
(2000) 08 GAU CK 0026
In the Gauhati High Court
Case No : Review petition No. 12 of 1999

Tripura Government Pensioner's Association	APPELLANT
Vs	
Shashi Prakash and Another	RESPONDENT

Date of Decision : 11-08-2000

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 55
Constitution of India, 1950 — Article 135, 136, 215
Contempt of Courts Act, 1971 — Section 8C(2)

Citation : (2000) CriLJ 3688 : (2000) 3 GLT 142

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : Mr. D.K. Biswas and Mr. S. Lodh, for the Appellant; Mr. A.G. Tripura, Mr. U.B. Saha and Mr. S. Chakraborty, for the Respondent

Judgement

1. This petition under Rule 6 Chapter 10 of the Gauhati High Court Rules read with Order XLVII, Rule 5 of the CPC has been filed for review of the order dated 14.12.1999 passed by the learned Single Judge in Contempt case No. 17 of 1999 whereby the contempt petition was dropped and closed. Being aggrieved thereby, the petitioner, namely, the Government Pensioners' Association, Tripura has preferred this petition on a number of grounds controverting the manner in which the matter was disposed of. In this Review petition, the petitioner Association has prayed for fresh hearing of the entire contempt petition on merit.

2. The petitioner Association filed Writ Petition No. C.R. 259/95 claiming dearness relief at the rate applicable to the Central Government pensioners. The said petition was preferred in view of insertion of Rule 55-A in the CCS (Pension) Rules which made the pensioners of the State Government eligible for Dearness Relief at the Central rate. The said petition was disposed of on 22.4.1997 with a direction to the State Government to pay pension reliefs to the pensioners at the rate applicable to the Central Government pensioners by eliminating the gap of 42%. The State Government challenged the said order in Writ Appeal No. 330 of 1997. The said appeal was dismissed as not being pressed as because the

learned Advocate General prayed for extension of time for payment of the arrears. The disposal of the appeal on 26-6-1997 set at rest the controversy relating to petitioners' entitlement. The State Government also paid part of the arrears to the pensioners. Since the balance arrears was not paid and the amount payable from month to month was withheld, the Contempt Petition No. COP(C) 32 of 1997 was filed against the Secretary, Finance and Joint Secretary, Finance to the Government of Tripura. The said petition was also disposed of on 4-11-1998 with extension of time for six months to comply with the orders of the Court. This order was passed in view of the explanation submitted by the respondent that they had entertained incorrect interpretation of the direction given by the Court. Since no payment was made within the extended period of six months, the Contempt Petition No. 17 of 1999 was filed. The respondents appeared and pleaded that the Pensioners' Rules have been amended by the state Government by the notification dated 27-10-1998 with retrospective effect and, hence, the order of the Court could not be complied with since the amendment was carried out in exercise of powers under article 309 of the Constitution. The case was thereafter listed on several dates and on 15-11-1999 it was directed to be listed on a date after 15-12-1999. But on a mention by the learned counsel for the respondents, the Court by the order dated 10-12-1999 prepared the date of hearing and fixed it as a first item on 13-12-1999. On that day, the learned counsel for the petitioner Association not being prepared prayed for a short adjournment, but the said prayer was rejected. The learned counsel had to argue the case being unprepared and referred to three reported cases of the Hon'ble Supreme Court and also prayed for further chance to complete his argument on the next day i.e. 14-12-1999. Accordingly, the case was listed on 14-12-1999 at 1-30 pm in the chamber of the learned Single Judge. Despite objection and without further hearing the learned counsel for the petitioner Association, the contempt petition was dropped. The written submission along with an affidavit submitted by them was not entertained as the judgment and order was ready for pronouncement.

3. Affidavit-in-opposition to the prayer for review have been filed by the respondents. It has been pleaded that contempt being a matter between the Court and the contemner, the applicant cannot have any reason of being aggrieved specially when the Court was satisfied that there was no contemptuous violation of the order of the Court. The Jurisdiction of the Court in entertaining a petition for review has also been questioned. The other allegations made in the review petition have also been denied by them.

4. Shri D.K. Biswas, learned counsel for the review applicant argued the case at length and tried to justify the maintainability of the review petition drawing support from the decision of the Apex Court in *M.M. Thomas v. State of Kerala* and another, 2000 AIR SCW 73. According to Shri Biswas, the High Court as a Court of Record, as envisaged in Article 215 of the Constitution, must have inherent powers to correct the records and; as such, the petition could be entertained, considered and appropriate orders passed to correct the mistake

apparent on the face of the record.

