

**SUPREME COURT OF INDIA**

Gauri Shankar Pd Rai

Vs.

Sajal Chakroborty Cheif Secy., Govt. of Jharkhand

C.A.No.4831 of 2014

(V.Gopala Gowda and C.Nagappan JJ.)

09.04.2015

**ORDER**

**V.GOPALA GOWDA, J.**

The above said group of contempt petitions are filed by the complainant-petitioners requesting this Court to initiate the contempt proceedings against the respondents for their alleged disobedience in not complying with the direction issued by this Court in the judgment dated 23.04.2014 passed in Civil Appeal No.4809 of 2014 along with other batch of Civil Appeals, the operative portion of the order passed in the above Appeals reads thus:

"...We accordingly direct the appellants to implement the orders of the Division Bench of the High Court thereby continuing the respondents in their services and extend all benefits as have been granted by it in the impugned judgment."

Contempt Petition No. 350 of 2014 in C.A. No. 4809 of 2014 was first taken up on 11.8.2014, when this Court ordered the issuance of notice. Subsequently, the other connected contempt petitions were also listed along with the main contempt petition No.421 of 2014 in C.A. No. 4831 of 2014. The respondents appeared through their counsel who sought time to comply with the order and filed their counter affidavit.

Vide letter No. R.C. D-01-CC-12/2011/7030(S), the Government of Jharkhand, Road Construction Department, issued a Notification dated 15.09.2014 to one of the complainants, the relevant portion of which reads thus: "In compliance of the

order dated 23.04.2014 of the Hon'ble Supreme Court in Civil Appeal No. 4809 of 2014 @ SLP (C)No. 266 of 2012, State of Jharkhand & Ors. Vs. Kamal Prasad & Ors., the cabinet's sanction has been obtained in the meeting dated 11.09.2014 and vide departmental resolution No. 6977 (S) WE, dated 15.09.2014, services of Shri Paras Kumar as Assistant Engineer on ad-hoc basis, are hereby regularised from his date of joining i.e. 27.06.1987.

By order of Governor of Jharkhand Sd/-

Principal Secretary to the Government 15.09.2014 Similar notifications were also issued to all the other complainants. The complainants, on being aggrieved by the partial compliance of the judgment and order of this Court dated 23.4.2014, have filed these contempt petitions and produced the Notifications sent by the respondents along with the affidavits. Mr. J.P. Cama, the learned senior counsel on behalf of the complainants, has submitted that the respondents have not fully complied with the judgment and order of this Court dated 23.04.2014 and therefore, they have wilfully disobeyed the order, which warrants further proceedings against them. We have heard him as well as Mr.P.P. Rao, the learned senior counsel appearing on behalf of the respondents.

The learned senior counsel on behalf of the complainants has invited our attention to the averments made in the writ petitions filed by the complainants before the High Court of Jharkhand along with the prayer made by them under clause 'C' of the writ petition No. 2087 of 2010, wherein the complainants have prayed before the High Court for the regularisation of their services on the said posts in terms with the conscious policy decision taken by the Notification No. 10113(s) dated 11.09.2009 by the Cadre Controlling State of Bihar. The contents of the same read thus: "(C) Further for direction upon the respondents to treat the petitioners equally to that of similarly situated 120 persons appointed along with the petitioners who fortuously remained working in the territory of successor State of Bihar w.e.f. 15.11.2000 and are still working without any disturbance and accordingly to consider the petitioners for regularization along with them in terms with the conscious policy decision taken vide notification no. 10113 (s) dated 11.09.2009 by the Cadre Controlling State of Bihar and in pursuance thereof, the petitioners have also applied for the same and which is in active considerations."

He has further placed strong reliance upon the judgment and order of the learned single Judge as well as the Division Bench of the High Court in support of his contention that the regularisation of the services of the complainants was sought even in relation to the posts of Junior Engineers and averments have been made to

that effect in the writ petitions. He has further adverted to the Division Bench judgment of the High Court wherein it is stated that the complainants have rendered 30 years of service both in the State Government of Bihar and Jharkhand. The learned senior counsel has placed reliance upon certain paragraphs from the aforesaid judgment, which read thus:

"25.....These persons continued in service for almost 30 years by the State Government (Bihar and Jharkhand both) not under any stay order passed by any Court and these employees, after 30 years of their service how can be rendered jobless when not only their life but life of their entire family is dependent upon this job. It is submitted that these employees should compete with other eligible persons and may get the job and in some of the cases Courts directed and the State Governments relaxed the age."

x x x x x x

29.....At the cost of the repetition we may mention here that the writ petitioners' eligibility at the time of appointment is not in question nor the conduct of these writ petitioners was questioned for more than 25 years by the State Government then simply because that there is some indication in the order that competent authorities may pass any order in relation to the services of the writ petitioners, the State Government proceeded to issue show-cause notice and then passed the order of termination of services of these employees, which cannot be justified.

