
(2003) 05 DEL CK 0115

In the Delhi High Court

Case No : CCP: 15 of 1993

Dr. B.L. Kapur

APPELLANT

Vs

Prof. J.S. Yadav and Others

RESPONDENT

Date of Decision : 30-05-2003

Acts Referred:

Constitution of India, 1950 — Article 215
Contempt of Courts Act, 1971 — Section 11, 12

Citation : (2003) 1 ILR Delhi 504

Hon'ble Judges : Surinder Kumar Aggarwal, J

Bench : Single Bench

Advocate : Rajender Dhawan, for the Appellant; R.P. Sharma, for the Respondent

Judgement

S.K. Agarwal, J.—By this petition under Sections 11 and 12 of the Contempt of Courts Act, 1971 (for short "the Act") and Article 215 of the Constitution of India, petitioner is seeking initiation of contempt proceedings against Prof. J.S. Yadav, Chairman, O.P. Sharma, Treasurer and Dr. R.S. Pandey, Officiating Principal of Rajdhani College, Delhi alleging wilful violation of the order dated 20.1.1992 passed by the Division Bench of this Court in CW No. 3674/90 quashing the letter dated 12.11.1990 issued by the governing body of the Rajdhani College terminating the service of the petitioner. The operative portion of the order reads as under: For the aforesaid reasons, the writ petition is allowed. The communication dated 12th November, 1990 from respondent No. 1, copy of which was supplied to the petitioner, is quashed. As a result of this, the petitioner will be entitled to work as the Principal of the College in terms of the aforesaid resolution of 8th April, 1990 w.e.f. 1st November, 1990 and will be entitled to all consequential benefits.

The case set up by the petitioner is that he was appointed Principal of Rajdhani College on 5.8.1985; prior to that he was working as vice-Principal, Ram Lal Anand College (evening); he was to retire from the post of Principal of the College on 31.10.1990, after attaining the age of 60 years; by letter dated 26th

September, 1990, chairman of the governing body of the college (hereinafter "the chairman") approved his re-employment as Principal of the college with effect from 1.11.1990. After re-employment, he worked upto 12.11.1990. In the meantime, there was a change in composition of governing body of the college, the issue of re-employment of the petitioner came up for reconsideration. The Chairman through its letter dated 12.11.1990, asked the senior most teacher to officiate as Principal of the college in place of the petitioner till the issue of re-employment of the petitioner was decided. Aggrieved by this letter, petitioner filed a writ petition. The Division Bench of this Court by order dated 20.1.1992 quashed the said letter dated 12.11.1990, holding that petitioner was entitled to work as Principal of the College with effect from 1.11.1990 and that petitioner would be entitled to all consequential benefits. The petitioner resumed work as Principal of the college on 20.1.1992. However, the chairman by letter dated 7.4.1992, informed the petitioner that his services have been terminated and in lieu of the notice period, he was given three month's salary by a cheque for Rs. 27,276/-. It is pleaded that the petitioner was not given retirement benefits like pension, gratuity, leave encashment, etc. which became due on retirement, despite request letter dated 1.9.1992 and notice dated 5.11.1992. It is alleged that the respondents wilfully did not implement above-noted order dated 20.1.1992. 2. Dr. B.S. Yadav, the Principal of Rajdhani College filed a reply on 11.2.1993, admitting that the petitioner retired on 31.10.1990 after attaining the age of superannuation. He was re-employed with effect from 1.11.1990; and that he was removed from service and senior most teacher was asked to work by the management vide letter date 12.11.1990; that the petitioner rejoined as the Principal of the college from 20.1.1992 and worked till 7.4.1992 when his services were terminated. It is pleaded that petitioner did not handover the charge and continued to be in possession of important documents which could help the college to process the case of the petitioner in releasing his retirement benefits. The college informed the petitioner on 6.3.1991 enclosing therewith list of documents in his custody but the same were not returned to the college and in the absence these documents, it was difficult for the College to process his case for his retirement benefits, for the period in dispute. It is further pleaded that petitioner was in possession of the keys of the filing cabinet which was in the Principal's offices; that the petitioner was previously working as Vice-Principal in Ram Lal Anand College and he had his lien in the said college as Vice-Principal; his service record from Ram Lal Anand College continued to remain in the said college; all benefits that accrued to the petitioner while he was working in the college were to be paid by the said college. The petitioner was to get a "No Dues" certificates from other departments/units of the college before any payment could be released to him after his retirement. It was pleaded that petitioner's assistance in further releasing the retirement benefit to him was necessary, which he failed to provide despite several letters. The respondents were making all efforts to implement the orders. It is also pleaded that Delhi Administration, Vice-Chancellor and Delhi University were parties to the writ petition and they have not been impleaded as parties in the contempt petition.

