

(2017) 04 AP CK 0061
In the Andhra Pradesh High Court
Case No : 2013 of 2016

S.Kiranmayi

APPELLANT

Vs

Sri N.Sambasiva Rao, Managing Director, APSRTC, & Ors.

RESPONDENT

Date of Decision : 27-04-2017

Acts Referred:

Constitution of India, Article 215 - High Courts to be Courts of record
Industrial Disputes Act, 1947, Section 12(3) - Duties of conciliation officers
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Citation : (2017) 04 AP CK 0061

Hon'ble Judges : A.Ramalingeswara Rao

Bench : SINGLE BENCH

Advocate : A.G.Satyanarayana Rao, Aravala Rama Rao

Judgement

1. This Contempt Case is filed alleging non-implementation of the order in W.P.No.12970 of 2016 dated 27.06.2016 Though it is not necessary for this Court to repeat the entire order, but for the purpose of disposal of the present Contempt Case, the following facts are necessary.

2. The husband of the petitioner, who was appointed as a contract driver in Chittoor-I Depot, died while in service on 20.02.2012 leaving behind the petitioner and her two minor children. The petitioner states that she is entitled for compassionate appointment under the Bread Winner Scheme. In respect of dependents of regular employees, they are eligible for payment of additional monetary benefit in lieu of employment from the year 1989. But, in view of the hardship of the families of contract employees who died while in service, the management extended the scheme of compassionate employment to the eligible dependants by entering into a Memorandum of Settlement under Section 12(3) of the Industrial Disputes Act, 1947, with the APSRTC Employees Union on 03.08.2013. The Government issued G.O.Ms.No.2, Transport Department dated 05.01.2013 according permission to APSRTC to provide compassionate

appointments to all the eligible dependents of the employees who died in harness during the period from 01.01.1998 to 31.12.2010. It was clarified in G.O.Ms.No.15, Transport Department, dated 07.02.2014, making it applicable to the employees who died thereafter also. The Corporation also issued circular on 01.03.2014 directing continuance of process of recruitment under the Bread Winner Scheme in respect of the employees who died beyond 31.12.2010 also.

3. The petitioner studied Intermediate and submitted an application on 24.02.2012 seeking employment on compassionate grounds. Her case was considered for the post of RTC Constable, interview was conducted and she was provisionally selected for the said post. She was asked to undergo physical efficiency test by proceedings dated 23.01.2016. She was qualified in that test also. She was asked to undergo medical examination by letter dated 23.03.2016 and she underwent the same. Thereafter, she was informed that she will not be given appointment as her husband was only a contract employee at the time of his death. In those circumstances, the petitioner approached this Court by filing W.P.No.12970 of 2016. In spite of several adjournments, no counter affidavit was filed and the learned Standing Counsel orally submitted that the settlement arrived with the Employees Union was not approved by the Board of Directors. This Court disposed of the Writ Petition by directing the respondents to consider the case of the petitioner for appointment to the post of RTC Constable under compassionate grounds in view of the settlement arrived at on 03.08.2013 and pass appropriate orders within three months.

4. The aforesaid order was not complied with and an order was issued on 31.08.2016 by the second respondent stating that the petitioners case will be considered in the selections to be conducted for employment under Bread Winner Scheme (compassionate grounds) after receipt of the approval of the Government for the Memorandum of Settlement arrived on 03.08.2013, and it was further stated that the said proceedings were passed in compliance with the orders of this Court.

5. Learned Counsel for the petitioner issued a notice on 13.09.2016 stating that the said order is in violation of the orders of this Court.

6. Since a counter affidavit was not filed in the Writ Petition, the respondents filed a counter affidavit in the present case admitting the facts stated in the affidavit and justified the action of denying appointment on the ground that before appointment of the petitioner when they verified the personal records of the deceased employee, they came to know that he was not a regular employee but he worked as contract driver and his services were not regularized. It is stated that the Bread Winner Scheme communicated by letter dated 15.05.2013 is applicable only to the regular employees of the Corporation. The petitioner was not eligible, as her husband was not a regular employee. However, the case of the petitioner will be considered in the selections to be conducted for employment under Bread Winner Scheme after receipt of the approval of the Government for the Memorandum of Settlement arrived on 03.08.2013. The said

proceedings were issued when the second respondent received the communication from the Executive Director on 15.05.2013 clarifying that the applications of the dependants of contract employees cannot be considered under the Bread Winner Scheme since it is applicable only to the regular employees of the Corporation.

