

(2001) 06 GAU CK 0009
In the Gauhati High Court
Case No : Cont. Case (C) No. 2 of 2001

Tripura Agricultural Field Service Grade III Employees Asson. and Another APPELLANT

Vs

Sushil Kumar Karmakar RESPONDENT

Date of Decision : 18-06-2001

Acts Referred:

Constitution of India, 1950 — Article 215
Contempt of Courts (Gauhati High Court) Rules, 1977 — Rule 3
Contempt of Courts Act, 1971 — Section 12

Citation : (2001) 2 GLT 590

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : K.N. Bhattacharjee and S. Chakraborty, for the Appellant; A.G. and U.B. Saha, for the Respondent

Final Decision : Dismissed

Judgement

Ranjan Gogoi, J.—This is an application u/s 12 of the Contempt of Court Act, 1971 read with Rule 3 of the Contempt of Court (Gauhati High Court) Rules, 1979, for initiation of a contempt proceeding against the Respondents for wilful disobedience of the order dated 22.9.2000 passed by this Court in Civil Misc. Appeal No. 350/2000 in W.P. (C) No. 451/2000.

2. The case of the Petitioner, as stated in the contempt petition, inter alia, is that by Memorandum No. F. 6(1) FIN(PC)/98 dated 3.7.2000, the Tripura State Civil Services (Revised pay) Rules, 1999 was amended and in terms of the said amendment the members of the Petitioners' Association were entitled to certain monetary benefits. The said benefits were sought to be withdrawn by the authority on the basis of the Memorandum No. F. 6(1)FIN(PC)/98 dated 11.9.2000. Aggrieved, the Petitioner instituted W.P. (C) No. 451/2000 against the aforementioned Memorandum dated 11.9.2000. This Court by order dated 22.9.2000 issued Rule on the writ application filed and as an interim measure

directed that the operation of the Memorandum No. F. 6(1)-FIN(PC)/98 dated 11.9.2000 shall remain suspended.

The further case of the Petitioner is that after the aforesaid order dated 22.9.2000 was passed by this Court, the Drawing and Disbursing OFFicers of Mohanpur, Sonamura, Bishalgarh, Dukli and Jaranja Agricultural Sub-Divisions have conferred the benefits in terms of the Memorandum dated 3.7.2000 to all eligible persons. However, the members of the Petitioners' Association working in the Teliamura and Khowai Agricultural Sub Divisions have not been conferred the same benefits though they are entitled to the same in terms of the Memorandum dated 3.7.2000.

3. According to the Petitioners, the Deputy Director of Agriculture, West Tripura, the Respondent No. 1, is responsible for implementation of this Court's order dated 22.9.2000 and that the said Respondent has wilfully disobeyed the aforesaid order of this Court. Such disobedience is apparent from the actions of the Respondent in not granting the benefits to the members of the Petitioners Association who are entitled to the same. It is also averred in the contempt petition that a lawyers notice of demand dated 4.12.2000 was submitted to the Respondent stating all relevant facts and asking for compliance with this Court order dated 22.9.2000. The Respondent, therefore, had sufficient notice of the order dated 22.9.2000 passed by this Court. It may be mentioned herein that by order dated 8.3.2000 this Court directed for impleadment of Director of Agriculture as a Respondent to the present proceeding.

4. Both the Respondents have appeared through counsels and filed their respective affidavit. In the affidavit filed on behalf of the Respondent No. 1, Sri Sushil Kumar Karmakar, it has been stated that the Respondent came to know about the order dated 22.9.2000 from the lawyers notice of demand dated 4.12.2000 and immediately thereafter on 6.12.2000, the Respondent No. 1 sought the decision of the Director of Agriculture in the matter. The aforesaid communication dated 6.12.2000 was followed by a reminder dated 18.12.2000. The Respondent No. 1 has also stated in the affidavit filed that as he was not a party to the original writ proceeding, he thought if fit to seek administrative approval from the Director of Agriculture for which purposes the communications dated 6.12.2000 and 18.12.2000 were addressed by him to the Director of Agriculture. Dr. P.K. Paul, Director of Agriculture, Govt, of Tripura, Respondent No. 2 has also filed his affidavit before this Court stating, inter alia, that on receipt of the lawyers notice of demand dated 4.12.2000, he referred the matter to the Government in the Finance Department and in accordance with the order dated 8.3.2000 passed by this Court, a high level meeting was held in the office of the Chief Secretary to the Government of Tripura. In the said meeting, it is stated in the affidavit, a decision was taken that in view of the objections raised by the different employees Associations in the matter of implementation of the Memorandum dated 3.7.2000, the implementation of the said Memorandum be deferred pending a final decision in the matter.

5. In the affidavit filed on behalf of the Respondent No. 2, it is also stated that in the order dated 22.9.2000 passed by this Court there was no specific direction to implement the Memorandum dated 3.7.2000. In any case there was no time bound direction issued by this Court to implement the said Memorandum. Subsequently, an additional affidavit has also been filed on 28.5.2001 stating that by notification bearing No. F. 6(1)-FIM(PC)/98 dated 19.5.2001, the Memorandum dated 3.7.2000 was amended with retrospective effect from 1.4.2000. By virtue of the said amendment, the benefits conferred on the members of the Petitioner's Association by Memorandum dated 3.7.2000 was taken away and the employees concerned would now be entitled to the benefits in terms of the notification dated 19.5.2001.

