
(2002) 04 P&H CK 0087
In the Punjab And Haryana At Chandigarh
Case No : C.O.C.P. No. 1449 of 2000

Laxmi Narain

APPELLANT

Vs

R.N.Prasher

RESPONDENT

Date of Decision : 12-04-2002

Acts Referred:

Citation : (2002) 3 AICLR 345 : (2002) 2 CCC 324 : (2002) 2 RCR(Criminal) 679

Hon'ble Judges : M.M.Kumar, J

Advocate : Shri S.K. Garg, Advocate. Shri Naresh K. Joshi, Assistant Advocate General, Haryana., Advocates for appearing Parties

Judgement

M.M. Kumar, J.

1. This contempt petition filed under Sections 10 and 12 of the Contempt of Courts Act, 1971 (for brevity, 'the Act') presents a classical example of officers and bureaucratic boobytraps showing how the orders of this Court could be systematically eroded in bits and pieces leading to its eventual flouting by those who are bound to follow them.

Brief facts :

2. In December 1993, the employees working in the Transport Department of the State of Haryana decided to abstain from work and went on strike. The respondent State considering the emergent situation created by the strike invited applications for filling up the vacancies/posts and made fresh appointments. The Transport Department made fresh appointments on adhoc basis without offering appointment to those who were on duty during the strike period despite the fact that the seniority list of such employees had been prepared in 1995. The Transport Commissioner has directed the preparation of seniority list and had allocated the petitioner to Rohtak Depot where his name in the waiting list was at No. 1. This fact is clear from the letter dated 23.6.1995 written by the Transport Commissioner and another letter dated 28.8.1997 vide which it has been assured to the petitioner that he was fully eligible for the post of Helper and would be

appointed against the vacant post as and when available. A copy of this letter is placed on the record as Annexure P.4. However, the respondents resorted to pick and choose policy and appointed persons whose names appeared at Sr. Nos. 38 and 40 respectively. It was alleged that during the month of August 1995 they were appointed as Helper on regular basis. A copy of the appointment letter of Pardeep Kumar whose name appeared at Sr. No. 38 is appended as Annexure P.5. Some of the employees appointed during strike period filed Civil Writ Petition No. 12509 of 1998 which was allowed on 5.4.1999. A Division Bench of this Court issued various directions in respect of the persons who were appointed during the strike period. The Division Bench during the course of arguments felt constrained to observe that the situation which has arisen before the Court was created by the Transport Department themselves because they failed to abide by the rule of seniority while absorbing who were appointed during the period of strike. The observation of the Division Bench and the detailed directions issued on 5.4.1999 reads as under:

"During the course of hearing, learned Deputy Advocate General brought to our notice that many writ petitions in which those who appointed during strike have sought direction for appointment/absorption are pending before this Court and unless that issue is finally settled, the official respondents cannot make regular appointments. We appreciate the dilemma of the nonofficial respondents but at the same time we are constrained to observe that the situation in which they find themselves is their own creation because they have failed to abide by the rule of seniority while absorbing those who were appointed during the period of strike. However, this lapse on the part of the official respondents cannot be made a ground to defeat the right of consideration acquired by the nonofficial respondents to be appointed/absorbed in the service of Haryana Roadways in accordance with the policy of the government or to allow them to circumvent the direction given in CWP No. 3495 of 1996.

We, therefore, dispose of the writ petition with the following directions :

- (i) The official respondents are directed to decide the issue of regularisation of services and or absorption of those who were appointed during strike, including the private respondents, by applying the rule of seniority in the particular cadre. This shall be done within a period of 3 months from the date of submission of certified copy of this order.
- (ii) List of the persons who may be found entitled to the benefit of this direction shall be published in the newspapers "Dainik Tribune" at the end of 3 months period.
- (iii) Against the remaining vacancies of Conductors appointment shall be made in accordance with the direction given by the Court on 19.5.1997 while deciding CWP No. 3495 of 1996.
- (iv) The official respondents are restrained from making appointment on the posts of Conductors till these directions are complied with in their entirety.

(v) The officials as well as nonofficial respondents are given liberty to approach the bench concerned for early hearing of CWP No. 16075 of 1998. The petitioners are also given liberty to apply for intervention in that case."