7. Learned Counsel for the writ petitioner who initiated the present contempt proceedings submitted that the denial of relief to the petitioner is in willful violation of the orders of this Court when this Court directed the respondents to consider the case meaning to pass favourable orders only. He relied on *The Barium Chemicals Ltd. v. A.J.Rana* , *Comptroller and Auditor-General of India v. K.S.Jagannathan* , *S.Purushotham v. District Collector, Karimnagar* , *Employees State Insurance Corporation v. All India ITDC Employees Union* and *K.Achamma v. Venkateswara University* .

8. Learned Counsel for the Corporation, on the other hand, submitted that by taking into consideration the facts and circumstances of the case, an order was passed by the second respondent and, in view of passing of such order, it cannot be said that there is willful violation of the orders of the Court punishable under the Contempt of Courts Act. He relied on *J.S.Parihar v. Ganpat Duggar* , *V.Kanakarajan v. General Manager, South Eastern Railway* , *Salaudin Ahmed v. Santa Andolan* and *Nambaru Ramu v. M.R.Prasanna Kumar* .

9. In the instant case, when the Writ Petition was considered, the respondents never chose to file a counter affidavit as could be seen from the adjournments granted and the order dated 27.06.2016. Even after disposal of the Writ Petition also an order was passed as aforesaid and no appeal was preferred against the order. Thus, the second respondent put upon himself the burden of implementing the orders of this Court. While examining the validity of the said order it has to be seen whether the said settlement relied on by the petitioner stated to have been sent to the Government for approval requires approval at all for implementation and in the absence of approval from the Government, denial of relief to the petitioner is a violation of the order of this Court or not.

10. A perusal of the Memorandum of Settlement shows that it was entered under Section 12(3) of the Industrial Disputes Act, 1947. The regularization of contract crew is one of the items of settlement. It was stated that the contract crew who were recruited up to December, 2012 will be taken up in a phased manner upon obtaining the prior permission from the Government as per the schedule given thereunder. The regularization schedule shows that it will come to an end by 01.09.2014. It was also stated that necessary administrative steps for getting permission from the Government for the said proposal will be taken up immediately. In respect of Bread Winner Scheme, the Unions represented for extension of the Bread Winner Scheme to contract crew with retrospective effect, while the management proposed for implementation of the scheme with prospective effect. After negotiations, implementation of the scheme with immediate effect was mutually agreed to. Only with regard to continuance of the

scheme for future beneficiaries in respect of both regular and contract employees dependants, it was agreed to seek clarification from the Government. The relevant portion reads as follows: Bread Winner Scheme: The unions represented for extension of the Bread Winner Scheme to contract crew with retrospective effect while the management proposed for implementation of the scheme with prospective effect. After negotiations, implementation of the scheme with immediate effect was mutually agreed to. It is also agreed to seek clarification from the Government to continue the scheme for future beneficiaries in respect of both regular and contract employees dependants.

11. In the above case the husband of the petitioner was selected in the year 2008 by a duly constituted selection committee and was appointed as a contract driver in Chittoor-I Depot on 08.10.2009. He died while in service on 20.02.2012. The settlement was arrived at on 03.08.2013. On a reading of the settlement with regard to the Bread Winner Scheme it is clear that it was made applicable with immediate effect to the contract crew, which includes the petitioner. However, with regard to the application of the Scheme for future beneficiaries, clarification from the Government was required and sought. The issue with regard to regularization of contract crew was also pending for permission from the Government. Now we are concerned with application of Bread Winner Scheme only and as per the settlement, there is no doubt that the Scheme is applicable with immediate effect. It appears that a resolution was passed by the Board for extension of the Scheme to the contract crew with retrospective effect as could be seen from the letter of the Corporation addressed to the Special Chief Secretary on 24.09.2013.

12. Thus, it is clear that there is no need to obtain the orders or clarification from the Government in respect of the settlement arrived and in view of the resolution passed by the Board. In view of this clear position, the contemnor should not have taken the stand that the case of the petitioner would be considered in the selections to be conducted for employment under Bread Winner Scheme (compassionate grounds) after receipt of the approval of the Government for the MOU arrived on 03.08.2013. The contemnor having taken that stand, this Court has no other alternative except to hold that the contemnor violated the orders of this Court by misinterpreting and by disallowing the genuine claim of the petitioner on untenable grounds. Thus, the second respondent violated the orders of this Court.

13. Coming to the legal position, the second respondent took a defense by relying on the decisions in J.S.Parihars case (supra), V.Kanakarajans case (supra), Salauddin Ahmeds case (supra) and Nambaru Ramus case (supra).

