

(1983) 06 SHI CK 0005
In the High Court Of Himachal Pradesh

Narottam Datt Sharma and Others

APPELLANT

Vs

Himachal Pradesh State Electricity Board, and Others

RESPONDENT

Date of Decision : 27-06-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144
Electricity (Supply) Act, 1948 — Section 79

Citation : (1983) CriLJ 1580 : (1983) 12 ILR HP 270

Hon'ble Judges : H.S. Thakur, J

Bench : Single Bench

Judgement

H.S. Thakur, J.—The petitioners have filed this petition under the Contempt of Courts Act for punishing the respondents for the disobedience of the order of this Court.

2. The relevant facts for determining this petition may be stated. The petitioners filed a writ petition No. 336 of 1976. which was decided on Sept, 11, 1981. For the purpose of deciding this contempt petition, it is sufficient to reproduce the operative portion of the judgment which runs as under:?

For the foregoing reasons and observations, I am of the view that the petitioners cannot be forced to work against the promoted posts on ad hoc basis and can legitimately claim their reversion to their regular posts of Junior Scale Stenographers, They are further entitled to be considered for promotion to the posts of Senior Scale Stenographers in accordance with the then existing rules and regulations. The writ petition is accordingly allowed.

It is contended by the petitioners that the aforesaid orders were also confirmed by a Division Bench of this Court by a judgment dated Nov. 18. 1981 in Letters Patent Appeals Nos. 34 and 35 of 1981. The relevant portion of the judgment may be reproduced:?

... The direction is thus only for considering the case of the respondents/ writ petitioners for promotion to the posts of Senior Scale Stenographers in

accordance with the rules and regulations which were applicable at the relevant time.

We find absolutely no infirmity with the directions issued by the learned single Judge and dismiss this appeal in limine.

3. It is stated by the petitioners that as many as 18 posts of Senior Scale Stenographers had been upgraded by the H. P. State Electricity Board and the petitioners being seniormost Junior Scale Stenographers were eligible to be considered for promotion to Senior Scale Stenographers' posts at the time of the first promotions made on 9th June, 1976. It is further stated that they requested the authorities to consider the case of the petitioners for the posts of Senior Scale Stenographers, According to them, several reminders and representations were also sent to the State Electricity Board but; they have not been given their dues nor the orders of this Court have been implemented. As such, they have asserted that this amounts to grave misconduct and disobedience of the orders of this Court and the respondents are liable for having committed the contempt of the court. The petitioners have also filed copies of letters, applications and representations sent by them to the authorities of the State Electricity Board.

4. The respondents have filed reply to the petition, on the affidavit of Shri K. C. Gupta, Secretary. H. P. State Electricity Board, Simla. In the affidavit, it is denied that any contempt of the court has been committed. It is further deposed that the respondents have the highest regard for the directions given by the court. It is also deposed that there was a fire in the office of the Board Secretariat on 6th March, 1982 wherein the entire record was burnt and even the confidential reports were completely destroyed. On this account, it is asserted that the consideration of the case has taken some time. It is stated that the Board has considered the claims of the petitioners along with other eligible persons belonging to their category. It is pointed out that the Departmental Promotion Committee (D. P.C.) found that on account of their long absence from the post of stenographer and working on the posts of Head-clerks, the petitioners were not found suitable for the posts of Senior Scale Stenographers but have been found suitable for promotion to the posts of Head-clerks. According to the respondents, this action is in strict conformity with the provisions of the Rules. It is further deposed that the Board framed the Regulations called, "The Himachal Pradesh State Electricity Board Recruitment and Promotion (Regulations), 1972," and that these regulations were framed u/s 79 of the Electricity (Supply) Act. it is pointed out that according to these regulations, it is inter alia provided that the appointment to the posts of Head-clerk/Head Assistant/ Assistant shall be made by promotion from amongst the Upper Division clerks who opt for the administrative wing and by promotion from amongst the stenographers (Junior Scale) who have passed the departmental examination for clerks and in this behalf a quota of 10% had been fixed for the category of Junior Scale Stenographers. According to the respondents, the Junior Scale Stenographers are also made eligible for promotion to the posts of Senior Scale Stenographers

