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Court : Patna

Decided On : Dec-22-1994

Judge : B.L. Yadav and Aftab Alam, JJ.

Appeal No. : Misc. Jurisdiction Case No. 449 of 1994

Appellant : Mohd. Manwarul Haque and ors.

Respondent : State of Bihar and ors.

Prior history : B.L. Yadav, J. 1. This is an application under Article 215 of the Constitution of India read with Section 12 of the Contempt of Court Act, 1971 (compendiously the Act). The prayer in the application is that Shri Rajani Ranjan Prasad, District Magistrate, Katihar (Respondent No. 2) and Shri Akshaya Kant Mishra, District Panchayat Officer, Katihar (Respondent No. 3) be punished for having deliberately and wilfully disobeyed the order of this Court dated 10th December, 1993 passed in C.W.J.C. No.

Judgement :

B.L. Yadav, J.

1. This is an application under Article 215 of the Constitution of India read with Section 12 of the Contempt of Court Act, 1971 (compendiously the Act). The prayer in the application is that Shri Rajani Ranjan Prasad, District Magistrate, Katihar (Respondent No. 2) and Shri Akshaya Kant Mishra, District Panchayat

Officer, Katihar (Respondent No. 3) be punished for having deliberately and wilfully disobeyed the order of this Court dated 10th December, 1993 passed in C.W.J.C. No. 7513 of 1993.

2. The portrayal of the essential facts are that the applicants were appointed as Dalpatis in their respective Gram Panchayats by the Executive Committee of the Gram Panchayat and their appointments were approved by the District Panchayat Officer, Katihar by exercising his power under Rule 4(1) of the Bihar Panchayat Village Welfare Force Rules, 1949. The applicants were sent for training in Central Training Institute at Ranchi and completed the same and were awarded certificates. The State Government (Respondent No. 1) decided by order dated 24.6.1989 to appoint Dalpatis, on the post of Panchayat Sewak provided a Dalpati was trained matriculate and was within the age limit of 40 years and 43 years for reserved categories. For this purpose a gradation list was prepared with a view to decide seniority of the Dalpatis in the district. The District Panchayat Officer also gave his approval. The District Selection Committee of the Panchayat Sewak was constituted in view of the direction contained in Memo No. 33 dated 13th March, 1992 and it held meeting on 20.10.1992 and selected the applicants and some other candidates to the post of Panchayat Sewak. The candidates selected by the said Committee for the appointment to the post of Panchayat Sewak were already appointed after following the procedure prescribed including the roaster. The District Panchayat Officer was directed by order dated 29.12.1992 to send the applicants in the Panchayat Sewak Institute, Jasidih-Deoghar in pursuance of the meeting of the District Selection Committee of the Panchayat Sewak held on 20.10.1992. In view of this direction and order the applicants joined the Panchayat Sewak Institute, Jasidih-Deoghar on 5.1.1993 and continued to work there satisfactorily till 3.4.1993. An examination was held in the Training Institute and the applicants were successful in that examination and a certificate was awarded to the applicants by the Principal of the Institute on 30.4.1993.

3. Thereafter the applicants joined before the Panchayat Office on 6.4.1993 and submitted their certificates of training but were not posted anywhere and they were not posted anywhere and they were awaiting for their postings. The District Magistrate (Respondent No. 2) vide Memo No. 445 dated 14.6.1993 appointed the

applicants and two others on the post of Panchayat Sewak in different blocks in the District Panchayat Office, Katihar and they continued to serve there to the full satisfaction of authorities concerned and they (except applicant No.1) were paid salary for the month of June, 1993. All of a sudden the Respondent No. 2 passed an order exercising the power of superintendence without any notice or information to the applicants that their posting be cancelled. The order was later on modified that only Ram Nath Paswan and Mansoor Alam who were similarly situate, would continue on their posts and the applicants would not continue on the post of Panchayat Sewak. The District Panchayat Officer by his order dated 23.8.93 directed the recovery of the amount of salary paid to the applicants.

