

(1984) 07 SHI CK 0002
In the High Court Of Himachal Pradesh

Hans Raj Dhir

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 17-07-1984

Acts Referred:

Citation : (1985) CriLJ 1030 : (1985) ShimLC 26

Hon'ble Judges : P.D. Desai, C.J;H.S. Thakur, J

Bench : Division Bench

Judgement

P.D. Desai, C.J.—An application received by one of us (Chief Justice) was registered as a writ petition. The application was made by a retired employee of the State Government who was at the time of his retirement working in the office of Settlement Officer, Consolidation, Hamirpur in the capacity of a clerk.

2. On April 28, 1969, the petitioner was placed under suspension. The services of the petitioner were terminated on Feb. 3, 1971. The order of termination was challenged in Civil Writ Petition No. 61 of 1971 : Reported in ILR (1974) HP 296 which was decided in favour of the petitioner on Mar. 15, 1974 by a learned single Judge of this Court by quashing the termination order and giving a further direction to the effect that "the petitioner shall be deemed to have continued in service right from the date the impugned order was passed" and that "he shall also be entitled to all consequential benefits arising as a result of the quashing of the order."

3. The decision of the learned single Judge in Civil Writ Petition No. 61 of 1971 was made the subject matter of Letters Patent Appeal No. 15 of 1974, which was preferred on April 25, 1974. An application for stay of the decision of the learned single Judge, being C.M.P. No. 519 of 1974, was instituted on June 6, 1974. It is the petitioner's case that meanwhile he submitted his joining report on May 16, 1974 in the office of Settlement Officer, Consolidation, Hamirpur, but he was not permitted to join duty. At an earlier stage in the course of this proceeding this fact appears to have been in dispute. It is, however, conceded now that the petitioner had furnished the joining report on May 16, 1974, as alleged by him,

and that it was forwarded to the second respondent (Director of Consolidation, Himachal Pradesh, Simla). It is the case of the petitioner that he was thus prevented from joining duty, although, as a result of the decision in Civil Writ Petition No. 61 of 1971, he was entitled to join duty and the operation and implementation of the said decision was not stayed at the relevant time. On the stay application preferred in the Letters Patent Appeal (C.M.P. No. 519 of 1974) an order was made on Oct. 11, 1974. The material portion of the said order reads as under:

... I would, therefore, consider that the balance of convenience requires that Shri Hans Raj Dhir (Petitioner) may be paid his salary for the ensuing period until the decision of the L.P.A., subject to his furnishing a security to the satisfaction of the Registrar of this Court.

It is not in dispute that the security furnished by the petitioner was not accepted and the question, therefore, of making payment of the salary for the ensuing period did not arise during the pendency of the Letters Patent Appeal. The Letters Patent Appeal was heard and dismissed on May 16, 1980. As a result of the dismissal of the appeal, the petitioner was permitted to resume duty on and with effect from Aug. 4, 1980. On Sept. 22, 1981, the petitioner was confirmed as a clerk. On Oct. 31, 1981, the petitioner retired on his having attained the age of superannuation. The petitioner was paid the arrears of salary in the month of June/July, 1981.

4. In the present petition, the petitioner has claimed : (i) that he is entitled to the payment of interest at the rate of 12% per annum on the delayed payment of arrears of salary, (ii) that he is entitled to be considered for confirmation as a clerk on and with effect from the date his juniors were confirmed as such, (iii) that he is entitled to be considered for promotion to the post of Assistant when his juniors were considered for promotion as Assistant and (iv) that he is entitled to the payment of certain T. A. Bills which have still not been cleared. We shall deal with these claims seriatim.

5. By virtue of the writ issued by the learned single Judge in the Civil Writ Petition on Mar. 15, 1974, the petitioner was entitled to be actually reinstated in service forthwith and also to the payment of arrears of salary. The petitioner actually presented himself for duty on May 16, 1974 but was not permitted to join duty nor was he paid the arrears of salary. Although the Letters Patent Appeal was preferred on April 25, 1974, an application for stay of the decision of the learned single Judge was not moved till June 6, 1974 and no order on such application was made till Oct. 11, 1974. Even the order made on the stay application, on its true and proper interpretation, was operative prospectively since it directed the payment of salary for the ensuing period (till the decision of the Letters Patent Appeal) subject to fulfilment of certain conditions. There was no stay as regards the payment, of arrears of salary up to the date of the stay order and the petitioner was, therefore, entitled to be paid the arrears of salary up to such date without attachment of any condition. However, no payment of

arrears covering such period was made till the month of June/July, 1981. Besides, the Letters Patent Appeal was dismissed on May 16, 1980 and the petitioner resumed duty on August 4, 1980. The payment of arrears of salary for the intervening period to which the petitioner became entitled upon the dismissal of the Letters Patent Appeal was also not made till the month of June/July, 1981. Indeed, once the Letters Patent Appeal was dismissed, the entire arrears of salary including that for the period during which the Letters Patent Appeal remained pending ought to have been paid to the petitioner with the utmost expedition. However, the payment, in fact, was delayed till the month of June/July, 1981, as earlier pointed out. No valid justification is shown to exist for the delayed payment. Under the circumstances, the petitioner is entitled to the award of interest on account of the delayed payment of arrears of salary as specified hereinbelow:

