
(2009) 10 AHC CK 0158

In the Allahabad High Court

Case No : Contempt Application (Civil) No. 2188 of 2009

Kavita Kumar

APPELLANT

Vs

M.A.A. Khan, Secretary Irrigation Department and Others

RESPONDENT

Date of Decision : 24-10-2009

Acts Referred:

Contempt of Courts Act, 1971 — Section 12

Citation : (2009) 10 AHC CK 0158

Hon'ble Judges : Devendra Pratap Singh, J

Final Decision : Disposed Of

Judgement

Devendra Pratap Singh, J.

Heard learned counsel for the parties.

Ajay Kumar, the deceased husband of the applicant died in harness while working as an Assistant Engineer in the Tubewell Division of the Irrigation Department at Saharanpur on 30.11.1994. Despite sincere efforts family pension, gratuity and other deathcumretiral benefits were not paid to her and she was informed that it was due to the fact that certain entries of miscellaneous advance were entered against her husband. However, on the direction of the Chief Engineer dated 5.9.1997, the Superintending Engineer submitted a report in January, 1998 exonerating her husband from the aforesaid miscellaneous advance whereupon the applicant again approached the opposite parties through a representation dated 8.4.1999 claiming payment of the said benefits together with interest at the rate of 16 percent. Inaction on their part forced her to file Writ Petition No. 33905 of 1999 and a Division Bench of this Court vide order and judgment dated 12.8.1999 directed the opposite parties to consider her representation within two months. The period fixed expired but yet the applicant met with inaction. She was constrained to file Contempt Application No. 2239 of 2000 wherein 3rd of September, 2000 was fixed for appearance of the opposite parties only thereafter the retiral benefits were released on 1.9.2000. The Contempt Court vide order dated 21.11.2000 directed the opposite parties to take a decision with regard to

payment of interest on delayed payment. The opposite parties rejected the claim vide order dated 26.12.2000 which was subjected to challenge in Writ Petition No. 5667 of 2001.

After exchange of pleadings a Division Bench of this Court by the following order dated 11.8.2008 directed the opposite parties to pay 12% simple interest w.e.f. February, 1998 till 31.8.2000:

"In the result, the writ petition succeeds and is allowed. A writ of mandamus is issued directing the respondents to pay 12% simple interest to the petitioner with effect from February 1998 till 31st August, 2000. The amount of interest shall be paid by the respondents to the petitioner within a period of three months from the date a certified copy of this order is produced before respondent no. 1."

Despite service on the opposite parties on 1.9.2008 no action was forthcoming and it was revealed to her that that matter has been referred to the State Government whereupon she approached the State Government through her letter dated 19.2.2009, to no avail. She was again left with no other option but to file the present contempt petition.

The opposite party no. 1, in pursuance of the notices received, file an affidavit of compliance together with a discharge application dated 26.8.2009 stating that after calculation, a sum of Rs. 17,322/- being the interest, was sent to the applicant through a Bank Draft dated 1.8.2009 under a covering letter of the Executive Engineer dated 3.8.2009.

The applicant in reply to the affidavit of compliance filed her counter affidavit on the ground that the amount mentioned in the affidavit of compliance was incorrect and a sum of Rs. 96,685/- was still outstanding even after the aforesaid payment. Whereupon a second affidavit of compliance was filed admitting in paragraph 7 that a sum of Rs. 91,916.65 paisa is still outstanding in the following words:

"That the remaining simple interest w.e.f. February 1998 till 31st August 2000 on family pension has been calculated to the tune of Rs. 91,916.65 paisa. A photostat copy of the calculation sheet is being filed herewith and marked as AnnexureSA1 to this affidavit."

and undertook to pay the aforesaid amount within a month in para 11 of the said affidavit in following words:

"That the deponent is making all possible efforts for compliance of the order of the Hon'ble High Court, however, for payment of the aforesaid amount of interest, one month's further time is required."

After hearing the parties the following order was passed on 7.10.2009:

"Heard learned counsel for parties.

The husband of the applicant was working as an Asstt. Engineer in the Tubewell

Division II in the Irrigation Department at Saharanpur when he died in harness on 30.11.1994. However, deathcumretiral dues were not paid as certain miscellaneous advances were allegedly outstanding in his name and subsequently report was submitted by the Executive Engineer in January 1998 exonerating her husband from the aforesaid advances. Yet, the amounts were not paid. Thus, the applicant made representation in April 1999 claiming the dues together with 16% interest and when no action was forthcoming, she preferred Writ Petition No.33905 of 1999 and a Division Bench of this Court vide order dated 12.8.1999 disposed off the writ petition directing the respondents to decide her representation within two months. Even after expiry of the aforesaid period, no decision was taken forcing her to prefer Contempt Petition No.2239 of 2000 and after issuance of notice, the family pension, gratuity and other dues were released on 1st of September 2000, but without any interest, even though she had specifically claimed interest in the aforesaid representation. The Contempt Court thereafter vide order dated 12.11.2000 gave another opportunity to the respondents to take a decision on payment of interest, but it was rejected vide order dated 26.12.2000. The applicant was again forced to prefer Writ Petition No.5667 of 2001 challenging the aforesaid order. After exchange of pleadings, the said writ petition was allowed vide order and judgment dated 11.8.2008 directing the opposite parties to pay 12% simple interest from February 1998 till 31.8.2000 within three months from the date of service of certified copy of the judgment. The certified copy of the judgment was served on the opposite parties through speed post on 1.9.2008, but the payments were not made and she was informed by letter dated 16.12.2008 that the matter has been sent to the Government for necessary action. She therefore approached the Government through her letter dated 19.2.2009, but yet no action was forthcoming forcing her to prefer this contempt petition.

