

(2014) 04 JH CK 0097
In the Jharkhand High Court
Case No : LPA No. 153 of 2013

Ashwini Kumar Sinha

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 21-04-2014

Acts Referred:

Contempt of Courts Act, 1971 — Section 2, 2(b), 2(c)

Citation : (2014) 2 JLJR 629

Hon'ble Judges : R. Banumathi, C.J;S. Chandrashekhar, J

Bench : Division Bench

Advocate : Anil Kumar Sinha and Vijay Shankar Prasad, Advocate for the Appellant; S.K. Verma, Advocate for the Respondent

Judgement

1. The present appeal is preferred against the order dated 25.2.2013 passed in W.P. (S) No. 5035 of 2012 whereby the learned Single Judge dismissed the writ with cost of Rs. 50,000/- on the appellant and directed initiation of a proceeding under the Contempt of Courts Act, 1971 against the appellant by a separate proceeding. Brief facts:--The appellant was appointed as a daily wager in Additional Primary Health Centre, Boarijore in 1985. Subsequently, the Selection Committee recommended the name of the appellant along with others for the appointment on the post and the appellant was appointed in Class-III posts of Surveillance Worker by the Civil Surgeon-cum-Chief Medical Officer, Godda vide Memo No. 1096 dated 31.12.1989 and was posted under the In-charge Medical Officer, Boarijore, Godda.

2. Subsequently, vide a Memo No. 310 dated 25.2.1991, the Civil Surgeon-cum-Chief Medical Officer terminated the service of the appellant and 51 other Class-III and Class-IV employees. Challenging the termination, the appellant filed a writ petition being C.W.J.C. No. 1848 of 2001 and the same was dismissed by order dated 20.8.2001. Against the said order, the appellant preferred an appeal in L.P.A. No. 636 of 2001 and the said Letters Patent Appeal was dismissed by the Division Bench by order dated 14.5.2003. The appellant filed another writ

petition being W.P. (S) No. 2156 of 2007 and the said writ petition was dismissed as not pressed.

3. Stating that some other Class-IV employees whose services were terminated were ordered to be reinstated by the order of the Court in C.W.J.C. No. 2078 of 1991 and contending that the appellant is similarly situated to those Class-IV employees, the appellant has filed writ petition being W.P. (S) No. 5035 of 2012 which was dismissed by the learned Single Judge holding that:--

7. The writ petition, CWJC No. 1848 of 2001, filed by the petitioner with the same prayer, was dismissed by order dated 20th August, 2001. Against the said order, the petitioner had preferred appeal, being L.P.A. No. 636 of 2001. The said appeal was dismissed by the Division Bench of this Court by a well considered and elaborate order dated 14th May, 2003. In the said order, it was noticed that the termination order was given opportunity to defend.....

9. Considering the facts and the documents available on record, I find that the petitioner has filed this writ petition by suppressing the material facts with the same prayer which was rejected earlier in writ petition (W.P. (S) No. 1848 of 2001). The appeal filed against the said order, being LPA No. 636 of 2001, was also dismissed by a reasoned order. I, therefore, find substance in the submission of learned counsel for the respondents that the petitioner has a defiant attitude towards the Court's order and he is also guilty of suppressing the material facts and making misrepresentation before this Court.

4. We have heard the learned counsel for the parties and perused the documents on record.

5. Mr. A.K. Sinha, learned Senior Counsel appearing for the appellant has submitted that the present writ petition being W.P. (S) No. 5035 of 2012 was filed by the appellant in view of order passed by this Court in W.P. (S) No. 2399 of 2009 whereby the prayer of other similarly situated persons were allowed and order of termination was quashed by this Court and that necessitated the filing of the present writ petition. Referring to paragraph Nos. 10, 16 & 20 of the writ petition, he further pointed out that the appellant-writ petitioner has disclosed filing of the C.W.J.C. No. 1848 of 2001 and W.P. (S) No. 2156 of 2007 by the appellant and it was thus duly disclosed by the appellant that the writ petitions filed earlier by the appellant were dismissed by this Court. Questioning the validity of the order passed by the learned Single Judge whereby a cost of Rs. 50,000/- has been imposed upon the appellant and a further direction has been issued for initiating a separate proceeding under the Contempt of Courts Act, 1971, the learned Senior Counsel has submitted that even if it has been found by the learned Single Judge that the appellant has suppressed some material facts, an order for initiation of a separate proceeding under the Contempt of Courts Act, 1971 could not have been ordered by the learned Single Judge. He has further submitted that in view of the prayer made by the appellant in the writ petition wherein an order similar to the order passed by this Court in W.P. (S) No.