3. In pursuance to the direction issued by the Division Bench of this Court, respondents issued a general notice in the English Daily The Tribune dated 13.12.1999 publishing the seniority list cadrewise of all those employees who had been employed during the strike. The name of the petitioner appeared at Sr. No. 1 in the seniority list for Rohtak Depot and at Sr. No. 19 in the seniority list of Jind Depot as is apparent from Annexure P.10. Some of the employees who were placed lower in the seniority list of workshop staff and had been appointed during the strike were regularised ignoring meritorious claim of the petitioner. Feeling aggrieved by the action of the respondents, the petitioner filed Civil Writ Petition No. 8980 of 1999 seeking direction to the respondents to comply with the orders dated 23.6.1995 and 12.7.1995. In the order dated 23.6.1995, the Transport Commissioner, Haryana has directed the General Manager, Haryana Roadways, Rohtak that the employees who had worked during the strike period may be adjusted in accordance with the qualification for which they are suitable on the post of Helper. It was further directed that the candidates cannot be adjusted against the vacant post but be kept on the waiting list. On 10.7.2000 when the case came up for consideration before the Division Bench, the Additional Advocate General undertook that the case of the petitioner for appointment to the post of Helper shall be duly considered by the authority if a reasonable time was given and the writ petition was disposed of. The order of the Division Bench after recording the undertaking given by the Additional Advocate General reads as under :

"Present : Mr. S.K. Sharma, Advocate for the petitioner.

Mr. R.S. Tacoria, Addl. A.G., Haryana.

During the course of arguments, learned State counsel submits that since the petitioner is an holder of ITI diploma, he qualifies for the appointment as Helper and further states that the case of the petitioner for appointment as such shall be duly considered by the authority if a reasonable time is given.

In these circumstances this petition is disposed of finally in view of the stand taken by the State counsel with the direction that the case of the petitioner shall be duly considered by the concerned authority for appointment as Helper within two months from the date of receipt of a copy of this order.

Sd/

A.S. Gill

Judge

Sd/

V.S. Aggarwal,

Judge"

July 10, 2000

4. A copy of the order was sent and communicated to the respondents on 18.9.2000 under registered cover AD. A copy of the postal receipt dated 18.9.2000 is appended as Annexure P13. Thereafter, a period of 2 months expired in the last week of November 2000.

5. Respondent No. 4 passed an order on 29.9.2000 intimating the petitioner that the services of the petitioner could not be regularised because before passing of the order on 10.7.2000 by the Division Bench the Department has taken the decision to cancel the waiting list published by them in the newspaper which had shown the petitioner at serial number 1.

6. Respondent No. 4 has been categorical in observing that in view of the fact that waiting list has been scrapped, the case of the petitioner could not be considered. It is pertinent to point out that there is no indication in the order dated 29.9.2000 passed by respondent No. 4 that the undertaking given by the learned State counsel was without any instructions or that there was no post of Helper available either at Rohtak Depot or at Jind Depot.

7. The petitioner feeling aggrieved served a legal notice on all the four respondents clearly indicating that the action of the respondents by passing the order dated 29.9.2000 would amount to circumventing and flouting the order passed by this Court on 10.7.2000. The principal plea taken was that if the seniority list was scrapped on 2.6.2000 then this fact should have been brought to the notice of this Court. Therefore, it cannot now be relied upon. The petitioner categorically stated that the order dated 29.9.2000 passed by respondent No. 4 had unwittingly stated that the case of the petitioner could not be considered. He laid emphasis on the last line of the order where respondent No. 4 has stated that 'Hence, the petitioner cannot be considered for appointment'.

8. It was thereafter that the present contempt petition was filed. The notice of the contempt was issued and all the respondents have filed their separate replies. The stand taken by respondent No. 4 in para No. 3 reads as under :

"That candidates appointed vide annexure P7 include all the candidates alleged to have been appointed vide annexure P6 and P8. It is further submitted that though the appointment of these candidates was erroneously made by the then General Manager, Haryana Roadways, Rohtak from time to time by ignoring the names of the petitioner for the reasons best known to them however all the candidates mentioned in P6 to P8 have already been retrenched from service by following the proper procedure as per law and rules except the candidates mentioned at serial No. 7, 10, 11 and 13 of the annexure P7 i.e. Sh. Satnam s/o Daya Singh, Parkash s/o Chander Singh, Satyawar s/o Sube Singh and Sh. Anil Kumar s/o Pooran Singh respectively. It is further submitted that Sh. Parkash s/o

