
(2016) 02 AHC CK 0037
In the Allahabad High Court
Case No : Contempt No. 2507 of 2015

Hari Prasad Dwivedi and Ors.

APPELLANT

Vs

S. Raj Lingam Collector Sultanpur and Ors.

RESPONDENT

Date of Decision : 25-02-2016

Acts Referred:

Citation : (2016) 3 ADJ 383

Hon'ble Judges : Anil Kumar, J.

Bench : Single Bench

Final Decision : Dismissed

Judgement

Anil Kumar, J. - Heard Sri Pramendra Kumar Singh, learned counsel for the applicants, Sri S.K.Yadav "Warsi" learned Standing Counsel for opposite party no.2 and perused the record.

2. Applicants/petitioners, who retired from the post of Collection Amin from Revenue Department District, Sultanpur, approached this Court for redressal of their grievance by filing Writ Petition No. 4503 (SS) of 2015 (Hari Prasad Dwivedi and others v. State of U.P. and others, disposed of by means order dated 6.8.2015, the operative portion of the same reads as under:-

"Thus, after hearing learned counsel for the parties and going through the records, writ petition is disposed of in terms of judgment and order dated 29.08.2014 passed in Special Appeal No. 83 of 2001 (State of U.P. and others v. Kanhaiya Lal and others). The competent authority/O.P. No. 3 is directed to examine the grievance of the petitioners with regard to grant of second promotional pay scale of the post of Tehsildar in the pay scale of Rs. 8000-13500 and decide the same in accordance with law as well as in the light of judgment and order passed in Special Appeal No. 83 of 2001, within a period of three months from the date of receipt of a certified copy of this order."

3. As per the case of the applicant, in spite of service of the said order on respondents, the same has not been complied with, so they approached this

Court by filing present contempt petition and notice was issued to respondent no.2 to file response.

4. Thereafter a short counter affidavit has been filed on behalf of respondent no.2.

5. Learned Standing Counsel, on the basis of averments, as made in short counter affidavit, submits that case of the applicants has been considered and rejected by order dated 2.2.2016 by opposite party no.2, a copy of which has been annexed as Annexure no.CA-1 to the short counter affidavit, taking into consideration the order dated 10.4.2015 passed by Collector, Sitapur, so the present contempt petition liable to be dismissed.

6. Sri Pramendra Kumar Singh, learned counsel for the applicants while opposing the said submission, submits that respondent no.2 has not considered the case of the applicants as per the order dated 6.8.2015 passed in writ petition no.4503 (SS) of 2015 which was disposed of in terms of the judgment and order dated 29.8.2014 passed in Special Appeal No. 83 of 2001 (State of U.P. through Principal Secretary Department of Revenue, U.P. v. Kanhaiya Lal and others), the operative portion of the order dated 29.8.2014 is quoted as under:-

"It appears from the record that after recall of the order dated 20.03.2001 and there being no interim order in favour of the appellants, the State Government issued Government Order dated 27.03.2006 followed by another Government Order dated 21.07.2006 whereby the State Government granted the original pay scale of Rs.1400-2300 of Naib Tehsildar to the Collection Amins.

It may be mentioned that similar question was considered by a Division Bench of this Court in Special Appeal No. 682 of 2010, Maya Ram Yadav v. State of U.P. and Ors.. Though the controversy pertains to Horticulture and Food Processing Department, but the question is same, as is involved in the present appeal. The Division Bench after examining the material on record has allowed the writ petition and ordered for granting promotional pay scale, where there is no promotional post.

For the aforesaid reasons, the special appeal is hereby dismissed."

7. Learned counsel for the applicants further submits that the said order has been confirmed by Hon"ble the Apex Court by order dated 10.4.2015 passed in Petition for Special Leave to Appeal (C) CC No. 5908/2015. However, the case of the applicants has not been considered in true prospect by order dated 10.10.2015 passed by authority concerned/Collector Sultanpur and order dated 2.2.2016 has been passed rejecting the case of applicants on the basis of the said order as such once Special Appeal No.83 of 2001 filed by the respondent was dismissed so there is no justification on their part to grant second promotional pay scale to the applicants as such the respondent has not considered the case of the applicants and not correctly decided their representations, as directed by this Court vide order dated 6.8.2015 passed in

Writ Petition No.4503(SS) of 2015 so the said action on the part of respondent is clear disregard of the order passed by writ court, liable to be punished.

8. Another arguments which advanced by learned counsel for the applicants is to the effect that in identical circumstance, Sri Rajendra Prasad Pandey and others has filed Writ Petition No. 373(SS) of 2015 in which an order dated 23.2.2015 has been passed. When the said order has not been complied with, they filed Contempt No. 1585 of 2015 (Rajendra Prasad Pandey and others v. Sri Raj Shekhar Collector, Lucknow) stating therein that instead of granting promotion pay scale of 8500-13500, opposite party has granted next pay scale of Rs. 6500-10500/- in which an order dated 10.9.2015 has passed the same on reproduction reads as under:-

"Heard.

