

SUPREME COURT OF INDIA

Gurminder Singh Kang

Vs.

Shiv Prasad Singh

C.A.No.8819 of 2012

(T.S.Thakur and Fakkir Mohamed Ibrahim Kalifulla JJ.)

07.12.2012

JUDGMENT

FAKKIR MOHAMED IBRAHIM KALIFULLA, J.

1. Leave granted.

2. This civil appeal arises out of the order dated 22.3.2004 passed by the High Court of Judicature at Patna in CWJC No.9019/2003 by which the appellant herein was found guilty of contempt of its order dated 21.8.1995 passed in CWJC No.4369/1994. While convicting him for contempt, the learned Judge imposed simple imprisonment of two months apart from a fine of Rs.2000/-. The order was, however, suspended for a period of four weeks to enable the appellant to approach this Court. Notice was issued by this Court in the Special Leave Petition on 15.4.2004 and the impugned order of the High Court was also stayed.

3. At the very outset, it is pertinent to mention that this Court by order dated 11.09.2009 dismissed the Special Leave Petition as against respondent No.1 as the petitioner failed to file application for substituted service in regard to respondent No.1.

4. We heard learned counsel for the appellant as well as learned counsel for the respondent. We have also perused the order impugned in this appeal. To briefly state the facts, one Shiv Prasad Singh who was In-charge Block Supply Officer of Aurangabad was dismissed from service in the year 1977 on charges of bribery, by the Commissioner, South Chhotanagpur Division, Ranchi. Subsequently,

considering his representation, he was reappointed by memo No.1471 dated 28.2.1980. While reappointing him, the said order mentioned that Shri Shiv Prasad Singh would get the basic starting pay of Rs.296/- and will not be entitled for any future promotions. The said order became final and Shiv Prasad Singh was reappointed as per order dated 28.2.1980. The said Shiv Prasad Singh filed CWJC 4369 of 1994 wherein he prayed for a direction to accord time bound promotion as per the State Government's scheme. Irrespective of the specific directions contained in reappointment order dated 28.2.1980, the said writ petition was disposed of by order dated 21.8.95. The said order was to the following effect:-

“It is no doubt that the order as contained in annexure ‘1’ was passed in the year 1980 and the petitioner did not assail the same in any Court of law since then, but in my opinion when the Government introduced the scheme of time bound promotion, he can not be denied the benefit arising therefrom only on account of the impugned order (annexure 1) if he is otherwise eligible and found suitable. However, it has rightly been pointed out by the learned standing counsel that as the representation of the petitioner is still pending before the Commissioner, Food and Civil Supply, Govt. of Bihar (respondent No.2) be directed to dispose of the same.

Accordingly, after having heard the learned counsel for the parties, the writ application is disposed of with the direction to the Commissioner, Food and Civil Supplies, Government of Bihar (respondent N0.2) to dispose of the representation of the petitioner by a reasoned order within three months from the date of receipt/production of a copy of this order, the certified copy of which shall be produced along with the copy of the said representation before respondent No.2 by the petitioner within two weeks.”

5. Pursuant to the said order Shiv Prasad Singh was granted first time bound promotion from 01.04.1981 and second time bound promotion from 09.09.92. His salary was fixed in the revised scale of Rs.5500-9000. The appellant herein by his order dated 25.7.2003 in his capacity as the Commissioner Food and Supplies and Commerce, Government of Bihar held that the grant of time bound promotion one on 01.04.1981 and other on 09.09.1992 were in contravention of the conditions contained in the reappointment order dated 28.2.1980 and so saying cancelled the said promotions. The salary was also fixed in the pre-revised scale of Rs.296/-. The corresponding revised scale was stated to be Rs.5000-8000/-.

6. Consequent to the said orders dated 25.7.2003 necessary orders revising salary in the lowest scale of Rs.5000-8000/- was fixed from 01.01.1996 and the excess payment was also directed to be recovered from him. Aggrieved by the order dated 25.7.2003, the said Shiv Prasad Singh filed a writ petition namely, CWJC No. 9019 of 2003. While examining the grievances in the Writ Petition of Shiv Prasad Singh the learned Judge of the Patna High Court took the view that the order passed by the appellant dated 25.7.2003 was in violation of the specific orders passed in CWJC 4369 of 1994 dated 21.8.1995 and directed the appellant to show cause why he should not be punished for contempt. Thereafter, the appellant stated to have filed his reply and not being satisfied with the stand taken by the appellant, the learned Judge concluded that the conduct of the appellant in having passed the order dated 25.7.2003 was in violation of the order dated 21.8.1995 and, therefore, the said conduct of the appellant amounted to contempt of the order of the Court. On the above said basis, the learned Judge ultimately imposed the punishment of two months' simple imprisonment apart from payment of fine of Rs.2000/-.

