
(2015) 10 SHI CK 0085
In the High Court Of Himachal Pradesh
Case No : COPC No. 672 of 2011

Brij Lal Thakur

APPELLANT

Vs

S.K. Murti and Others

RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

Citation : (2015) 10 SHI CK 0085

Hon'ble Judges : Mansoor Ahmad Mir, C.J. and Dharam Chand Chaudhary, J.

Bench : Division Bench

Advocate : Sanjeev Bhushan, Senior Advocate and Abhilasha Kaundal, Advocate, for the Appellant; Shrawan Dogra, Advocate General, Anup Rattan, Romesh Verma, Additional Advocates General and J.K. Verma, Deputy Advocate General, for the Respondent

Judgement

Dharam Chand Chaudhary, J.—Complaint herein is that the respondents have failed to implement the judgment dated 17.3.2010 Annexure C-1, passed by learned Single Judge in CWP(T) No. 186 of 2008 despite of the certified copy thereof delivered in the office of second respondent long ago. There being willful, intentional and deliberate violation of the judgment passed by this Court, therefore, the respondents are stated to be in contempt of this Court and as such have been sought to be punished in accordance with law.

2. Petitioner herein alongwith six others had filed an Original application in the HP State Administrative Tribunal, which on its abolition in the year 2008 came to be transferred to this Court for disposal and registered as CWP(T)P No. 186 of 2008. The complaint was that the respondents though have granted the benefit of merger of 50% dearness allowances with basic pay of the Government employees in terms of office memorandum dated 10.6.2005 (Annexure A-1 to the writ petition), however, later on withdrawn vide subsequent communication dated 29.9.2005 (Annexure A-2 to the writ petition) and their pay has been reduced.

3. The original petitioners including the petitioner were appointed as Lecturers/

Drawing Teachers on contract basis against the sanctioned posts and in the matter of pay+ allowances and other terms and conditions of their employment were governed by the Government notification dated 8.10.1996 (Annexure A-3 to the writ petition). They were entitled to the minimum of the pay scale plus allowances by way of salary. They were to be paid their emoluments in terms of the notification Annexure A-1 at par with other employees working on regular basis, however, in their case the benefit of office memorandum Annexure A-1 has been arbitrarily withdrawn in contravention of the terms and conditions in the agreement they executed. The benefit of office memorandum Annexure A-1, initially extended in their favour was later on withdrawn unilaterally without affording them an opportunity of being heard. To the contrary, the office order qua payment of emoluments to contractual employees dated 9.5.2006 (Annexure R/C-3 to the reply) has been issued and thereby the emoluments of contractual employees were reduced to basic pay+ D.P. (50%). The clarification dated 17.5.2006 (Annexure R-4 to the reply) was issued that this will only be the maximum ceiling so far as the emoluments of contractual employees are concerned. Not only this, but vide instructions dated 8.8.2006 (Annexure A-4) the respondent-State has ordered to call upon the contractual employees to exercise their option as to whether they would like to be governed by the norms and conditions of their contract executed prior to 9.5.2006 or the fixation of their emoluments in terms of the order dated 9.5.2006, Annexure R/C-3. The respondents consequently prepared their salary bills in terms of the office order dated 9.5.2006 Annexure R/C-3 read with Annexure A-4 supra and thereby reduced their salary. It was claimed that in terms of the agreement they executed they were entitled to the salary and other allowances at the rates as admissible to the employees of the State Government from time to time as they were also discharging the similar duties being discharged by their counter parts appointed on regular basis. They allegedly were discriminated in the matter of payment of salary. The writ petition was, therefore, filed with the following prayers:

"i) That the present OA may kindly be allowed and the salary as ordered to be fixed vide Annexure A-2 and Annexure A-4 may kindly be declared as void and ab initio and set aside.

ii) That the respondents be directed to pay the revised pay scale and other benefits to the applicants from the initial date of appointment as is being paid to the similar situate employees."

