

(2023) 07 CAT CK 0044

In the Central Administrative Tribunal

Case No : Civil Contempt Application No. 330, 00128 Of 2022 In Original
Application No. 330, 00559 Of 2018

Vineeta Tiwari

APPELLANT

Vs

Anupam Sharma, General Manager, E.C. Railway, Hajipur &
Ors

RESPONDENT

Date of Decision : 20-07-2023

Acts Referred:

Contempt Of Courts Act, 1971 — Section 12

Citation : (2023) 07 CAT CK 0044

Hon'ble Judges : Om Prakash VII, Member (J); Dr. Sanjiv Kumar, Member (A)

Bench : Division Bench

Advocate : Shivani Tiwari, M.K. Sharma, Ajay Kumar Rai

Final Decision : Disposed Of

Judgement

Om Prakash VII, Member (J)

1. The present Contempt Petition is filed against non-compliance of the order dated 08th October 2021 passed in OA No. 330/559/2018. In the aforesaid OA, while disposing the OA, the following directions were given to the respondents:-

"4. On the basis of above discussion, the impugned order of removal of applicant cannot be sustained. It is liable to be quashed. Accordingly, impugned order is quashed. The respondents are directed to treat the applicant in service from the date, he was removed from service and to provide all consequential benefits admissible to him including the arrears with 6% interest within a period of two months from the date of this order ".

2. Learned counsel for the respondent submitted that in compliance of the order dated 08.10.2021 passed in OA No. 330/559/2018, the respondents have filed Writ – A No. 18637 of 2021 before the Hon'ble Allahabad High Court, which is still pending, thus, the present contempt petition may be kept in abeyance till finalization of the aforesaid writ petition. It has been submitted in the compliance

affidavit that the Late Shri S.S. Tiwari (original applicant) was chargesheeted due to violation of Hindu Marriage Act as he had got second marriage during the lifetime of his first wife. It has also been submitted that deceased employee was submitted his family declaration in the office of respondents in the year 1997 in which he has mentioned the name of Smt. Vishnu Devi as his wife, though Smt. Vishnu Devi has not claimed any retiral dues. In compliance of order of the Tribunal, the respondents have issued letter dated 12.05.2023 and sent the same to Smt. Vishnu Devi, Smt. Pushpa Devi and Smt. Vineeta Devi thereby directed to obtain succession certificate from the competent court of law making party to each other so that further proceeding with regard to payment of retiral dues of deceased employee shall be proceeded. Petitioner and Smt. Pushpa Devi have submitted applications before the respondents on 18.4.2023 and 21.4.2023 respectively for grant of family pension and retiral dues. In the aforesaid applications, they are claiming to be the legally wedded wife of the deceased employee. It is also submitted that it is not possible to release dues without obtaining succession certificate from a competent court of law.

3. In rebuttal, learned counsel for the petitioner submitted that during the inquiry proceedings, the alleged complainant Smt. Pushpa Devi was called for by Inquiry officer to submit her evidence but she did not appear nor submitted any documentary evidence which could prove that she was married with the deceased employee. Respondents are asking for succession certificate while it is proved that the applicant is the only legally wedded wife of the deceased employee and as such respondents may be directed to release all the retiral dues to the petitioner.

4. We have heard and considered the arguments of learned counsel for the parties and gone through the material on record.

5. The Contempt of Courts Act, 1971 clearly emphasizes that ingredients of willful disobedience must be there before anyone can be charged for contempt of a civil nature. The Hon'ble Apex Court in *Dinesh Kumar Gupta v. United India Insurance Company Limited*, (2010) 12 SCC 770 has observed that "contempt of a civil nature can be held to have been made out only if there has been a willful disobedience of the order and even though there may be disobedience, yet if the same does not reflect that it has been a conscious and wilful disobedience, a case for contempt cannot be held to have been made out." Similar view had also been taken by the Hon'ble Supreme Court in *Ahmad Ali. Vs. Supdt., District Jail*, 1986 Supp SCC 556 : AIR 1987 SC 1491 wherein it has been observed that "mere unintentional disobedience is not enough to hold anyone guilty of contempt and although disobedience might have been established, absence of willful disobedience on the part of the contemnor, will not hold him guilty unless the contempt involves a degree of fault or misconduct".

6. The Hon'ble Apex Court in the case of *J.S. Parihar Vs. Ganpat Duggar and others* AIR 1997 Supreme Court 113 has held that in compliance of the order of the Court, the preparation of the seniority list may be wrong or may be right or

may not be in conformity with the directions, but that would be a fresh cause of action to avail of the opportunity of judicial review. It is also held that the same cannot be considered to be the willful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. It was also held that Learned Single Judge exercising the jurisdiction to consider the matter on merits in contempt proceedings would not be permissible under Section 12 of the Act.

7. In the case of Shail Raj Kishore, Secretary, Education basic, U.P. Lucknow and others 2004 (3) AWC 2444 the Hon'ble court has held as under:-

"If the applicants feel that the order passed by the opposite party is not in accordance to the intent or desire of the Court or otherwise illegal and arbitrary, the same can only be challenged before the appropriate forum. In various cases, Apex Court has held that the Contempt Court cannot go into the merit of the order. Various grounds raised by the learned counsel for the applicant to submit that the order is bad in law required consideration and adjudication, which can only be done by the appropriate Court and not by this Court."

8. From the perusal of aforesaid compliance affidavits filed by the respondents, it is abundantly clear that respondent are trying to prove their willingness to comply with the order of the Tribunal, therefore, they have filed compliance affidavit. We have perused the order of the Tribunal dated 08.10.2021 passed in OA No. 330/559/2018 whereby respondents were directed to treat the applicant in service from the date, he was removed from service and to provide all consequential benefits. It is also pertinent to mention here that in compliance of order of the Tribunal, respondents have passed an order dated 12.05.2023 whereby petitioner is directed to produce succession certificate issued by competent court of law so that retiral dues of the deceased employee could be released. It is also important to note that there is dispute between two wives. Smt. Pushpa Devi is claiming to be the first wife of deceased employee but from the perusal of family declaration, the name of Smt. Vishnu Devi has been mentioned, thus, respondents have issued a notice to all the claimant, who are claiming the wife of deceased employee and directed to produce succession certificate from the competent court of law making party to each other. Hence, we are of the view that the respondents are willing to comply the order of the Tribunal and they have fully explained the reasons in their compliance affidavits, as such it is in the fitness of thing that petitioner as well as claimant are directed to submit a succession certificate to the respondents and respondents are directed to release the retiral dues and family pension to the person who submits a succession certificate.

11. Considering the above view of the Hon'ble Apex Court and the directions as given hereinabove, where there is no willful disobedience on part of the respondents, they are willing to pay the entire dues to the rightful claimant, thus, CCP is liable to be closed. Accordingly, CCP is closed. Notices issued to the respondents stand discharged. All associated MAs stand disposed of.