An affidavit of compliance has been filed by the opposite party stating therein that in compliance of the order dated 23.2.2015 passed in Writ Petition no. 373 (SS) of 2015; Rajendra Prasad Pandey and others v. State of U.P. and others, the grievance of the petitioners has been considered by the Sub Divisional Magistrate, Sadar, Lucknow, in accordance with law as well as in the light of judgment and order dated 29.8.2014 passed in Special Appeal No. 83 of 2001 and the same has been allowed by passing a detailed speaking and reasoned order dated 31.8.2015, copy whereof has also been sent to the petitioners. Therefore, it is has been submitted by the Standing Counsel that the order of the writ court has been complied with and the instant petition is liable to be dismissed.

Learned Counsel for the petitioners after seeing the affidavit and the order dated 31.8.2015 has submitted that instead of granting promotional pay scale of Rs. 8500-13500, opposite party has granted next pay scale of Rs. 6500-10500/- which is a sham compliance and as such the assertion of the Standing Counsel are false and incorrect.

At this stage, learned Standing Counsel submitted that he may be allowed some time to seek instructions in the matter and to re-examine the issue in view of the contention of petitioner"s Counsel for passing fresh order.

Accordingly, list this case on 28.9.2015. In case, order is not complied with in its true sense and affidavit of compliance is not filed, then the opposite party will appear on the date fixed."

9. Thereafter, second promotional pay scale have been granted to the said persons. Accordingly, it is submitted by learned counsel for the applicants that the action on the part of respondent, not granting second promotional pay scale to the applicants and rejected their case is clear disregard of the order dated 6.8.2015 passed in Writ Petition No.4503 (SS) of 2015 liable to be punished.

10. After hearing learned counsel for the parties and going through the record, undisputed facts which emerge out is that in the present case initially the

applicants have approached this Court by filing Writ Petition no.4503(SS) of 2015, disposed of vide order dated 6.8.2015. In contempt petition filed on behalf of the applicants, notice was issued and a short counter affidavit has been filed on behalf of respondent no.2, the defence taken is that the case of the applicants has been considered and rejected by order dated 2.2.2016 taking into consideration the order dated 10.10.2015, the operative portion of the order dated 2.2.2015 reads as under:-

"vr% ek0 mPp U;k;ky; ds ikfjr vkns" k fnukad 6-8-2015 ds vuqiky esa ;kphx.k Jh gfjizlkn f}osnh o vU; rFkk mi;qDr ,oa vgZ lsok fuo`Rr laxzg vehuksa dks "kklukns" k la[;k 235@1and7and2015and01 (67)@2014 fnukad 13-5-2015 esa fn, x, izkf+o/kkuksa ds varxZr 6500and10500 iqujhf{kr osru lajpuk ds ln`"; osru cSaMand2 :i;k 9300and34800 rFkk xzsM osru :i;k 4600 oS;fRrd :i ls fn;s tkus dh Lohd`fr iznku dh tkrh gSA rn~uqlkj Jh gfjizlkn f}osnh ,oa vU; dk izR;kosnu fuLrkfjr fd;k tkrk gSA"

11. In view of the above said fact, the question which arises for consideration that if in pursuance to order passed by Writ Court, the concerned authority had considered the case of the applicants/petitioners, come to the conclusion on the basis of the reasoning given therein that the applicants are not found fit to be given the benefit in view of the order passed by the Writ Court, then in that circumstances against the authority concerned an action can be taken under the provisions of Contempt of Courts Act for non compliance of the order passed by writ court.

12. Answer to the above question lies in the following judgments passed by the Hon"ble Apex Court as well as by this Court.

13. In the case of J.S. Parihar v. Ganpat Duggar and others, AIR 1997 SC 113 the apex court has held as under:-

"The question then is whether the Division Bench was right in setting aside the direction issued by the learned single Judge to redraw the seniority list. It is contended by Mr. S.K. Jain, learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three Benches, the learned Judge cannot come to a conclusion whether or not the respondent had wilfully or deliberately disobeyed the order of the Court as defined under Section 2(b) of the Act. Therefore, the learned single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2.7.1991. Subsequently promotions came to be made. The question is: whether seniority list is open to review in the contempt proceedings to find out, whether it is in conformity with the direction issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation

of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, afresh direction by the learned single judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act."

14. In the case of Lalit Mathur v. L. Maheswara Rao, (2000) 10 SCC 285 the Hon"ble Supreme Court held as under:-

"The High Court in the writ petition had issued a direction for the consideration of the respondent's representation by the State Government. This direction was carried out by the State Government which had considered and thereafter rejected the representation on merits. Instead of challenging that order in a fresh writ petition under Article 226, the respondent took recourse to contempt proceedings which did not lie as the order had already been complied with by the State Government which had considered the representation and rejected it on merits."

