

(2007) 01 AHC CK 0084
In the Allahabad High Court

Justice Palok Basu, (Retd.) President, State Consumer
Disputes Redressal Commission

APPELLANT

Vs

Sri R.K. Kulshrestha, Former President

RESPONDENT

Date of Decision : 12-01-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Consumer Protection Act, 1986 — Section 10
Contempt of Courts Act, 1971 — Section 12, 19

Citation : (2007) 2 ADJ 613 : (2007) 1 AWC 781

Hon'ble Judges : Sudhir Agarwal, J;S. Rafat Alam, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S. Rafat Alam and Sudhir Agarwal, JJ.—This appeal u/s 19 of the Contempt of Courts Act read with Chapter-VIII Rule 5 of the Rules of the Court has been preferred against the orders dated 7.11.2005 and 8.12.2005 of the Hon'ble Single Judge in Contempt Petition No. 3689 of 2003. The order dated 7.11.2005 commands the appellant to comply with the judgment dated 27.4.2004 in letter and spirit except for payment of interest before the next date and file an affidavit failing which the Court may be left with no other option but to frame charges for trial and order dated 8.12.2005 holding appellant prima facie guilty of willful and deliberate violation of the interim order dated 12.11.2003 and thereby frames charge as follows:

You, Justice Palok Basu (Retired) President of the State Consumer Redressal Commission, show cause why you should not be tried and punished u/s 12 of the Contempt of Courts Act, 1971 for deliberate defiance and willful disobedience of the interim orders of this court dated 12th November, 2003 passed in Writ Petition No. 50320 of 2003.

2. We have heard, Sri S.P. Gupta, Senior Advocate assisted by Sri C.S. Singh, Addl. Chief Standing Counsel for the appellant and Sri Ranjit Saxena for the

respondent. From voluminous pleadings and written arguments submitted by the parties and lengthy arguments advanced, the facts, as emerges may be narrated, as under, to facilitate adjudication of the matter.

3. The respondent, Sri R.K. Kulshrestha was a member of Higher Judicial Service and attained age of superannuation on 31.3.2000 while working as Addl. District Judge, Moradabad. Vide State Government's notification dated 2.2.2001 issued u/s 10 of the Consumer Protection Act, 1996, the respondent was appointed as Chairman (full time), District Consumer Forum, Etah for a period of 5 years or till he attains the age of 65 years whichever is earlier. The appellant was appointed as Chairman, State Consumer Disputes Redressal Commission (hereinafter referred to as the "SCDRC") and by Government Order dated 25.9.2002 he was also appointed Head of the Department of District Consumer Redressal Forums of State of U.P. Salary of the respondent after his appointment as Chairman, District Consumer Forum was fixed at Rs. 19,506/- per month and he received the said salary regularly till February, 2003. It appears that the SCDRC vide its order dated 15.3.2003 allotted budget to various District Consumer Forums authorizing Chairman of respective District Consumer Forums to act as Drawing and Disbursing Authority. After getting power to act as Drawing and Disbursing Authority, the respondent withdrew his current salary as well as balance of his past salary by calculating the same at the rate of Rs. 22,400/- per month instead of 19,506/-. This matter was reported to the State Government vide SCDRC order dated 21.3.2003 whereupon the State Government vide order dated 31.5.2003 (Annexure-14 to the affidavit filed in support of the stay application in this appeal) conveyed its decision that the current salary of the respondent is 19,506/- per month and by misconstruing various Government Orders issued earlier, he has wrongly withdrawn excess amount, and, therefore, cancelled higher pay fixation and excess withdrawal of salary by the respondent and also to recover the excess amount drawn by him. A further direction was issued to make an inquiry against him for wrongful withdrawal of salary. The State Government's letter was communicated to the respondent vide Registrar, SCDRC's letter dated 31.6.2003 asking him to refund the excess amount withdrawn towards salary. Besides, pursuant to the State Government's Direction contained in the letter dated 31.5.2003, the appellant issued order dated 4.9.2003 appointing Registrar, SCDRC, as inquiry officer to hold inquiry against the respondent and by order dated 10.9.2003, respondent was placed under suspension and attached with District Consumer Forum, Kanpur Dehat. A third order was passed by the appellant on 15.9.2003, withdrawing power of Drawing and Disbursing Authority from the respondent. Pursuant to the aforesaid order, the respondent deposited on 9.10.2003, Rs. 50,858/-being excess amount withdrawn by him. The Registrar, District Consumer Forum, Etah vide letter dated 13.10.2003 informed the factum of the said deposit to SCDRC. The respondent thereafter preferred Writ Petition No. 50320 of 2003 under Article 226 of the Constitution of India before this Court on 9.11.2003 seeking following reliefs:

a) issue a writ, order or direction in the nature of Certiorari quashing the

impugned order dt. 10.09.2003 passed by the President, State Commission served upon the applicant on 12.09.2003 (Annexure 11 to this writ petition) and the order dt. 04.09.2003 appointing Shri Hoop Singh, HJS as a enquiry officer in violation of Rule 9 of the U.P. Consumer Protection Rules,1987 (Annexureno.11).

b) Issue a writ, order or direction in the nature of Mandamus directing the respondents to pay the salary of the applicant from 01.03.2003 till date and balance of salary as prescribed by law and rules.

c) Mandamus commanding the respondents to pay damages of two lacs rupees for passing the illegal orders having no jurisdiction just to harass the applicant and to be recovered from the appropriate persons as decided by the Hon''ble High Court.

d) issue any other suitable writ, order or direction which this Hon''ble Court may deem fit and proper in the circumstances of the case.

e) award the heavy cost of the present writ petition to the applicant.

4. The aforesaid writ petition came up for admission before a Division Bench on 12.11.2003 and after hearing the learned Counsel for the respondent, the Court recorded a prima facie satisfaction that the order to suspend or to conduct inquiry issued by the President, SCDRC is illegal and therefore granted interim order, the relevant extract whereof is reproduced hereunder:

For the reasons given above we are of the opinion that the impugned orders dated 4.9.2003 and 10.9.2003 are prima facie illegal, and hence we stay these orders till further orders.

A copy of the order will be given to the learned Counsel for the petitioner on payment of usual charge today A copy will also be given to the learned, Standing Counsel today free of charge, and he shall communicate it to the State Government as well as the President of the State Consumer Disputes Redressal. Commissioner, Lucknow.

5. From the perusal of the record of the writ petition, it appears that the writ petition was filed after serving notice in the office of Chief Standing counsel representing respondent Nos. 1 and 5 only. A copy of the interim order was also received by the Chief Standing counsel on 12.11.2003 at 5.00 P.M. The registry subsequently issued notice to the respondent No. 2 impleaded in the writ petition by registered post A.D. on 19.11.2003 fixing 18.12.2003. Though the notice was issued to the State Consumer Dispute Redressal Commission through its Registrar impleaded as respondent No. 2 in the writ petition on 19.11.2003 fixing 18.12.2003, the respondent however filed a contempt petition No. 3689 of 2003 on 15.12.2003 itself alleging that he has not been paid salary from March 2003 and onwards. The application appears to have been taken by Hon''ble Contempt Court on 17.12.2003 whereon the following order was passed

List on 19.1.2004 by which time learned Counsel for the applicant may file

receipt of the order on the opposite party.

6. The SCDRC impleaded as respondent No. 2 in the writ petition, in the meantime filed its counter affidavit in the pending writ petition on 16.12.2003 whereupon a division Bench on 18.12.2003 passed an order directing for listing thereof at an early date. The record shows that the copy of the stay vacation application and counter affidavit was served upon learned Counsel for the respondent on 15.12.2003. The contempt petition it appears thereafter was listed before the Court on 19.1.2004 and it passed following order:

Let notices be issued within one weeks to O.P. No. 1 & 2 returnable within six weeks.