14. In J.S.Parihars case (supra) the Supreme Court was considering a case relating to the preparation of seniority list. The Division Bench of the High Court declared the seniority list prepared with retrospective effect in terms of the amended Rules as unconstitutional and it accordingly quashed the list and directed preparation of the seniority list afresh. The said order was followed by

two other Division Benches. When contempt proceedings were taken up, the learned single Judge of the Court held that the respondents had not willfully disobeyed the orders of the Court and gave direction to prepare the seniority list as per the orders of the Division Bench by giving liberty to the petitioner to move the contempt petition afresh if the order was not complied with. When the appeal was filed against the said order, a preliminary objection was taken with regard to the maintainability of the appeal. The Division Bench held that the appeal was not maintainable under Section 19 of the Contempt of Courts Act, but held that the appeal would be maintainable as a Letter Patent Appeal and set aside the directions issued by the learned single Judge. The matter was taken up to the Supreme Court. The Supreme Court, on the facts of the case, held that the appeal was not maintainable as there was no order of punishment. With regard to setting aside the direction of the learned single Judge, it was held that when once an order was passed by the Government on the basis of the directions issued by the Court, a fresh cause of action arises, but that cannot be considered to be a willful violation of the order. It was further held that when the learned single Judge held that there was no willful violation of the orders, he ought not to have issued further direction to redraw the seniority list.

15. The case in *V.Kanakarajan* (supra) is a case arising out of an order of dismissal by the Division Bench of Calcutta High Court on an application for contempt. The order of the High Court stated that no case was made out for contempt against the respondents, but the petitioner was given liberty to move against the said order in appropriate writ application. The said order was upheld by the Supreme Court.

16. In *Salauddin Ahmeds* case (supra) the Supreme Court held that in order to establish that a person had deliberately and willfully committed contempt of Court, two essential ingredients have to be proved. The first thing is a direction from the Court, and the second thing is, in spite of knowledge of such order, the person has deliberately and willfully violated the same with the intention of lowering the dignity and image of the Court.

17. In the instant case the order passed by the contemnor has to be read as it is and when the said order is based on untenable grounds, it has to be construed as a deliberate and willful violation.

18. In *Nambaru Ramus* case (supra) when contempt proceedings were initiated for not complying with the order directing the respondents to consider approving the appointments of petitioners as Secondary Grade Teachers and as Hindi Pundit (Grade-I), learned Government Pleader therein relied on *J.S.Parihars* case (supra). Learned single Judge, on the facts of the case, opined that there was no direction to approve the appointments of the petitioners but it was only a direction to "consider approving" the same. When the respondents passed elaborate orders concluding that the approval cannot be granted, in view of the decision in *J.S.Parihars* case (supra), it was held that the cause of action did not survive and no contempt would lie.

19. In the light of the above decisions it has to be considered whether the direction of this Court mandates the respondents to consider the case of the petitioner in a positive manner or it left anything to the discretion of the respondents enabling them to pass an order giving rise to a fresh cause of action.

20. In Barium Chemicals Ltd.s case (supra) the word consider fell for interpretation and the Supreme Court observed as follows:

The words "considers it necessary" postulate that the authority concerned has thought over the matter deliberately and with care and it has been found necessary as a result of such thinking to pass the order. The dictionary meaning of the word "consider" is "to view attentively, to survey, examine, inspect (arch), to look attentively, to contemplate mentally, to think over, meditate on, give heed to, take note of, to think deliberately, be think oneself. to reflect" (vide Shorter Oxford Dictionary). According to Words & Phrases-Permanent Edn: Vol. 8-A to "consider" means to think with care. It is also mentioned that to "consider" is to fix the mind upon with a view to careful examination; to ponder; study; meditate upon, think or reflect with care. It is, therefore, manifest that careful thinking or due application of the mind regarding the necessity to obtain and examine the documents in question in sine qua non for the making of the order. If the impugned order were to show that there has been no careful thinking or proper application of the mind as to the necessity of obtaining and examining the documents specified in the order, the essential requisite. to the makings of the order would be held to be non-existent.

A necessary corollary of what has been observed above is that mind has to be applied with regard to the necessity to obtain and examine all the documents mentioned in the order. An application of the mind with regard to the necessity to obtain and examine only a few of the many documents mentioned in the order, while there has been no such application of mind in respect of the remaining documents, would not be sufficient compliance with the requirements of the statute. If, however, there has been consideration of the matter regarding the necessity to obtain and examine all the documents and an order is passed thereafter, the Court would stay its hand in the matter and would not substitute its own opinion for that of the authority concerned regarding the necessity to obtain the documents in question.