7. We heard Mr. Anurag Kumar, learned counsel for the appellant who strenuously contended that the appellant could not understand the implication of the order dated 21.8.95 in the proper perspective when he passed the order dated 25.7.2003 and that in any event since he has tendered an unconditional apology he should be dealt with leniently.

8. While entertaining this appeal, the appellant was directed to be present in Court. Accordingly, he also appeared before us on 8.10.12. It was submitted before us by the learned counsel for the appellant that the appellant retired as Chief Secretary of State of Bihar and that he regrets for whatever had happened in passing the order dated 25.7.2003 and that he did not intend to violate the orders of the Court. The learned counsel, therefore, contended that considering the age of the contemnor and having regard to the remorse conduct displayed, he may be dealt with leniently.

9. Having perused the order of the learned Single Judge who has considered the matter in extenso, we find that the conclusions of the learned Judge in having held that the stand of the appellant that he was not able to understand the spirit of the order in the proper perspective cannot be accepted, was well justified. The appellant was a senior IAS officer and it was found that he had nearly 30 years of experience as an officer in the administrative service. When we peruse order dated 21.8.95, we find that the High Court, though was conscious of the conditions contained in the reappointment order dated 28.2.80, took the view that irrespective

of the said condition, namely, that the order of reappointment was subject to the condition that Shiv Prasad Singh would not be entitled for any promotions, however, found that having regard to the time bound promotions provided for under separate schemes announced by the State Government, any such condition in the order dated 28.2.80 would not operate against the detriment of the said employee, namely, Shiv Prasad Singh. That such conclusion has been clearly set out in the order which has been extracted by us in the earlier part of this order. It was with that specific observation the authority concerned, namely, the Commissioner, Food and Civil Supply of Government of Bihar was directed to dispose of the employee's representation by reasoned order by fixing a time limit. The order dated 21.8.95 had also become final and conclusive. Pursuant to the said order when the then Commissioner Food and Civil Supplies Government of Bihar passed orders, granting the first time bound promotion from 1.4.81 and second time bound promotion from 9.9.92 and by fixing the salary of the employee concerned in the proper scale, even assuming the appellant who was stated to have been subsequently posted as Commissioner of Food and Civil Supplies had any doubt as to the nature of the order passed on 21.8.95, he should have taken the Royal Road of approaching the High Court and sought for proper clarifications instead of taking his own decision to reverse the orders granting time bound promotions to the peril of the employee and that too without even referring to the order dated 21.8.95. Even thereafter when the said employee filed the present Writ Petition in CWJC No.9019 of 2003, the appellant ought to have rectified his mistake and restored the benefits of time bound promotions granted in favour of the employee concerned and thereby displayed his remorse conduct by complying with the directions of the High Court.

10. The order of the learned Single Judge impugned in this appeal discloses that instead of displaying such fair conduct before the Court, he appeared to have attempted to justify his action by resorting to an escape route and stated to have offered his regret and unconditional apology as a last resort to pardon him from being punished for any contempt action. Orders and judgments of the Court are meant to be obeyed and not to be disobeyed, with impunity. Of late, we come across several such instances, where high level officers of the Administration display scant regard for the orders of the Court and always come forward with lame excuses. The case on hand is one such instance where the appellant who was a senior level I.A.S. Officer with not less than 30 years of experience in the State Administration came forward with a lame and flippant statement that he did not understand the implication of the order of the High Court which led him to pass

such orders in total derogation of the directions contained in the orders of the High Court.

11. In the light of the above conclusion of ours, on going through the orders impugned in this appeal, we do not find any scope to interfere with the order of the learned Single Judge. Before us the learned counsel stated that the appellant has retired from service and while appearing before us the learned counsel submitted that the appellant expresses his deep regrets and sincere apologies without any reservation for whatever conduct displayed by him in the matter of non-compliance of the orders of the High Court dated 21.8.95.

12. We, therefore, hold that the orders impugned in this appeal in having concluded that the appellant committed contempt of its order dated 21.08.95 does not call for interference. We, however, take into account the age of the appellant as well as the remorse conduct now displayed before us, as submitted by learned counsel appearing for the appellant, we are of the view that the simple imprisonment of two months alone need not be retained. We, however, impose a “stern warning” to be recorded as against the appellant apart from confirming the imposition of fine of Rs.2000/- to be paid as per the order of the learned Judge impugned in this appeal. We further direct that the said fine amount of Rs.2000/- shall be paid, as directed by the learned Judge, within four weeks from the date of receipt of copy of this order. Failing compliance of the said condition, the sentence of simple imprisonment of two months shall stand revived. With the above directions, this appeal stands disposed of.