7. After service of notice in contempt petition an affidavit along with misc. application No. 63599 of 2004 was filed on behalf of the appellant on 5.4.2004 stating that after receipt of ex parte interim order dated 12.11.2003 a counter affidavit along with stay vacation application has already been filed before the Court and, thus a request was made to adjourn hearing of the contempt petition till the matter is disposed in the writ petition. The short counter affidavit was also filed by Sri Roop Singh impleaded as respondent No. 2 in the aforesaid contempt petition stating that after communication of the stay order dated 12.11.2003, he has immediately stayed proceedings of departmental enquiry and the interim order therefore has been complied fully. The respondent R.K. Kulshrestha however also filed an application No. 54851 of 2004 in the pending writ petition in March 2004 seeking following relief:

It is, therefore, most respectfully prayed that the direction may kindly be issued to Opposite Party-3 to ensure that the payment of salary for the period March, 2003 upto Feb. 2004 and arrears from 14.02.2001 & T.A. Bill may kindly be released and paid to the petitioner forthwith alongwith 18% interest.

8. A division Bench on 25.3.2004 passed order on the aforesaid application of the respondent directing it to be listed with record in the second week of April 2004.

9. Further it appears that the appellant conferred power of Drawing and Disbursing Authority of President, District Consumer Forum, Etah upon the President; District Consumer Forum, Mainpuri and as a result whereof, salary of the respondent was payable under the order of the President, District Consumer Forum, Mainpuri. Consequently, his salary for the period of March, 2003 payable in April, 2003 till February, 2004 payable in March, 2004 was paid in March, 2004 vide treasury cheque No. 566530 Of Rs. 23,627/- and No. 566531 of Rs. 2,09,754/-. The aforesaid amount was deposited with the respondent's Saving Bank Account No. 12966 Allahabad Bank, Etah vide letter dated 7.4.2004. This was confirmed by the President District Consumer Forum, Mainpuri vide his letter dated 17.4.2004 sent to the Registrar, SCDRC. Thereafter regular salary was paid from the month of March, 2004 and onwards as is apparent from the chart filed as Annexure-9 to the affidavit filed in support of the stay application in this appeal. The writ petition of the respondent was finally decided by this Court vide

judgment dated 27.4.2004, a copy whereof has been filed as Annexure-CA-17 to the counter affidavit. It was held that power of suspension and disciplinary inquiry can be exercised only by the State Government under the provisions of the Act and the Rules framed thereunder and merely on the basis of the executive order i.e. the Government Order such power could not have been exercised by the Chairman, SCDRC. Consequently, the suspension order dated 10.9.2003 as well as the order dated 4.9.2003 whereby the Inquiry Officer was appointed were quashed and the respondent was declared in service throughout with entitlement of his salary regularly. A direction was issued to pay his salary alongwith arrears and interest at the rate of 12% from the date of suspension till the date of reinstatement and the payment was to be ensured within 2 months from the date of judgment. The Court also directed to reinstate the respondent forthwith. It appears that on 10.8.2004 the respondent filed an application No. 139516 of 2004 in the contempt petition stating that the writ petition has been finally decided on 27.4.2004 but the final judgment has not been complied with and therefore, action be taken against the appellant for disobeying judgment dated 27.4.2004. The aforesaid application 139516 of 2004 of the respondent came up before the Court on 12.8.2004 whereon it was directed to be listed on the date fixed. The State Government as well as the SCDRC preferred SLP before the Apex Court wherein an interim order staying payment of interest was passed on 10.9.2004.

