

(2015) 01 TP CK 0018
In the Tripura High Court
Case No : Cont. Cas. (C) 28 of 2014

Satyesh Ch. Deb

APPELLANT

Vs

C.L. Das

RESPONDENT

Date of Decision : 17-01-2015

Acts Referred:

Constitution of India, 1950 — Article 16, 16(4A), 162
Contempt of Courts Act, 1971 — Section 12, 2(b), 20

Citation : (2015) 01 TP CK 0018

Hon'ble Judges : S. Talapatra, J.

Bench : Single Bench

Advocate : Sougata Datta, for the Appellant; S. Chakraborty, Addl. G.A.,
Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Talapatra, J.—At the instance of the petitioner in the W.P.(C) 269 of 2002, this petition has been filed for drawing up a proceeding under Section 12 of the Contempt of Courts Act for willful disobedience shown to the order dated 09.12.2013 passed by this Court in Rev. Pet. No. 04 of 2005. It is not in dispute that the State of Tripura and other respondents filed the said review petition being Rev. Pet. No. 04 of 2005 against the judgment and order dated 16.12.2013 delivered in W.P.(C) No. 269 of 2002 on the solitary ground that the judgment in question was passed based on the law as culled down in Ajit Singh and Others Vs. The State of Punjab and Others, and the said judgment has been debased by the Constitution (85th Amendment) Act, 2009 w.e.f. 17.06.1995 pursuant to the said amendment, the notification No. F.23(3)-GA(P and T) 2004 dated 27.01.2005 has been issued by the General Administration (Personnel and Training Department), Government of Tripura. By the judgment and order dated 09.12.2013 the said review petition was dismissed on observing that:

[17] What further Mr. S. Deb, learned sr. counsel has raised that the said notification cannot be treated as the validating act of the previous action

granting the consequential seniority to the reserved category promotees vis-a-vis the general/unreserved category promotees in the promotion level. Such action was struck down by this Court in terms of *Ajit Singh (II)* (supra). Whether the said notification cannot be treated as a piece of validating act requires further consideration. For appreciating such jurisprudential objection, this Court has to travel back to the amended provision of Article 16(4A) of the Constitution of India as engineered by the Constitution (Eighty Fifth Amendment) Act, 2001. By the amended provision, the State has been enabled with the power for making any provision for reservation in the matters of promotion with consequential seniority to any class or classes of post in service under the State in favour of the Scheduled Castes and Scheduled Tribes which in the opinion of the State are not adequately represented in the services for the State. This provision itself stands contrary to what had been held by *Ajit Singh (II)* (supra). Therefore, the ratio of *Ajit Singh (II)* (supra) has been expressly debased by the said piece of validating act, which has amended Article 16(4A) with effect from 17.06.1995. From a reading of the statement of the object and reason of the Constitution (Eighty Fifth Amendment) Act, 2001 it becomes further clear that the very purpose of the said Act was to remove the effects of *Ajit Singh (II)* (supra) and to provide the consequential seniority in the matters of promotion to the reserved category candidates/incumbents vis-a-vis the general category candidates/incumbents on the basis of the continued officiation. Thus, there cannot be any amount of doubt that *Ajit Singh (II)* (supra) has been debased by the said Constitution (Eighty Fifth Amendment) Act, 2001 with effect from 17.06.1995, the day on which Article 16(4A) had been made operational in the Constitution (77th Amendment) Act. In exercise of the said enabling power the State has made the provision by an executive fiat in the form of the notification No. F.23(3)-GA(P and T) 2004 dated 27.01.2005. The executive order as passed under Article 162 of the Constitution of India since has been extended to a matter where the legislature of a State has power to make laws it cannot be said the notification has no invalidating statutory effect. The provision can be made in exercise of power provided to the State under Article 162 of the Constitution of India, subject to that in any matter with respect to which the legislature of the State and Parliament have power to make laws, the executive power of the State shall be subject to and limited by the executive power expressly conferred by the Constitution or by any law by the parliament upon the union or authorities thereof. In this case the State in exercise of the enabling power has provided under Article 16(4A) of the Constitution of India the provision of the consequential seniority to the reserved category promotees in terms of their continuous officiation. Therefore, it has got all contours and trappings of the validity Act. Thus, the contention of Mr. Deb in this regard is discarded.

[18] A ancillary question that comes to the fore that what remedy would be available to the State after such validating act. That issue should not be compounded by any complex interpretation. Executability of the judgment has been slighted and the declaration as to the law has been entirely debased

retaining any effect, from the date on which the validating action has come into effect. But by way of the review reversal of the judgment cannot be caused by the court. On cumulative assessment of the contentions as projected, this court has no hesitation to hold that this petition for the review is not maintainable as in as much as for the legislative action, even with retrospective operation but posterior to the impugned judgment the same cannot be altered or modified in exercise of the power of review by this Court.

