction does go to the root of the matter of jurisdiction as it is capable of being cured by acquiescence or order of court or in other respects. But inherent lack of jurisdiction is a different matter. Thus, I am of the view that this Court had no jurisdiction to pass the order dated 17th October, as the writ petition was not maintainable in view of Section 28 of the Administrative Tribunals Act, 1985. The order was, thus, a nullity and void and technically, the respondents were not under an obligation to obey the same. As such, the contempt petition is not maintainable. However, I would like to mention

whether it was justified for the respondents to raise such objection when the respondents are Senior Officers of the Union of India. The law of contempt is based on some public policy by punishing any conduct which shakes public confidence in the administration of justice. The primary object of the contempt proceedings is to safe-guard and protect the dignity of Court and administration of justice. The Courts in India derive their authority from the Constitution with the people of this country have themselves adopted and given upto themselves and held it and pressed it for the security and benefit of the people. The power which Judges are called upon to exercise is the authority of the people themselves which has vested by the Constitution in court of law. In the ultimate analysis, contempt of Court is contempt of the authority of the sovereign state exercisable through its courts duly constituted for the administration of justice. The administrative authorities should not forget that they should never rely upon the technicalities. They should act in a manner consistent with the broader concept of justice if the feeling is to be nurtured in the minds of the citizens that the Government is by and for the people. This has become more essential when the administration is dealing with the employees or in the matter of employment. It is true that the order of this Court was without jurisdiction. Thus, I am dismissing the contempt petition but it would be for the administration to consider this matter whether such an objection should have been taken by them just to save themselves from the peril of contempt proceedings after clearly defying the order of the Court. Such a conduct of the respondents cannot be appreciated in any manner.

8. Let a copy of this order be sent to the Chairman, Railway Board and the Union Minister for Railways.