

(2020) 02 J&K CK 0054

In the Jammu And Kashmir High Court

Case No : Contempt Petition No. 737 Of 2018, Service Writ Petition No. 1004 Of 2015

Mohd Shafiq And Others

APPELLANT

Vs

Anuradha Gupta. Director School Education And Another

RESPONDENT

Date of Decision : 18-02-2020

Acts Referred:

Contempt Of Courts Act, 1971 — Section 2(b)

Citation : (2020) 02 J&K CK 0054

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : M.I. Sherkhan, Seema Shekhar

Final Decision : Disposed Of

Judgement

1. Present contempt petition has been filed for initiation of contempt proceedings against the respondents for non-compliance and disobedience of

judgement dated 10.05.2018 passed in CPSW No.200/2017 (in SWP No. 1004/2015) on the grounds taken therein.

2. It may be noticed that against the directions passed by the learned Single Judge in different writ petitions for considering the claim of the petitioners

for their appointment as Class-IV employees in the Education Department, the State-respondents went in appeal which was disposed of on

30.07.2009, the operative part of which is reproduced hereunder:

â??In the circumstances, for all practical purposes, it must be deemed that by way of a policy decision, the State Government created 417 more posts

and in those posts, by the order dated 04.04.2003 those 417 persons, who were permitted to work on temporary basis by the order dated 11.04.2002,

were regularized. In consequence thereof, it must be deemed that there are still

417 posts available. The number of writ petitioners is less than 417.

Accordingly, all of them can be accommodated. There will, therefore, be no occasion to take recourse to upsetting the orders of the Government

dated 11.04.2002 and 04.04.2003.

In the circumstances, the exercise to be undertaken in terms of the judgment and order under appeal be completed within a period of six months from

today and to that extent the judgment and order under appeal is modified with clarifications.â??

3. Subsequently, the writ petitioners filed a writ petition, bearing SWP No.1004/2015, which came to be disposed of vide judgment dated 07.04.2015,

whereby it is observed as under:-

â??Learned counsel for the petitioners stated at the Bar that the petitioners would be satisfied in case the petition in hand is disposed of with a

direction to the respondent Nos. 2 and 3 to consider the case of the petitioners in light of order dated 03.11.2009 passed in APSWP No. 39/2009 in

SWP No. 2607/2001.

His statement is taken on record.

At request, the petition in hand is taken up for final disposal and, as such, disposed of with a direction to the respondent Nos. 2 and 3 to consider the

claim of the petitioners in light of order dated 03.11.2009, passed in APSWP No. 39/2009 in SWP No. 2607/2001, referred to herein above, provided

the same is applicable in the case in hand and pass appropriate consideration within a period of six weeks from the date a certified copy of this order

is made available to them.â??

4. For implementation of the aforesaid order dated 07.04.2015, the writ petitioners preferred a contempt petition, bearing CPSW No.200/2017, which

came to be disposed of vide Order dated 10.05.2018 observing as under:

â??In view of the aforesaid submission, the contempt petition is disposed of with the direction to the Chief Education Officer, Poonch to issue the

orders of appointments in favour of the petitioners in the light of the order dated 13.05.2010 as well as order dated 18.05.2016. Needless to state that

the orders shall be issued subject to the conditions mentioned in the aforesaid orders. Let the aforesaid exercise be carried out within six weeks from

today.

Accordingly, the contempt petition is disposed of along with connected MP(s).â??

5. Writ Petitioners have now filed the present contempt petition seeking implementation of order dated 10.05.2018 passed in CPSW No.200/2017 (in SWP No.1004/2015).