Relevant portion of the counter affidavit reads as under:

All record relating to the controversy that now has arisen was in his possession being Principal of the College. Some important documents that would help the college to process the case of Dr. Kapoor, in releasing his retirement benefits including his salary as claimed are not available so much so Dr. Kapoor was informed by office letter dated No. 2543 dated 6.3.1991 enclosing therewith list of documents that were in the custody of Dr. Kapoor but the said documents have not so far been returned to the College and in the absence of the same it will be extremely difficult for the college to process the case of Dr. Kapoor of his retirement benefits and salary for the period in dispute. Copy of letter dated 6.3.1991 together with annexures thereto is annexed and marked Annexure R-I.

2. That Dr. Kapoor was also in possession of keys of the filing cabinet placed in the Principal's officer. Dr. Kapoor was reminded by officer letter No. 2543 dated 6.3.91 followed by a reminder No. 483 dated 31.5.91 but so far Dr. Kapoor has not returned the keys of the filing cabinet in his custody in the College. What documents are lying there and to what extent they are helpful in processing the case of Dr. Kapoor can be seen only after Dr. Kapoor had made, available the keys of the filing cabinet. Even the Government Body has taken a serious note of Dr. Kapoor's not returning the keys of the filing cabinet in its meeting held on 10.1.1991., when in item No. "O" Minutes of the it was observed by the Governing Body as follows:-

The Governing Body considered the note dated 10.1.1991 submitted by Shri J.L. Batra, Sr. P.A. To the Principal informing that College records/documents pertaining to the proceedings of the Governing Body and Personal files are still in the custody of Dr. B.L. Kaboor. The Governing Body took a serious view and resolved that Dr. Kapoor be asked to handover the college records/documents in his custody to the offg. Principal. At this stage the offg. Principal reported that the keys of the filing cabinet placed in the Principal's Office are also with Dr. Kapur. The Governing Body further resolved that Dr. Kapur be asked to handover the keys of the filing cabinet to the offg. Principal.

Copy of letter No. 2614 dated 7.5.92 reminding for the 3rd time to Dr. Kapur to return the keys of the filing Cabinet is annexed and marked Annexure R-II.

That deponent and other members of the Governing Body of the College and college itself are seriously interested to ensure that all retirement benefits are paid to Dr. B.L. Kapur but this can be done only if Dr. Kapur assists the deponent and the college in making available the relevant records. After relevant records have been made available, the case is required to be put up before the Governing Body and thereafter to Delhi University and finally to Universities Grants Commission for releasing the amount of retirement benefits and salary that fell due to Dr. B.L. Kapur.

3. In the rejoinder affidavit, while reiterating the stand taken in the petition, it was pleaded that petitioner did not reply to college letters dated 6.3.1991 and

6.9.1992 asking for documents as the writ petition was then pending. Relevant paras of the rejoinder read as under:-

In fact, the Contempt Petition is mainly directed against the failure of the respondents in making payment of salary to the Petitioner that became due to him as a consequence of the order passed by this Hon'ble Court on 20.1.1992 in the above noted Writ Petition.

In reply to para 2 of the counter affidavit, it is reiterated that since the Writ Petition filed by the Petitioner was pending, he was not obliged to respond to the letters dated 6.3.1991 and 31.5.1991. It is further submitted that the Petitioner, vide his letter dated 6.9.1992 referred to above, had requested the Chairman of the Governing Body to depute somebody to take the key of the filing cabinet. In spite of petitioner's said letter dated 6.9.1992 (annexed above) the College did not take any steps to collect the key from him. So far as the letter dated 7.5.1992 is concerned, it is admitted in the counter affidavit itself that the said letter had not been served on the petitioner and it came back unserved. It is submitted that no further communication from the College was received to the Petitioner's letter dated 6.9.1992. In spite of the Petitioner's said letter dated 6.9.1992 as well as the notice dated 5.11.1992, the Respondent did not take any steps to make payment of the dues of the Petitioner.

4. In short, facts are: petitioner retired as the Principal of Rajdhani College on 31.10.1990 on superannuation at the age of 60 years. He was re-employed with effect from 1.11.1990. However, the Governing Body of College, in pursuance of its Resolution, vide letter dated 12.11.1990 relieved him from the post. The said letter of removal was challenged. By judgment and order dated 20.1.1992, the letter dated 12.11.1990 was quashed and it was held that petitioner was entitled to work as the Principal of the College w.e.f. 1.11.1990 and would be entitled to all consequential benefits. However, governing body through another letter dated 7.4.1992, terminated the services of the petitioner and he was given three month's salary, by way of cheque for Rs. 27,276/-, in lieu of the notice period. This termination has not been challenged.