1. On the sum due and payable as arrears of salary up to Oct. 10, 1974 that is, till the day previous to the date of the stay order, interest will be paid at the rate of 12% per annum from the date the salary became due and payable from month to month till the date of actual payment, that is, June/July, 1981.
2. On the sum due and payable as arrears of salary from Oct. 11, 1974 till Aug. 3, 1980, that is, from the date of the conditional stay order till the resumption of duty by the petitioner pursuant to the dismissal of the Letters Patent Appeal, interest will be paid at the rate of 12% per annum, from May 17, 1980 till the date of actual payment, that is, June/July, 1981.

The payment of interest as ordered hereinabove will be made within a period of six weeks from today. The time limit is both, peremptory and mandatory.

6. As regards the claims relating to confirmation and promotion, the Departmental Promotion Committee, which held its meeting on Sept. 22, 1981 and considered the question of confirmation, decided and recommended that the petitioner be confirmed on and with effect from the same day, that is, Sept. 22, 1981 and the petitioner has been accordingly confirmed. The Departmental Promotion Committee, at its meeting held on May 14, 1984, considered the question of promotion and found that on the basis of the record available, the petitioner was not fit for promotion. We have perused the reports of the Departmental Promotion Committee as well as the relevant records which were available to the said Committee and are satisfied that there is no legal ground on the basis of which the decision of the Committee as regards the petitioner's confirmation as well as promotion could be assailed. The petitioner is, therefore, not entitled to any relief on that score in the present petition.

7. As regards the petitioner's claim for T. A. Bills, the learned Advocate General states that it is under process and that the necessary payment, if any, will be made within a period of one month from today.

8. In view of the above directions, the writ petition does not survive and it stands disposed of accordingly subject to such directions. The Court wishes to place on

record its appreciation for the valuable assistance rendered by Mr. K. D. Sood, who was appointed *amicus curiae*.

9. Before parting with the matter, we regard it to be expedient to observe that an impression has been left on our minds that the concerned authorities failed to reinstate and to pay arrears of salary to the petitioner soon after the decision of the learned single Judge, even though at the material time no stay order was operative, as they appeared to be entertaining the belief that since a Letters Patent Appeal was preferred, the matter had once again become *sub judice* and that, therefore, there was no legal obligation to grant the benefits accruing due to the petitioner pursuant to the decision of the learned single Judge. This belief, which appears to have been entertained by the concerned authorities, is wholly unwarranted. Once a case is decided, it is the bounden duty of the State and its subordinates to implement, with the utmost expedition, the said decision. In a Government which is ruled by law, there must be complete awareness to carry out faithfully and honestly the decisions rendered by courts of law after effective adjudication. Then only will private individuals, organisations and institutions learn to respect the decisions of courts. In absence of such attitude on the part of all concerned, chaotic conditions might arise and the functions assigned to the courts of law under the Constitution might be rendered a futile exercise. It requires to be emphasised, in this connection, that mere preferment of an appeal does not automatically operate as a stay of the decision under appeal and that till an application for stay is moved and granted by the appellate court, or, in the alternative, the court which rendered the decision is moved and grants an interim stay of the decision pending the preferment of an appeal and grant of stay by the appellate court, the decision continues to be operative. Indeed, non-compliance with the decision on the mere ground that an appeal is contemplated to be preferred or is actually preferred, and that, therefore, the matter is *sub judice*, may amount to contempt of court punishable under the Contempt of Courts Act, 1971. The decision of the Supreme Court in *Shri Baradakanta Mishra Ex-Commissioner of Endowments Vs. Shri Bhimsen Dixit*, , places the matter beyond dispute, doubt or debate as regards this aspect.