The above observations were made while interpreting Section 19(2) of the Foreign Exchange Regulation Act. The Supreme Court quashed the order passed under the said Section by the competent authority on the ground that the order was passed without complying with the requirements of the said Section. It was also stated that the compliance of the Section is required in view of the penal consequences flowing from non- compliance with the order made under the said Section.

21. In K.S.Jagannathans case (supra) the Supreme Court considered the nature of writ of mandamus and observed as follows:

There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.

22. The circumstances under which this Court passes an order in a writ of mandamus and the nature of the order is explained in Employees State Insurance Corporations case (supra), more particularly in relation to the directions issued in the Writ Petitions to consider the cases, as follows:

Where an order or action of the State or an authority is found to be illegal, or in contravention of prescribed procedure, or in breach of the rules of natural justice, or arbitrary/unreasonable/irrational, or prompted by mala fides or extraneous consideration, or the result of abuse of power, such action is open to judicial review. When the High Court finds that the order or action requires interference and exercises the power of judicial review, thereby resulting in the action/order of the State or authority being quashed, the High Court will not proceed to substitute its own decision in the matter, as that will amount to exercising appellate power, but require the authority to "consider" and decide the matter again. The power of judicial review under Article 226 concentrates and lays emphasis on the decision making process, rather than the decision itself.

The High Courts also direct authorities to "consider" , in a different category of cases. Where an authority vested with the power to decide a matter, fails to do so in spite of a request, the person aggrieved approaches the High Court, which in exercise of power of judicial review, directs the authority to "consider" and decide the matter. In such cases, while exercising the power of judicial review, the High Court directs "consideration" without examining the facts or the legal question(s) involved and without recording any findings on the issues. The High Court may also direct the authority to "consider" afresh, where the authority had decided a matter without considering the relevant facts and circumstances, or by taking extraneous or irrelevant matters into consideration. In such cases also, High Court may not examine the validity or tenability of the claim on merits, but

require the authority to do so. Where the High Court finds the decision-making process erroneous and records its findings as to the manner in which the decision should be made, and then directs the authority to "consider" the matter, the authority will have to consider and decide the matter in the light of findings or observations of the Court. But where the High Court without recording any findings, or without expressing any view, merely directs the authority to "consider" the matter, the authority will have to consider the matter in accordance with law, with reference to the facts and circumstances of the case, its power not being circumscribed by any observations or findings of the Court.

We may also note that sometimes the High Courts dispose of matter merely with a direction to the authority to "consider" the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the Court, to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to "consider" the matter afresh.

There are also several instances where unscrupulous petitioners with the connivance of "pliable" authorities have misused the direction "to consider" issued by court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time the person making the representation approaches the High Court with an innocuous prayer to direct the authority to "consider" and dispose of the representation. When the Court disposes of the petition with a direction to "consider", the authority grants the relief, taking shelter under the order of the Court directing it to "consider" . Instances are also not wanting where authorities, unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order "to consider" as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to "consider", may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of Court's direction to "consider" the claim or on account of collusion/connivance between the person making the representation and the authority deciding it.

Therefore, while disposing of writ petitions with a direction to "consider", there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The aforesaid aspects were highlighted recently in *A.P.S.R.T.C. & Ors. v. G. Srinivas Reddy and Ors.* (AIR 2006 SCW 1108).

The said cases were followed by this Court in *S.Purushothams* case (*supra*).

23. The consequences of not following such directions was considered by a learned single Judge of this Court in K.Achammas case (supra) by once again considering the word consider and holding as follows:

At this stage, this Court has no option except to go through the dictionary meaning of the word "consider" by referring to two or three premier dictionaries.

As per the Chambers Dictionary 10th Edition, the word "consider" means "look at attentively or carefully; to think or deliberate on; to take into account; to attend to, to regard as, to think, hold the opinion, to reward, think seriously or carefully, to deliberate."

As per the Oxford Dictionary Thesaurus and Wordpower Guide, Indian Edition 2007, the word "consider" means "think carefully about; take into account when making judgment; contemplate; reflect on; examine; review; mull over; ponder; deliberate on."

As per Collins English Dictionary, the word "consider" means "to think carefully about (a problem or decision); to bear in mind; to have regard for or care about; to discuss (something) in order to make a decision; to look at."