30. The contention of the learned Advocate General that the show-cause notice is not without jurisdiction or it is not passed by the authority having no power are absolutely misplaced arguments in as much as that the State wanted to take a decision to dispense with the services of the writ petitioners then the State should have applied its mind and should have looked into all aspects including why their services are sought to be terminated/dispensed with after 30 years of their services from the time of their appointment on the post of Junior Engineers and why their services cannot be regularized and who has created this irrevertible situation?"

He has further contended that with regard to certain factual and legal aspects urged, the Division Bench of the High Court at para 33 of its judgment has passed the following order:

"33. In view of the reasons mentioned above, the LPA is allowed and impugned order dated 25.07.2011 is set aside. Interlocutory Application No. 3223/2011 is allowed and the order of termination of services of the writ petitioners and the show-cause notice are quashed and the petitioners shall be entitled to all the consequential benefits also."

The same was sought to be justified by the complainants' senior counsel in the Civil Appeal No.4809 of 2014, which relevant aspects have been referred to in the judgment dated 23.04.2014 passed by this Court at paras 4 and 6, which read thus:..

"4. The respondent-employees (the writ petitioners before the High Court), were initially appointed in the year 1981 in the posts of Junior Engineers in the Rural Development Department in the erstwhile State of Bihar in respect of which the recommendation of the Bihar Public Service Commission (for short "the BPSC") was not required. It is the case of the respondent employees that they have continuously discharged their duties in the above posts honestly and diligently to the satisfaction of their employer. They were subsequently appointed on ad-hoc temporary basis as Assistant Engineers in the pay-scales of Rs. 1000-50-1700/- P.Ro-10-1820/-, with certain conditions on the basis of recommendation made by the BPSC against temporary posts from the date of notification. Their services as Assistant Engineers on ad-hoc basis were entrusted to work in the Road Construction Department where they were required to contribute their work within the stipulated period. The relevant condition No. 2 in the said notification No. Work/G/1-402/87,248/(S) Patna dated 27.6.1987 is extracted hereunder:- "1. XXX XXX XXX

2. This ad-hoc appointment shall be dependent on approval of Bihar Public Service Commission.

3. XXX XXX XXX ....."

It is their further case that they have been working in the said posts for more than 29 years from the date of first appointment as Junior Engineers and 23 years from the appointment in the posts of Assistant Engineers on ad-hoc basis. Neither the BPSC nor Bihar State Government nor Jharkhand State Government had intention to dispense with the services of these employees. Therefore, they did not take steps to dispense with their services from their posts. The employees approached the High Court when they were issued the show cause notices dated 20.4.2010 by the appellant No.3. After taking substantial work from the respondent-employees they

have been harassed by issuing show cause notices asking them to show cause as to why their services should not be terminated on the ground of their appointment to the posts as illegal/invalid. Their appointments were, however, not held to be invalid either by the orders of the High Court or Supreme Court in spite of the fact that 199 posts filled up by advertisement No.128/1996 issued by the BPSC dated 2.9.1996 as the same would not affect the respondent-employees who otherwise have been in continuous service for more than 23 years in the substantial posts of Road Construction Department and not of Rural Engineering/Rural Works Department. Therefore, it was pleaded by them that the impugned notices issued to them was an empty formality with preconceived decision and the same is also not only discriminatory but also suffers from legal mala fides, arbitrariness, unreasonableness and is in utter transgression of the interim order dated 22.3.2010 passed in W.P. (S) No. 1001 of 2010 amounting to overreaching the majesty of the High Court.

