
(2001) 03 JH CK 0011
In the Jharkhand High Court
Case No : MJC No. 159 of 2001

Binod Prasad Karn

APPELLANT

Vs

Hari Shankar Prasad and Others

RESPONDENT

Date of Decision : 15-03-2001

Acts Referred:

Citation : (2001) 03 JH CK 0011

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Judgement

M.Y. Eqbal, J.—Heard Mr. M.S. Anwar, learned counsel for the petitioner and Mr. V. Shivnath, learned counsel for the opposite party.

2. This application has been filed for initiation of contempt proceeding against opposite party No. 1, the Managing Director, Bihar State Lac Marketing Federation Ltd. for the alleged violation of the order dated 1.8.2000 passed in CWJC No. 2323/2000 (R).

3. The aforementioned writ application was filed by the petitioner for quashing the departmental proceeding initiated against him and also the order dated 5.4.2000 by which he was transferred to Jante Factory, Murhu, Ranchi, This Court, by order dated 1.8.2000. refused to interfere with the order of transfer and departmental proceeding. However, so far payment of salary is concerned, the petitioner was directed to file representation before the competent authority and the latter was directed to dispose of the representation within a month by taking a decision for payment of salary.

4. Petitioner's case is that in pursuance of the aforesaid order he filed representation before opposite party No. 1 on 11.8.2000 and also joined Jante Factory, Murhu. The representation of the petitioner was sent by registered post on 11.8.2000 which was said to have been received by opposite party No. 1. It is contended that instead of complying the order of this Court, the opposite party No. 1 issued a show cause notice dated 18.8.2000 calling for an explanation from

the petitioner as to why he approached the High Court against the order of transfer. It is further stated that as per the direction given in the show cause notice the petitioner submitted his joining report in the headquarters of the opposite party on 21.10.2000. A copy of the show cause notice dated 18.8.2000 has been annexed as Annexure 3.

5. A show cause has been filed by opposite party No. 1 stating, inter alia, that the petitioner disobeyed the order of transfer dated 5.4.2000 and did not join in the transferred post. The petitioner was again directed to join vide memo No. 240 dated 16.9.2000 but the petitioner refused to join and returned the said memo by the office messenger. It is further stated that till date the petitioner has not joined at the headquarters of the opposite party in compliance of the order dated 16.9.2000 and he has not worked from 6.2.2000 till date. He is, therefore, not entitled to get salary for the period he has not worked.

6. The petitioner also filed a supplementary affidavit in pursuance of the order dated 26.2.2001 passed in this case rebutting the allegation made by the opposite party and stating that he had joined Jante Factory and worked from 11.8.2000 to 30.8.2000.

A reply to the show cause has also been filed by the petitioner stating, inter alia that he was lying ill at Patna and was indoor patient from 7.9.2000 to 19.9.2000. He was discharged from the hospital only on 19.9.2000. Thereafter, as per advice of the doctor, the petitioner was to take rest at Patna for four weeks and for that he sent application for grant of medical leave.

7. First of all I will deal with the conduct of the petitioner in the matter of the matter of obeying the order of the superior authority. The petitioner was transferred by office order dated 5.4.2000 to Jante Factory. Murhu. Instead of joining in the transferred post he moved this Court by filing, CWJC No. 2323/2000(R) and this Court, by order dated 1.8.2000, refused to interfere with the order of transfer. Admittedly there was no order staying the transfer of the petitioner and, therefore, there is no justification for the petitioner to disobey the order of transfer for about four months i.e. till 10.8.2000. Even assuming that the petitioner joined at Jante Factory on 11.8.2000 but he remained absent in the month of September, 2000 which is evident from the Attendance Register produced by the opposite party. There is no satisfactory evidence to show that the conduct of the petitioner was bona fide in the matter of obeying the order of the superior authority. In my opinion, a person who invokes the jurisdiction of this Court under Contempt of Courts Act, must come with clean hands and satisfy the Court that his conduct is fair notwithstanding the fact that the contempt proceeding is between the Court and the contemnor. In that view of the matter I am not inclined to exercise my discretion to initiate contempt proceeding against opposite party No. 1. Recently in the case of Om Prakash Jaiswal v. D.K. Mittal and another AIR 2000 SC 722, the Apex Court while considering the jurisdiction of the Court in the matter of initiation of contempt has held as follows :--

"The jurisdiction to punish for contempt is summary but the consequences are serious. That is why the jurisdiction to initiate proceedings in contempt as also the jurisdiction to punish for contempt in spite of a case of contempt having been made out are both discretionary with the Court. Contempt generally and criminal contempt certainly is a matter between the Court and the alleged contemnor. No one can compel or demand as of right initiation of proceedings for contempt. Certain principles have emerged. A jurisdiction in contempt shall be exercised only on a clear case having been made out. Mere technical contempt may not be taken note of. It is not personal glorification of a Judge in his office but an anxiety to maintain the efficacy of justice administration system effectively which dictates the consciences of a Judge to move or not to move in contempt jurisdiction. Often an apology is accepted and the felony condoned if the Judge feels convinced of the genuineness of the apology and the prestige of the Court having been restored."

8. Now I shall examine whether the opposite party No. 1, in fact, committed contempt of this Court by wilfully disobeying and disregarding the order passed in the writ petition. As noticed above, Instead of disposing of the representation and taking a decision whether the petitioner is entitled to salary, opposite party No. 1 issued show cause notice dated 18.8.2000. According to the petitioner the show cause notice dated 18.8.2000 amounts to contempt of this Court. From a perusal of the said show cause it appears that besides other facts opposite party No. 1 has called for an explanation from the petitioner as to why he moved the High Court without giving prior information to the office. It is further stated in the show cause notice that approaching the High Court against the order passed by the opposite party without prior information amounts to indiscipline and insubordination. The words used in the show cause notice amounts to Contempt of Court. However, in the show cause the opposite party No. 1 has tendered his unqualified apology for making those statements in the show cause notice. By filing a supplementary affidavit it is further stated that those statements have not been made with an intention to lower down the authority of this Court and the statements are unintentional for which opposite party No. 1 tenders his unqualified apology.

9. Having regard to the facts stated in the show cause and the submissions made by the learned counsel for the opposite party No. 1, I am satisfied that the statements made in the show cause notice were not intentional in order to lower down the authority in the Court. But the opposite party No. 1 must be warned that he should not repeat such statements in future and should be very careful in the matter of obeying the order of this Court.

10. With the aforesaid observations this contempt proceeding is dropped.

11. Contempt proceeding dropped.