

(2008) 12 JH CK 0010
In the Jharkhand High Court

Sh. Avinash Sharan and Others	Vs	APPELLANT
The State of Jharkhand and Others		RESPONDENT

Date of Decision : 12-12-2008

Acts Referred:

Citation : (2008) 12 JH CK 0010

Hon'ble Judges : Gyan Sudha Mishra, C.J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gyan Sudha Misra, C.J.—All the six petitioners herein have filed a petition for contempt alleging non-compliance of the judgment and order

dated 12.10.2004, against which the respondent State had filed an appeal before the Supreme Court stating that no case for contempt is made

out. Learned Judges of the Supreme Court, vide order dated 3.8.2007 passed in Civil Appeal No. 6098/1997, remanded the matter to the High

Court to consider whether the respondent-petitioners have succeeded in making out a case for contempt against the appellant-respondent State in

their favour and therefore, the counsel for the parties have been heard on the question referred to above.

2. Having heard the counsel for the parties at length, it could be noticed that the petitioners had been recommended for absorption, since they had

discharged duties as Teaching Staff against the sanctioned posts. In support of their assertion, counsel for the petitioners invited the attention of this

Court to Annexure - IVA to the reply filed by them, which is an extract from the Agrawal Commission's report indicating the names of such

persons who had been discharging duties against the sanctioned posts and were

also fit for absorption. Besides this, counsel for the petitioners also has drawn the attention of this Court to the order issued by the Sido Kanhu Murmu University as contained in Annexure - 3 to this writ petition for their absorption and the University also absorbed them, but the respondent-State failed to grant recognition to this absorption and did not pay the salary which is payable in pursuance to the absorption to such Teaching Staff who had been discharging duties on the sanctioned posts.

3. Since the order dated 3.8.2007 passed in Civil Appeal No. 6098/1997 by the Supreme Court had referred the matter to the High Court to

consider as to whether the judgment passed by the Supreme Court had been complied or not, it could be noticed that the petitioners have

succeeded in making out a case in their favour in the light of the aforesaid averments that they are entitled to salary against the sanctioned posts

after their absorption by the University as they were found fit for absorption not merely by the authorities of the Sido Kanhu Murmu University, but

also as per the report of the Agrawal Commission, which had prepared a list of eligible candidates who were found fit for absorption, as they had

been discharging duties against the sanctioned posts.

4. Mr. R. Krishna, Sr.S.C, representing the respondent-State, who are contemnors herein, submitted that the petitioners are not fit for absorption

against the sanctioned posts, nor are they entitled to receive the salary for the sanctioned posts and thus, he has sought to make out a case that the

petitioners have failed to make out a case of contempt in their favour against the respondent-contemnors.

5. Having heard the counsel for the respondent-State, I am of the view that the respondent-contemnors have failed to make out a case that the

petitioners have not been able to make out a case for contempt and it would be appropriate to repeat that the petitioners have not only succeeded

in proving that they were fit for absorption as per the report of the Agrawal Commission, but have also succeeded in proving that they have been

absorbed by the order of the University against the sanctioned posts and the only relief that could be granted by the respondent-State was to pay

salary against the sanctioned posts in pursuance to the absorption. Once the petitioners succeeded in proving that they had already been absorbed

on the sanctioned posts by the order of the University and had also been found

fit for absorption against the sanctioned posts as per the Agrawal

Commission's report, the respondents cannot be permitted to reopen the question that the petitioners were not fit for absorption. If the

respondent-State still maintains the view that the petitioners were not entitled for absorption against the sanctioned posts, then it was their duty to

apprise the learned Judges of the Supreme Court that even as per the Agrawal Commission's report, the petitioners were not fit for absorption or

at least they could have challenged the order passed by the University that their absorption against the sanctioned posts was not fit to be upheld.

6. The only limited question which was to be considered by this Court as per the order of the Supreme Court referred to hereinbefore was to

ensure whether the petitioners had been appointed against the sanctioned posts or not in order to claim the salary of the posts which had been

sanctioned and the petitioners having succeeded in this regard, for the reasons stated hereinbefore, the respondents have no way out than to allow

them salary for the posts on which they have been absorbed since they had been discharging duties against the sanctioned posts.

7. It hardly needs repetition that a petition for contempt cannot be used as a tool to assail the principal order for which contempt petition has been

filed. Thus, the petitioners having succeeded in establishing that the respondents have neither complied the order passed by the University, nor the

Agrawal Commission's report, it would clearly amount that they have failed to comply the order passed by the Supreme Court, for which

contempt petition has been filed which had been remanded to this Court to consider whether a case for contempt is made out or not.

8. Under the circumstance, the contempt petition is allowed and disposed of with the direction to the respondents to treat them absorbed On the

sanctioned posts on which they had been discharging duties expeditiously, but not later than a period of six weeks for the date of the order. If,

however, the respondents still fail to comply the order passed by the Supreme Court, for which contempt petition has been filed in this Court, it

would be open to the petitioners to file a fresh contempt petition.