5. Shri U.B. Saha, learned counsel for the respondents submitted that power of review is not available in a case where a petition for contempt is dropped. According to him, there is also no provision for appeal in such a situation and the only remedy available to the aggrieved party is to approach the Hon"ble Supreme Court under Article 136 of the Constitution. According to him, there being no error apparent on the face of the record, question of any direction for hearing of the matter afresh does not arise.

6. It appears that the learned Single Judge dropped the contempt proceeding on the ground that so long the notification dated 27.10.1998 issued by the Government amending the adoption order relating to the payment of pension at the Central rate stands, the respondents are not in a position to make payment at the rate as ordered by this Court. According to the learned Single Judge, there is no wilful violation of the order of the Court. Shri Biswas pointed out that the respondents having sought time repeatedly for complying with the orders of the Court cannot be exonerated in the manner as has been done without adjudicating the legal question involved as to whether the amendment of the Rules during pendency of the contempt petition with retrospective effect would be enough to exempt the respondents who had deliberately violated the orders of the Court at certain point of time. Shri Biswas, learned counsel for the petitioner further submitted that the right of the State Government pensioners arising out of Rule 55 A was a right vested in law and the court cannot endorse the manner in which it has been obliterated with utter disregard to the orders passed by this Court. This question, obviously, has not been answered by the learned Single Judge. The petitioner Association may entertain grievance on this count.

7. The limitations inherent in a proceeding under the Contempt of Courts Act are apparent. The right to appeal is available only when punishment is imposed. The Contempt of Court Act, 1971 do not provide for review against an order dismissing the proceeding. In this context, it has to be considered whether the High Court in exercise of its plenary powers under Article 215 of the Constitution can entertain a petition to correct an error apparent on the face of the record. In this connection, Shri Biswas, learned counsel for the petitioner has drawn the attention of the Court to a decision of the Supreme Court in *M.N. Thomas v. State of Kerala* and another, 2000 AIR SCW 73 it would, therefore, be appropriate to read the views of the Supreme Court in their Lordships own words :-

" 13. In this case we are not concerned with the power of review of the Forest Tribunal. It was High Court which reviewed its own judgment and so the question is whether the High Court has such power dehors Section 8C(2) of the Act. Power of review conferred on the Supreme Court under Article 135 of the Constitution is not specifically made applicable to the High Courts. Does it mean that the High Court has no power to correct its own orders, even if the High Court is satisfied

that there is error apparent on the face of the record?

14. High Court as a Court of Record, as envisaged in Article 215 of the Constitution, must have inherent powers to correct the records. A Court of Record envelopes all such powers whose act and proceedings are to be enrolled in a perpetual, memorial and testimony. A Court of Record is undoubtedly a superior Court which is itself competent to determine the scope of its jurisdiction. The High Court, as a Court of Record, has a duty to itself to keep all its records correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it the High Court has not only power but a duty to correct it. The High Court's power in that regards is plenary, in *Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another*, a nine Judge Bench of this Court has recognised the aforesaid superior status of the High Court of plenary jurisdiction being a Court of Record.

15. In Halsbury's Law of England (4th Edn. Vol. 10, para 713) it is stated thus :-

The Chief distinctions between superior and inferior Courts are found in connection with" jurisdiction. Prima facie, no matter is deemed to be beyond the jurisdiction of a superior Court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior Court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular Court. An objection to the jurisdiction of one of the superior Courts of general jurisdiction must shown what other Court has jurisdiction, so as to make it clear that the exercise by the superior Court of its general jurisdiction is unnecessary. The High Court, for example, is a Court of universal jurisdiction and supertintendency in certain classes of actions, and cannot be deprived of its ascendancy by showing that some other Court could have entertained the particular action." (Though the above reference is to English Courts the principle would squarely apply to the superior Courts in India also)."

8. The law as interpreted by the Hon"ble Supreme Court shows that the High Court being a Court being a Court of Record is competent to determine the scope of its jurisdiction and it has a duty to keep all its records correctly in accordance with law. Shri Saha, learned counsel for the State respondents submitted that the petitioners" remedy in the instant case lies in filing a petition before the Apex Court under Article 136 of the Constitution and this being the position, the inherent powers to correct the records under-Article 225 cannot be invoked. Referring to a decision of the Supreme Court in *Om Prakash Jaiswal Vs. D.K. Mittal and Another [OVERRULED]*, Shri Saha argued that a private party may invite the attention of the Court to certain facts as may persuade in initiating proceedings for contempt. Such private party filing an application before the Court does not become a complainant or a petitioner in the proceedings. He is just an informant and his duty ends with the facts being brought to the notice of the Court. He cannot be called an aggrieved party and, as such, this review petition filed by the Government pensioners cannot be entertained under Article 215 of the Constitution.

