
(2015) 03 AHC CK 0075
In the Allahabad High Court
Case No : Special Appeal No. 182 of 2015

Dharam Pal Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A
Constitution of India, 1950 — Article 226
Contempt of Courts Act, 1971 — Section 2(b), 20

Citation : (2015) 4 ADJ 58 : (2015) 110 ALR 830 : (2015) 3 AWC 2840 : (2015) 2 ESC 1225 : (2015) 147 FLR 24 : (2015) 4 LLN 593 : (2015) 2 UPLBEC 1519

Hon'ble Judges : D.Y. Chandrachud, C.J.;Manoj Kumar Gupta, J

Bench : Division Bench

Advocate : Anoop Trivedi, for the Appellant

Final Decision : Partly Allowed

Judgement

1. The special appeal is from a judgment and order of the learned Single Judge dated 19 December 2014 by which a writ petition filed by the appellant under Article 226 of the Constitution has been dismissed.

2. The appellant was a Constable in the State Police. He was initially appointed on 1 July 1974 and continued to serve until 20 November 1996 when he was dismissed from service under Rule 8(2)(b) of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991. The dismissal was on the basis of a report dated 31 October 1996 finding that the appellant had been noticed to be under the influence of liquor on 23 September 2006 and to have misbehaved in that condition. Admittedly, no disciplinary enquiry was held. The appellant filed a writ petition¹ challenging the order of dismissal. The writ petition was allowed by a learned Single Judge of this Court on 25 August 2004 and the order of dismissal was set aside. There was a consequential direction for reinstatement in service with continuity and full back wages. The operative order of the learned Single Judge was as follows:

"In the result, the writ petition is allowed and the impugned order dated 20.11.1996, 29.5.1997 and 22.6.1999 are quashed and the respondents are directed to reinstate the petitioner with continuity of service and with full back wages. It is however open to the disciplinary authority to initiate a departmental inquiry after affording an opportunity of hearing to the petitioner under Rule 8 of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991."

3. On 15 September 2005, the Senior Superintendent of Police, Saharanpur issued directions to the effect that the appellant would be paid only 51% of his back wages from the date of his dismissal until his reinstatement in service which took place on 25 October 2014. The appellant filed a contempt application². The contempt application remained pending for nearly four years before this Court until it was dismissed on 20 January 2011. The contempt application was dismissed by a learned Single Judge on 20 January 2011 on the ground that the contempt application which was filed on 28 February 2007 was beyond a period of one year from the date of the order. The appellant then filed a writ petition, seeking to challenge the order dated 16 October 2004 by which it was stated that though the appellant was being reinstated in service, the direction for the payment of back wages would be issued separately; an order dated 22 November 2004, recording a censure entry and an order dated 15 September 2005 recording that the appellant would be entitled to only 51% of the back wages. All the orders had been passed by the Senior Superintendent of Police, Saharanpur.

4. The learned Single Judge dismissed the writ petition on 19 December 2014, holding that a second writ petition filed for the enforcement of the order passed in the earlier writ petition was not maintainable, particularly when the contempt application had been dismissed. The learned Single Judge also held that there was a delay in filing the second writ petition and in challenging the orders of 16 October 2004, 22 November 2004 and 15 September 2005 after a lapse of seven years.

5. The first submission which has been urged on behalf of the appellant is that the learned Single Judge has erred in non-suiting the appellant on the ground of the order which was passed in the contempt proceedings.

6. A contempt proceeding is not in the nature of a proceeding for the execution of a decree or order. The object and purpose of a contempt proceeding is to invoke the jurisdiction of the Court to punish a person who has wilfully and intentionally disobeyed an order of the Court. A contempt proceeding is not a proceeding to execute a judgment, decree or order. The Court before which the contempt proceeding is moved may well decline to entertain a contempt application on the ground that the breach of the order was not wilful or intentional. That would not negate the right of the person in whose favour a decree or order has been passed or to whom the benefit of the decree or order enures to enforce the judgment and decree.

7. In Niaz Mohammad and others, etc. etc. Vs. State of Haryana and others, AIR 1995 SC 308 : (1994) 6 JT 260 : (1994) 4 SCALE 292 : (1994) 6 SCC 332 : (1994) 3 SCR 720 Supp : (1995) 1 UJ 124 , the Supreme Court noted the difference between a contempt proceeding and a proceeding for the execution of a decree or order in the following observations:

"9. Section 2(b) of the Contempt of Courts Act, 1971 (hereinafter referred to as "the Act") defines "civil contempt" to mean "wilful disobedience to any judgment, decree, direction, order, writ or other process of a court...." Where the contempt consists in failure to comply with or carry out an order of a court made in favour of a party, it is a civil contempt, The person or persons in whose favour such order or direction has been made can move the court for initiating proceeding for contempt against the alleged contemner, with a view to enforce the right flowing from the order or direction in question. But such a proceeding is not like an execution proceeding under Code of Civil Procedure. The party in whose favour an order has been passed, is entitled to the benefit of such order. The court while considering the issue as to whether the alleged contemner should be punished for not having complied with and carried out the direction of the court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the Act while defining civil contempt, have said that it must be wilful disobedience to any judgment, decree, direction, order, writ or other process of a court. Before a contemner is punished for non-compliance of the direction of a court, the court must not only be satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was wilful and intentional. The civil court while executing a decree against the judgment-debtor is not concerned and bothered whether the disobedience to any judgment, or decree, was wilful. Once a decree has been passed it is the duty of the court to execute the decree whatever may be consequence thereof. But while examining the grievance of the person who has invoked the jurisdiction of the court to initiate the proceeding for contempt for disobedience of its order, before any such contemner is held guilty and punished, the court has to record a finding that such disobedience was wilful and intentional."