15. Further in the case of Ashok Kumar Pandey v. Ashok Kumar Singh, D.I.O.S., Ballia and others, 2003 (5) AWC 4393 this court has held as under:-

"The D.I.O.S. considered the report and the matter of appointment of the applicant in great detail. He observed in the previous writ petition the applicant claimed his appointment under Section 18 of the U.P. Secondary Education Service Commission Act, 1982. However, in the second writ petition, he claimed his appointment under Removal of Difficulties II Order. Both these matters were considered and it was held that the appointment is not according to the rules either under Section 18 of the U.P. Secondary Education Service Commission Act, 1982, or under Removal of Difficulties Order (Second). therefore, the appointment was disapproved.

It is further contended that previous approval in compliance of the order passed in the writ petition was passed by the Sub-Divisional Magistrate, who was holding the charge of D.I.O.S. without considering the provisions of the Act.

Therefore, the direction of this Court has been complied with. If the applicant is aggrieved by the order of the D.I.O.S. deciding the matter and is of the view that the decision is not correct, he may challenge the same in the appropriate writ or in other proper proceedings. There is no ground to proceed with the contempt. The petition for contempt is accordingly dismissed."

16. In the case of Brahma Deo Tiwari v. Alok Tandon, District Magistrate, Allahabad 2004 (1) AWC 543 this Court has held as under:-

"As already noted herein above, this contempt petition has been filed alleging violation of the order of the writ court dated 10.12.1997 by which the writ court

had directed to consider the case of the applicant with regard to his appointment. The contempt court after perusing the order dated 11.7.1997, though had disapproved the decision taken by the opposite party, had directed vide order dated 10.12.1997, to reconsider the case of the applicant after taking into consideration different aspect which are mentioned in the order itself. By the order dated 17.12.2002, the opposite party has considered all the aspects mentioned in the order dated 10.12.1997. Counsel for the applicant has urged that the order dated 17.12.2002 is neither legally nor factually correct. It may be so, but it is well settled that the contempt court can neither sit in appeal nor examine the correctness of a resultant order. The Apex Court in *Lalit Mathur v. L. Maheshwara Rao*, (2000) 10 SCC 285 and *J.S. Parihar v. Ganpat Duggar*, (1996) 6 SCC 29, has held that correctness of an order passed by a statutory authority on the directions of the writ court cannot be examined under the contempt jurisdiction. No doubt the resultant order may give rise to a fresh cause of action."

17. In the case of *Shail Raj Kishore, Secretary, Education Basic, U.P. Lucknow and others*, 2004 (3) AWC 2444 this Court has held as under:-

"If the applicants feel that the order passed by the opposite party is not in accordance to the intent or desire of the Court or otherwise illegal and arbitrary, the same can only be challenged before the appropriate forum. In various cases, Apex Court has held that the Contempt Court cannot go into the merit of the order. Various grounds raised by the learned for the applicant to submit that the order is bad in law required consideration and adjudication, which can only be done by the appropriate Court and not by this Court."

18. In the case of *Anil Kumar Shahi (2) v. Prof. Ram Sevak Yadav*, (2008) 14 SCC 115 the Apex Court held as under :-

"When the court directs the authority to consider a matter in accordance with law, it means that the matter should be considered to the best of understanding of an authority to whom direction is given, therefore, mere error of judgment with regard to legal position does not constitute contempt of Court. There is no wilful disobedience if the best efforts are made to comply with the court order."

19. A Division Bench of this Court in the case of *Hari Raj Kishore v. Shiv Prasad Dubey*, 2007 (1) JCLR 639 has held as under:-

"The Court in Contempt jurisdiction has to consider only whether the direction or judgment of the Court passed in regular proceeding has been complied with or not. It cannot go beyond the directions contained in the order, disobedience whereof is complained. Whether the authority rightly passed the order pursuant to the order passed by the Court or procedure adopted is correct is not the matter to be seen by the Court dealing with contempt matter. For that purpose, it is open to the aggrieved person to approach the Court in regular proceedings by filing a fresh writ petition etc.."

20. Thus the contempt court cannot review or revise the order passed by the authorities in consequence of an order passed by a court of law. After passing of the order by the contemner, a fresh cause of action would arise for the aggrieved party to seek its judicial review. Merely because the order passed by the contemner, in deference to order passed by a court of law is illegal, cannot be considered to be in wilful violation of the order of the court. Once the High Court in writ jurisdiction issues a direction to consider the representation made by a litigant which the Government/authority rejects on merits, the litigant is required to file a fresh writ petition under Article 226 of the Constitution of India in challenge to the order passed by the Government/authority. The said litigant cannot take recourse to contempt proceedings, which would not lie because order passed by the writ court, had already been complied with by the Government/authority. As this Court while exercising jurisdiction under the Contempt of Courts Act, 1971, will not be in a position to issue certiorari to quash the order or to issue other directions to the respondent.

21. In view of the above said facts, applicants cannot derive any benefit on the basis of arguments that in similar circumstances benefit has been given to other persons, who are similarly situated to the applicants as well as from the order passed by this Court in Contempt No. 1585 of 2015 (Rajendra Prasad Pandey and others v. Sri Raj Shekhar Collector, Lucknow).

22. For the foregoing reasons, the contempt petition lacks merit and is dismissed.

23. Notice issued, is discharged.