2. It is further required to be noted that by the judgment and order dated 16.12.2004 delivered in W.P.(C) No. 269 of 2002, the following direction has been passed:

"For the foregoing reasons, this writ petition is allowed. The impugned memorandum dated 20.08.2004 (Anneuxre-8) placing the private-respondents senior to the petitioner is hereby quashed. Resultantly, the respondents are directed to prepare a fresh inter se seniority list placing the petitioner senior to the private-respondents. Since the petitioner is reported to be retiring on superannuation on 31.12.2004, the entire exercise of preparing the seniority list shall be completed before 31.12.2004. No costs." 3. The State of Tripura and the other respondents by filing an application being CM. Appl. No. 33 of 2005 approached the Court for extending the time "to comply with the order dated 16.12.2004". The said application was disposed of by the order dated 20.01.2005 on extending the time for complying the direction within 2(two) months w.e.f. 01.01.2005 on observing that:

"This is an application filed by the state respondents for extending time to comply with the order dated 16.12.2004 passed by this Court. Time for compliance with the order given by this Court was up to 31.12.2004. Since then almost a month has passed without compliance with the order. I have carefully gone through the application. It must be stated here that if the order could not be complied with by the state applicants by 31.12.2004, they should have at least applied for extension of the time before expiry of the period for compliance. It is to be noted that the petitioner had already retired before compliance with the order, and, as such, he was not able to get the fruit of his litigation before his retirement. This is very unfortunate. The state applicants should have been more sensitive to a matter of this nature. However, considering the fact that the state applicants have decided not to prefer an appeal and also of the fact that between 31.12.2004 and now, some steps must have been taken by the state applicants, it would be proper to grant a further period of two months time with effect from 1.1.2005 to the state applicants for compliance with the order. Order accordingly." Thus, the State of Tripura and its officers, who were impleaded as the respondents and who sought for extension of time was under obligation to comply the direction as stated invariably by 28.02.2005.

4. There is no dispute that when such seniority list was not published in compliance of the direction as stated within 28.02.2005, the petitioner herein who filed the writ petition being W.P.(C) No. 269 of 2002 did not approach this

Court for drawing up of the contempt proceeding within the period of limitation as prescribed by Section 20 of the Contempt of Courts Act, 1971 which provides as under:

"20. Limitation for actions for contempt: No court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed." The petitioner was well aware that the respondents if committed any contempt they have committed the said contempt on 01.03.2005. In this regard, the explanation given by the petitioner appears in the Para-5 of this petition, which reads as under:

"5. Because of the pendency of the review application, your humble petitioner herein could not take action against the deliberate and wilful non-compliance of the order passed on 16.12.2004 in W.P.(C) No. 269 of 2002 (Annexure - P1 supra). After the review petition was dismissed on 09.12.2013, your humble petitioner made an application on 21.02.2004 to the Principal Secretary to the Government of Tripura in the Department of Forests and the Principal Chief Conservator of Forests, Gorkhabasti, Agartala drawing their attention about the dismissal of the review petition." 5. It appears that the petitioner has approached this Court in the aftermath of his receipt a communication dated 29.05.2014 issued by the Addl. Secretary to the Government of Tripura in response to his representation which is as under:

No. F.4(1892)/For/Estt-14/7591 Government of Tripura Forest Department

Dated, Agartala, the 29th May, 2014

To

Sri Satyesh Ch. Deb Retd. Senior Forest Ranger, Ramnagar Road No. 1, P.O. Ramnagar, Agartala, West Tripura.

Sub: Representation dated nil of Sri Satyesh Ch. Deb, Retd. S.F.R.

Sir,

I am directed to inform you that your representation dated nil has been carefully examined by this Department. Although, it would appear from the judgment dated 09.12.2013 of the Hon'ble High Court of Tripura that the judgment passed by the Ld. Single Bench in the writ petition on 16.12.2004 has been upheld, in fact, the basis of the said judgment and order has been completely debased in view of the constitutional 85th amendment. This is also the findings arrived at while disposing the review petition.

Therefore, there is no question of implementing the aforesaid judgment and/or preparing a fresh seniority list giving you seniority over the private respondent.

Your representation thus stands disposed of.

Yours faithfully

(C.L. Das, IFS) Addl. Secretary to the Government of Tripura.