and the rules do not contemplate the grant of any option to an employee. It is asserted that their case has to be considered for promotion in order of seniority by the D. P.C. The pay scales of Senior Scale Stenographers and Head-clerks/Head Assistant/Assistant are stated to be the same, but the posts of Senior Scale Stenographers carry a special pay on account of onerous nature of duties. It is further pointed out that the cases were considered in order of seniority and the petitioners, who were senior were appointed as Head clerks, etc. Subsequently, the posts of Senior Scale Stenographers had become available. Since the petitioners and other had already been promoted as Head clerks, cases of other persons next in order of seniority were considered and those who were found suitable were appointed as Senior Scale Stenographers, according to the availability of posts. It is also stated that there was no up gradation of any post of Senior Scale Stenographer, however, 12 posts of Junior Scale Stenographers were upgraded to the rank of Senior Scale Stenographers and 6 other posts of Senior Scale Stenographers were created. It is pointed out that on the availability of these posts in March, 1976. the claims of persons working as Junior Scale Stenographers were considered and because the petitioners were already working in the cadre of Head-clerks etc. the persons next in order of seniority were considered and granted requisite promotions. It is contended that this promotion order was not challenged by the petitioners nor were the eighteen persons promoted by this order impleaded in the writ petition. According to the respondents, the Board has carried out the directions given by this Court.

5. Oral arguments were addressed by the learned Counsel for the parties and written arguments have also been submitted.

6. It is contended by Shri J. L. Gupta, learned Counsel for the respondents, that in accordance with the directions of the Court, the Board was required to revert the petitioners to their regular posts of Junior Scale Stenographers and to consider them for promotion to the posts of Senior Scale Stenographer in accordance with the then existing rules. It is stressed that the Board has faithfully carried out both the directions. It is pointed out that the petitioners were reverted to the posts of Junior Scale Stenographers by orders dated 11th August, 1982 (Annexure R-4/1). It is further pointed out that the claims of the petitioners were considered for promotion to the posts of Senior Scale Stenographers by the DPC constituted in accordance with the rules. The Department however, found the petitioners unsuitable for the posts of Senior Scale Stenographers but suitable for promotion to the posts of Head clerks, Assistants. As such, by an order dt. 11th August, 1982. the petitioners were promoted as officiating Head clerk/Head Assistants etc. in the pay scale of Rs. 225-500 with effect from 9th June, 1976, (Annexure R-4/2). It is contended that the rules permit the promotion of Junior Scale Stenographers to the posts of Head-clerks etc. It is also pointed out that 18 persons who had been promoted as Senior Scale Stenographers had been working as steno-typists from different dates starting from 1964 to the year 1969. They had been promoted as Junior Scale Stenographers on different dates from the year 1973 to 1975 and were

promoted as Senior Scale Stenographers in the year 1976. As such, it is contended that they had long experience as stenographers and the Board considered that they would not be suitable for the posts of Head-clerks etc. It is also pointed out that the petitioners had been working on the posts of Head-clerks and they were unlikely to do well in the cadre of Service Scale Stenographers. Accordingly, in the larger interest of the service, this decision was taken by the Board, It is vehemently contended by Mr. Gupta that it is only an act of wilful disobedience of an order passed by the court which can amount to contempt of court. It is contended that there is not even an allegation that the respondents had wilfully disobeyed the directions of this Court, It is further submitted that it is only an act of wilful disobedience prompted by extraneous consideration or corrupt motive which amounts to the contempt of court.