8. In Kapildeo Prasad Sah and Others Vs. State of Bihar and Others, AIR 1999 SC 3215 : (1999) 3 CTC 189 : (1999) 6 JT 215 : (1999) 5 SCALE 183 : (1999) 7 SCC 569 : (1999) SCC(L&S) 1357 : (1999) 1 SCR 725 Supp : (2000) 1 SLJ 134 : (1999) 2 UJ 1370 : (1999) AIRSCW 3182 : (1999) 7 Supreme 382 , the Supreme Court again highlighted the distinction in the following terms:

"10. ...Initiation of contempt proceedings is not a substitute for execution proceedings though at times that purpose may also be achieved."

9. In Food Corporation of India Vs. Sukh Deo Prasad, AIR 2009 SC 2330 : (2009) 1 CLR 921 : (2009) 5 JT 546 : (2009) 4 SCALE 318 : (2009) 5 SCC 665 : (2009) 4 SCR 1107 : (2010) AIRSCW 145 , the Supreme Court held as follows:

"21. ...Contempt jurisdiction, either under the Contempt of Courts Act, 1971, or under Order 39 Rule 2A of the Code, is not intended to be used for enforcement of money decrees or directions/orders for payment of money. The process and concept of execution is different from process and concept of action for disobedience/contempt."

10. In Kanwar Singh Saini Vs. High Court of Delhi, (2011) 4 RCR(Civil) 402 : (2011) 4 RCR(Criminal) 407 : (2011) 10 SCALE 725 : (2012) 4 SCC 307 : (2011) 6 UJ 4202 , the Supreme Court held as follows:

"10. ...Thus, when the matter relates to the infringement of a decree or decretal order embodies rights, as between the parties, it is not expedient to invoke and exercise contempt jurisdiction, in essence, as a mode of executing the decree or merely because other remedies may take time or are more circumlocutory in character."

11. The contempt application which was filed in 2007, remained pending until 20 January 2011. The contempt application which was instituted by the appellant was rejected by a learned Single Judge on 20 January 2011 on the ground that it had been filed beyond the period of limitation prescribed in Section 20 of the Contempt of Courts Act, 1971. Upon the rejection of the contempt application, the appellant filed a writ petition before this Court in 2011, seeking to challenge the orders of the Senior Superintendent of Police, Saharanpur, including the order for the payment of only 51% of the back wages. The Senior Superintendent of Police had also rejected the claim of the appellant to consequential benefits.

12. The rejection of the contempt application did not obliterate the right and entitlement of the appellant flowing out of the order of the learned Single Judge of this Court dated 25 August 2004. The learned Single Judge allowed the writ petition filed by the appellant and set aside the dismissal with continuity in service and full back wages. The authorities were, however, granted liberty to initiate a departmental enquiry after affording an opportunity of a hearing to the appellant under Rule 8 of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991. In pursuance of the liberty which was granted to the authorities, the matter rested with an award of a censure entry to the appellant. We may note, at this stage, that the learned counsel appearing on behalf of the appellant has not pressed the challenge to the award of the censure entry.

13. The order of the learned Single Judge dated 25 August 2004 attained finality and it was not open to the authorities to act in breach of a binding judicial order by substituting the order for the payment of full back wages with a direction for the payment of only a portion of the back wages. This would amount to sitting in appeal over the order of the learned Single Judge, which the authorities of the State were clearly not competent to do.

14. Having regard to the legal position which we have explained above, it cannot

be held that the writ petition, which was filed by the appellant for challenging the order denying him the payment of full back wages, was not maintainable following the dismissal of the contempt application. The appellant had a bona fide explanation that he was entitled to the benefit of the period which he had spent as a litigant before this Court when his contempt application was pending and that it should be taken into account in determining as to whether there was any negligence by him in taking recourse to the remedy of a writ petition. The appellant, under legal advice, was bona fide pursuing his remedy before this Court and after dismissal of his contempt application, filed a writ petition for enforcement of his rights and for challenging the orders of the Senior Superintendent of Police, Saharanpur without any delay.

15. For these reasons, we are of the view that the impugned order of the learned Single Judge, dismissing the writ petition, is unsustainable. The learned Single Judge has erred in the reasoning which has been adduced in support of the order of dismissal of the petition.

16. We, accordingly, allow the special appeal in part and set aside the impugned judgment and order of the learned Single Judge dated 19 December 2014. The writ petition filed by the appellant shall stand allowed with a direction that the respondents shall, within a period of three months from today, compute and pay over to the appellant the back wages to which he is entitled under the judgment and order of this Court dated 25 August 2004 and to other consequential benefits, as admissible on the basis of that judgment and order.

17. The special appeal shall, accordingly, stand disposed of. There shall be no order as to costs.

1Civil Misc. Writ Petition No. 6483 of 1999

2Contempt Application No. 1022 of 2007