4. In reply to the writ petition, the stand as taken was that the category of petitioner being not covered under the office memorandum dated 10.6.2005 is not entitled to claim emoluments with merger of 50% dearness allowance at par with the government employees appointed on regular basis. The Government in order to bring uniformity issued instructions dated 9.5.2006 Annexure R/C-3, 17.5.2006, Annexure R-4 and 8.8.2006 Annexure R-5. As per these instructions, the emoluments of the contractual employees were restricted to basic-pay plus

50% dearness allowance and in the event of they were drawing higher amount prior to issuance of the said instructions had to exercise their option to continue therewith as per the contract of their appointment. The petitioners, therefore, being not entitled to the benefit of the office memorandum dated 10.6.2005, the writ petition was sought to be dismissed.

5. Learned Single Judge while taking note of the impugned order dated 29.9.2005, Annexure A-2 having been withdrawn by the respondent-State during the pendency of the writ petition and learned Counsel on both sides being in agreement that the point in issue in the writ petition is covered in favour of the petitioners by a Division Bench judgment of this Court in CWP(T) No. 14232 of 2008, titled Nek Ram and others v. State of HP and others, the writ petition was disposed with a direction to the respondents to grant benefits to the petitioners in terms of the judgment in Nek Ram's case supra, vide judgment dated 17.3.2010 (Annexure C-1) to this petition. It is this judgment alleged to have been violated by the respondents.

6. The notice of this petition has only been confined to the second respondent. In response the stand of the said respondent is that there is no willful or intentional violation of the judgment Annexure C-1 and rather it is the petitioner herein who has failed to exercise the option in terms of the office order dated 9.5.2006 Annexure R/C-3 read with order dated 8.8.2006 Annexure R-4 (to the reply filed in the writ petition) which even was required to be exercised in terms of the judgment of this Court also in Nek Ram's case supra. Also that in terms of the instructions dated 9.5.2006 the petitioner could have only drawn basic pay plus 50% dearness allowance/D.P. and as he was drawing higher emoluments prior to issuance of these instructions hence was allowed to draw the same. Therefore, the judgment Annexure C-1 is stated to be not violated by the respondents.

7. The petitioner in supplementary affidavit filed on 12.12.2012 while submitting that he has already exercised the option in terms of the judgment in Nek Ram's case supra, the stand of the respondent that nothing is due to him is stated to be in sheer violations of the judgment of this Court. The benefit of the judgment of this Court in Nek Ram's case is stated to be given to other similarly situated persons, however, denied to the petitioner. Reliance in this behalf has been placed on Annexure Y-1, the salary statement of one Smt. Deepa Kaushal, Lecturer Economics in Government Senior Secondary School, Nogli, District Shimla. He has also filed his own due and drawn statement to show that he is being paid lesser salary.

8. In the counter affidavit filed by the second respondent the stand taken is the same as in the reply to this petition filed on 28.3.2012.

9. We have considered the matter in the light of the material placed on record and the arguments addressed on both sides.

10. The petitioners in the writ petition were appointed as teachers on contract basis and in the matter of payment of salary/emoluments they were governed by

the government instructions dated 8.10.1996 Annexure A-3 to the writ petition. In these instructions there is provision of payment of full wages to the employees like the petitioners at the minimum of the scale including usual allowances payable to a government servant. In the affidavit-in-reply dated 27.6.2013 filed by the second respondent it has been stated that the petitioners were being paid basic pay+D.A.+ other allowances, i.e., 6400+3904+200+200 =10704/- on 9.5.2006, the day when office order Annexure R/C-3 was issued by the respondent-State.

11. The statement Annexure R-2 to the counter-affidavit filed by respondent No. 2 on 30.4.2013, however, reveals that only D.A. has been paid to the petitioner, whereas in terms of office memorandum dated 10.6.2005 he is entitled to draw his salary as under:

"B.P.+D.P.+D.A. and other allowances admissible to government employees."

12. The due and drawn statement Annexure Y-1, in the case of one Smt. Deepa Kaushal, lecturer Economics on contract basis to the supplementary affidavit dated 9.12.2012 of the petitioner, reveals that her salary has been drawn with the help of the formula in the office memorandum dated 10.6.2005. The petitioner has prepared the due and drawn statement Annexure Y-2 to the same affidavit and on perusal thereof it is crystal clear that he has not been paid the due and admissible emoluments.

