

(2003) 05 AHC CK 0080

In the Allahabad High Court

Case No : C.M. Contempt Application No. 2806 of 2002

Hari Dutt Sharma and Others

APPELLANT

Vs

R.R. Zurur, Secretary Railway and Others

RESPONDENT

Date of Decision : 20-05-2003

Acts Referred:

Constitution of India, 1950 — Article 311(2)
Contempt of Courts Act, 1971 — Section 12, 2

Citation : (2003) 5 AWC 4021

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Yogesh Kumar Saxena, for the Appellant;

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned counsel for the parties and perused the record.

2. This contempt petition has been filed against the opposite parties alleging wilful disobedience of the judgment and order dated 11.3.2002 passed by the Division Bench of this Court in Writ Petition No. 10586 of 2002.

3. The judgment and order dated 11.3.2002 is as under :

By the Court :

The Petitioners have alleged that Respondent Nos. 5 and 6 have been convicted in a criminal case and appeal is pending in this Court and they are on bail.

The Petitioners have prayed that departmental action should be taken against them. So, in this connection the Petitioners may approach the authority who shall pass appropriate order in accordance with law expeditiously after hearing Respondent Nos. 5 and 6. Petition is disposed of.

Sd. M. Katju, J.

Sd. Rakesh Tiwari, J.

4. Writ Petition No. 10586 of 2002 was filed by the applicants for issuance of a writ of quo warranto commanding the Respondent Nos. 1 to 4 to oust the Respondent Nos. 5 and 6 from public office on account of their conviction in double murder case by the trial court.

5. It is not disputed that these persons are on bail and criminal appeal is pending against them in this Court. It appears that the aforesaid writ petition was filed by the applicants due to some inter-rivalry dispute with the Respondents.

6. A perusal of the aforesaid order in the writ petition would show that the Court had not given any direction to the departmental authorities to take any action and the Petitioners were directed to approach the appropriate authority for orders in accordance with law. Therefore, during the pendency of the appeal before this Court, no action can be taken by the authorities, merely on the ground that they are accused in some criminal case in which order of conviction has been passed at the trial stage.

7. The words "led to his conviction on a criminal charge" in proviso (a) to Article 311(2) can only mean a criminal charge which has finally resulted in the conviction of the accused. Use of this phrase is a pointer to final conclusion of trial, which had led to the proceedings against the accused.

8. Further aspect of the matter is that in case of reversal by the appellate court, of the order of conviction passed by the trial court would be that no order of conviction would be existing. Any punitive action taken against a good servant solely based on the order of conviction at trial stage would not at all be proper in accordance with law...because if the order of conviction of the trial court is reversed by the appellate court, the very foundation on which the applicants are basing their action would disappear and any action taken by the departmental authorities and punishment awarded to the delinquent employee will necessarily have to fall with it leading to a situation aptly described in a Nursery rhyme. All the kids horses and all the kings men could not put Humpty Dumpty together again.

9. I am supported in my view by a Division Bench of this Court in Divisional Superintendent, Northern Railway, Allahabad v. Ram Saran Das AIR 1966 All 336 (DB), wherein it has been held that :

3. ...The sole question that has arisen before us relates to the interpretation of the expression "led to his conviction on a criminal charge" used in the above sub-clause. In our opinion, there can be no manner of doubt that the words "led to his conviction on a criminal charge" can only mean a criminal charge which has finally resulted in the conviction of the person proceeded against.

12. If the interpretation suggested by learned Counsel is accepted, it would be open to the Government to dismiss or remove any public servant once an order of conviction has been passed by the trial court without giving him any opportunity whatsoever of meeting the charges levelled against him, even

though his conviction is subsequently set aside by the higher court, and the case against him is found by it to be false and a concocted one. Such a procedure would be against all rules of natural justice. In our opinion, nothing could have been farther from the intention of the Constitution makers than a consequence so disastrous in its nature and so inequitable in its character.

10. No case of wilful disobedience could be made out by the applicants.

11. The contempt application has no force and is dismissed accordingly.