Chander Singh (at Sr. No. 10) of annexure P.7 had expired on 9.3.99 and action for retrenchment of the candidates namely Sh. Satnam, Satyawan and Anil Kumar mentioned at Sr. No. 7, 11 and 13 respectively is being taken by the following proper procedure as per law and rules. It is further submitted that in view of the situation the deponent has approached the Labour Commissioner, Haryana, Chandigarh for getting necessary prior approval for the retrenchment of helpers junior to the petitioner u/s 25(N) of Industrial Disputes Act, 1947 vide letter No. 4730 of EA/RK dated 21.8.01 and letter dated 1176/EA/RK dated 27.9.2001. Though the speaking order in compliance of the directions dated 10.7.2000 passed by this Hon''ble High Court in CWP No. 8980 of 1999 had been passed on 29.9.2000, however in view of the above noted facts and circumstances the order dated 29.9.2000 has been modified vide order dated 9.5.2001. A copy of the same has been conveyed to the petitioner at his home address. Copy of the same is also appended as Annexure R1. Thus the deponent has not taken any action causing any infringement to the legal rights of the petitioner and as such the deponent has not caused contempt of this Hon''ble Court."

9. A perusal of the above para shows that the appointments of the candidates shown in the list Annexures P.6 and P.8 have been erroneously made by ignoring the names of the petitioners for the reasons best known to the General Manager, Haryana Roadways, Rohtak at that time.

10. A perusal of the averments made in para 7 shows that Respondent No. 4 has also tried to blame Additional Advocate General for verbal undertaking which he had given to the court. The intemperate language used by respondent No. 4 can hardly be countenanced. Para No. 7 reads as under :

"In reply to this para of COCP, it is submitted that a CWP No. 8980 of 1999 was filed by the petitioner on flimsy ground for the directions to the respondents to comply with the letters dated 23.6.95 and 12.7.95 and to appoint the petitioner as Helper. The said CWP was disposed of by this Hon''ble court vide order dated 10.7.2000 in view of the verbal undertaking given by the law officer conducting the case on behalf of the respondents. But the law officer concerned has given to alleged undertaking at his own sweet will without any instructions from the deponent/respondents to the effect, that the case of the petitioner for appointment as helper shall be considered by the concerned authority if a reasonable time is given."

11. The stand taken by respondent No. 1 Shri R.N. Prasher is that there is no post of Helper available and already excess number of persons are working. It has further been stated that even services of some of those who are working on daily wage basis have been dispensed with and some of those who are still working are in the process of being dispensed with.

12. A laconic affidavit has been filed by Shri Ranbir Singh, General Manager, Central Workshop, Haryana Roadways, Hisar stating that no person junior to the

petitioner has been appointed/adjusted in Haryana Roadways.

13. However, an interesting affidavit dated 20.2.2002 has been filed by Virender Lather, HCS, General Manager, Haryana Roadways, Rohtak who is now posted in place of respondent No. 4 stating that on 19.3.2001 Jhajjar depot was created and 53 buses were transferred from the workshop of the Rohtak depot and 69 workshop employees were also transferred to Jhajjar. It was claimed that still there was 257 workshop employees against the required strength of 160. Nothing has been disclosed with regard to the Helper/Carpenter. The petitioner has filed an additional affidavit on 7.2.2002 further asserting that Parveen Kumar and Dilbagh Singh whose names appeared at Sr. No. 29 and 37 in the seniority list have been appointed and regularised and working in Haryana Roadways, Jind depot whereas he is shown at serial No. 19 in the list of Jind Depot. It was further asserted that the stand of respondent No. 4 in his reply dated 1.10.2002 is absolutely false in so far as the assertion has been made that the waiting list has been scrapped on June 2, 2000 because in COCP No. 858 of 2000 titled Jasbir Singh and others v. Shri R.N. Prasher the waiting list which was ordered to be scrapped in June, 2000, was ordered to be revived. The order passed by Hon"ble Mr. Justice R.L. Anand on 4.10.2001 reads as under ;

"In any case, the government cannot take the advantage of these directions again for the simple reason that the government never brought to the notice of the High Court when earlier undertaking was given to the High Court that the petitioners would be given employment as and when the vacancies arise. Moreover, the government has taken a decision in the month of May, 2000 for scrapping the waiting list which was prepared at one point of time. This decision cannot be sustained in view of the judicial order passed by the High Court.

Resultantly, I dispose of both the contempt petitions by giving directions to the respondent to revive the waiting list which shall be deemed to have been revived forthwith with the passing of this order and the petitioners and other persons similarly situated, shall be accommodated at the first instance according to their eligibility/qualifications as per the seniority list. Directions are also given to the respondent that till the waiting list is fully exhausted no vacancy shall be filled up in the cadre of conductor/driver/technical staff."

14. I have heard Shri S.K. Garg, learned counsel for the petitioner and Shri Naresh K. Joshi, Assistant Advocate General, Haryana for the respondents and have perused the record with their assistance.