10. Thereafter, it appears that the contempt matter came up before the Court on 7.11.2005 and the Court taking note of the aforesaid application and a subsequent application, i.e., No. 170767 of 2004 dated 21.9.2004, observed that firstly the interim order was not complied in its entirety inasmuch salary of Sri R.K. Kulshrestha was not released and, thereafter despite final judgment on 27.4.2004, neither the current salary was paid nor arrears was released within two months and thus it appears that the orders of this Court were not complied. The Hon"ble Court expressed its anguish for not complying with the order within two months and, thereafter granted one more opportunity to the appellant to comply the judgment dated 27.4.2004 in letter and spirit except for payment of interest before the next date fixed and cause an affidavit of compliance to be filed failing which the court may frame charge for trial.

11. The appellant it appears filed an affidavit stating that interim order as well as the final judgment both have been complied with whereupon the learned Counsel for Sri R.K. Kulshrestha-respondent made a statement that the orders have not been complied in letter and spirit and sought time to file reply, which was allowed and 7.12.2005 was fixed whereafter on 8.12.2005 the Hon"ble court observed that the appellant could not show any justification for passing the order dated 26.3.2004 despite the fact that the interim order was in force and since no valid explanation has been furnished, therefore, the Court framed charge whereagainst the present appeal arises.

12. From the facts narrated above, we are of the view that the entire contempt

proceedings have been initiated at the instance of the respondent as a gross misuse of the process of law. Further from the perusal of the orders dated 7.11.2005 and 8.12.2005 there appears to be a total variation and it is not clear there from as to how and when any non compliance has been shown by the appellant.

13. In the first order dated 7.11.2005, the reason given for continuing with the contempt proceeding which weighed the mind of the Court is that salary was not paid and thus it is in disobedience of the interim order as well as the final judgment. The relevant extract of the order is reproduced as under:

From the aforesaid facts and the record, it is apparent that first a reasoned speaking interim order was not compiled in its entirety, inasmuch as, the salary of the applicant was not released. It is also apparent that in spite of the final judgment of the writ court dated 27.4.2004 neither the current salary has been paid to the applicant nor the arrears were released within two months as directed by the Division Bench. More than a year has expired but there is non-compliance by the opposite party No. 1.

14. Further, from the operative part of the order it is apparent that another opportunity was granted to the appellant to comply the judgment dated 27.4.2004 in letter and spirit except for payment of interest but thereafter in the order dated 8.12.2005 we find that there is no mention of any disobedience on the part of the appellant with respect to alleged non payment of salary but the reason for non compliance of the orders has been said to be the issuance of the order dated 26.3.2004 by the appellant though, the interim order was in force as is apparent from the following:

When this petition was heard yesterday, i.e. 7th December, 2005, it transpired that there was absolutely no justification reply or explanation as to why the opposite party No. 1 had passed the aforesaid two orders dated 26th March, 2004, even though the interim order was in force. Considering the entire facts, the court was of the opinion that another opportunity be granted to the opposite party No. 1 to submit his explanation or reply.

15. A reading of the charge framed shows that the same is for alleged defiance and wilful disobedience of the interim order dated 12.11.2003 and there is no allegation of disobedience of the direction issued by the writ Court in the judgment dated 27.4.2004. The alleged disobedience is for issuance of the order dated 26.3.2004.

16. During the course of the arguments before us, also, after having the aforesaid factual background, we repeatedly enquired from the learned Counsel appearing for the respondent as to what was the occasion of disobedience of the interim order dated 12.11.2003 wherefor he preferred contempt petition on 15.12.2003 and what was the instance of disobedience or defiance giving cause of action to him to prefer contempt petition on 15.12.2003 but the learned Counsel for the respondent could point out none except that he was not being

