
(2006) 03 AHC CK 0243

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 1220 (c) of 2005

Hari Krishna Verma

APPELLANT

Vs

Sanjay Mohan and Others

RESPONDENT

Date of Decision : 07-03-2006

Acts Referred:

Contempt of Courts Act, 1971 — Section 12

Citation : (2007) 1 ACR 316

Hon'ble Judges : Devi Prasad Singh, J

Bench : Single Bench

Judgement

Devi Prasad Singh, J.—Heard learned Counsel for the parties.

2. Petitioner was appointed on the post of Lecturer (Civics) against the regular vacancy on ad hoc basis in Lala Ram Swaroop Shiksha Sansthan Inter College, Banthara, Lucknow in pursuance to resolution of the Committee of Management. The appointment was done by the Committee of Management, since the Board, a statutory body, could not fill up the vacancy in question expeditiously for the reason best known to it. On account of non-payment of salary Writ Petition No. 445 (SS) of 2005 was filed in which the interim order dated 24.1.2005 was passed by this Court.

3. Relevant portion from the interim order is reproduced as under:

Accordingly, the opposite parties are directed to pay salary to the Petitioner with effect from 13.7.2004 and continue to pay the same every month. This arrangement shall continue till duly selected candidate by the concerned Selection Board joins the post held by the Petitioner in the Institution.

4. When the aforementioned interim order was not complied with the present contempt petition has been filed. A notice was issued to opposite party No. 2 on 23.5.2005 to show cause as to why he may not be tried and punished on account of non-compliance of interim order passed by this Court. Shri Vikas Srivastava, District Inspector of Schools, Lucknow, instead of complying with the order

passed by this Court has indicated various grounds for the non-payment of salary. While considering a case u/s 12 of the Contempt of Court Act in view of law settled by Apex Court in the cases Director of Education, Uttaranchal and Others Vs. Ved Prakash Joshi and Others, and Prithawi Nath Ram Vs. State of Jharkhand and Others, it is not open for this Court to enter into the merit of an order passed under writ jurisdiction unless the Petitioner had approached this Court by committing any fraud or misrepresenting of the fact. However, no such plea has been taken in the present contempt petition by the Respondents.

5. On 12.12.2005 after hearing the learned Counsel for the parties it was found that a plea was taken by the Respondent District Inspector of Schools that committee of management had not sent the bill. Hence this Court had proceeded to observe that under the Payment of Salary Act, it is the duty of District Inspector of Schools to ensure the payment of salary to the teachers and staff of an institution. In case management does not cooperate then option shall always be open to take appropriate action to implement the order passed by this Court.

6. On 6.3.2006 when the case was listed and it was found that order has not been complied with by Respondent. Hence, the District Inspector of Schools as well as Joint Director of Division and Deputy Director of Education was summoned to appear in this Court. In compliance thereof officers are present in person.

7. Today, it has been submitted that by order dated 6.3.2006 it has been decided by the competent authority to pay salary to the Petitioner in terms of order dated 24.1.2005 passed in the aforementioned Writ Petition No. 445 (SS) of 2005. Respondents tender apology and submit that since the order has been complied with they should be discharged.

8. It is settled proposition of law that in case Officers want to tender apology then they have to tender the same on the very first day after receipt of notice in a contempt proceeding. If an apology is tendered after inordinate delay, it is not necessary for this Court to accept the same and discharge the contemner. It shall depend upon the facts and circumstance of each case. However, of course this Court ordinarily takes lenient view in case an apology is tendered on the very first day by the authorities concerned after receipt of notice under the contempt proceedings with a statement relating to compliance of order of the court. In the present case initially counter-affidavit was filed and thereafter the Petitioner had filed a rejoinder-affidavit. Respondent District Inspector of Schools had tried to defend himself by taking plea on various counts, as discussed hereinabove. When this Court had summoned the authorities and shown its intention to proceed under the contempt jurisdiction an order has been passed for payment of salary. Accordingly it is not necessary to accept the apology and this Court may proceed to frame charges with further proceedings under the contempt jurisdiction.

9. I have heard Shri Lalit Shukla, learned standing counsel as well as Petitioner's counsel.

10. Learned standing counsel submits that apology though tendered orally may be accepted and contemnors may be discharged as the order has been complied with. During the course of argument the attention of this Court has been drawn towards numerous cases filed and pending in this Court where orders are complied with only when this Court proceeded to frame charges or shown its intention to punish the contemnors. Such act on the part of State authorities is not permissible under Law. In case, the State authorities do not want to comply with the order passed by this Court then either they should prefer appeal before the higher forum and pray for an interim order or may contest the contempt case in accordance to law on merit. Compliance of order either after filing of counter-affidavit or at the stage when this Court proceeded to frame charges or shown its inclination to punish the contemner shall not be a ground to exonerate the contemner. This Court takes judicial notice of the fact that in majority of cases orders are complied with either on the receipt of notice u/s 12 of the Contempt of Court Act or when this Court proceeded to frame charges. It has been also seen that even for small matters where this Court directs to decide a representation authorities keep the matter pending till they receive the notice u/s 12 of the Contempt of Court Act. Representations are decided after receipt of notice u/s 12 of the Contempt of Court Act. Such action on the part of State authorities is deprecated.

11. This Court is not interested to prosecute a contemner but this Court shall always be interested and feels duty bound to maintain the majesty of law, rule of law and dignity of this institution. In case, the litigants are compelled to approach this Court to file a contempt petition for compliance of routine orders of this Court then in appropriate case there shall be no option except to proceed and punish the contemnors. There appears to be deliberate and intentional defiance of orders passed by this Court by the authorities as appears in view of the flood of contempt petition filed in this Court every day.

12. Since, this Court had taken notice of the present prevailing situation for the first time in present case relating to defiance of the order passed by this Court by the State authorities, I am not proceeding to frame charges against the contemner of present contempt petition. They are warned to remain cautious in future in implementing the order passed by this Court. However, they are discharged from the present contempt proceeding.

13. Since this Court had taken judicial notice on account of flood of contempt petitions filed in this Court everyday for trivial issues, the Chief Secretary, Government of U.P. is directed to issue appropriate order or circular to all the departments of State of U.P. as well as local bodies to remain cautious in future to implement the orders, directions and judgment of this Court in their letter and spirits keeping in view the observation made in the present judgment. Let Chief Secretary issue a circular or order accordingly within a period of six weeks from the date of receipt of a certified copy of this order and a compliance report may be submitted immediately thereafter in this Court.

14. Subject to above, contempt petition is disposed of. No order as to costs.
15. Let a copy of the present judgment be sent to Chief Secretary, Government of U.P., Lucknow within a week.
16. Office shall list this petition immediately after lapse of two months alongwith report relating to the compliance of present order.