

(2006) 01 AHC CK 0066
In the Allahabad High Court
Case No : Contempt Application No. 648 of 1992

Ram Niwas

APPELLANT

Vs

Shri Ram Avtar Gupta, Sub-Divisional Magistrate/Sub-Divisional Officer, Sahsawan and Shri M.R. Khan, Tahsildar

RESPONDENT

Date of Decision : 27-01-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Contempt of Courts Act, 1971 — Section 12

Citation : (2006) 3 AWC 2341 : (2006) 2 UPLBEC 1810

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : A.R. Dubey and B.K. Solanki, for the Appellant; Nurul Huda and S.C., for the Respondent

Final Decision : Disposed Of

Judgement

Tarun Agarwala, J.—The applicant alleged that he was appointed on a substantive vacancy w.e.f. 16.10.1989 as a Collection Peon. The appointment letter indicated that he was being appointed against the vacancy occurring on the retirement of a collection peon and that his services were to continue till such time a regular appointment was made by a Selection Committee. The applicant alleged that on account of the displeasure of the Tehsildar, the impugned order of termination dated 25.10.1991 was issued without any authority by the Tehsildar and without giving any opportunity of hearing. Since the Tehsildar had no authority to issue the order of termination, consequently, the applicant filed a writ petition before this Hon'ble Court in which an interim order dated 13.1.1992 was passed staying the operation of the impugned termination order dated 25.1.1991, It is alleged that inspite of the issuance of the interim order, the opposite parties neither allowed the applicant to join his duties nor paid his salary. Consequently, the applicant filed the present contempt application u/s 12 of the Contempt of Courts Act alleging willful disobedience by the opposite parties in not complying with the interim order passed by the Court in the writ petition. Notices were issued and,

the opposite parties filed their counter affidavits justifying their action in not reinstating the applicant, by relying upon a decision of the Supreme Court in the case of Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, contending that since there was no specific direction in the interim order to reinstate the applicant, consequently the opposite parties did not reinstate the applicant nor the opposite parties have willfully flouted the interim order of this Court.

2. Heard Sri V.K. Solanki, the learned Counsel for the applicant and Sri Nurul Huda, the learned standing counsel for the opposite parties.

3. The learned Counsel for the opposite parties submitted that since there was no specific direction permitting the applicant to continue in service nor was there any specific direction for reinstatement, consequently, the opposite parties did not allow the applicant to continue in the service and, therefore, the opposite parties have not willfully flouted the orders of the Writ Court. The learned Counsel for the opposite parties further submitted that a counter affidavit has also been filed in the writ petition and, therefore, the contempt proceedings should now be kept in abeyance till the disposal of the writ petition. In support of his submission, the learned Counsel for the opposite parties have placed various judgments which shall be referred hereinafter.

4. In Chamundi Mopeds (supra) the Supreme Court held that if the impugned order is stayed, it means that the impugned order would not be operative from the date of the passing of the stay order. The Supreme Court held :-

The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order.

5. The Supreme Court categorically stated that even though the impugned order had not been wiped out from existence by an interim order, nonetheless, the impugned order cannot remain operative from the date of the issuance of the interim order. It, therefore, clearly means that the impugned order ceases to remain operative even though it remains in a dormant condition. The result is, that the applicant would be entitled to continue in service during the pendency of the writ petition. Therefore, if the opposite parties does not reinstate the applicant, in that view, the opposite parties are, in fact, giving effect to the impugned order and are implementing the impugned order which had been stayed by the Court. Thus, implementing an order by the opposite parties which had been stayed by the Writ Court would, in my opinion, amount to willful violation of the order passed by the Court.

6. The learned Counsel for the opposite parties placed reliance in the case of Mrs. Harbans Kaur v. Sardar (Ch.) Narender Singh and Anr. 1992 AWC 1398 in which it was held that since no specific direction was passed by the Court either to reinstate or to pay the salary, in that eventuality no willful contempt was made out. In my opinion, this judgment is totally distinguishable, inasmuch as, in the

interim order it was clearly indicated that it was open to the opposite parties to take work or not to take work from the applicant.

7. The learned Counsel for the opposite parties has also placed reliance in the case of Tannary and Foot Wear Corporation Vs. T. Rudra, Chairman cum Managing Director and Others, in which it was held that since there was no specific direction for the payment of salary, consequently no willful contempt was made by the opposite party.