6. It further appears that the petitioner has mediated and alleged the violation of order dated 09.12.2013 delivered in the Review Petition No. 04 of 2005 along with the order dated 16.12.2005 delivered in W.P.(C) No. 269 of 2002. It is apparent on the face of the order dated 09.12.2013 that no direction has been passed in the review petition in any manner. Therefore, there cannot be any disobedience to the said order. This has been done as it appears with intent to overcome the limitation as prescribed by Section 20 of the Contempt of Courts Act, 1971. From the records of Review Petition No. 04 of 2005 it appears that though the State filed a petition for staying the operation of the judgment and order dated 16.12.2004 delivered in W.P.(C) No. 269 of 2002, being C.M. Appl. (Rev) No. 23 of 2005 arising from Review Petition No. 04 of 2005, this Court did not pass any order of stay and as such, there had been no impediment whatsoever for the petitioner urge for a contempt proceeding to be drawn. But the petitioner observed the review proceeding with ease. Mere pendency of the review petition cannot extend the period of limitation. As such, on the face of the record showing wilful disobedience to the direction as contained in the judgment and order dated 16.12.2004, this Court cannot initiate any proceeding under Section 12 of the Contempt of Courts Act, 1971 for committing civil contempt as defined in Section 2(b) Contempt of Courts Act, 1971 as the cognizance of an act of contempt has to be taken within a period of one year from the date when such act is committed.

7. Mr. Sougata Dutta, learned counsel appearing for the petitioner has submitted that when the review petition is dismissed, the respondents had no other alternative but to comply the direction as stated. But they have taken a plea that in view of the following observation and for the Constitution (85th Amendment) Act, 2001 which has come into effect from 17.06.1995 and the notification dated 27.01.2005, Annexure-R/1 to the affidavit-in-opposition, the direction has lost its force. In the affidavit filed by the respondents it has been averred thus:

"10. That in regard to the statement made in paragraph 5 of the contempt petition it is stated that it is not true that an application drawing attention about dismissal of the review petition was submitted by Sri Satyesh Ch. Deb to the Principal Secretary, Forests and PCCF, Gurkhabasti, Agartala on 21.02.2014. However, one application drawing attention about dismissal of the review petition was received from Sri Satyesh Ch. Deb in the office of Principal Secretary, Forests on 25.02.2014 wherein he requested to pass an order for compliance of the order of the Hon"ble High Court in restoring his seniority and consequential benefits.

11. That in regard to the statement made in paragraph 6 of the contempt petition it is stated that it is true that the application of Sri Satyesh Ch. Deb received on 25.02.2014 in the office of Principal Secretary, Forests was disposed of by a letter dated 29.05.2014 under signature of the Addl. Secretary, Government of Tripura saying that the order of the Hon"ble High Court dated

16.12.2004 had been debased completely in view of the constitutional (85th) Amendment and thus, fresh seniority list as ordered cannot be issued.

12. That in regard to the statement made in paragraph 7 of the contempt petition it is stated that the Judgment and Order dated 16.12.2004 of the Hon"ble High Court against the Case No. W.P.(C) 269 of 2002 could not be implemented in view of notification issued by GA (PandT) Department, Government of Tripura vide No. F.23(3)-GA(PandT)/2004 dated 27.01.2005 which is in compliance of the amendment of Clause 4(A) of Article 16 of the Constitution of India made by the Constitution (85th) Amendment Act, 2001.

The same has also been narrated in the Judgment and Order made in Rev.Pet. No. 04 of 2005 in W.P(C) No. 269 of 2002 dated 09.12.2013 of the Honourable High Court vide para-18 which is reproduced below:

"A ancillary question that comes to the force that what remedy would available to the State after such validating act. That issue should not be compounded by any complex interpretation. Executability of the judgment has been slighted and the declaration as to the law has been entirely debased retaining any effect, from the date on which the validating action has come into effect." Thus, there was no deliberate and wilful violation of the direction of the Honourable High Court.

13. That in regard to the statement made in paragraph 8 of the contempt petition it is stated that it is a fact that a CM application No. 33 of 2005 was filed before the Hon"ble High Court seeking time extension for compliance of the order passed by the Hon"ble High Court on 16.12.2004 in W.P.(C) 269 of 2002. But, in view of the notification issued by the GA (PandT) Department, Government of Tripura vide No. F.23(3)-GA(PandT)/2004 dated 27.01.2005 which is in compliance of the amendment of Clause 4(A) of Article 16 of the Constitution of India made by the Constitution (85th) Amendment Act, 2001, the same could not be implemented."

14. That, I again repeat that I never had any intention to disobey or flout any judgment or order of this Hon"ble Court. Accordingly, I again submit that the instant contempt proceeding should be dropped.

It appears that the respondents interpreted the said observation in a manner they found convenient.

8. Mr. S. Chakraborty, learned Addl. G.A. appearing for the respondents has submitted that interpretation is bona-fide and based on that interpretation of the order passed in the review proceeding. The affidavit cannot be held to be "wilful disobedience" to constitute the civil contempt. Even though this submission requires some serious consideration but since this Court has categorically found that this proceeding is barred by limitation, this Court would not embark on such exercise.

Accordingly, this petition stands dismissed as no proceeding under Section 12 of the Contempt of Courts Act can be drawn as the limitation of one year has

expired on 01.03.2006.