paid salary despite the interim order. On our specific query as to whether any direction was issued by this Court on 12.11.2003 directing the appellant to pay salary to the respondent and/or whether the appellant was responsible for payment of salary to the respondent, the learned Counsel for the respondent could not give any reply at all. However, he stressed that even if there was no cause of action as such on 15.12.2003, when the contempt petition was filed or on 19.1.2004 when the notice was issued in the aforesaid contempt petition, yet since the contempt petition remained pending and the appellant issued an order on 26.3.2004 appointing the enquiry officer and directing him to complete enquiry, he acted in blatant defiance of the interim order dated 12.11.2003 passed in the aforesaid writ petition and, therefore, the charge has rightly been framed. Before coming to other aspect of the matter, we propose to consider first this aspect itself, at this stage. The learned Counsel for the appellant pointed out that the Hon'ble Court has erred in law in observing that the interim order was operative on 26.3.2004 though it stood already vacated by operation of law after expiry of two weeks from the date stay vacation application along with counter affidavit was filed by the appellant in the writ petition i.e. on 16.12.2003/18.12.2003. He further contended that Article 226(3) of the Constitution provides where an ex parte interim order has been passed if a stay vacation application is filed and is not disposed of within two weeks, the interim order shall automatically stand vacated and therefore on 26.3.2004 no interim order was operative against the appellant or the SCDRC, which was impleaded as respondent No. 2 in the writ petition. The learned Counsel for the respondent however contended that Article 226(3) would apply where an ex parte interim order is passed but in the present case, the writ petition was filed after service of notice upon the learned Chief Standing Counsel who also received the copy of the interim order dated 12.11.2003 and therefore Article 226(3) would have no application and the interim order continued to operate and the appellant could not have passed any order appointing enquiry officer or directing him to conduct any departmental enquiry against the appellant in the teeth of the interim order dated 12.11.2003. It would be useful to quote Article 226(3) of the Constitution as under:

Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under Clause (1), without-

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard.

makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is

later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

17. As we have noticed, the writ petition was filed serving notice upon the learned Chief Standing Counsel who accepted notice on behalf of the respondent Nos. 1 and 5, i.e. State of U.P. through Chief Secretary U.P. Government and the Principal Secretary Department of Food and Civil Supplies, U.P. Lucknow. The respondent Nos. 2, 3 and 4 arrayed in the aforesaid writ petition are State Consumer Disputes Redressal Commission, U.P. Moti Mahal, Lucknow, the President of the State Consumer Disputes Redressal Commission, U.P., Moti Mahal, Lucknow and Sri Roop Singh, Registrar, Public Inquiry Officer, State Consumer Disputes Redressal Commission, Moti Mahal Lucknow. The interim order dated 12.11.2003 passed by this Court also shows that the Court issued notice to the respondent Nos. 2, 3 and 4 returnable at an early date and the learned standing counsel was directed to file counter affidavit who represents the other respondents, namely 1 and 5. Therefore, admittedly so far as the respondent Nos. 2, 3 and 4 arrayed in the writ petition are concerned, the interim order dated 12.11.2003 was an ex parte interim order. The aforesaid respondent Nos. 2, 3 and 4 filed their counter affidavit along with stay vacation application on 16.12.2003 and it is evident from the record that the said application was not disposed of within two weeks. In the circumstances, the legal consequences flowing from Article 226(3) would swing in action with full effect and cannot be ousted in any manner. The consequence of non compliance of Article 226(3) has been considered by a Division Bench of this Court in *Jhunjhunwala Oil Mills Ltd. v. State of U.P. and Ors.* 1997(1) ACJ 308 and in para-14 of the judgment, the Court observed-

In this regard we may point out that the provisions of sub Clause (3) of Article 226 of the Constitution of India have taken care of it and if within the period of two weeks from the date on which application for vacating stay is received in the office of the Registry and the same is not placed before the Court, the ex-parte stay order automatically stands vacated after expiry of two weeks" period. Thus, the provisions of Sub-clause (3) of Article 226 in respect of vacating interim order is automatic after expiry of two weeks from the date on which the application is received in the office and by the petitioner.