Upon issuance of notice, affidavit of compliance of Sri M.A.A.Khan, Secretary in the Irrigation Department was filed stating that the interest amount of Rs.17320/ has been paid on delayed payment vide bank draft dated 1.8.2009. However, this was contested by the applicant through a counter affidavit alleging that out of total interest amount which was to be paid in accordance with the judgment of this Court, a sum of Rs.96,685/still remains pending. Another application supported by an affidavit was filed by Sri Khan admitting in paragraph 7 thereof that an amount of Rs.91,916.65p. is still outstanding and the matter has been referred to the Finance Department on 7.9.2009 for obtaining financial sanction for payments of interest. He prayed a month's time to make the payments.

It is apparent from the record that more than a month has expired since moving of the aforesaid application, but till date payments have not been made.

A perusal of the aforesaid shows a sorry state of affairs where even false and misleading affidavit by no less than a Secretary to the Government has been filed and a widow is being made to run before the Court on several occasions and yet the legal dues have not been paid.

Accordingly, the opposite party no.1 or whosoever is working as Secretary of the Department shall appear in person and show cause why he should not be punished under Section 12 of the Contempt of Courts Act and other allied powers and why heavy cost and compensation be not awarded to the applicant.

Let a copy of this order be given to Sri K.R.Singh, learned Standing counsel within 48 hours.

List on 23.10.2009."

Contemnor, opposite party no. 1, appeared along with a discharge application dated 22.10.2009 taking another stand that after fresh calculation the amount has been quantified at Rs. 25,419/ as under:

"That according to the calculation sheet, the interest of the petitioner has been calculated to the tune of Rs. 25,419/ which has been paid to the petitioner vide treasury cheque dated 15.10.2009. A Photostat copy of the cheque dated 15.10.2009 of Rs. 25,419/ is being filed herewith and marked as AnnexureSA2 to this affidavit."

It is apparent from the aforesaid, that a widow has been running for the last 15 years for the payment of her lawful dues. She had to approach the courts on at least four occasions. The opposite parties were directed to pay the amounts within three months but more than a year has expired.

The writ order dated 11.8.2008 was to be complied within three months. There is no denial of the averments that the order was served on the contemnor through a covering letter dated 1.9.2008, but apart from a vague averment in para 9 of the first compliance affidavit there is no explanation for the unreasonable delay of about a year in offering the payments through covering letter dated 3.8.2009. If there was some difficulty in complying with the order within the time frame fixed by the Court, the opposite party could have approached the writ court for extension of time, but, no such effort was made. There being no satisfactory explanation for the delay, it would amount to wilful disobedience.

As already noticed above, the contemnor had given an undertaking to pay Rs. 91,916.65/ within a month through the second compliance affidavit, but this undertaking has also been breached.

It is also apparent that the contemnor has been taking different stands in the three different compliance affidavit without any justifiable cause and assuming any one of the stands to be correct, the remaining two are misleading which have caused non compliance of the writ of this court. The Apex Court more than a score years ago in the case of Sebastain M. Hongray, petitioner Vs. Union of India [AIR 1984 SC 1026) has held that where there is an effort to mislead the Court by presenting distorted version, it would constitute civil contempt.

No doubt, if any of the aforesaid instances are taken in isolation, it can be argued that it may be a technical violation. But if the three are considered together and

in the background of the facts noted, there can be no other conclusion except to hold that Sri M.A.A. Khan is guilty of wilful violation of the writ order which is punishable under Section 12 of the Contempt of Courts Act, 1971.

The parties were also heard on the question of sentence, but except for the contention that there is a bona fide mistake, no mitigating circumstances have been brought forth. The apology, on these facts does not appear to be genuine and from the heart and are empty words just to avoid punishment. Even otherwise, justification and apology do not go together as they are incompatible.

However, before the Court could deliver the sentence, an affidavit of the contemnor has been filed by the learned Advocate General disclosing that a treasury cheque of Rs. 66,498/ drawn in favour of the applicant would be paid to her and as such the contemnor has purged the contempt of breaching the undertaking given by him. He has informed the Court that the contemnor undertakes to pay a compensation of Rs. 50,000/ to the applicant through demand draft within 15 days from today in lieu of any sentence which the Court may deliver. The counsel for the applicant has no objection.

The learned Advocate General also assures the Court that a mandatory direction will be issued by the Chief Secretary to all Government officials including in the Secretariat within 15 days directing them to comply with the directions of the Court within the time prescribed by it.

Taking a holistic view especially considering the fact that the writ order has been complied, undertaking given to the Court has been honoured and the applicant has been suitably compensated, the Court refrains from sentencing the contemnor and relieves him with a warning.

With the aforesaid directions, this contempt petition is finally disposed off.