

Mohandas Vs. Ashokan

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Court : Kerala

Decided On : Jul-07-2005

Reported in : 2005(3)KLT574

Judge : M. Ramachandran and; S. Siri Jagan, JJ.

Acts : [Contempt of Courts Act, 1971](#) - Sections 19; Contempt of Courts (High Court of Kerala) Rules, 1988 - Rule 6

Appeal No. : Cont. APP (C) No. 5 of 2005

Appellant : Mohandas

Respondent : Ashokan

Advocate for Def. : Asok M. Cherian, Adv.

Advocate for Pet/Ap. : K. Ramakumar, Adv.

Disposition : Appeal dismissed

Judgement :

M. Ramachandran, J.

1. The above appeal has been filed under Section 19 of the [Contempt of Courts Act, 1971](#). Objection about the maintainability of the appeal and defect had been noticed by the office. But, by order dated 3-3-2005, this Court had directed that the

appeal to be assigned a number and it is to be posted for hearing.

2. Mr. Asok M. Cherian had taken notice on behalf of the respondent, who is the petitioner in the contempt application. Pointing out that there was violation of the orders passed by this Court dated 6-8-2003 in W.P.(C). No. 21467 of 2003, the petitioner in the writ petition had filed C.C.C. No. 1712 of 2004. The background of the case is as following.

3. In the writ petition, the learned single Judge, by order dated 6-8-2003', had directed that 'If the Corporation does not propose to make appointment to temporary vacancies in accordance with the rules, they have to call candidates from Employment Exchange.' It was further directed that the above will be the rule for appointment to casual, contract or daily wages employment.

4. An appeal had been filed against the interim order. The order had been modified by judgment in W.A. No. 1864 of 2003, on 14-11-2003. The Division Bench had observed:

'We consider it appropriate to observe that the direction given by the learned single Judge, does not cover purely casual employment. It would only be applicable in cases where the vacancy is likely to last for a period of three months or more.'

5. As could be seen from the Memorandum of Charges, the allegation was that the respondent-Managing Director, Kerala State Warehousing Corporation has committed and continue to commit the act of willful disobedience of the orders of this Court in Writ Petition (Civil) No. 21467 of 2003 (Annexure-A1), as stands modified by the judgment in Writ Appeal No. 1864 of 2003 (Annexure-A2) and thus committed the civil contempt.

6. The respondent had entered appearance and a counter affidavit also had been filed. A preliminary objection had been raised before the learned single Judge, when the contempt case was posted, to the effect that the application was not maintainable, as what was complained of was a violation of a Division Bench judgment. The learned Judge had however held that the contempt case could have

been placed before the single Judge as well as before the Division Bench, as violation of orders of the single Judge also had been alleged. Since a single Judge is not authorised to attend to final hearing of a contempt case, but could have held only a preliminary enquiry, the objection was technical, as the natural course would have been only a reference, in case it was found that a prima facie case had been made out.

7. The learned Judge had noticed that retention of employees appointed beyond three month period would have violated Annexure-A1 order [order of single Judge]. According to him, Annexure A-1 order cover all appointments, whether they are on daily, contract or regular basis. Therefore, if persons continue beyond a period of three months, there was violation of Annexure-A1 order, even as modified by Annexure-A2 judgment. The Judge was of the view that a prima facie case had been made out and the matter was referred to be heard by a Division Bench. It had been posted for hearing, along with this appeal.

8. The Contempt Appeal had been placed for orders of the Honourable the Chief Justice, and by order dated 09-06-2005, the appeal is directed to be listed before a Division Bench dealing With contempt matters. The maintainability and justifiability of the reference is therefore to be examined and the contempt proceedings will have to depend upon the decision in this appeal.

9. As referred to earlier, the present appeal is filed against the reference order, challenging that part of the order, holding that the C.C.C is maintainable. Under Section 19 of the Contempt of Courts Act, an appeal shall lie as of right from any order or decision of High Court to a Bench of not less than two Judges, of course where the order or decision is that of a single Judge. It is widely worded and we are of opinion that the appeal is to be considered as maintainable.

10. However, the further submission of the learned counsel for the appellant on the validity of the reference order, do not appear to be acceptable. The Rules framed by the High Court refers to a preliminary hearing by an appropriate Bench in the matter of a contempt of court case. We are not advertng at all to criminal contempt matters. Rule 6 postulates that every proceeding for contempt shall be dealt with by a Bench of not less than two Judges. However, when civil contempt

is alleged in respect of proceedings of a single Judge, the matter has to be posted before the same Judge, who is to hold a preliminary enquiry in the matter. If a prima facie case is made out and if apology is not forthcoming and accepted, the matter has to be posted before a Bench dealing with contempt matters. This alone has happened here. Therefore, there does not appear to be any procedural irregularity and more importantly this may not cause prejudice to the respondent, as by an order of reference and by follow up proceedings, the issue has come up before a Division Bench, who alone are authorised to consider it on merit.

11. The contention of Mr. Ramakumar is that as the order of the learned Judge has merged with the appellate judgment, the single Judge should not at all have dealt with the issue. Mr. Asok M. Cherian points out that the Division Bench order has not upset the order of the single Judge, but has dealt with only a part of the order, more by way of a clarification. Therefore, when the petitioner alleges that the order of the learned single Judge also is simultaneously violated, the matter necessarily had to be posted before him. That is the correct procedure to be followed. Indisputably, cases which are governed by the second proviso to Rule 6, are to go to the single Judge, who had passed the orders, in the first instance. This alone had been followed. Such a restriction is not there in respect of orders which are passed by a Division Bench. The appeal is to be posted before Division Bench, and the Rule does not insist that it should be placed before the same Bench or Judges.

12. Even if the rules are not comprehensive enough to cover all possible situations, they take note of the minimum requirements of procedure. We are satisfied that the appeal has no merit.

It is dismissed.