15. Learned counsel appearing for the petitioner has submitted that the orders of this Court have been intentionally flouted by putting forward four excuses :

(a) that the statement made by the Additional Advocate General was at his own sweet will and without instructions;

(b) that the waiting list which was prepared had been scrapped on 2.6.2000 and, therefore, the order dated 10.7.2000 directing the respondents to consider the

case of the petitioner for appointment as Helper cannot be considered;

(c) that there is no post of Helper on which the petitioner may be appointed or considered for appointment;

(d) that no persons junior to the petitioner have been allowed to continue.

16. On the other hand, State counsel has reasserted the stand taken by the respondents in their reply and has argued that there is no post of Helper. He has submitted that it is not possible to consider the petitioner for appointment on the post of Helper.

17. I have thoughtfully counsel for the respective submissions made by the learned counsel for the parties and have come to the conclusion that respondent No. 4 has deliberately circumvented the orders of this Court.

18. Before giving the reasons in support of that conclusion, it is appropriate to mention that on 11.2.2002 when the case came up for hearing an affidavit was filed by the petitioner disclosing that the assertion of respondent No. 4 with regard to scrapping of waiting list is misleading because thereafter on 4.10.2001 Hon"ble Mr. Justice R.L. Anand in C.O.C.P. No. 858 of 2000 titled (Jasbir Singh and others v. R.N. Prashar and others) has ordered revival of the waiting list. To counter this stand taken by the petitioner, the respondents took the stand that the order passed by Hon"ble Mr. Justice R.L. Anand could not have been passed and LPA was likely to be filed. The order dated 11.2.2002 reads as under :

"Learned Assistant Advocate General, Haryana, Mr. Hari Dutt Sharma states that against the order passed by this Court in COCP No. 858 of 2000 titled Jasbir Singh and others v. Shri R.N. Prasher, the State is likely to file the Letters Patent Appeal taking the plea that the Contempt Court cannot pass any additional directions.

The plea taken by the learned State counsel is not sustainable. The order as it stands admittedly has not been complied with. In view of the statement of learned State Counsel that the appeal is to be filed by the respondents vide which the waiting list has been revived, a week's time is granted to the respondents to produce the stay order, if any. If the respondents fail to file an appeal and to get stay of the above said order, the respondents shall comply with the order dated 10.7.2000. To come up for further orders on 19.2.2002."

19. A perusal of the above order shows that ample opportunity was given to the respondents to comply with the directions issued by a Division Bench of this Court on 10.7.2000 as the period of 2 months had been passed in November 2000. However, respondents preferred to take upon itself the task of violating the orders further. Thereafter a new and different stand was taken stating that 53 buses have been transferred from Rohtak depot to Jhajjar depot. Neither any date of transfer of buses was given nor it was disclosed as to how the orders passed by the Division Bench would not require to be complied with. On 19.2.2002, another affidavit was filed giving details. Still there was time with the

respondents to comply with the direction issued by the Division Bench. On 20.2.2002, again another order was passed giving ample opportunity to respondent No. 4 as well as to Shri Virender Lather who is presently a General Manager, Rohtak Depot to comply with the directions issued by this Court and the case was adjourned to 5.3.2002. The order dated 20.2.2002 reads as under :

"Shri Joshi has filed additional affidavit of Shri Virender Lather, HCS, General Manager, Haryana Roadways, Rohtak explaining that 53 buses were transferred from the workshop of Rohtak Depot to Jhajjar Depot and 69 workshop employees from Rohtak Depot were also transferred to Jhajjar Depot. The norm specified per bus per helper is 1.3. The petitioner was No. 1 in the waiting list. Obviously, the waiting list was revived in pursuance to the orders passed on 4.10.2001 by Hon"ble Mr. Justice R.L. Anand in COCP No. 858 of 2000. The petitioner is admittedly at serial number 1 and a post would be available for him had no bus was diverted from Rohtak to Jhajjar Depot. Therefore, prima facie a case for contempt is made out. However, I grant a week's time to the residents (respondents ?) to carry out the directions issued by this Court.

Before parting, it is also appropriate to mention that intemperate/indecent language has been used by Shri Dharamvir HCS, respondent No. 4, General Manager, Haryana Roadways, Rohtak, against the Law Officers of the office of Advocate General, Haryana, in paragraph 7 of the reply. Let the matter be taken up by the concerned quarter at its own level.

Case to come up on 5.3.2002.

Copy of the order be given to the learned State Counsel after due attention under the signatures of the Bench Secretary."