6. It is contended in the contempt petition that names of the some of the petitioners were wrongly mentioned, so they submitted representation to the respondents, but the same has not been decided by the respondents. It is also contended that in SWP No. 411/2006, SWP No. 1609/2005, and SWP

No. 865/2011 they were petitioners at S.No.9 and 14 in SWP No. 411/2006, petitioner No.5 and 10 in SWP No. 1609/2005 and petitioner No.7 in

SWP No. 865/2011 and that their names figured in Govt. Order No.440-Edu of 2010 dated 13.05.2010 at S.No.89, 104, 99, 103, 32, 37, 39, 60, 95 and

51 respectively. It is also contended that the Government issued Order No.440-Edu of 2010 dated 13.05.2010, asking Director School Education to

issue appointment letters after verification so as to implement the judgments passed by this Court. It is further contended that neither the respondents

are verifying the documents of the petitioners nor issuing appointment letters. It is also contended that names/particulars of the petitioners were

wrongly typed in the main writ petitions as shown above, but they were approved for appointment in the Govt. Order No.440-Edu of 2010 dated

13.05.2010.

7. The statement of facts stands filed on behalf of respondents, wherein it is stated that after considering the record pertaining to the case as well as

the report received from respondent No.2, the case of the petitioners has been examined by the respondent in due deference to the directions of this

Court and in this regard, a detailed order being order dated 30.03.2019 has been issued. Respondents also state that petitioners claim that they were

petitioners in SWP No. 411/2006, SWP No. 1609/2005, and SWP No. 865/2011 and were figuring at S.No.9 and 14 in SWP No. 411/2006, petitioner

No.5 and 10 in SWP No. 1609/2005 and petitioner No.7 in SWP No. 865/2011 and that their names figured in Govt. Order No.440-Edu of 2010 dated

13.05.2010 at S.No.89, 104, 99, 103, 32, 37, 39, 60, 95 and 51 respectively, but, the factual position, however, is that the names of the petitioners do not

figure in the said writ petitions and Government order as contended by them at the respective serial numbers and such contention of the petitioners,

was totally unjustified and wrong as contended. With these submissions, learned counsel for the respondents has prayed that since judgment/order

passed by this Court in SWP No.1004/2015 and CPSW No.200/2017 stand complied with in letter and spirit, the instant contempt petition may be dismissed.

8. Heard learned counsel for the parties and perused the record.

9. Bare perusal of order dated 30.03.2019 reveals that respondent No.1, vide communication dated 18.05.2016, directed Chief Education Officer,

Poonch, to implement the orders passed in various writ petitions after checking/verifying/authenticating all original documents/qualification, date of

birth certificates, state subject and character and antecedents as required under rules of the petitioners as per the sanction accorded in terms of

Government Order No.440-Edu of 2010 dated 13.05.2010. In response to the communication dated 18.05.2016, respondent No.2 vide his

communication No.CEO/P/ Legal/30018 dated 14.01.2017 has stated that on perusal of the approved list it is evidently clear that the names of the

petitioners in SWP No.1004/2015 and CPSW No.200/2017 do not figure in the approved list attached with the Govt. order No.440-Edu of 2010 dated

13.05.2010. In so far as claim of the petitioners that they were petitioners in SWP No. 411/2006, SWP No. 1609/2005, and SWP No. 865/2011 and

were figuring at S.No..9 and 14 in SWP No. 411/2006, petitioner No.5 and 10 in SWP No. 1609/2005 and petitioner No.7 in SWP No. 865/2011 and

that their names figured in Govt. Order No.440-Edu of 2010 dated 13.05.2010 at S.No.89, 104, 99, 103, 32, 37, 39, 60, 95 and 51 respectively, but, it is

contended on behalf of the respondents that the names of the petitioners do not figure in the said writ petitions and Government order as contended by

them at the respective serial numbers. Moreso, from the perusal of order dated 30.03.2019, issued by respondent No.1, annexed with statement of

facts, it comes to fore that the petitioners in the present contempt petition, i.e. CPSW No.737/2018 in SWP No.1004/2015, do not figure in the

approved list attached with Government Order No.440-Edu of 2010 dated 13.05.2010. The case of the petitioners has been examined /considered

strictly as per the rules governing the field, and it has been found that the names of the petitioners in the writ petitions do not figure in the approved list

attached with the GO No.440-Edu of 2010 dated 13.05.2010. Therefore, after

consideration/examination, their case has been found to be not in

consonance with the rules and also devoid of any merit, and, thus, the claim of the petitioners has been rejected by the respondents.