13. Obviously on 10.6.2005, the day when the respondent-State has taken a decision with regard to the merger of 50% D.A. to be added to as D.P. to basic pay qua its employees vide office memorandum Annexure A-1 to the writ petition, the petitioners were drawing their salary as aforesaid. Initially Annexure A-1 was made applicable to contractual employees also and for some time they continued to draw their salary as per this memorandum. Subsequently, the benefit thereof was, however, withdrawn from the contractual employees vide letter dated 29.9.2005, Annexure A-2 to the writ petition. It is against this order several writ petitions including CWP(T) No. 14232 of 2008, Nek Ram and others v. State of H.P. and others including CWP(T) No. 186 of 2008 came to be filed with a prayer to quash the office order Annexure A-2. This was withdrawn by the respondent-State, as is apparent from the judgment alleged to have been violated. Therefore, the decision taken by the respondent-State qua withholding the benefit of Annexure A-1 from contractual employees became non-existence. The respondent-State, however, had taken a decision circulated vide letter dated 9.5.2006 Annexure R/C-3 to the reply filed in the writ petition and the contractual employees were allowed the emoluments, i.e., initial of the pay scale+ D.A. It was made clear vide subsequent letter dated 17.5.2006 Annexure R-4 to the reply filed in the writ petition that the maximum ceiling of emoluments payable to contractual employees fixed vide Annexure R-4 should not exceed in no case.

14. Then comes the instructions dated 8.8.2006, Annexure R-5 to the reply filed

in the writ petition circulated to ensure that the contractual employees like the petitioners appointed before 9.5.2006 are given an opportunity to exercise their option as to whether for the purpose of drawal of their emoluments they intend to be governed by the norms and conditions under the contract they executed or would like to opt to be governed by the instructions circulated vide letter dated 9.5.2006 (Annexure R/C-3). The only purpose of the instructions Annexure R-5 was to ensure that the emoluments, which were being drawn by the contractual employees like the petitioners before coming in force the instructions dated 9.5.2006, are not reduced.

15. The original petitioners had a grievance against the instructions Annexure R-5 (Annexure A-4 to the writ petition), therefore, it is for this reason they have sought the quashment thereof also in the writ petition. The grievance of the petitioners was absolutely justified because prior to issuance of instructions dated 9.5.2006 they admittedly were drawing the emoluments higher in side, i.e., basic pay+ D.P.+D.A. and other allowances at par with regular government employees.

16. Significantly, the nature of the grievance brought to the Court by the petitioners in Nek Ram's case supra was also identical in nature. A Division Bench of this Court after taking into consideration all prose and cons and also the tone and tenor of the office memorandum, Annexure A-1, the subsequent letter dated 29.9.2005, Annexure A-2 and also the fresh decision taken on 9.5.2006 vide Annexure R/C-3 to govern the pay of contractual employees and also the clarification dated 8.8.2006 Annexure R-5, has held as under:

"The sum and substance of the clarification is that the contractual employees appointed before 9.5.2006 were asked to exercise an option whether they would like to be governed by the terms and conditions of the contract as already executed and in operation before the issuance of letter dated 9.5.2006 or they would like to opt to be governed by the letter dated 9.5.2006. In case the employees had opted to be governed by letter dated 9.5.2006, their emoluments were to be determined by letter dated 9.5.2006. However, simultaneously, the employees opting to be governed by the pattern prior to 9.5.2006 as per clarification No. 2, their cases were to be individually determined under the contract and they were to continue to get emoluments as admissible to them prior to 9.5.2006 and order dated 9.5.2006 was not made applicable to them.