4. The applicants thereafter preferred C.W.J.C. No. 7513 of 1993 before this Court, which was disposed of by a Division Bench of this Court, by order dated 10.12.1993 (Annexure-1 to this application). It was directed that the District Magistrate(Respondent No. 2) would decide and pass an appropriate order, within six weeks, in the matter of posting of the applicants and for the payment of their salary afresh in the light of the direction and observations of this Court dated 18.4.90 in C.W.J.C. No. 14 of 1990 (Annexure-B to the counter-affidavit). The District Magistrate was to decide the matter afresh within six weeks, but so far the District Magistrate has wilfully avoided to decide the matter, in complete disobedience of the order of this Court.

5. Respondent No. 2, instead of deciding the matter within the time specified by this Court, referred the matter of the Director, Panchayati Raj for an appropriate direction in the matter. The Director, however, clarified it by his order dated 1.2.1994 (Annexure-4) that he has nothing to do in the matter and same pertains to the district level. Thereafter, instead of deciding the matter himself the Respondent No. 2 referred the matter to the Government pleader of Katihar by his letter dated 11.2.94 and the latter gave the opinion in favour of the applicants (vide Annexure-5). Respondent No. 2 instead of deciding the matter in view of legal opinion copy of C.W.J.C. No. 14 of 1990 and C.W.J.C. No. 4711 of 1992 and also C.W.J.C. No. 7513 of 1993 (giving rise to the present application for contempt). It was, however, difficult to obtain the original copies of these writ petitions. The matter has not been decided as yet by the District Magistrate.

6. Learned Counsel for the applicants has urged that the Respondent No. 2 wilfully did not comply with the order of this Court and deliberately disobeyed the same and it was a 'Civil-Contempt', as defined under Section 2(b) of the Act, the matter must have been decided within the time specified by this Court.

7. Learned Counsel for the State, on the other hand, contended that the delay was caused on account of so many factors and the District Magistrate required the original copy of those petitions just to remove certain doubts in his mind and he was making a further enquiry, which could not be said wilful disobedience. It was also stated that at least six weeks further time be granted to dispose of the matter and as the District Magistrate has submitted unconditional apology, the same may be accepted. No contempt was made out.

8. Having appreciated the submissions of both sides the moot question for our consideration is whether under the circumstances the contempt was made out and whether apology can be accepted? By the order dated 10.12.93 (Annexure-1) a Division Bench of this Court directed the District Magistrate to decide the matter of posting and salary of the petitioners within six weeks but the same was admittedly not decided within that period. Can it be said to be a wilful disobedience within the meaning of Section 2(b) of the Act. The reply of the District Magistrate is that original copy of those petitions was not received to remove certain doubts in his mind, hence matter could not be decided in time. He has prayed for some more time. He did not wilfully disobey the order. Under these circumstances can it be said that order of this Court was wilfully disobeyed ?

9. Section 2(b) of the Act defines 'Civil Contempt', as wilful disobedience to any judgment, decree, direction, order writ or other process of a Court, or wilful breach of undertaking given to a Court. A bare reading of the aforesaid provision makes it manifest that only wilful disobedience of any order or judgment would constitute a contempt. In case some disobedience has been made, that itself would not be a contempt unless the circumstances justify that it amounts to wilful disobedience. What is to be emphasised is that the meaning of the expression 'wilful' has to be ascertained.

10. The expression 'wilful' neither statutorily defined nor it is judicially interpreted. In such situation the help of dictionary can be taken. The dictionary, however, gives different meanings and out of that only one or two meanings could be relevant for the context in which it is required.