7. The learned Counsel for the respondents/contemners has placed reliance on a decision of the Supreme Court in *S.S. Roy v. State of Orissa* AIR 1960 SC 190 : 1960 Cri LJ 282. That was a case in which the Additional Munsif in connection with the execution of a money decree issued a warrant of arrest, but a First Class Magistrate in the exercise of jurisdiction u/s 144 Cr. P.C. restrained its execution. The proceedings under the Contempt AC were taken against the Magistrate. The High Court came to the conclusion that no circumstance existed which would justify the Magistrate in passing an order of that nature u/s 144 Cr. P.C. It was, however, found that the Magistrate was not influenced by any extraneous consideration or dishonest motive in making the order. All the same, it was established that he acted* in a negligent manner and without proper care and attention and was" liable for contempt of court. On appeal to the Supreme Court, their Lordships of the Supreme Court while setting aside the order observed as under:

...As has been said by the Privy Council in *Barton v. Field* (1843) 4 Moo PCC 273. it is not sufficient in such cases for the purpose of visiting a Judicial Officer with the penal consequences of proceeding in contempt, simply because he committed an error of judgment or the order passed by him is in excess of authority vested in him. The error must be wilful error proceeding from improper or corrupt motives in order that he may be punished for contempt of court. On the facts found, the appellant can certainly be said to have acted without proper care and caution but there is nothing on the record to suggest any wilful culpability on his part and it has been expressly held by the learned Judges of the High Court that he was not actuated by any corrupt or dishonest motive. In these circumstances, we think that the order passed by the High Court cannot be supported.

8. On the contrary, it is contended by Mr. Chhabil Dass, learned Counsel for the petitioners, that on June 8. 1976, there were no posts of Junior Scale Stenographers as such, and the regular posts to which the petitioners belonged were the posts of Senior Scale Stenographers which were the upgraded posts on that day. It is further argued by him that the petitioners had to be considered for

promotion to the posts of Senior Scale Stenographers in accordance with the then existing rules. It is also pointed out that it is a well settled rule of law that when eligible persons are to be considered for promotion from a particular date, their cases have to be considered on the basis of the confidential reports and performance of work prior to that date and subsequent events cannot be taken into consideration. He has referred to the decisions in Shri Parvez Qadir Vs. Union of India (UOI), : Gurmohsn Singh v. Union of India 1976 SLWR 338 and Gobind Sadashiv v. State of Maharashtra 1978 SLWR 513 : 1978 Lab IC 1703 . The essence of these decisions is that any disciplinary proceedings or adverse confidential remarks in respect of the subsequent years to that date, cannot be taken into account in adjudging their suitability. Moreover, if the D.P.C. fails to consider the case of an employee for promotion exclusively on the basis of record of service prior to that period but takes into account the record of service after the said date, the action cannot be sustained. From the reply filed on behalf of the respondents, it is clear that while considering the case of the petitioners for promotion as Senior Scale Stenographers, their subsequent performance as Head-clerks etc. was taken into consideration. Such an approach is not justified under the law. In fact, the petitioners had to be considered for promotion as Senior Scale Stenographers on the basis of their service record prior to the period when they were so considered. Of course, if later on they were found unfit to discharge the duties of such post, any suitable action as warranted under the rules and regulations, could be taken against any of them, it may be observed that it cannot inevitably be presumed that since the petitioners for sometime worked in some other capacity, their knowledge and experience as stenographers had disappeared.

9. The point which is to be determined in this petition is whether the respondents have wilfully disobeyed the directions of this Court or not. The Contempt of Courts Act, 1971 defines "civil contempt" as under:

Civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.

The observations of the Supreme Court in S.S. Roy's case 1960 Cri LJ 282 (supra) reproduced above are relevant for deciding this point. The respondents have considered the case of the petitioners for promotion as Senior Scale Stenographers but the D. P.C. took into consideration the subsequent performance of the petitioners. This may be termed as an error of judgment but cannot be considered a wilful error, proceeding from improper or corrupt motives. Similarly, the respondents may be said to have acted without proper care and caution but such actions cannot be termed to be actuated by any corrupt or dishonest motive.

10. For the foregoing reasons, I am of the view that indeed the action of the respondents cannot be approved but there is no justification on the facts disclosed for holding them liable under the Contempt of Courts Act.

11. With the above observations, the petition is dismissed, with no order as to costs.