The Apex Court in case between Divisional Personnel Officer, Southern Railway and Another v. T.R.Challappan ((1976) 3 SCC 190), observed that to consider means; there should be active application of the mind and further observed that the term consider postulates consideration of all the aspects. In cases between The Barium Chemicals Ltd and another v. SH. A.J.Rana and others (AIR 1972 SC 591) and Ajit Singh and others (II) v. State of Punjab and others ((1999) 7 SCC 209), the Apex Court observed that "It is therefore manifest that careful thinking or due application of the mind regarding the necessity to obtain and examine the documents in question is sine qua non for the making of the order."

24. Therefore, the dictionary meaning of the word "consider" means to consider basing on the material available on record. To consider means to consider sincerely and honestly, which means to make sincere effort to pass an order in the letter and spirit of the directions of this Court. To consider means to make all efforts to fulfil the object of the order of the Court. To consider does not mean to search for a lame excuse and reject the claim. It does not mean to just pass an order and dismiss the claim of the petitioner on flimsy grounds. Therefore, the respondents shall not invent or search some fresh reason or other technical ground and reject the claim of the petitioner when there is a specific direction by this Court to consider the case of the petitioner. The Authorities cannot show the same reason or ground which they had already taken in the earlier proceedings. This amounts to showing disrespect to the orders of the court. The authorities cannot flout the orders of the Court on technical grounds. If at all they require permission of the Government, they must address the Government enclosing the copy of the order of the court or orders of the quasi judicial authorities and the authorities at the government level also should and must take into consideration the directions and observations of the court and purport of those orders. No

authority can disturb the findings or observations of any court. The findings, directions or observations of a court can only be disturbed, varied, modified or set aside by the court, superior to the court which made those findings or directions. Except the superior court, no authority can take a contra view, taken by a court. Rejection of the claim on a ground which they had already taken in the earlier proceedings and which has been already considered and rejected by the Court amounts to nothing but Contempt of Court and disobeying the orders of the Court.

25. In view of the above position of law and in the light of the facts and circumstances of the case, the second respondent has no option but to extend the benefit under the Memorandum of Settlement to the petitioner. But, the second respondent passed an order after initiation of contempt proceedings stating that the case of the petitioner would be considered in the selections to be conducted for employment under Bread Winner Scheme (compassionate grounds) after receipt of the approval of the Government for the MOU arrived on 03.08.2013. As stated above, no permission was required for giving the benefit to the petitioner. If the petitioner is driven to another round of litigation, as contended by the learned Counsel for the respondents, it is a mockery of justice. This Court has to have a holistic view of the matter and should not multiply the litigation. When there is no choice to the respondents to exercise the discretion, except passing an order in a particular manner on the facts of the particular case, the passing of an order deviating and denying the benefit would amount to willful violation of the orders of this Court. This Court cannot dismiss the Contempt Cases on technical pleas when the orders have become final and Contempt Cases are filed alleging non-implementation of such orders. Several opportunities were given to the second respondent to correct his mistake in the present case also and in spite of the same, no effort was made by him nor did wisdom dawn on him. It appears that at a belated stage, an appeal was filed seeking condonation of delay and the fate of such appeal was not known. This Court is a Court of record and vested with the power to punish for contempt under Article 215 of the Constitution of India and in appropriate cases it can travel beyond the provisions of the Contempt of Courts Act.

26. This Court in *Sabza Ali v. M.Raghunandan* considered the decisions of the Supreme Court in *Maniyeri Madhavan v. Inspector of Police, Cannanore*, *In re Vinay Chandra Mishra*, *Anil Ratan Sarkar v. Hiral Ghosh* and *E.T.Sunup v. C.A.N.S.S.Employees Association*, and quoted that even a lackadaisical attitude, which itself may not be deliberate or wilful, have not been held to be a sufficient ground of defence in a contempt proceeding. Obviously, the purpose is to ensure compliance of the orders of the court at the earliest and within stipulated period.

27. Here is a case of a poor lady who wanted compassionate appointment and was denied the same on untenable grounds. If the second respondent has taken into consideration the facts and circumstances of the case and the order passed by this Court, he would have allowed the case of the petitioner. The act of the

second respondent to circumvent the orders should not be encouraged and the decisions relied on by the learned Counsel for the contemnor are not applicable to the facts of the case. Hence, this Court holds that the second respondent is liable for punishment and, accordingly, the second respondent is convicted under the Contempt of Courts Act and punished to pay a fine of Rs.5,000/- (Rupees five thousand only) to the petitioner within four weeks. The payment of fine or the punishment in this case, will not absolve the responsibility of the respondents to comply with the order.

28. The Contempt Case is, accordingly, allowed.