

(2013) 05 SHI CK 0095

In the High Court Of Himachal Pradesh

Case No : COPC No. 431 of 2012 in CWP No. 4935 of 2010

Mohan Bag

APPELLANT

Vs

R.P. Singh and Another

RESPONDENT

Date of Decision : 01-05-2013

Acts Referred:

Constitution of India, 1950 — Article 215
Contempt of Courts Act, 1971 — Section 10

Citation : (2013) 05 SHI CK 0095

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Advocate : Tarlok Chauhan, for the Appellant; G.C. Gupta and Mr. Pawan Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Kuldip Singh, J.—This petition under Article 215 of the Constitution of India read with Section 10 of the contempt of Courts Act, 1971 has been filed for punishing the respondents for willfully disobeying the order dated 14.7.2011 passed in CWP No. 4935 of 2010. The pleaded case of the petitioner is that he had filed CWP No. 4935 of 2010 in the High Court. The petitioner prayed for quashing of order dated 6.11.2006 whereby Leave Travel Concession (LTC) for consecutive block years 2006-07, 2008-09 of petitioner and his other eligible family members had been forfeited. The petitioner had also Judgment? yes prayed for quashing office order No. 29/2008 dated 11.3.2008 whereby the petitioner had been ordered to be posted as Deputy Manager (Vigilance) in the Vigilance Department, Parwanoo. In the said order it had been mentioned that petitioner be not posted on a sensitive post.

2. The petition was contested by the respondents including Chairman and Managing Director of Satluj Jal Vidyut Nigam Limited as well as Director (Personnel). The then Chairman and Managing Director with the permission of the Court had filed separate reply and to treat the earlier reply filed only on

behalf of the Director (Personnel). In the subsequent reply filed by the Chairman and Managing Director, the claim of the petitioner was conceded. It has been stated that after receipt of notice dated 29.3.2010 of the petitioner, the Chairman and Managing Director had already taken appropriate action and directed the Director (Personnel) to modify the office order dated 6.11.2006. The Chairman and Managing Director further stated that he had already passed an order dated 23.1.2008 that the petitioner shall not be posted on the non-sensitive post and offending words reflected in office order No. 29/2008 dated 11.3.2008 were ordered to be removed vide order dated 19.12.2009. The High Court on 14.7.2011 after taking into account the reply of respondent No. 1 especially paras 3, 4, 24 and 25 declared that the petition has become infructuous.

3. The respondent No. 2 after judgment dated 14.7.2011 did not comply the order. The respondent No. 1 took no steps for implementation of the order, petitioner issued notice dated 14.3.2012 to the respondents. The respondents in reply to the notice took the stand that the petition filed by the petitioner was dismissed as infructuous and no direction regarding the posting of the petitioner on a sensitive post or restoration of his legal rights of leave travel concession had even been made by the High Court. It was also stated that order dated 14.7.2011 of the High Court had been complied with in letter and spirit.

4. The stand taken by respondents No. 1 and 2 in the reply was contrary to the record. The respondent No. 1 in reply to the writ petition acknowledged the claim of the petitioner and also directed respondent No. 2 to take action on the accepted claims of the petitioner. The respondent No. 2 is well aware of the order passed by the High Court. He has deliberately and intentionally not complied the order dated 14.7.2011. The respondent No. 1 is also equally guilty of non-implementation of the order passed by the High Court. It has been lastly stated to take appropriate action against the respondents for disobedience of the Court order.

5. The respondents have filed joint reply. In the preliminary objection, it has been stated that allegations are vague. The petition does not disclose alleged defiance of the order dated 14.7.2011. In the reply of respondent No. 1 to the writ petition, it has been submitted in paras 3, 4, 24 and 25 that petitioner had already been ordered to be posted in Vigilance Department vide order dated 19.12.2009 which was a sensitive post. The petitioner had also been granted all the benefits subsequent to the above said order. There was left nothing to be complied with after passing order dated 14.7.2011. In any case, the respondents tendered unconditional and unqualified apology. There were no directions. The writ petition was disposed of having become infructuous. The petition has been filed in order to harass the respondents.

6. On merits, it has been stated that the Chairman and Managing Director of SJVN Ltd. had already passed an order dated 19.12.2009 for removing the offending words from the office order dated 11.3.2008 in consideration of

representation dated 25.11.2009 of the petitioner. The order was also passed to modify the office order dated 6.11.2006. The petitioner has failed to disclose as to in what manner the respondent No. 1 did not comply with the order dated 14.7.2011. The petitioner had already been granted reliefs claimed in the writ petition, nothing remains to be complied with after passing of the order dated 14.7.2011. The petitioner is posted as Senior Manager (Vigilance) at Dehradun, which is a sensitive post and all other benefits were also given to him retrospectively, the order dated 6.11.2006 did not have any effect on the legal rights of the petitioner. The respondents prayed for dismissal of the petition. The petitioner filed rejoinder and reiterated his stand.