6. Mr. K.N. Bhattacharjee, learned Sr. counsel appearing on behalf of the Petitioner has submitted that the effect of the order dated passed by this Court is that the Memorandum dated 3.7.2000 became operative immediately and the said Memorandum remained in operation till when the benefits under the said Memorandum dated 3.7.2000 stood withdrawn. The Petitioners were, therefore, entitled to receive the benefits conferred by Memorandum dated 3.7.2000. Mr. Bhattacharjee, learned Sr. counsel has very strenuously contended that the aforesaid position is admitted by the Respondents themselves inasmuch as acting in pursuance of this Court's order dated 22.9.2000 certain Drawing and Disbursing Officers have conferred the benefits to some employees in terms of the Memorandum dated 3.7.2000 whereas in respect of two sub divisions, namely Teliamura and Khowai such benefits have not been granted. Mr. Bhattacharjee submits that time and again this Court in various orders passed in the present proceeding had directed the Respondents to implement this Court order dated 22.9.2000. According to the learned Counsel such directions for implementation of the order dated 22.9.2000 could be translated into action by the Respondents only by payment of the benefits in terms of the Memorandum dated 3.7.2000. The Respondents not having conferred such benefits in respect of the employees of the two sub divisions in question, the said Respondents have committed contempt of court by wilful disobedience of the order dated 22.9.2000.

7. Mr. Bhattacharjee, learned Sr. counsel appearing on behalf of the Respondent Nos. 1 and 2, on the other hand has argued that this Court by order dated 22.9.2000 has not issued any positive directions for payment of any particular scale of pay to the members of the Petitioners Association, neither there is any time limit fixed for such payment. There is no such time limit fixed even under the Memorandum dated 3.7.2000. The subject matter of the present proceeding is in regard to disobedience of this Court's order dated 22.9.2000 and not with regard to non-implementation of the Memorandum dated 3.7.2000. The learned Counsel for the Respondents submits that on the basis of the materials on record, it is not possible to attribute any particular act on the part of the Respondents which can even remotely be understood to have rendered the order dated 22.9.2000 ineffective. Mr. Bhattacharjee has further argued that while it is true that by virtue of the order dated 22.9.2000 passed by this Court, the

Memorandum dated 3.7.2000 become effective, in the absence of any positive order from this Court to give effect to the said Memorandum and that too within a particular time schedule, no wilful violation or disobedience of the order dated 22.9.2000 of this Court is made out. In the absence of any particular time limit for payment of dues in accordance with the Memorandum dated 3.7.2000 either from this Court or in terms of the Memorandum itself, it was always open for the State to reconsider the grant of monetary benefits in terms of the Memorandum in question. Upon such reconsideration, for reasons stated the State has decided to issue the notification dated 19.5.2001 and the said notification dated 19.5.2001 has been given retrospective effect from 1.4.2000. On these premises, learned Counsel argues that no case of contempt is made out against the Respondents.

8. I have considered the rival submissions made by the counsels for the parties. The contempt jurisdiction of this Court either under provisions of the Statute or under Article 215 of the Constitution would be attracted only in cases of wilful disobedience on orders passed by the court. The order dated 22.9.2000 passed by this Court had suspended the operation of the impugned notification dated 11.9.2000. The effect of the aforesaid suspension is that notification dated 3.7.2000 came back into force. In terms of the said Memorandum dated 3.7.2000, the members of the Petitioners' Association were entitled to certain benefits. However, no time limit has been fixed in the Memorandum dated 3.7.2000 for grant of the monetary benefits thereunder. There is also no positive direction from this Court to the authorities to grant the monetary benefits in terms of the Memorandum dated 3.7.2000. In such a situation, it was always open for the authorities of the State to confer such benefits as and when the circumstances permitted. To grant the benefits to some while denying similar benefits to Ors. does not necessarily establish wilful disobedience of the order dated 22.9.2000. In the instant case, it has been stated in the affidavit filed by Respondent No. 2, Director of Agriculture that the matter relating to conferment of benefits in terms of the Memorandum dated 3.7.2000 after the order dated 22.9.2000 was rendered by this Court, was duly considered by a high powered committee. In view of the objections received from different categories of employees it was decided to keep the Memorandum dated 3.7.2000 in abeyance pending a fuller and detailed examination of the entire matter. Such reconsideration during the period of subsistence of the Memorandum cannot be said to be impermissible. Eventually, a decision was taken to withdraw the benefits conferred by Memorandum dated 3.7.2000 to certain sections of the employees of the State particularly the employees represented by the Petitioners' Association and instead to confer certain other benefits. For the said purposes, the notification dated 19.5.2001 was issued with retrospective effect from 1.4.2000. The correctness of the States action as aforesaid is not the subject matter of the present petition. Considering the above and in view of the clear language of the order dated 22.9.2000, this Court is of the considered opinion that the failure on the part of the Respondent Nos. 1 and 2 to confer, on

some of the members of the Petitioners Association, the benefits under the Memorandum dated 3.7.2000 does not amount to wilful disobedience of the order dated 22.9.2000 passed by this Court in Civil Misc. Application No. 350/2000 in W.P. (C) No. 451/2000. At best such actions of the Respondents during the period of subsistence of the Memorandum dated 3.7.2000 may have amounted to actions inconsistent with the said Memorandum but as already held the instant proceeding has not been initiated on account of any failure/refusal to implement the Memorandum dated 3.7.2000. In fact, there is no order or direction whatsoever from this Court for implementation of the said Memorandum dated 3.7.2000.

9. For the foregoing reason, this Court is inclined to take the view that is case of contempt for wilful violation of disobedience of the order dated 22.9.2000 has been made out. The contempt application is, therefore, dismissed but without any order as to costs.