6. Further, direction was sought by the respondent employees from the High Court in the Writ Petitions to treat them equally at par with similarly situated 120 persons appointed along with them who fortuitously remained working in the territory of successor State of Bihar namely, after the Jharkhand State was formed w.e.f. 15.11.2000 without any disturbance and consider their claim for regularization along with them in terms with the conscious Policy decision taken by it vide notification No. 10113(s) dated 11.09.2009 by the Cadre Controlling State of Bihar and in pursuance thereof the respondent-employees have also applied for the same and which is in active consideration of the State of Jharkhand and further they sought for issuance of a writ of prohibition restraining the appellants from termination of their services from their posts in pursuance of the impugned show cause notices as they had seriously apprehended in the light of pre- decisive and prejudicial findings and reasons recorded in the impugned notices in the garb of order dated 22.3.2010 passed in W.P.(S) No. 1001 of 2010, that their services might be terminated. However, the fact remains that they are discharging their regular service to the appellants (although their posts are termed as ad-hoc in nomenclature) for more than 29 years from the initial appointment as Junior Engineers since the year 1981 after following due procedure of Advertisement etc. and their services have been upgraded to the posts of Assistant Engineer again on temporary basis in 1987 pursuant to Cabinet decision of the erstwhile State of Bihar Government with the permission of BPSC who had recognized their qualification of degree and experience. Therefore, their appointment to the posts is legal and valid from their date of inception of their original appointment as Junior Engineers in the erstwhile State Government of Bihar stating that the appellants have been discharging their regular services in the respondent State although they

treated them as ad hoc regular service in the respondent state their posts are termed as ad hoc in nomenclature for more than 29 years from the initial appointment as Junior Engineers since the year 1981 and after following the procedure of advertisement etc. and their services have been upgraded to the posts of Assistant Engineers (Civil) again on temporary basis in 1987 pursuant to the Cabinet decision of the erstwhile Bihar Government the Bihar Public Service Commission (BPSC) which recognised their qualification of their experience....."

After noting the aforesaid relevant facts, as has been urged in the writ petition proceedings and civil appeals before this Court, this Court has passed the judgment and order dated 23.04.2014, the operative portion of which is extracted above, in which the relief as prayed by the complainants was granted accordingly by this Court.

Therefore, the learned senior counsel for the complainants has submitted that the purport of the judgments and orders of the High Court and this Court are that the complainants are entitled for regularisation in their posts from 1981, i.e. from the date they have been appointed as Junior Engineers in the Department of the State Government of Jharkhand and the said posts of the complainants have been upgraded to Assistant Engineers by giving them promotion, pursuant to the Cabinet decision. Therefore, he has prayed that they are entitled for regularisation in their posts from 1981, i.e. from the year they were initially appointed to the said posts and not from 1987 as has been notified to them by the respondents in the above mentioned Notification as the same does not amount to full compliance of this Court's direction issued in the judgment and order as has been submitted by the learned senior counsel for the complainants. Therefore, he has urged that there has not been full compliance of the operative portion of the judgment and order of this Court.

On the other hand, Mr. P.P. Rao, the learned senior counsel for the respondents has sought to justify the compliance affidavit and the Notifications produced along with the affidavit by contending that the direction given by the High Court and this Court in the operative portion of the orders is that regularisation of the complainants' services in the posts of Assistant Engineers must be done by the respondents and the same has been complied with by them. He has further contended that there is neither any specific prayer nor any direction in the judgment of the single Judge or the Division Bench of the High Court directing the respondents to regularise their services to the posts of Junior Engineers from the year 1981. In the absence of the same, it cannot be said that there is a wilful disobedience on the part of the respondents on which these contempt proceedings

could be initiated against them. In support of this contention he has placed strong reliance upon the judgments of this Court, wherein this Court has laid down the law that the contempt proceedings can be maintained and proceedings can be initiated against the respondents by the complainants only when there is a wilful disobedience of the judgement and order by them. In support of the above legal submissions he has placed reliance upon the decision of this Court in the case of All India Anna Dravida Munnetra Kazhagam vs. L.K. Tripathi and Ors.[1], wherein this Court has held thus:

"64. In *Kapildeo Prasad Sah and Ors. v. State of Bihar and Ors.* : (1999) 7 SC 569, the Court outlined the object of its contempt jurisdiction in the following words:

"9. For holding the respondents to have committed contempt, civil contempt at that, it has to be shown that there has been wilful disobedience of the judgment or order of the court. Power to punish for contempt is to be resorted to when there is clear violation of the court's order. Since notice of contempt and punishment for contempt is of far-reaching consequence, these powers should be invoked only when a clear case of wilful disobedience of the court's order has been made out. Whether disobedience is wilful in a particular case depends on the facts and circumstances of that case. Judicial orders are to be properly understood and complied with. Even negligence and carelessness can amount to disobedience particularly when the attention of the person is drawn to the court's orders and its implications. Disobedience of the court's order strikes at the very root of the rule of law on which our system of governance is based. Power to punish for contempt is necessary for the maintenance of effective legal system. It is exercised to prevent perversion of the course of justice.

x x x

11. No person can defy the court's order. Wilful would exclude casual accidental, bona fide or unintentional acts or genuine inability to comply with the terms of the order. A petitioner who complains breach of the court's order must allege deliberate or contumacious disobedience of the court's order.""

