

(2011) 03 AHC CK 0119
In the Allahabad High Court
Case No : Contempt No. 2216 of 2010

Jay Bahadur Singh and Another

APPELLANT

Vs

Sri Ajay Kumar Singh, Asst Dir. of Edu. and Others

RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226(3)
Contempt of Courts Act, 1971 — Section 12

Citation : (2011) 4 ADJ 521 : (2011) 8 RCR(Civil) 1983

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Judgement

Anil Kumar, J.—Heard Sri G.C. Verma, learned Counsel for the applicants and Sri A.M. Tripathi, learned Counsel for the Respondents.

2. Applicants approached this Court for redressal of their grievances by filing Writ Petition No. 3148(SS) of 2010 (Jay Bahadur Singh and Anr. v. State of U.P. and Ors.). On 6.8.2010, an order passed quoted herein below:

Heard learned Counsel for the Petitioners.

Notice on behalf of opposite parties No. 1 to 3 has been accepted by the learned Standing Counsel while notice on behalf of opposite parties No. 4 and 5 has been accepted by Sri A.M. Tripathi, who pray for and are granted four weeks' time for filing counter-affidavit. Petitioners may file rejoinder affidavit within two weeks thereafter.

List after expiry of the aforesaid period.

Submission of learned Counsel for the Petitioners is that the Petitioners were appointed in accordance with the sanctioned strength which was prevailing prior to the issuance of the Government Order dated 2.7.1990 but at the time when the Institution was brought under the grant-in-aid, approval was granted in respect of three posts by the Government as well but later on while granting

approval, the BSA has accorded approval of salary in respect of one post only and has declined to make payment in favor of the other persons.

The Government Order in this regard is very clear and it stipulates that the sanctioned strength of class-IV employees prior to the issuance of the Government Order was three in Junior High Schools, therefore, they will continue in the same capacity. As and when the said class-IV employees are retired, the post will come to an end and one post will continue in respect of Junior High School. Therefore, the claim of the opposite parties that salary cannot be paid to the Petitioners is devoid of merit.

Considering the aforesaid facts, operation of the order dated 17.2.2010, contained in Annexure No. 1 to the writ petition, shall remain stayed and the Petitioners will be paid their salary.

3. As per the version of the applicants, the same is not complied so the present contempt petition filed u/s 12 of the Contempt Court Act.

4. On 7.10.2010, notices issued to the Respondents, thereafter a short counter-affidavit filed on behalf of Respondent No. 2/Ashok Nath Tewari, District Basic Education Officer, Pratapgarh. In Paragraph No. 6 it is stated as under:

That the counter-affidavit along with the dismissal of the writ petition as well as application for vacation of the interim order has already been moved and no rejoinder affidavit has been filed by the Petitioners in the said writ petition and the same is pending under consideration before this Hon"ble Court.

5. On 20.1.2011, on behalf of the applicants, rejoinder-affidavit filed, and in Paragraph No. 5 stated as under:

That in reply for the contents of Paragraph 6 of the short counter-affidavit it is submitted that, the counter-affidavit has been filed in the writ petition after filing the contempt petition and issuing notices to the opposite parties by this Hon"ble Court. In the counter-affidavit the opposite parties have reiterated the facts which have been mentioned in the order dated 17.2.2010 and, the said order has been stayed by this Hon"ble Court after hearing to the opposite parties in the writ petition, as evident from the orders passed by this Hon"ble Court on 19.5.2010 and subsequent thereto, therefore, the filing of the counter-affidavit is not going to change the position in the present contempt petition, it is further submitted that the rejoinder affidavit has been filed by the Petitioners in the writ petition.

6. In view of the above factual background, Sri G.C. Verma, learned Counsel for the applicants submits that order dated 6.8.2010 has been passed by the Writ Court after hearing the parties and taking into consideration the Government Order dated 2.7.1990, so there is no justification or reason on the part of the Respondents not to pay the salary to applicants on the post in question, as such said act on their part is clear violation of interim order dated 6.8.2010, liable to be punished in the instant case.

7. Sri A.M. Tripathi, learned Counsel for the Respondents submits that interim order dated 6.8.2010 passed on the basis of the averment as made by the Petitioners-applicants in the writ petition, although after hearing the learned Counsel for the parties but thereafter as per the orders passed by Writ Court, the counter-affidavit filed along with an application for vacation of the interim order. The said application is still pending for consideration, so till the disposal of the application for vacation of interim order on merit, the proceedings of the present contempt petition may be deferred with.

8. After hearing the learned Counsel for the parties and going through the material on record, the undisputed facts are that although the interim order was granted by this Court on 6.8.2010 in favor of the applicants-Petitioners after hearing the parties but Respondents have given time to file counter-affidavit to place their version. Thereafter, Respondents filed their counter-affidavit along with the application for vacation of the stay order, pending for adjudication/consideration.

9. Considering the above said facts, this Court is of the opinion that the payment of salary from the State Exchequer is a serious business and should not be taken lightly. Public money cannot be wasted, if at the end of the day, is found, that the salary to the applicants was not payable.

10. Further, I am of the opinion that an ex parte interim mandamus issued by this Court in regard to payment of salary, cannot be enforced by resorting to the provisions of the Act unless the ex parte interim order passed by this Court is confirmed after hearing the opposite parties and Respondents must have an opportunity to place sufficient material before the Court that the relief sought by the Petitioner cannot be granted as he may not be entitled to the same or it is by no means desirable to grant such an equitable relief to prove a case before the Court in the main case, accordingly argument made by the learned Counsel for the applicants is misconceived and proceedings of the present contempt petition may be differed till the disposal of application for vacation of the stay order as in this regard Hon"ble the Supreme Court and this Court in a large number of cases have consistently held that the contempt proceeding should not be proceeded against an interim order. So, this Court is of the firm opinion that in the present case, the matter requires adjudication from the Writ Court and that the matter should be finally resolved before the salary is paid to applicants, if any.