The petitioners have been appointed in the year 2000. They were placed in the pay scale of Rs. 1800-3200 (Rs. 1800 fixed plus allowances). In fact, they were getting pay scale of Rs. 1800-3200 and other allowances and decision dated 10.6.2005 was also made applicable to them whereby decision was taken to merge 50% dearness allowance with basic pay of all the government employees. The office memorandum dated 10.6.2005 was not made applicable qua the petitioners as per letter Annexure A-2. We have already made observation hereinabove that the same could not be issued without hearing the petitioners. The petitioners have been appointed by the State Government to discharge the

duties of Teachers. They are discharging exactly the same duties, which are being discharged by regularly appointed Teachers. There is no qualitative difference as far as their duties are concerned. Consequently, they are entitled to be paid the same pay and allowances, which are being paid to the regularly appointed teachers. The mode/method of recruitment will not disentitle the petitioners the parity with the regularly appointed teachers. Thus the action of the respondent-State of depriving the petitioners the benefit of merger of 50% dearness allowance with basic pay was unjust and unfair".

"... Cumulatively, what emerges by harmonizing clarifications No. 1 and 2 of letter dated 8.8.2006 is that the petitioners' option was to be sought whether they would like to be paid their emoluments as per letter dated 9.5.2006 or they would like to be governed by the terms and conditions of their contract already executed. Since the petitioners have entered into agreement before 9.5.2006, their emoluments were to be protected and individually determined under the contract after permitting them to exercise their option. The individuals who have entered into agreement before 9.5.2006 constitute a special class and the endeavour has also been made in clarifications No. 1 and 2 to ensure that their emoluments are not reduced. The Teachers belong to a noble profession. Their emoluments must commensurate with their status."

17. In view of the ratio of the judgment of this Court in *Nek Ram's case supra*, this Court has categorically held that the benefit of office memorandum dated 10.6.2005 could have not been withheld vide subsequent letter dated 29.9.2005 from the petitioners without affording them opportunity of being heard. Also that since they were appointed by the respondent-State to discharge their duties as teachers and as they are discharging the same duties which are being discharged by their counter parts appointed on regular basis, therefore, they are entitled to be paid the same pay and allowances as are admissible to their counter-parts appointed on regular basis. No doubt, the Division bench of this Court has further observed that in terms of the instructions dated 9.5.2006 read with the clarification dated 8.8.2006 the options were required to be called for from the contractual employees, however, in view of they had entered into an agreement with respondent-State before 9.5.2005 their emoluments were required to be protected and individually determined after permitting them to exercise their options as they constitute a special class. The crux of the ratio of the judgment in *Nek Ram's case supra*, therefore, is that the contractual employees like the petitioners, who were already appointed and entered into an agreement before 9.5.2006 their emoluments were to be protected and determined under the contract. Meaning thereby that in the case of such contractual employees their emoluments cannot be restricted to basic pay+ D.P.

18. It is worth mentioning here that the judgment passed by this Court in *Nek Ram's case supra* was assailed in the Apex Court by way of Petition for Special Leave to Appeal (Civil) No. 27115/2012. The Apex Court while dismissing the Petition for Special Leave to Appeal being time barred and also on merit has held

as under:

"In our view, the explanation given by the petitioners for delayed filing of the special leave petition, to say the least, is wholly unsatisfactory. Therefore, the petitioners' prayer for condonation of delay is rejected.

Even on merits, we are satisfied that the High Court had rightly declared that the respondents herein are entitled to the benefit of policy contained in Memorandum dated 10.6.2006 and the State Government was not justified in withdrawing the benefit of the policy contained in that Memorandum.

The special leave petition is accordingly dismissed on the ground of delay and also on merits."

19. Now if coming to the judgment alleged to have been violated, learned Counsel representing the petitioner and learned Additional Advocate General, both were in agreement that the point in issue involved in the writ petition was covered in favour of the petitioners by the Division Bench judgment of this Court in Nek Ram's case supra. Taking note of the representations so made on behalf of the parties on both sides, learned Single Judge has directed the respondents to grant the benefit to the petitioners in terms of the judgment in Nek Ram's case supra.

