

(1996) 08 GUJ CK 0026

In the Gujarat High Court

Case No : M.I.S.C. Civil Application (Contempt Petition) No. 99 of 1993

Hirpara Manjulaben Gobarbhai

APPELLANT

Vs

Bhikhalal B. Sinjaliya

RESPONDENT

Date of Decision : 23-08-1996

Acts Referred:

Contempt of Courts Act, 1971 — Section 20

Citation : (1996) 08 GUJ CK 0026

Hon'ble Judges : S.M. Soni, J; R.R. Jain, J

Bench : Division Bench

Advocate : C.V. Prajapati, for the Appellant; D.P. Vora, for Respondent (absent), for the Respondent

Final Decision : Dismissed

Judgement

Soni, J.—This petition is filed to take action under the Contempt of Courts Act for wilful non-compliance of the order passed by Gujarat Primary Education Tribunal on 21.2.91 in Application nos.195, 196 and 197 of 1988. Primary Education Tribunal by the above-referred order, ordered reinstatement with all back wages, setting aside the oral termination of 3.5.88. The Tribunal has also directed to pay arrears within three months and then to go on paying accruing salary.

2. Order of reinstatement became effective immediately on the next day of the order. Question in this case is whether non-compliance of the order of reinstatement in service amounts to contempt of court or not ? If the said order of reinstatement is not complied wilfully and without any justifiable cause, it may amount to contempt of court which passed the order, provided further that that court is a court subordinate to High Court as contemplated under sec. 10 of the Contempt of Courts Act. However, question still remains to be considered whether the wilful non-compliance of the order of reinstatement would amount to recurring contempt for every day till it is complied with and thus can it be said to be a continuing breach of the order to constitute contempt of court so as to circumvent the provisions of section 20 of the Act. Answer to this, in our opinion,

is in negative. Wilful non-compliance, if any, to constitute contempt of court, is the non-compliance of order of reinstatement. The said order of reinstatement is required to be complied with immediately from the next day. If the same is not complied with wilfully and/or without excusable cause, non-compliance may constitute contempt of court. Suppose non-compliance of order to reinstate is an omission which amounts to an act of contempt, can the defaulter be prosecuted for every day's non-compliance ? Will every day prosecution be not barred by principle of *autrefois acquit* or *autrefois convict* ? In our opinion, non-reinstatement does not give a fresh cause for every day of breach. If the said order is not complied with, when is it required to be complied with, if not on the next day of the order ? The act of omission if amounts to contempt and he is punished for the same, can he again be dealt with for contempt for non-compliance of that order for subsequent days ? If a person is held guilty of contempt of court for non-compliance of order of reinstatement, then he is punished and is directed to purge the contempt. The defaulter undergoes punishment but does not comply with direction to purge. Then, what shall be the consequential effect ? Should this process go on for every non-compliance and the defaulter be punished every time and directed to employ ? In our opinion, no. Reinstatement order if not carried out, the employee gets a right to salary and such salary can be recovered by process of law, be even by distress. Principle of service jurisprudence is that a contract of personal service cannot be specifically enforced. Employee would be entitled to salary for the same, as if he is in employment and the same can be recovered by way of execution against person or property or by revenue process, if permissible under law. However, defaulter cannot be prosecuted every day for each day's breach of non-compliance of order of reinstatement, as order of reinstatement does not stand renewed every day. Thus, non-compliance of order of reinstatement is not a continuing wrong. Hence, there is no recurring or continuing breach. Therefore, if one wants to take action under the Contempt of Courts Act for wilful defiance or disobedience of the order to reinstate, then action should be initiated in compliance of sec. 20 of the Contempt of Courts Act. Sec. 20 contemplates action to be initiated within one year. It reads as under:-

"No court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed".

3. In this case, the order complained for non-compliance is of 21.2.91. This petition for taking action under the Contempt of Courts Act is filed on 8.12.92. The court has issued notice on 4.2.93. Even assuming that the court has taken cognizance on issuance of notice on 4.2.93, then also, it is without jurisdiction inasmuch as the application for taking action under the Contempt of Courts Act for breach of the order of reinstatement is barred by limitation. Thus the action is barred by limitation and, therefore, the court has no jurisdiction to entertain the same.

4. In view of the order of the Primary Education Tribunal, petitioner will be entitled to salary as ordered from the date of the order subject to ordinary law of limitation. We have in the case of Girishchandra R reported in 1996 (1) G.L.H. 523 taken a view that such order is an executable one as per the provisions of the Civil Procedure Code. Supreme Court has held in the case of the Alahar Co-op.Credit Service Society vs. Sham Lal reported at 1995 (3) GLH 550 that contempt is not a substitute for execution. Thus, on this count also, this application is not maintainable.

5. In view of the above, this petition is not maintainable and is liable to be dismissed. It is hereby dismissed. Rule discharged with no order as to costs.