The matter was then taken up on 11.4.2002 giving the final opportunity to comply with the order and the case was adjourned to 12.4.2002 by passing the following order :

"The arguments have been heard at length. Yesterday and even on earlier hearings, the conduct of the respondents is far from satisfactory. Contradictory stand has been taken before the Division Bench, who passed the order on 10.7.2000 in CWP No. 8990 of 1999. Period of two months was given for consideration of the case of the petitioner for appointment to the post of Helper. That period had expired long back. Till today, the consideration which has taken place is revealed that there was no post. A perusal of the statement made before the Division Bench reveals that no such stand was taken. On the contrary, the statement was made wherein it was implicit that the posts were available and the stand taken subsequently is only aimed at circumventing the orders of this Court. Such a conduct cannot be approved.

Learned State Counsel requests for a day's time in order to enable him to file an undertaking of the officer concerned to purge the contempt which has prima facie been committed. Allowed to do so.

To come up for further proceedings tomorrow i.e. 12.4.2002."

20. Today on 12.4.2002, a halfbaked affidavit/undertaking is filed in the Court offering appointment to the petitioner on daily wage basis and it is still claimed that there is no post. This affidavit further proves that Shri Virender Lather who is now General Manager, Haryana Roadways, Rohtak as well as respondent No. 4 Shri Dharamvir have calculatively and designedly flouted the order dated 10.7.2000 passed by the Division bench of this Court which is based on a statement made by the learned Additional Advocate General that the case of the petitioner for the post of helper would be considered. The stand of the respondent in its order dated 29.9.2000 Annexure P.14 is that the waiting list prepared by him was scrapped on 14.6.2000 before passing of the order dated 10.7.2000 by the Division Bench of this Court. This stand has been reiterated in the reply filed by respondent No. 4 on 1.10.2001. Further adding that the (sic) passed on 29.9.2000 was modified by another order dated 9.5.2001. A copy of that order is Annexure R/1 with his reply. However, in the reply, no statement was made asserting that no post was available. Further stand of respondent No. 4 was that the Law Officer appearing on behalf of the respondent before the Division Bench has given the undertaking at his own sweet will and without any instructions from respondent No. 4. Therefore, it has to be concluded that on 1.10.2001 posts were available as it was implicit in the statement made by the learned Addl. Advocate General before the Division Bench on 10.7.2000. On 4.10.2001 when Hon"ble Mr. Justice R.L. Anand directed in C.O.C.P. No. 8958 of 2000 that the waiting list could not be scrapped in view of the comprehensive direction issued by the Division Bench of this Court and ordered revival of the seniority list a new stand was coined asserting that there was no post available. The first defence that the waiting list has been scrapped taken in the order dated 29.9.2000 came to an end on 4.10.2001. Therefore, I have reached an irresistible conclusion that respondent No. 4 and Shri Virinder Lather, General Manger, Haryana Roadways, Rohtak have been taking stands of convenience before this Court in order to flout the order passed by the Division Bench on 10.7.2000. It is appropriate to mention that thereafter the stand taken is that 53 buses were transferred to Jhajjar Depot, therefore, the petitioner could not be adjusted.

21. Had there been any truth with regard to allegation levelled against the Additional Advocate General, then nothing prevented respondent No. 4 for filing an application before the Division Bench seeking clarification of the order. Therefore, the stand that no post is available is false and cannot be accepted. Moreover, an attempt has been made to conceal from this Court the existence of the order dated 4.10.2001 setting up the false plea that the waiting list has been scrapped in June 2000. A perusal of the order passed by this Court on 4.10.2001 makes it abundantly clear that the waiting list scrapped on 2.6.2000 has to be revived. When the petitioner produced that order by filing additional affidavit, State counsel was instructed to assert then that LPA has to be filed to assail the order dated 4.10.2001. This conduct of respondent No. 4 and Shri Virender

Lather is also unbecoming of an officer of the State. The intention of respondent No. 4 and Shri Virender Lather has further been manifested when the stand taken is that the Additional Advocate General has made statement at his own sweet will. Such an intemperate language has been employed to coin an excuse and to circumvent the order of this Court. On four occasions, respondents were given ample time and opportunity to comply with the orders passed by the Division Bench of this Court but till today all that has been heard is one excuse or the other which are not only different but are contradictory. Therefore, I have reached an irresistible conclusion that respondent No. 4 Dharamvir and Virender Lather, General Manager, Rohtak Depot have committed contempt of this Court by flouting the order dated 10.7.2000 passed by the Division Bench of this Court. Let a notice be issued to them with regard to quantum of sentence for 22.4.2002.

22. A copy of the order be given dasti after due attestation by the Bench Secretary to the learned State counsel for onward transmission to both the contemnors.

JUDGMENT accordingly.