
(2004) 09 AHC CK 0151

In the Allahabad High Court

Case No : Civil Miscellaneous Contempt Petition No. 1083 of 1995

Maimoona Begum

APPELLANT

Vs

Ashok Kumar. Upadhya, Deputy Director of Education
(Secondary), Jhansi, Division, Jhansi

RESPONDENT

Date of Decision : 27-09-2004

Acts Referred:

Contempt of Courts Act, 1971 — Section 12

Citation : (2004) 09 AHC CK 0151

Hon'ble Judges : S.P.Mehrotra, J

Final Decision : Disposed Of

Judgement

S.P. Mehrotra, J.

1. List has been revised. Learned Counsel for the petitionerappellant is not present.

2. The present Contempt Petition has been filed under Section 12 of the Contempt of Courts Act, 1971. It is, inter alia, prayed that the Opposite Party be punished for allegedly having committed Contempt of this Court by disobeying the order dated 9.5.1995 passed by this Court in Civil Misc. Writ Petition No. 12337 of 1995 Maimoona Begum v. Deputy Director of Education (Secondary), Jhansi Division, Jhansi and others.

3. From the averments made in the Contempt Petition, it appears that for redressal of her grievance, the petitionerappellant filed the aforementioned Civil Misc. Writ Petition No. 12337 of 1995. The said Writ Petition was disposed of by this Court by its order dated 9.5.1995.

Copy of the said order dated 9.5.1995 has been filed as Annexure No. 1 to the affidavit accompanying the Contempt Petition. The relevant portion of the said order dated 9.5.1995 is reproduced below :

".....In the circumstances, as the claim of the petitioner is to be

decided by the respondent No. 1 upon considering the relevant fact and the law prevailing, I dispose of the writ petition directing the respondent No. 1 to consider and decide the claim of the petitioner for family pension by disposing of the petitioner's representation dated 16.8.1994 at Annexure No. 6 to the writ petition by a reasoned order in accordance with law within a period of six weeks from the date of production of a certified copy of this order alongwith a copy of the aforesaid representation before him."

It is, inter alia, stated in the Contempt Petition that the petitionerapplicant served a copy of the said order 9.5.1995 passed by this Court upon the Opposite Party along with a copy of the representation dated 16.8.1994 by registered post dated 22.5.1995; and that despite time granted by this Court in the said order dated 9.5.1995 having expired, the Opposite Party did not comply with the directions given in the said order dated 9.5.1995.

4. By the order dated 25.7.1995 passed on the Contempt Petition notice was directed to be issued to the Opposite Party to show cause as to why till date the said order dated 9.5.1995 had not been complied with. The said order dated 25.7.1995 is quoted below :

"Issue notice to the Opposite Party calling upon him to explain why till date the order passed by this Court on 9.5.1995 has not been complied with. The Opposite Party is directed to file counter affidavit within a period of three weeks. List on 14th September, 1995.

If the counter affidavit is not filed within the time allowed by this Court, the Opposite Party will appear in person before this Court on the date fixed. In case the counter affidavit is filed, the Opposite Party need not appear in person."

5. In response to the notice issued pursuant to the said order dated 25.7.1995, the Opposite Party, Ashok Kumar Upadhya, put in appearance and filed his counter affidavit, sworn on 13.9.1995. Paragraph No. 7 of the said counter affidavit of the Opposite Party, which is relevant in present context, is quoted below :

"7. That in reply to the contents of para 7 of the Contempt Petition it is submitted that though there is a direction by Apex Court in some of the cases where the suitability of the rules permits, it observes the dependents of the deceased the superannuary post could be created. However, in the present case, the petitioner's husband died sometimes on 29th August, 1979. However, in accordance with Government Order No. Madhy/6648/157I(78)/198, dated 23.9.1981 which was applicable retrospectively since January, 1981, therefore, in the present case, there was no any such Government Order nor any rules, therefore, the observation of the petitioner was not at all possible in view of the G.O. referred to above. Nevertheless the deponent when came to the knowledge of the order passed by this Court on 17.6.1995 though it was given a photostat copy not in compliance with the direction given by this Court as no certified copy of the order was supplied. Nevertheless the deponent just to honour and in

consonance with the direction given by this Court, have decided the representation of the petitioner by a speaking order. The representation of the petitioner was decided on 8/11.9.1995 A true copy of the decision made on the representation of the petitioner dated 8/11.9.1995 is being filed herewith and marked as Annexure C.A.I to this affidavit."

6. It is evident from the averments made in paragraph No. 7 of the counter affidavit, quoted above, that the directions given in the order dated 9.5.1995 passed by this Court in the aforementioned Civil Misc. Writ Petition No. 12337 of 1995 were complied with by passing the order dated 8/11.9.1995 on the representation of the petitionerapplicant dated 16.8.1994.

Copy of the said order dated 8/11.9.1995 passed by the Opposite Party has been filed as Annexure No. C.A.I, to the counter affidavit.

7. Further averments have been made in the counter affidavit giving reasons for the delay in complying with the directions given in the said order dated 9.5.1995, and it is evident that the delay was neither deliberate nor wilful.

By the order dated 14.9.1995, time was. granted to the petitionerapplicant to file reply of the aforesaid counter affidavit filed on behalf of the Opposite Party.

8. The Office Report dated 5.11.1996 shows that no reply was filed on behalf of the petitionerapplicant against the said counter affidavit.

In the circumstances, there is no reason to doubt the correctness of the averments made in the aforesaid counter affidavit.

9. It is, thus, evident that the directions given in the said order dated 9.5.1995 passed in the aforesaid Civil Misc. Writ Petition No. 12337 of 1995 were complied with by the Opposite Party.

The delay in compliance with the said directions has been explained in the aforesaid counter affidavit, and, as noted above, the delay was neither deliberate nor wilful.

10. In view of the aforesaid discussion, I am of the opinion that the Opposite Party cannot be held guilty of having committed contempt of his Court, and the show cause notice issued to the Opposite Party is liable to be discharged.

11. The show cause notice issued to the Opposite Party is, accordingly, discharged. The Contempt Petition stands of disposed of accordingly.

Decided accordingly.