

(2010) 09 AHC CK 0120
In the Allahabad High Court
Case No : Contempt No. 2047 of 2010

Beean Deshwar

APPELLANT

Vs

Mr. Ashok Ganguli, Director Rajya Shaikshik Anushandhan
Another

RESPONDENT

Date of Decision : 22-09-2010

Acts Referred:

Constitution of India, 1950 — Article 32
Contempt of Courts Act, 1971 — Section 10, 11

Citation : (2010) 09 AHC CK 0120

Hon'ble Judges : Ritu Raj Awasthi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ritu Raj Awasthi, J.—Heard Sri Ramesh Pandey, learned Counsel for the applicant-petitioner and perused the record.

2. It is submitted that by order dated 26.10.2007 passed in Special Appeal No. 358 of 2004, the Court had allowed the special appeal as per the decision given in Special Appeal No. 346 of 2004 Shashi Sharma v. State of U.P. and Ors., decided on 26.10.2007. The said special appeal was allowed with the following observations:

We are in respectful agreement with the reasons given in the aforesaid Judgment given in special appeal as nothing could be argued, so as to dislodge the findings recorded by the aforesaid Bench. Since the controversy involved in the present special appeals is squarely covered by the judgment in the aforesaid special appeal of Gyanandra Kumar Sharma and 49 others, we, for the aforesaid reasons, set aside the order passed by the learned Single Judge dated 14.9.2004 and direct the State to proceed further in accordance with law with respect to the present appellants. We are informed that one seat each is reserved for all the appellants, which are lying vacant, therefore, immediate action be taken for considering the case of the appellants, ignoring the condition that they have not

passed their B.Ed./L.T. course, as a regular candidate.

3. It is submitted that against the judgment dated 26.10.2007 passed in the Special Appeal No. 346 of 2004, the State had filed SLP before the Hon. Supreme Court in which the operation of the judgment passed in the aforesaid special appeal was stayed on 4.4.2008. However, subsequently by order dated 23.4.2010, the Hon. Supreme Court has directed that the petitioner shall be sent for six months training as per the procedure.

4. Learned Counsel for the petitioner has tried to impress the Court that in view of the subsequent order of the Hon. Supreme Court, the petitioner was entitled to be sent on training and the opposite party is responsible for disobedience of the Court's order.

5. The record reveals that by order dated 4.4.2008 passed in SLP (Civil) No. 4638 of 2008, the operation of the judgment dated 26.10.2007 passed in Special Appeal No. 346 of 2004, was stayed. Subsequently by order dated 23.4.2010 the Hon. Supreme Court has directed that the petitioner shall be sent for six months training as per procedure on a clear understanding that the mere fact that they have undertaken the training will not allow them to claim any equities and the matter shall be listed on 21.9.2010.

6. Learned Counsel for the petitioner on a query being put, submits that he is not aware as to what has happened in the Hon. Supreme Court on 21.9.2010. Learned Counsel for the petitioner fails to indicate that the judgment and order dated 26.10.2007 passed in Special Appeal No. 346 of 2004 is operational and has to be complied with by the opposite party.

7. It is to be noted that the present contempt petition has been filed for disobedience of the order dated 26.10.2007 passed in Special Appeal No. 358 of 2004 after passing of the interim order dated 23.4.2010 by the Hon. Supreme Court.

8. I am of the considered opinion that the order passed by the Hon. Supreme Court confines to the petitioner of the writ petition relating to which the special appeal No. 346 of 2004 was filed.

9. Moreover, in case the petitioner is relying on the order of Hon. Supreme Court and is entitled to be sent on training as directed by Hon. the Supreme Court and also says that the said order has not been complied with then it was open to the petitioner to move contempt petition before the Hon. Supreme Court.

10. In view of the above, this contempt petition is misconceived and it is hereby dismissed. However, it is open to the petitioner to seek appropriate remedy before the appropriate forum as may be provided under law.

22.9.2010 Arjun

11. After the dictation of the above order Sri Ramesh Pandey, learned Counsel for the petitioner appeared before the Court and submitted that he wants to cite

the following judgments in support of his submissions:

1. D.S. Batra and Others Vs. Lal Chand Singh and Others,
2. 2005 (23) LCD 232, Provincial Medical Services Association, U.P. and Ors. v. State of U.P. and Ors..

12. In the case of D.S. Batra and others (Supra), certain employees of U.P. Bridge Corporation had filed the writ petition under Article 32 of the Constitution of India before the Hon. Supreme Court with respect to their grievance for payment of appropriate salary and regularization on the posts on which they were working. The writ petitions were disposed of. Thereafter the department had retrenched the said employees against which a writ petition was filed challenging the retrenchment order before the High Court. In the writ petition certain interim orders protecting the interest of the petitioners were passed by the High Court. Ultimately, the writ petition was decided taking into consideration the above order passed by the Hon. Supreme Court. Thereafter the department had filed the SLP before the Hon. Supreme Court wherein the Hon. Supreme Court had modified the order passed by the High Court to some extent.

13. Since the above order was not being complied with, contempt petition was filed before the Hon. Supreme Court which was disposed of with the following observations:

If our order is not being complied with, the petitioners may approach the High Court for any appropriate directions. The contempt petition is disposed of.

14. Thereafter the contempt petition was filed before the High Court alleging wilful disobedience of the order which was entertained.

15. Feeling aggrieved against the order passed on the miscellaneous application relating to the recall of the order, the contempt appeal was decided by the present judgment.

16. In the case of Provincial Medical Services Association, U.P. and others (Supra) the special appeal was preferred against the order passed by the learned Single Judge while dealing with the contempt petition with respect to the earlier order passed in the same contempt petition directing the State Government to frame transfer policy and implement the same.

17. Learned Counsel for the petitioner on the strength of the aforesaid judgments submitted that the High Court is fully empowered to exercise the contempt jurisdiction in the case where the Hon. Supreme Court has issued certain directions in the matters arising out of the cases agitated before the High Court.

18. However, the aforesaid judgments are of no assistance to the petitioner as in the present case the facts of the case clearly indicate that the SLP is pending before the Hon. Supreme Court in which the judgment and order dated 26.10.2007 passed in Special Appeal No. 346 of 2004 has been stayed by order

dated 4.4.2008 and by the interim order dated 23.4.2010 the Hon. Supreme Court has directed that the petitioner shall be sent for six months training with certain observations, which operates between the parties.

19. Under Sections 10 and 11 of the Contempt of Courts Act, it has been provided that a High Court shall have jurisdiction to inquire into or try a contempt of itself or of any Court subordinate to it which in other words exclude jurisdiction of the High Court to inquire into and try a contempt of other superior Courts.

20. As such, I do not feel proper to entertain the instant contempt petition. It is hereby dismissed as observed above.