10. In *Baradakanta Mishra's* case, the Additional Assistant Commissioner of Hindu Religious Endowments had taken an action u/s 27 of the Orissa Hindu Religious Endowments Act, 1952 (hereinafter referred to as "the Act") and appointed an interim Trustee of the deities. The person affected lodged objections u/s 41 of the Act but the objections were rejected without holding any inquiry. Against the said decision, the objector filed a Revision before the Commissioner of Hindu Religious Endowments, who was a member of the Superior Judicial Service of the State and was at one time an officiating District Judge. While the Revision application was pending before the Commissioner, the High Court of Orissa, in a different case which was pending before it, held that the Assistant Commissioner had no power to appoint an interim Trustee u/s 27 of the Act until he had held an inquiry u/s 41 and found that there was no hereditary Trustee of the religious institution. At the hearing of the Revision

before the Commissioner, the aforesaid decision of the Orissa High Court was cited by the objector in support of his case. The Commissioner made the following observations in the said context:

...The decision in the High Court on Bhramarbar Santra and Others Vs. State of Orissa and Others, would not be applicable to this instance. Further against the order, we have moved the Supreme Court and as such, the matter can be safely deemed to be sub judice.

The decision of the Commissioner was challenged in a writ petition before the Orissa High Court. The High Court issued a notice to the Commissioner taking exception to the observations made in his order that since the decision of the High Court was under challenge before the Supreme Court, the matter could be regarded as sub judice. The plea taken up by the Commissioner, who appeared before the High Court in response to the notice, was that under the Constitution the decision of the Supreme Court was the law of the land. He, therefore, bona fide entertained the opinion that when the matter was under appeal or otherwise before the Supreme Court, the point of law became sub judice and only the decision of the Supreme Court in the matter would be binding on the subordinate authorities. The Commissioner further pleaded that the proceedings before him were of administrative nature and that the act of not following the decision of the High Court in such a proceeding would not amount to contempt of court. The High Court rejected the plea and held that the conduct of the Commissioner, far from being bona fide, was clearly mala fide and that he intentionally avoided to follow that decision of the High Court by advancing grounds which were most inappropriate. The High Court, therefore, found the Commissioner guilty of contempt of court and admonished him in open court and directed him to pay Rs. 300/- as costs of the proceedings. The Commissioner preferred an appeal against the said decision to the Supreme Court. The Supreme Court, in the course of its decision, observed that the Commissioner has had 23 years judicial experience and that he could not have legitimately entertained the belief that as soon as a petition for a certificate to appeal to the Supreme Court was filed in the High Court against its decision the binding character of the decision disappeared. The Supreme Court, while upholding the finding of the High Court that the appellant had deliberately avoided to follow the decision by giving wrong and illegitimate reasons and that his conduct was clearly mala fide, made the following pertinent observations:

Under Article 227 of the Constitution, the High Court is vested with the power of superintendence over the courts and tribunals in the State. Acting as a quasi judicial authority under the Orissa Hindu Religious Endowments Act, the appellant was subject to the superintendence of the High Court.

Accordingly the decisions of the High Court were binding on him. He could not get away from them by adducing factually wrong and illegitimate reasons...,

The conduct of the appellant in not following the previous decision of the High

Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. His conduct is therefore comprehended by the principles underlying the law of contempt. The analogy of the inferior court's disobedience to the specific order of a superior court also suggests that his conduct falls within the purview of the law of contempt. Just as the disobedience to a specific order of the Court undermines the authority and dignity of the court in a particular case, similarly any deliberate and mala fide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court. Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court generally, but is also likely to subvert the Rule of law and engender harassing uncertainty and confusion in the administration of law.

On this view of the matter, the Supreme Court dismissed the appeal preferred by the Commissioner.

11. It will be noticed that the decision in *Shri Baradakanta Mishra Ex-Commissioner of Endowments Vs. Shri Bhimsen Dixit*, wholly endorses the view earlier expressed by us. Be it stated that in that case, even though the Commissioner had declined to follow the decision of the High Court rendered in a different case on the ground that an appeal having been preferred against the said decision its binding character had disappeared, the contempt jurisdiction was invoked and exercised. When there is disobedience to a specific order of the court, whether on account of sheer neglect or refusal to implement the order on the ground that an appeal is preferred or intended to be preferred, the contempt would take still a more aggravated form and will be liable to be visited with a higher penalty.

12. In the present case, the conduct of not permitting the petitioner to join duty when he submitted his joining report soon after the decision of the leaned single Judge could have been regarded as falling within the ambit of the law of contempt and, if the petitioner had taken timely action, the concerned officers could have been proceeded against in contempt. The action of non payment of arrears of salary to the petitioner for such a long period could also have been similarly viewed.

13. In view of the foregoing, it appears to be expedient in the interest of justice to direct the State Government to bring the aforesaid legal position to the notice of all subordinates and to impress upon them the imperative need to implement the decisions rendered by the courts of law with the utmost expedition, unless, an appeal is preferred against such a decision and an application for stay is moved and granted by the appellate court, or in the alternative, the court which rendered the decision is moved and grants an interim stay of decision pending the preferment of an appeal and grant of stay by the appellate court.

14. Let a copy of this judgment be forwarded to the Chief Secretary of the State Government under the signature of the Registrar and seal of this Court for appropriate action.