

V.G. Nigam and Others

Vs

Kedar Nath Gupta and Another

Civil Appeal No. 3930 of 1992

(S. R. Pandian, R. M. Sahai JJ)

24.09.1992

JUDGEMENT

R.M. SAHAI, J.:-

1. The only question is if the Madhya Pradesh State Administrative Tribunal (MPSAT) was justified in sentencing the appellants for contempt of Court not for not complying with the order passed by it within extended time granted by the tribunal itself but for failure to carry out its directions faithfully and in the letter and spirit the tribunal expected of them.

2. Reason for sentencing each of the appellant, in words of Tribunal was,

"Respondent No. (sic) is the Principal Secretary of the Department and was expected to exhibit more zeal and enthusiasm in carrying out the directions of the Tribunal. Even though he was not party to the DPC yet he could implement the Tribunal's order on other courts. He did not explain the delay in calling the special DPC. He also failed to direct his office to place all the relevant service records of the applicants and his juniors who were impleaded as respondents in the original application. He took no steps for cancellation of their promotions or even for regularisation of their promotions. Taking into consideration all these omissions and commissions by him. We are of the opinion that he should be sentenced to pay fine of Rs. 500/-. Respondent No. 2 actively participated in the DPC. In the DPC proceedings, we noticed features which do not support his claim of faithful and sincere compliance of the Tribunal's order. We therefore imposed a fine of Rs. 500/- on him. Respondent No.4 by virtue of illegal promotions in his favour continuing on the chair had been responsible for the outcome of contempt of this petition. We sentence him to a fine of Rs. 500/-."

3. A little background appears necessary to be narrated. On 12-9-1989 a petition filed by respondent, an Assistant Director-cum - Project Officer in the Tribunal Welfare Department assailing his supersession and denial of promotion to the post of Deputy Director was allowed and following directions were issued:-

"(i) ACRs communicated after a great deal of delay should be deemed to be non-existing.

(ii) As the advance character roles are not in existence, the case of confirmation be considered within 3 months of the receipt of the orders. (iii) Since the adverse

remarks have been treated to be not existing a special DPC should meet to consider the case of promotion within 6 months of the date of order as in April 1973; for promotion from the rank of Assistant Director/ PO to the post of Deputy Director.

(iv) A special DPC should meet to consider all the cases of the applicant for promotion on the basis of our order with regard to adverse remarks and this DPC should consider the position in the respective years."

But the department instead of complying with the directions, approached this Court by way of special leave petition which was dismissed on 2nd April 1990. The DPC was summoned thereafter in June 1990. It recommended:-

"(i) The petitioner be confirmed on the post of District Organizer w.e.f. 1-4-1970 (Ann. R-IV).

(ii) The case of the petitioner was considered as on 28-4-73, 13-6-78 and 31-7-84 and was found fit to be promoted to the post of Deputy Director as on 31-7-1984 only."

While recommending the petitioner's case as on 31-7-1984 the DPC also made the following observations :-

(i) The recommendation is subject to the condition that the department certifies the petitioner's integrity beyond doubt.

(ii) The Department has also to implement the recommendations following the procedure of opening the sealed cover as per rules on the date of final orders in the existing departmental enquiries."

4. Since there was delay in summoning the DPC and even the recommendations did not appear to be in compliance with the order of the Tribunal the respondent invoked contempt jurisdiction of the Tribunal which found that the department was not justified in delaying the summoning of DPC merely because it had filed the Special Leave Petition in this Court specially when the advice of the learned Advocate General was to the contrary. The Tribunal further held that once directions were issued by it to consider the claim of respondent for promotion in July 1984 any further proceeding against him after that date could not stand in his way. Nor was there any justification on part of the department, according to the Tribunal, to refer the recommendation of the DPC to the DAG of the Government. And pendency of any departmental inquiry could not operate as a bar to the issuance of the promotion order as observed by the Tribunal in its main order. On these findings the Tribunal was of opinion that the appellants were guilty of contempt but it did not take any action and instead of imposing any punishment it directed.

"However, before taking any decision we would still give one more opportunity to the respondents to comply with the Tribunal's order timely, faithfully and sincerely in all letters and spirit within a period of one month from today and report compliance on 31-8-1991."

5. It is undisputed that the order was implemented within the time granted by the Tribunal. But the respondent once again approached the Tribunal in its contempt jurisdiction before which the appellants tendered unqualified apology and explained that respondent had been granted promotion as Deputy Director as directed by the Tribunal with effect from 1st July 1984 and his promotion to

the post of Joint Director was already recommended to the Public Service Commission. The Tribunal however found after examining the record of DPC produced before it that the conclusions of the DPC were illegal and revealed intentional down grading of the respondent. It also found that the appellants did not convene special DPC to consider further promotions to the post of Joint Director and Additional Director which was causing harm to the respondent. Consequently, the Tribunal was of the opinion that the appellants failed to carry out the directions in the letter and spirit of the order. During pendency of the petition, in this Court the respondent filed counter affidavit and claimed that the appellants have not complied with any of the orders of the Tribunal, therefore the petition was liable to be dismissed. On 21st July 1992, this Court permitted the respondent to point out any further hardship to the department as it was claimed on behalf of the appellants that the respondent had already been promoted as Joint Director. In compliance with the order the learned counsel for State of Madhya Pradesh appears to have written a letter to the Government in reply of which a letter sent by the Government has been produced. Apart from various details it is stated that the respondent was appointed as Project Administrative Tribunal Development Officer on 27th May 1992 which post is equivalent to Joint Director but the respondent has filed a petition against the order before the MPSAT which granted stay and directed respondent to make representation to the Government.

6. Since the respondent has approached the Tribunal against his appointment to an alleged equivalent post, we do not propose to express any opinion on it. As regards the order of the Tribunal sentencing the appellants for not complying with the order in 'letter and spirit' while depreciating the practice or any attempt to ignore or by-pass the order passed by courts or Tribunals it would be too hazardous to sentence in exercise of contempt jurisdiction on mere probabilities. The wilful conduct is the primary and basic ingredient of such an offence. We do not propose to express any opinion on the effect of filing of Special Leave Petition in this Court. Nor we express any opinion if the appellants were guilty in contempt for non summoning of DPC for promoting to the post of Joint Director or Additional Director. But we are satisfied that the Tribunal having not taken any action on earlier occasion and granted one more opportunity to the appellants to implement the order and that having been done the facts and circumstances did not justify the sentence awarded to the appellants. We hasten to clarify that we may not be understood as saying that if the DPC has not followed the directions of the Court or the Tribunal its orders are not liable to scrutiny. Since we are not laying down or declaring any law and deciding the validity of the order on facts of case we do not consider it necessary to say any further.

7. In the result this appeal succeeds and is allowed. The order sentencing the appellants to pay fine is set aside. The fine, if paid, shall be refunded to the appellants.

Appeal allowed.

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