8. In Prem Shanker Pandey v. Jag Roshan Lal "Sachiv" Krishi Utpadan Mandi Samiti Sthal Mundera, Allahabad and Anr. 1992 AWC 9 a learned Single Judge held, that since a stay vacating application had been filed by the opposite party and since there was no specific direction in the stay order for reinstating the applicant, consequently, no willful contempt could be made out,

9. In Director of Education, Uttaranchal and Ors. v. Ved Prakash Joshi and Ors. (2005)3 UPLBEC 2415 the Supreme Court held that where the order of the termination was set aside and where no specific direction for the payment of the arrears was issued by the Court, in that view of the matter, no contempt could be made out nor the Contempt Court could direct the payment of the arrears. The Supreme Court held that in the absence of any positive direction with regard to the payment of the arrears, the Court could not travel beyond the order. Similar view was also expressed in Sadhu Singh Chauhan v. Dr. B.M.L. Tiwari and Anr. 1993(2)UPLBEC 1035 in Chairman, Governing Council Anjuman Arts, Commerce and Science and Others Vs. Sayyed Mohammad Shafi, and in Vishwanath Singh and Anr. v. Km. Kamlesh Priyadarshi 1997(3) AWC 1548.

10. The aforesaid cases are distinguishable inasmuch as there was no specific direction for the payment of arrears of the salary upon the reinstatement of the service. In the present case, there is a suspension of the order of termination. Consequently, there is an implicit direction for the continuation of the service of the applicant.

11. In R.M. Ramaul Vs. State of Himachal Pradesh and Others, , the Supreme Court while disposing of a contempt petition held that even though there was no specific direction in the order of the Supreme Court to consider the complainant's case for promotion with retrospective effect, such a relief was implicit in the reasoning of the order.

12. In Chandraveer Singh v. M.B. Mathur 1990(2)UPLBEC 1221, a Division Bench of this Court explained the effect of the interim order :-

The interim order passed under Article 226 of the Constitution of India staying operation of termination order without any consequential order or direction will not be a superfluous, meaningless or redundant order in the absence of consequential order which necessarily is not required in every case. Its effect will be to restore back the relationship of employer and employee may it be temporarily as it was prior to the passing of termination order. Despite the

interim order if work is not taken or even salary is not paid discriminating such person from the other employees who are paid salary, the negative act would be in derogation of the orders passed by the Court which not being treated with respect or having binding effect. The inaction and even non-payment of salary in the absence of any plausible explanation of delay will amount to flouting the interim orders, passed by the Court.

13. In *Anand Kumar Pandey v. Vinod Kumar Srivastava*, Executive Officer (Adhishashi Adhikari), Nagar Panchayat, Oran, Banda and Anr. 1995 (3) AWC 1914 it was held that a person could be held guilty of contempt for violating the interim order of the Court. Similar view was again reiterated in *Suresh Chandra v. Ashok Kumar*, Director of Harijan and Social Welfare, Lucknow 1996 (3) AWC 1605.

14. In view of the aforesaid, it is clear that the staying of the operation of the termination order is not a superfluous, meaningless or redundant order. It is not necessary that a specific order in this regard is required to be issued separately. The effect of the interim order is to restore the relationship between the employer and the employee. The effect of the interim order is, that the applicant continues to remain an employee of the opposite parties, inasmuch as, the termination order has been suspended and that the applicant is entitled to perform his duty. If a specific order was required to be passed, in that eventuality, the opposite parties would never implement any interim order and the interim order would become meaningless. By not giving effect to the interim order, the opposite parties are necessarily implementing their own order which had become ineffective by virtue of the interim order. If the opposite parties continue to implement the order which has been rendered ineffective for the time being, in that eventuality, in the opinion of the Court, it would amount to willful violation of the order of the Court.

15. It is submitted that a counter affidavit has been filed in the writ petition and therefore, the contempt proceedings should be kept in abeyance. It has been stated at the bar that the counter affidavit in the writ petition was filed in the year 2004, whereas the interim order was issued in the year 1992. Consequently, on account of the delay in filing the counter affidavit by the opposite parties, this plea is neither tenable nor bonafide. Consequently, the mere fact that a counter affidavit has been filed in the writ petition does not give a leverage to the opposite parties to avoid the implementation of the interim order.

16. Since the opposite parties were wrongly construing the judgment of the Supreme Court, it could be said, that there was no deliberate intention on their part to willfully flout the order passed by the Court. However, the interim order is required to be complied with by the opposite parties. The interim order has to be given effect to by the opposite parties. Consequently, one more opportunity is given to the opposite parties to reinstate the applicant within six weeks from the date of the production of a certified copy of this order failing which the Court will have no option but to frame charge/charges against the opposite parties for

willful violation of the order of the Court.

17. It is made clear that the contempt proceedings were initiated as far back as in the year 1992. The opposite parties must have been transferred by now. Consequently, the applicant is directed to serve a certified copy of this order before the person who is presently holding the post of the Sub Divisional Magistrate/Sub Divisional Officer, Sahsawan, Badaun, who will implement the order. List for further orders on 27.3.2006.