9. Situated, thus, it has to be examined whether the petitioners have an alternative remedy under provisions of Article 136. It has been held in various decisions that the powers of the Supreme Court under Article 136 are in the nature of special or residuary powers which are exercisable outside the purview of ordinary law and the powers could be invoked where the cause of Justice wants interference by the Supreme Court. It is an exceptional and overriding power and is exercisable sparingly in special and extraordinary situation. The Supreme Court, in its discretion, may allow or reject special leave to appeal. This discretionary power of the Supreme Court cannot be availed of by any party as a matter of right. The powers under Article 136, therefore, cannot be said to be an alternative remedy in law and the provisions thereof cannot be a ground for outright rejection of the prayer of this Review petition.

10. Now, we may advert to the provisions of Article 215. Although the powers of this Court under Article 215 have not been specifically invoked in this petition, yet this Court in search of justice is competent to mould the reliefs and exercise the appropriate powers to do complete justice. In *M.M. Thomas (supra)*, the Supreme Court has in details interpreted the scope and ambit of the power of the High Court under Article 215. The High Court is undoubtedly a superior Court of Record and has the powers to correct errors apparent on the face of record. Besides, in *Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another*, the Supreme Court had held that the High Court being a Court of Record has the powers to determine questions about its own jurisdiction. The decision of the Supreme Court indicates that this Court in an appropriate case, on consideration of the facts peculiar to the said case, may exercise its powers under Article 215 to correct an error apparent on the face of the record.

11. It has been stated hereinbefore that the pensioners of the State Government were declared entitled to Dearness Relief at the Central rate on the basis of Rule 55A inserted by the State Government in the relevant Rule. The judgment of the court attained finality when the Advocate General sought for time before the Division Bench to implement the orders passed by the learned Single Judge. The respondents on receipt of the contempt notice appeared and assured repeatedly that the orders of the Court would be complied with. Their subsequent stand that they are unable to implement the order because of amendment of the Rule was challenged by the petitioner. The core question before this Court was whether the respondents could be exonerated from the consequences of their inaction on the ground that the relevant rule was amended with retrospective effect. This has obviously not been answered. That apart, the legitimate expectation of the pensioners that they would be paid the relief at the Central rate as per the final verdict of the Court has been obliterated in a manner that called for examination in its proper perspective. That has also not been done in the instant case. Their grievance that they have not been given proper hearing is apparent on the face of the record. The case was ordered to be listed after 15.12.1999, but was preponed without notice and the learned counsel for the petitioner had to argue the case on that day without preparation. The case was listed on the next day for

further hearing which was, according to them, eventually not allowed and the order under review was delivered, no doubt, contempt is a matter between the Court and the contemner, yet it is also regarded as an effective weapon to secure compliance of the Courts' order. Without over-emphasising its importance it can be said that contempt proceedings will have to be dealt with utmost care. (It is pertinent to mention here that the element of error is always germane in denial of the reasonable opportunity of being heard). In my opinion, to erase the impression that justice has been denied to the senior citizens at this late stage of their life, it is necessary that they be heard before the respondents are declared exempt. The law is dynamic; it is inventing in its own course the jurisdiction that suits the cause of justice. In the given case, for absence of provision for review in the statute, it would be appropriate to take the aid of Article 215 of the Constitution to uphold the cause of Justice.

12. It is pertinent to mention here that exercise of this plenary power will not in any way be in conflict with any express provision in the Contempt of Courts Act, 1971.

13. I would, therefore, like to hold that this petition in its background for reversal of the impugned order dated 14-12-1999 may be entertained in order to exercise the powers given to this Court by Article 215 of the Constitution.

14. In the result, the impugned order dated 14-12-1999 is hereby recalled in exercise of aforesaid powers and the original Contempt Case No. 17 of 1999 is directed to be heard afresh with due opportunity of hearing to both the parties. Shri. D.K. Biswas, learned counsel for the petitioner submitted that the Government notification dated 27-10-1998 by which the relevant pension rules have been amended retrospectively has been challenged in W.P.(C) No. 62 of 2000. Hence, the Contempt case No. 17 of 99 be listed along with aforesaid W.P. (C) No. 62 of 2000 before the appropriate Bench.

15. With the aforesaid observations and directions, the Review petition stands disposed of.