18. Thus, the provisions of Sub-clause 3 of Article 226 in respect of vacating interim order is automatic after expiry of two weeks from the date on which the application is received in the office. Again in Para-16 of the judgment, the Court held-

In this respect we may observe that within the statutory period stipulated in sub Clause (3) of Article 226 if the application is not being placed before the Court in time, a duty is cast upon the party who had obtained ex-parte order to take active steps to get-the matter listed before the Court within the specified period

soon after copy of the application for vacating stay is received, and if he does not do so, he can do so at his own peril in view of mandate in Article 226(3) and the serious consequences envisaged therein. Therefore, the petitioner as well as the Registry both must get the matter considered by the Court immediately, and if that is not done within the stipulated period, the petitioner cannot escape the liability by pointing out that the Registry has failed to list the case in Court. In case 14 days are likely to expire and the registry has failed to list the case, the counsel for the petitioner can bring this fact to the notice of the Court and get the petition listed immediately because this constitutional mandate admits of no exceptions.

19. The same view was taken earlier in *Ram Ashish Ram v. The Security Officer and Anr.* 1991 (18) ALR 24 , and has been reiterated recently by a division Bench in *Dr. R.C. Chaudhary Vs. Vice Chancellor, B.R. Ambedkar University and Others*, and it has been held that provision of Article 226(3) is mandatory and strict observance is necessary.

20. In our view, the learned Counsel for the appellant is right in his submission that the ex parte interim order dated 12.11.2003 cannot be said to have continued since the stay vacation application and counter affidavit filed by the respondent Nos. 2, 3 and 4 impleaded in the writ petition on 16.12.2003/18.12.2003 was not disposed of within two weeks thereafter. Therefore on 26.3.2004, when the appellant passed order appointing enquiry officer directing to conduct and complete enquiry, it cannot be said to be in violation of the interim order dated 12.11.2003 which was not operating on the said date. It is not the case of the respondent that any order extending interim order or on the stay vacation application of the applicant was passed. It is also not his case that the appellant has enforced the aforesaid order dated 26.3.2004 after the judgment has been, pronounced by this Court on 27.4.2004. In this view of the matter, it cannot be said that by issuing the letter dated 26.3.2004, the appellant violated interim order dated 12.11.2003 which stood vacated after expiry of two weeks from the date of filing stay vacation application along with counter affidavit. Since, the charge has been framed only for issuance of the letter dated 26.3.2004 said to be in violation of the interim order dated 12.11.2003, in view of the aforesaid finding, it is liable to be quashed on this ground alone.

21. However, we intend to consider the other observations made in two orders under appeal regarding non payment of salary to the respondent and resultant disobedience of the interim order dated 12.11.2003 and judgment dated 27.4.2004. From the facts discussed above, it is evident and also not disputed before us that on account of wrongful withdrawal of salary by the respondent in March 2003 when he was conferred power of drawing and disbursing of salary by SCDRC vide order dated 15.3.2005, the matter of payment of his subsequent salary, i.e. March 2003 payable in April 2003 and onwards became disputed and as a result thereof, the respondent was not actually receiving salary regularly

from March 2003 and onwards till he was placed under suspension on 12.9.2003 and also when the interim order was passed by this Court on 12.11.2003. Moreover, this Court while granting interim order on 12.11.2003 did not issue any direction regarding payment of salary to the respondent though he has sought a relief in the writ petition itself for payment of salary from March 2003 and onwards. The respondent also realizing that there was no order passed by this Court directing for payment of salary, moved an application No. 54851 of 2004 in March 2006, but thereon also no order was passed. In the meantime salary of the respondent from March 2003 till February 2004 was paid on 7.4.2004 vide Cheque No. 566530 of Rs. 23,627/- and 566531 of Rs. 2,09,754/-. The aforesaid amount was deposited with the respondent's Saving Bank Account No. 12966 Allahabad Bank Etah vide letter dated 7.4.2004. The factual assertion regarding aforesaid payment has been made in para-30 of the affidavit in support of the stay vacation application in this appeal and not denied by the respondent. He has filed a counter affidavit but instead giving parawise reply, a general reply has been given narrating various facts. The aforesaid payment however is not denied but what his grievance appears to be is that the department was calculating payment of salary under some other Government Orders, though as per the rules, respondent ought to have been paid salary under a different Government Order. This is apparent from para 56 of the counter affidavit which is reproduced as under:

56. That the main difficulty, which has arisen in the instant case is that the officers/officials of the appellant are calculating the payment of salary by relying upon proposed Govt. Order No. C.P. 2004/29-08-96 C.P.-15/93 dated 17.01.1997 issued by U.P. Govt. whereas the said Govt. Order has already been revised by the subsequently passed Govt. Order No. 1137/29-08-97/C.P.-03/93 dated 22.11.1997 issued by the U.P. Govt. and therefore the action of the officers/officials of the appellant in calculating the payment of the arrears of the salary and the T.A. in accordance with old Govt. Order dated 17.01.1997 is highly misconceived action of the officers/officials working under the appellant.

Therefore, salary of the petitioner from March 2003 till February 2004 was actually received by him in April 2004. The judgment dated 27.4.2004 allowing the writ petition directing the authorities to pay his current salary for arrears etc. did not deal with the quantum of salary or the issue of fixation of salary to the respondent in a particular manner. It appears that the respondent sought to raise a dispute that he was entitled for salary at higher rate though it was wrongly fixed at Rs 19506/- but this issue has not been even touched by this Court in the said writ petition and the learned Counsel for the respondent could not place before us any finding or direction of this Court in the judgment dated 27.4.2004 on this aspect. Therefore, whatever amount he was getting pursuant to the orders passed by the authorities was paid to him but the request of the petitioner for payment of salary at a higher rate was neither considered nor decided nor any direction was issued in this regard. In the matter of contempt the Court is primarily concerned with the question of contumacious conduct on the part of the

contemnor who is alleged to have committed default in complying with the directions in the judgment or order. The court cannot traverse beyond the order, non-compliance of which is alleged and cannot say what should not have been done or what should have been done which is not otherwise provided in the order, disobedience whereof is complained as held in Director of Education, Uttaranchal and Others Vs. Ved Prakash Joshi and Others,

22. In Midnapore Peoples' Co-op. Bank Ltd. and Others Vs. Chunilal Nanda and Others, the writ court allowed the writ petition, quashed enquiry proceedings and consequential action taken by the Bank, permitted it to conduct de novo enquiry within 4 months subject to cooperation by the employee concerned and directed to pay proper subsistence allowance to the employee concerned during the period of suspension. The de novo enquiry could not be completed within the time prescribed and the court extended the time by two weeks, whereafter a contempt application was filed wherein directions were issued to reinstate the employee concerned and to treat him in service all through and to pay all arrears of salary within four weeks. The Apex Court held the said directions to be outside the scope of contempt proceedings and held that it amounted to adjudicate the rights and liabilities of the parties not in issue in the contempt proceedings.

23. The Hon'ble Apex Court after reiterating similar view in Union of India (UOI) and Others Vs. Subedar Devassy PV, held as under-

While dealing with an application for contempt the court cannot traverse beyond the order, non-compliance with which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible.

24. Moreover, in the case in hand, it has also been stated that salary for the period subsequent to February 2004 was also paid to the respondent and we have not been shown any material or pleading on record controverting the said facts. Therefore, we do not find any occasion to hold the appellant guilty of non compliance or disobedience of either the interim order dated 12.11.2003 or judgment dated 27.4.2004 in any manner and, have no hesitation in observing that the contempt proceeding initiated against the appellant cannot be sustained since respondent has utterly failed to point out any act or omission on the part of the appellant constituting deliberate defiance of any order of this Court amounting to contempt. The entire proceeding is, hence, liable to be quashed.

25. In the result, this appeal succeeds and is allowed. The orders dated 7.11.2005 and 8.12.2005 impugned in this appeal are set aside. We also dismiss the contempt application having no sufficient cause of action and direct it to be consigned to record. The notice issued to the appellant shall stand discharged. However, there shall be no order as to costs.