In the present cases, the regularisation of the services of the complainants has been made from the respective dates i.e, from the date on which they were appointed to the post of Assistant Engineers from the posts Junior Engineers, in the absence of

any specific plea or any direction given in the impugned order by both the Courts to the respondents to regularise the services of the complainants w.e.f. 1981 in the posts of junior Engineers. Therefore, it cannot be said that it is a wilful disobedience of the judgment and order on the part of the respondents and that they have committed contempt of this Court. Therefore, the learned senior counsel for the respondents has requested this Court to drop the said proceedings.

He further contends that if they are aggrieved by the non-grant of the regularisation of the services of the complainants to the said posts w.e.f. 1981, they are required to initiate appropriate proceedings before a competent Court of law and get such directions issued to the respondents and therefore he has prayed to drop the proceedings by accepting the compliance affidavit.

We have heard the learned senior counsel on behalf of both the parties. With reference to the aforesaid rival legal contentions urged and after careful consideration of the averments made along with the prayer made in the writ petitions and on a perusal of the judgments and orders of both the High Court and this Court, we pass the following order:

Our attention has been rightly invited by the learned senior counsel for the complainants, Mr.J.P. Cama, to the pleadings and the prayer at clause 'C' of the writ petition before the High Court as well as the operative portion of the orders passed by the Division Bench of the High Court dated 8.11.2011 and this Court dated 23.04.2014. We have adverted to certain facts at paras 4 and 6 of the judgment dated 23.04.2014 of this Court with reference to the claim of the contempt petitioners. Though the complainants were initially appointed to the services in the erstwhile State of Bihar, subsequently on the bifurcation of Bihar and Jharkhand States, the services of these complainants have been transferred to the State of Jharkhand and they have been functioning as such in the posts of Assistant Engineers. Therefore, the contention of the learned senior counsel, Mr. P.P. Rao, that the notification issued by the erstwhile Bihar State cannot be applied to the complainants who have been transferred and fall under the jurisdiction of the Jharkhand State is wholly untenable in law for the reason that prior to their appointment to the posts of Assistant Engineers in the State of Jharkhand, they have been discharging their duties similar to that of permanent Junior Engineers from the year 1981 in the erstwhile State of Bihar and therefore, treating their services as ad hoc, after promoting them to the said posts of Assistant Engineers, without giving them pay scale payable to the said permanent posts in the State of Jharkhand is erroneous and contrary to law. Therefore, the contention urged in this regard by Mr. P.P. Rao cannot be accepted by us. The learned senior counsel on

behalf of the respondents has contended that there are neither any pleadings nor any specific prayer in the writ petitions filed by the complainants nor any specific directions were given in the judgments and orders of both the High Court as well as this Court to the respondents to regularize the services of the complainants with effect from 1981. The said contention cannot be accepted by this Court for the reason that it is contrary to the record and therefore, the same is wholly untenable in law. The purport of the judgments and orders of the High Court as well as this Court makes it amply clear that the respondents shall regularize the services of the complainants with effect from 1981 in the posts of Junior Engineers also.

However, in our considered view, the reliance placed upon the judgments and orders of the High Court as well as this Court do support the contention of the complainants for the reason that there is wilful disobedience on the part of the respondents as they have partially fulfilled the direction given by this Court as well as the High Court with regard to the regularization of the services of the complainants from the year 1987.

However, further direction is issued to the respondents to regularise the services of the complainants from the date of their initial appointment as Junior Engineers i.e. from the year 1981. Not complying with the directions issued by this Court from the above mentioned year would amount to deprivation of the legitimate rights of the complainants as determined by the High Court and this Court in the judgments and orders. After taking the entire litigation, pleadings, documents on record and the rival legal contentions urged on behalf of the parties into consideration, we direct the respondents to comply with the above said direction after properly understanding the purport of the judgments and orders of the High Court as well as this Court.

For the aforesaid reasons, we give one more opportunity to the respondents to comply with the judgments and orders in toto for the regularization of the services of the complainants from the year 1981. The same cannot be treated as a fresh direction issued in the contempt petitions to the respondents as we have indicated the purport of the operative portion of the judgments and orders of the High Court as well as this Court. The respondents shall comply with the order as indicated above and submit their compliance report within four weeks from today.

[1] (2009) 5 SCC 417