20. The petitioner herein in so many unambiguous and unequivocal words has stated that the benefit of the judgment of this Court in Nek Ram's case supra has already been extended in favour of the petitioners in that case and also other similarly situated persons. There is no denial to such averments in this petition. The respondent in a clandestine manner and in order to circumvent the judgment of this Court has taken a stand that the contractual employees like the petitioner are only entitled to fixation of their emoluments in terms of the instructions dated 9.5.2006 read with clarification dated 8.8.2006 Annexure R/C-3 and Annexure R-5, respectively that too on exercising options by them. In view of the judgment in Nek Ram's case supra those who have entered into an agreement prior to 9.5.2006 contractual employees are entitled to draw their emoluments in terms of the contract. The petitioner in the supplementary affidavit dated 9.12.2012 filed in the Registry of this Court on 12.12.2012, has categorically stated that he has exercised the option earlier also and after the pronouncement of the judgment in Nek Ram's case supra. In counter-affidavit though the exercising of option by the petitioner has been disputed, however, even if it is presumed that he has not exercised any option, his statement in supplementary affidavit could have been treated his option in terms of the judgment in Nek Ram's case supra and his pay fixed at par with the teachers of his category appointed on regular basis.

21. Surprisingly enough, the respondents have ignored the judgment of Hon'ble Apex Court Annexure R-1 to the affidavit dated 27.4.2013 filed in the Registry of this Court by second respondent on 30.4.2013, also because the Apex Court has held the petitioners (respondents in the Petition for Special Leave to Appeal)

entitled to the benefit of policy contained in memorandum dated 10.6.2005 (Annexure A-1 to the writ petition) with further observations that the respondent-State was not justified in withholding such benefit from them. Therefore, the respondents are not in contempt of this Court, but that of Hon''ble Apex Court also. Therefore, in view of the directions of the Hon''ble Apex Court, the respondents should have extended the benefit of memorandum dated 10.6.2005 in favour of the petitioner even if no option was exercised by him. The plea that since he failed to exercise the option and it is for this reason he has been allowed to draw the same salary as was being drawn by him prior to 9.5.2006 seems to be taken merely to circumvent and ignore the judgment Annexure C-1.

22. Therefore, taking such a stand contrary to the judgment passed by this Court and also by the Apex Court, is nothing else but a conduct contumacious in nature with a view to disgrace the judgment in question. As per the true import and meaning of the judgment, the petitioner herein including the writ petitioners are entitled to the benefit of office memorandum dated 10.6.2005. Respondent No. 2 being posted as Director of Higher Education, Himachal Pradesh can reasonably be believed to have understood the true import and meaning of the judgment in Nek Ram's case supra and also the judgment Annexure C-1. It was his bounden duty to have implemented the judgment in letter and spirit. He, however, conducted himself in a manner bringing thereby the authority and majesty of this Court into disrespect and disregard. The judgment complained to have been violated has attained the finality. Even Petition for Special Leave to Appeal against the judgment in Nek Ram's case supra also stands dismissed with a direction to the respondent-State to extend the benefit of office memorandum dated 10.6.2005 in favour of the petitioners also. Instead of implementing the judgment, the second respondent has taken a stand discussed hereinabove contrary to the true import and meaning of the ratio of the judgment of this Court in Nek Ram's case supra. Such willful act and conduct on the part of the second respondent constitute the basic ingredients for the offence of contempt.

23. We are, therefore, satisfied from such contumacious conduct of the respondent that he has shown scant regard to the judgment passed by this Court. Not only the second respondent, but first respondent is also in contempt because it was for the respondent also to have ensured the implementation of the judgment Annexure C-1. Therefore, we order to issue show cause notice in terms of Form No. 1 to the Contempt of Court (Himachal Pradesh) Rules, 1996 to both the respondents to show cause as to why they be not punished for contempt of this Court. They are now not holding the office of Principal Secretary (Education) and also Director of Higher Education, Himachal Pradesh, learned Advocate General to disclose their present address complete in all respect to the Registry of this Court within a week. Notice in the aforesaid terms be thereafter issued to them for 28.10.2015.

24. Since the successors-in-office of respondents No. 1 and 2 have also not implemented the judgment Annexure C-1 and rather Shri Dinkar Burathoki in the

affidavit dated 27.6.2013 has reiterated the stand as was taken by his predecessor-in-office Shri O.P. Sharma, respondent No. 2, therefore, we order to issue notice to them also for the same date. Let them to show cause as to why the proceedings for contempt of this Court be not initiated against them.