11. In Crl. Misc. Case No. 2120 (C) of 2010/ Javed Akhtar and Anr. v. Sri Ravi Kant District Minority Welfare Officer, District Gonda and Ors., decided on 13.5.2008 this Court held as under:

Upon hearing the matter and upon considering the entire issue, this Court is of the opinion that the payment of salary from the State Exchequer is a serious business and should not be taken lightly. Public money cannot be wasted, if at the end of the day, is found, that the salary to the applicants was not payable. The controversy, as to whether, the applicants are working in the institution or

whether they are liable to be paid the salary from the State Exchequer is pending adjudication in the writ petition.

This Court as well as the Supreme Court in a large number of cases have consistently held that the contempt proceeding should not be proceeded against an interim order. This Court is of the firm opinion that in the present case, the matter requires adjudication from the Writ Court and that the matter should be finally resolved before the salary is paid to the applicants, if any.

12. In the case of Ram Ashish Ram v. Security Officer (H.C.) 1991 (18) ALR 24, this Court held as under:

In my opinion, the Respondents could have legitimate hope that their application for vacating stay order shall be decided on an early date. It is well established that the matter of contempt is between the Court and the contemnor. The Petitioner has only to invite the attention of Court to the facts and circumstances in which according to him, contempt has been committed. It is for the Court to consider whether its contempt has been actually committed or not. In my opinion, it shall be highly unjust on the part of the Court not to decide the prayer for vacating the stay order and to punish the Respondents for committing the contempt. If without deciding the matter of stay vacation the Respondents for committing are held to have committed contempt, it will not be equitable on the part of the Court. It is different matter that the prayer for vacating stay order may not have merit, but a party, against whom an interim order is passed, has a legal right to agitate against the same under Article 226(3) of the Constitution.

13. In the case of Raj Rajan v. V.S. Vasudevan and Anr. (1995) 3 UPLBEC 1472, this Court held as under:

The contempt proceedings are not like executing a civil Court in the contempt proceedings the applicant has to prove that has been a willful default but on the other hand the opposite party right to show that the order sought to be enforced was incapable of executed.

In the instant case, therefore, the opposite parties must have one opportunity to defend the ex parte interim order in the proceedings before the opposite parties are dragged before the Court. In the case of State of Jammu & Kashmir Vs. Mohd. Yaqoob Khan and Others, the Supreme Court has disapprove the practice of enforcing the ex party interim orders in contempt proceedings. The Supreme Court held that so long the stay matter in the written was not finally disposed of, the further proceedings in the contempt was itself misconceived and no order therein should have been passed.

14. Hon"ble Apex Court in the case of State of Jammu & Kashmir Vs. Mohd. Yaqoob Khan and Others, clearly held that Whenever any stay vacation application has been filed for vacation of interim order, the proceedings of contempt should be deferred till disposal of such application.

15. Further, in Mohd. Yaqoob (supra) Apex Court has also disapproved the

practice of enforcing the ex parte interim orders in contempt proceedings. The Supreme Court held that so long the stay matter in the writ petition was not finally disposed of the further proceedings in the contempt case was itself misconceived and no order therein should have been passed, observed as under:

We do not agree. The scope of a contempt proceedings is different from that of the pending main case yet to be heard and disposed of (in future). Besides, the Respondents in a pending case are at a disadvantage if they are carry upon to meet the merits of the claim in a contempt proceedings at the risk of being punished. It is, therefore, not right to suggest that it should be assumed that the initial order of stay got confirmed by the subsequent orders passed in the contempt matter.

16. High Court should first take up the stay matter in the writ case, and dispose it of by an appropriate order. Only thereafter it shall proceed to consider whether the State and its authorities could be accused of being guilty of having committed Contempt of Court.

17. In addition to the above said facts, while adjudicating the matter u/s 12 of the Contempt Court Act, in the case of Sushyant Somal v. Sushma Somal AIR 1981 SC, the Supreme Court observed as under:

Nor is a person to be punished for contempt of Court for disobeying an order of Court except when the disobedience being similar, even if not the same, has any criminal proceeding, where the person alleged to be a contempt is able to place before the Court sufficient material to conclude that is impossible to obey the order. The Court will not be justified in punishing the alleged contemnor.

18. The Apex Court has expressed the similar view in the case of Niyaz Mohammad and Ors. v. State of Haryana (1994) 6 SCC 33, wherein it is held that the contempt proceedings are not be executing a civil Court decree. In the contempt proceedings are not has to prove that there has been a willful default but on the other hand the opposite party has a right to show that the order sought to be enforced was incapable of being executed, So Respondents must have a right of one opportunity to defend the ex parte interim order in the main proceedings before they are dragged before the Contempt Court.

19. In view of the above said facts, the submission made by Sri A.M. Tripathi, learned Counsel for the Respondents that at least an opportunity be given to defend the ex parte interim order in the main proceeding before the Respondents are dragged before the contempt Court, has got force rather the same is in accordance with law as mentioned above.

20. For the foregoing reasons, the proceeding of the present contempt petition is deferred till disposal of the application for vacation of interim order dated 06.08.2010 filed by the Respondents along with counter-affidavit in the writ petition No. 3148 (SS) of 2010 (Jay Bahadur Singh and Anr. v. State of U.P. and Ors.).

21. However, liberty is given to the parties to move an application for listing of the present case after decision on application for vacation of the stay order.