5. There is no dispute that after filing of the contempt petition, all retirement benefits, including pension, which became due to the petitioner on retirement stand paid. Now the grievance of the petitioner is that since payment of his dues was delayed and were made between 1993 and 1995, therefore, he is entitled to interest for the delayed period, as the same come under the "consequential benefits" in terms of order dated 20.1.1992.

6. Learned Counsel for the petitioner argued that respondents have wilfully violated the judgment dated 20.1.1992 passed by this Court and the disobedience continued even after filing of the contempt petition. The respondents falsely justified non-payment by alleging non-furnishing of some documents, with a view to harass the petitioner. Petitioner having put in twenty years of service, in various capacities should not have been driven to the Court of

law to claim his salary and retirement benefits from the College. Therefore, the respondents are liable to pay interest @12% per annum. In support of his submission that interest should be awarded on delayed payments, reliance is placed on the Supreme Court decisions in *Bal Kishore Mody Vs. Arun Kumar Singh and Others*, ; *State of Kerala and Others Vs. M. Padmanabhan Nair*, *Mrs. Vinod Virmani Vs. State of Punjab* 1995 (2) SLR 155; and *Union of India Vs. Justice S.S. Sandhawalia (Retd.)* and others,

7. Law regarding exercise of contempt jurisdiction is well settled by several authoritative pronouncements of Supreme Court. It has to be sparingly exercised with care and caution. The object and purpose of the Act, is to secure a feeling of confidence of the people in general and for due and proper administration of justice in the country. There should be "wilful" disobedience of the court orders. The burden of proof is on the person who alleges contempt. The proceedings under the Act are quasi-criminal in nature and as such the standard of proof required for the same is that of a criminal proceeding and the breach thereof is required to be established beyond reasonable doubt, as held in *Mrityunjay Das and Another Vs. Sayed Hasibur Rahaman and Others*, and *Chhotu Ram Vs. Urvashi Gulati and Another*,

8. Applying the above principles, the first question which requires consideration is whether there was any "wilful" or deliberate attempt on the part of the respondents in delaying payment of the retirement benefits to the petitioner that became due to him upon his retirements on 30.10.90? As per instructions issued by the Executive Council of the University, copy of which was produced at the time of hearing, all pension cases are required to be initiated eighth months before the date of retirement of the employee and complete pension papers are required to be sent to the University six months before the date of retirement of the employee along with personal file complete in all respects, service book together with a certificate that service has been verified with other records, including calculation of the pension. Admittedly, petitioner was himself working as Principal of the College till 31.10.1990 and it was he who was to process the papers. If the petitioner himself did not process his pension papers as per University rules, he cannot be heard saying that respondents are guilty of contempt.

9. The petitioner became entitled to the payment for salary etc. for the period of re-employment from 12.11.1990 to 20.1.1992 consequent upon the judgment and order dated 20.1.1992. The petitioner had actually not worked for this period for the college. He was deemed to be under employment by virtue of the judgment. There is no specific direction in the judgment directing the college to pay interest even on the salary for which he did not work. In my considered view, non payments of interest as claimed by the petitioner on the amounts which became payable for this period cannot be termed as the "wilful" defiance so as to constitute the contempt. The view taken by the respondents is a bona fide and plausible view.

10. To conclude, in the facts of this case, it is difficult to record any finding that there is "wilful" defiance of the order passed by this Court, by the respondents, particularly, when petitioner himself failed to reply and respond to the letters dated 6.3.1991 and 6.9.1991, written by the College during the pendency of his writ petition on the ground that his writ petition was pending. Prima facie, it appears that petitioner himself at least was partly responsible for delayed settlement of his retirement dues.

11. The Supreme Court in *Kapildeo Prasad Sah and Others Vs. State of Bihar and Others*, has held that the petitioner, who complains of contempt must allege deliberate and contumacious disobedience of Court's order. Mere casual accidental, bonafide, unintentional or genuine inability to comply with the orders is not enough. This is not a case where neither any justification nor explanation has been given by the respondents, therefore, ratio of the decisions cited by learned Counsel for the petitioner is not applicable to the facts of this case.

12. For the foregoing reasons, no case for initiating contempt proceedings against the respondents is made out. This order would be without prejudice to the right of the petitioner to claim interest or damages, if any, against the respondents in any other judicial proceedings. Petition stands disposed of.