10. In the above backdrop, it is pertinent to mention here that to hold respondents or anyone of them liable for contempt, this Court has to arrive at a conclusion that the respondents have wilfully disobeyed the order of this Court. The exercise of contempt jurisdiction is summary in nature and an

adjudication of the liability of the alleged contemnor for wilful disobedience of the Court is normally made on admitted and undisputed facts. Reference

in this regard may be made to Noor Saba Vs. Anoop Mishra & another reported in 2013 0 Supreme (SC) 809.

11. In Kapildeo Prasad Sah & Ors. Vs. State of Bihar & Ors., reported in 1999 0 Supreme (SC) 926, it is held as under:-

“9. For holding the respondents to have committed contempt, civil contempt at that, it has to be shown that there has been wilful disobedience of

the judgment or order of the court. Power to punish for contempt is to be resorted to when there is clear violation of the court’s order. Since

notice of contempt and punishment for contempt is of far reaching consequence, these powers should be invoked only when a clear case of wilful

disobedience of the court’s order has been made out. Whether disobedience is wilful in a particular case depends on the facts and circumstances

of that case. Judicial orders are to be properly understood and complied. Even negligence and carelessness can amount to disobedience particularly

when attention of the person is drawn to the court’s orders and its implication. Disobedience of court’s order strikes at the very root of rule of

law on which our system of governance is based. Power to punish for contempt is necessary for the maintenance of effective legal system. It is

exercised to prevent perversion of the course of justice.”

12. In Suresh Estate Pvt. Ltd. & others Vs. Municipal Corporation of Greater Mumbai and others, reported in 2008 0 Supreme (SC) 185, 2it is held as

under:

“12. The above discussion makes it very clear that there is no wilful disobedience of any of the directions issued by this Court while disposing of

the appeal filed by the petitioners. This Court does not find that the respondents are guilty of wilful disobedience to the judgment rendered by this

Court. As no case for initiating proceedings for civil contempt is made out by the petitioners against the respondents, the instant application cannot be entertained and is liable to be dismissed.â??

13. In M/s Ashok Paper Kamgar Union and others Vs. Dharam Godha & others, reported in 2003 (0) Supreme (SC) 856, it is held as under:-

â??17. Section 2(b) of Contempt of Courts Act defines civil contempt and it means wilful disobedience to any judgment, decree, direction, order, writ

or other process of a Court or wilful breach of undertaking given to a Court. Wilful means an act or omission which is done voluntarily and

intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done,

that is to say with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or

purpose. Therefore, in order to constitute contempt the order of the Court must be of such a nature which is capable of execution by the person

charged in normal circumstances. It should not require any extra ordinary effort nor should be dependent, either wholly or in part, upon any act or

omission of a third party for its compliance. This has to be judged having regard to the facts and circumstances of each case.â??

14. In view of above discussion and after applying the ratio of aforementioned judgments handed down by the Supreme Court, this Court is of the firm

view that liability for contempt petition arises only on wilful disobedience and can be made only on the basis of admitted and undisputed facts. As is

discernible from the proceedings petitioners are changing the stand and raising fresh dispute. Adjudication of such disputes is not permissible in

contempt jurisdiction. It is made clear that the Court in contempt jurisdiction has to consider only whether the direction or judgment of the Court

passed in regular proceedings has been complied with or not. Since the respondents have considered the case of the petitioners in compliance of the

directions passed by this Court and have issued a detailed order bearing No.DSEJ/legal/12958-61 dated 30.03.2019, therefore, the only remedy

available to the petitioners is to throw challenge to the said consideration order. This Court cannot go beyond the directions contained in the order;

disobedience whereof is complained of.

15. For the forgoing reasons, the contempt petition is closed. Rule, if any, issued

is hereby discharged. However, the petitioners are at liberty to challenge the consideration order if they so advised.