7. I have heard the learned counsel for the parties. In CWP No. 4935 of 2010 on 14.7.2011 the following order was passed:

The only relief claimed in the petition is to quash the orders dated 6.11.2006 and 11.3.2008 whereby it was ordered that the petitioner should be posted on a non-sensitive post.

This petition has become infructuous in view of the reply filed by respondent No. 1, especially the submissions made in paras 3 & 4 of the preliminary submissions and paras 24 & 25 of the reply. The respondent No. 1 who is the main employer of the petitioner has virtually accepted the claim of the petitioner. It is expected that respondent No. 2 shall comply with the orders of respondent No. 1 within six weeks from today.

In view of the above the petition is dismissed as infructuous. No costs. Dasti copy.

The order dated 14.7.2011 indicates that in CWP No. 4935 of 2010 orders dated 6.11.2006 and 11.3.2008 were assailed. The order dated 6.11.2006 according to the petitioner affected LTC entitlement of the petitioner and in the order dated 11.3.2008 it was mentioned that the petitioner be not posted on a sensitive post. In the order dated 14.7.2011, it has been observed that petition has become infructuous in view of the reply filed by respondent No. 1. It has also been observed in that order that respondent No. 1, who is the main employer of the petitioner has virtually accepted the claim of the petitioner. The Court at the end observed that it is expected that respondent No. 2 shall comply with the orders of respondent No. 1 within six weeks from 14.7.2011. The petition was ultimately dismissed as infructuous.

8. The respondents in the reply have taken the stand that orders dated 6.11.2006 and 11.3.2008 were complied before 14.7.2011 inasmuch as the petitioner vide order dated 19.12.2009 was posted in Vigilance Department and word non-sensitive has been removed from the order dated 11.3.2008. The petitioner was held to be eligible for respective benefits, which is nothing but modification of the order dated 6.11.2006.

9. In Anil Kumar Shahi and Others Vs. Prof. Ram Sevak Yadav and Others, it has been held that when the Court directs the authority to consider a matter in

accordance with law, it means that the matter should be considered to the best of understanding by the authority and, therefore, a mere error of judgment with regard to the legal position cannot constitute contempt of Court. There is no willful disobedience if best efforts are made to comply with the order. In *Sushila Raje Holkar Vs. Anil Kak (Retd.)*, it has been held a contemnor, thus, may be punished only when a clear case for contumacious conduct has been made out.

10. In *Chhotu Ram Vs. Urvashi Gulati and Another*, on 8.10.1999 the Supreme Court allowed the appeal of the applicant/claimant with the observations that if he is considered fit for promotion as in September, 1980, he shall be given the necessary promotion and other consequential benefits. There were other directions also. It was contended that judgment dated 8.10.1999 has not been deliberately complied. The Supreme Court held by reason of the order dated 8.10.1999, the Court did not issue a mandate but issue a direction for consideration only. In the event however, the matter being not considered or in the event consideration was effected in a manner to whittle down the claim of the petitioner, initiation of the proceedings cannot but be said to be justified. But in the event, however, contextual facts depict that the consideration was effected in accordance with the normal rules, practice and procedure and upon such consideration, no promotion could be offered to the petitioner, question of there being any act of contempt would not arise. The Supreme Court also held a proceeding under the extra-ordinary jurisdiction of the Court in terms of provisions of the Contempt of Courts Act is quasi-criminal and as such, the standard of proof required is that of criminal proceeding and breach shall have to be established beyond all reasonable doubt.

11. In the judgment dated 14.7.2011 the Court "expected" that respondent No. 2 shall comply with the orders of respondent No. 1 within six weeks. The respondents have taken the stand in the reply that vide order dated 19.12.2009 the word "non-sensitive" has been removed from the order dated 11.3.2008 and the petitioner has been held to be eligible for respective benefits which amounted to modification of order dated 6.11.2006. In other words, the petitioner is entitled to his LTC claim and the offending words from the order dated 11.3.2008 stood removed. In these circumstances, nothing more left to be complied. There was no mandate of the Court for complying any specific order. The Act of contempt is to be proved beyond reasonable doubt. The petitioner has failed to make out a case of willful disobedience of the order dated 14.7.2011. In view of above, the petition fails and is accordingly dismissed. Notice discharged.