2399 of 2009 was sought by the appellant and the dismissal of the earlier two writ petitions were disclosed by the appellants, the writ petition could not have been dismissed imposing a cost of Rs. 50,000/- upon the appellant.

6. Mr. S.K. Verma, learned counsel appearing for the respondents has submitted that by approaching the Court even after dismissal of the successive writ petitions and L.P.A. No. 636 of 2001 the appellant misused the process of law, and therefore, the learned Single Judge has rightly imposed a cost of Rs. 50,000/- besides, ordering initiation of a separate proceeding under the Contempt of Courts Act, 1971.

7. Having appreciated the submissions advanced on behalf of the learned counsel appearing for the parties, we are of the view that though the appellant has lost before this Court in the proceeding of C.W.J.C. No. 1848 of 2001 and the order passed in the writ petition has been affirmed by the Letters Patent Court in L.P.A. No. 636 of 2001, from the materials on record it appears that the appellant did not disclose the dismissal of the Letters Patent Appeal. We are of the view that this would not amount to suppression of a material fact so as to warrant imposition of cost of Rs. 50,000/-. The word "material fact" has been discussed by the Hon"ble Supreme Court in *Arunima Baruah Vs. Union of India (UOI) and Others*, , so as to mean a fact, consideration and/or non-consideration of which would materially affect the outcome of the case. In "*Arunima Baruah*" (supra), the Hon"ble Supreme Court has held that suppression must be of "material" fact. A "material" fact would mean a fact necessary for determination of the lis and thus, if a fact is not essential for grant or denial of the relief, it would not be a "material" fact. The Hon"ble Supreme Court has held thus:--

12. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.

8. Since the appellant had disclosed the dismissal of the writ petition being C.W.J.C. No. 1848 of 2001 however, he failed to disclosed dismissal of L.P.A. No. 636 of 2001 which was filed challenging the order passed in C.W.J.C. No. 1848 of 2001, we are of the view that non-disclosure of the dismissal of the Letters Patent Appeal would not have any material bearing on the outcome of the case.

9. We further find that the word "contempt" has been defined u/s 2 of the

Contempt of Courts Act, 1971. Section 2(b) defines the word "civil contempt" and Section 2(c) defines "criminal contempt" which read as under:--

2. Definitions.--(b) "civil contempt" means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court;

(c) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which--

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

10. From the definition of "civil contempt" u/s 2(b) it is patently clear that only a willful disobedience of an order passed by the Court or willful breach of an undertaking given to the Court would amount to contempt. It cannot be gathered from the definition of civil contempt as defined u/s 2(b) of the Contempt of Courts Act, 1971 that suppression of a fact even though not a "material fact" would amount to contempt of Court and warrant initiation of separate proceeding under the Contempt of Courts Act, 1971.

11. In view of the aforesaid, though we do not find any merit in the contention of the learned Senior Counsel appearing for the appellant that appellant should have been granted order similar to the order granted to persons in W.P. (S) No. 2399 of 2009, we find substance in the contention that imposition of cost on the appellant was not justified and in the facts of the present case, the learned Single Judge could not have ordered initiation of a separate proceeding under the Contempt of Courts Act, 1971. Accordingly, we set aside the order of imposition of cost of Rs. 50,000/- upon the appellant as well as the order for initiation of a separate proceeding under the Contempt of Courts Act, 1971. In the result, this Letters Patent Appeal is partly allowed.