11. Long ago in *Kerr v. Kennedy* (1942) 1 K.B. 409 at page 413 it was held that dictionaries are for consultation in the absence of any judicial guidance or authority. I am reminded what Sir Samuel Johnson, an English Poet, Critic, Essayist and Dictionary Maker has said about the use of dictionaries in following words:

Dictionaries are like watches the worst is better than none, and the best can not be expected to go quite true. Every honest Lexicographer agrees, knowing that no matter how keenly he strives to make his book 'go true', he would inevitably lose the battle with what might be called linguistic indeterminacy since indeterminacy will be the prime fact of his professional life, he will often be tempted to deny and resent, like the grammarians of the 17th and 18th Centuries, the radical instability of languages.

12. In Stroud's Judicial Dictionary the expression 'wilful' means purposely without reference to bone fides, deliberately and intentionally, with evil intention, wantonly or causelessly See *High Wycombe v. Thames Excavators*, 78 L.T. 463.

13. In Black's Law Dictionary (Sixth Edition) the expression 'wilful' means proceeding from a conscious motion of the will, voluntary, knowingly, deliberate, intending the result which actually comes to pass, designed, intentional, purposeful, not accidental or involuntary.

14. In our opinion, in order to constitute Civil Contempt disobedience must be wilful. Under the circumstances of the case, unless the disobedience is intentional or deliberate or purposeful no contempt would be made out.

15. *Ashok Kumar Singh v. State of Bihar* : 1992 CriLJ284 was a case taken to the Supreme Court from this Court. It was observed that in the special leave petition certain directions came to issued by the Court on 7.2.1991. The State of Bihar was

directed that it should carry out the selection process for the retention of the services of those teachers who were qualified at the time of their appointment and that such of the teachers who were found qualified were to be taken back in the employment and were to be given full benefit of continued service irrespective of any break in service on account of termination of the services. The Court had reiterated the directions of the High Court that while making fresh selections the bar of age should not be used against the teachers. The order of the Court applied to untrained teachers for all the categories also. The Commissioner has made an order which is not in conformity with the directions given by this Court and the Division Bench of the High Court. The directions of the Court, in peculiar facts and circumstances of the case arising out of closure of a number of schools for want of teachers provided inter alia that even the untrained teachers were entitled to be selected and appointed not only in the reserved categories but also in the other categories, provided trained teachers are not available and the untrained teachers are otherwise qualified, without putting the bar of age against them.

It was held by the Supreme Court that from the material on record and after hearing learned Counsel for the parties it is not a case in which it can conclusively be said that the respondent have wilfully or deliberately or contemptuously flouted or disobeyed the orders of this Court dated 7.2.1991. It appears to be a case of misinterpretation of the executive directions and order of this Court dated 7.2.1991 and is, therefore, not a fit case in which contempt proceedings need to proceed any further . Thus the contempt proceedings are dropped and discharged the Rule issued against the respondents.

16. In the present case it has to be ascertained as to whether non-compliance of the order of this Court in other words disobediences was intentional, without any justification or deliberate and whether it can be said that disobedience was with evil intention or intentional or not? As the District Magistrate required original copy of those petitions just to remove certain doubts in his mind and he was making a further enquiry to decide the matters as directed by this Court, in our considered opinion it can not be said that he has wilfully disobeyed the order or the judgment of this Court. Obviously, in such matters Civil Contempt as defined under Section 2(b) of the Act is not made out, as the disobedience can not be said to be

deliberate, intentional or purposeful.

17. However, as the District Magistrate himself requires six weeks further time to dispose of the matter as directed by this Court, under the circumstances of the case we grant six weeks time from the date a certified copy of this order is furnished to comply with the directions of this Court. In case within the period of six weeks the order of this Court is not complied with it would certainly amount to wilful disobedience as the District Magistrate himself has required that period of time to comply with the order.

18. We accordingly discharge the notice issued to the respondent No. 2, as no wilful disobedience is proved. However, the District Magistrate is directed to dispose of the matter by a reasoned order as directed by this Court, within six weeks from the date a certified copy of this order is furnished. There shall be no order as to costs.

Aftab Alam, J.

19. I agree.