

K. Samba Moorthy Vs Sanjiv Chadha & Ors

Court: Supreme Court Of India

Date of Decision: Jan. 27, 2025

Hon'ble Judges: B.R. Gavai, J; K. V. Viswanathan, J

Bench: Division Bench

Advocate: Abhijit Basu, Tatini Basu, Byrapaneni Suyodhan, Kumar Shashank, Praveena Gautam, Pawan Shukla, Tissy Annie Thomas, Akanksha Tyagi

Final Decision: Partly Allowed

Judgement

K.V. Viswanathan, J.

1. Leave granted.

2. The present appeal calls in question the correctness of the final judgment and order dated 24.08.2023 passed by the High Court for the State of

Telangana at Hyderabad in Contempt Case No. 311 of 2023. By the said judgment, the High Court dismissed the Contempt Petition holding that the

orders the violation of which, was complained of, have been duly complied with by the alleged contemnor-respondents. The High Court further held

that promotion up to Scale-V cannot be granted as there was no adjudication in the order of the Writ Court and further that the cancellation of the

promotion order had not been challenged. The High Court noted that such reliefs cannot be granted in the contempt case.

Brief facts :-

3. In 1983, the appellant was appointed as a Probationary Officer in the Bank of Baroda and in the year 1992, he was promoted to the Manager cadre

(MMG-II).

4. When the appellant was serving as Branch Manager, Utran Branch, District Surat, Gujarat, a Show Cause Notice dated 22. 03.1999 for alleged

lapses and irregularities committed by him during his service was issued. The appellant submitted his reply on 12. 04.1999. A further Show Cause

Notice dated 08.02.2000 setting out ten more irregularities was issued to the appellant and he filed his reply on 19.02.2000.

5. At this stage, the appellant appeared in the promotion exercise from Scale-II to Scale-III on 22.12.2000. A charge-sheet in the disciplinary

proceedings was issued to him on 26.12.2000.

6. The results of the promotion were declared on 28.07.2001 and the appellant's result was kept in abeyance in view of the pendency of the

disciplinary proceedings. On 23.08.2001, after a detailed enquiry and after observing serious lapses on the part of the appellant in opening of the

savings bank accounts of one Mr. Tejuddin Hussain and one Mr. Tajeshwali Basha and in sanctioning, documentation and disbursement of loans to the

aforesaid customers, a minor penalty was imposed on the appellant. The penalty was "reduction in pay by 1 stage in a time scale for a period of 3

years without cumulative effect and not adversely affecting his pension. The Appeal filed by the appellant before the Appellate Authority was

rejected on 25.01.2002 and the order of the Disciplinary Authority was upheld. A review before the Reviewing Authority was also rejected on

01.01.2003.

7. Admittedly, on 30.08.2002, the appellant was informed by a letter of Senior Branch Manager that his promotion from MMG/S-II to MMG/S-III, that

was kept in abeyance, stood cancelled. On 16. 03.2008, the appellant challenged the orders passed in the disciplinary proceedings and called in

question the correctness of the orders of the Disciplinary Authority, Appellate Authority and the Reviewing Authority. There was no prayer

challenging the cancellation of the promotion.

8. Pending the Writ Petition, in the year 2012, the appellant appeared in the promotion exercise and was promoted from Scale-II to Scale-III as a

Senior Branch Manager. It should be recorded herein that he further appeared in the subsequent promotion exercises of 2016, 2017 and 2018 from

Scale-III to Scale-IV but was declared unsuccessful.

9. The learned Single Judge, by a judgment dated 20.07.2017, allowed his Writ Petition on the ground that the Enquiry Officer, who undertook the

process of the enquiry, was junior to the appellant in Scale-II and the said officer had also appeared for interview for promotion to the category of

Scale-III along with the appellant. The learned Single Judge concluded that there was real likelihood of bias. So holding, the learned Single Judge

allowed the Writ Petition in the following terms.

"14. In view of the above reasons, this Court is of the definite opinion that there existed real likelihood of bias in the entire process of enquiry. Therefore, this

Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the entire impugned proceedings are vitiated. For the aforesaid reasons, the writ

petition is allowed, setting aside the orders passed by the 3rd respondent vide proceedings No. SGZ:ZVD. 15/0-1372 dated 23.08.2001 as confirmed by the 2nd

respondent vide order dated 25-01-2002 as confirmed by respondent no. 1 vide proceedings No. AGM.AP.INS.P.AUDIT.3744 dated 01.01.2003 and the petitioner is

entitled for all the consequential benefits. No order as to costs.

(emphasis supplied)

10. The Bank of Baroda filed Writ Appeal No. 1285 of 2017 against the judgment of the learned Single Judge. We find from the website of the High

Court that by an order of 13.09.2017 the Division Bench suspended the order of the learned Single Judge. Pending the Writ Appeal, the appellant

superannuated on 31. 12.2018. The Writ Appeal was disposed of on 30.03.2022 in the following terms:

“Learned counsel for the appellants is fair enough in stating before this Court that in the light of the retirement of the employee in question, the present writ appeal

be disposed of leaving the question of law open.

The writ appeal is accordingly disposed of leaving the question of law open.

(Emphasis supplied)

11. On 10.07.2022, the appellant submitted a representation claiming, restoration of pay since the penalty was set aside; promotion from Scale-II to

Scale-III from July, 2001 and monetary benefits and also claimed notional promotion placing him as the last candidate of each promotion exercise

whereby the 2001 batchmates of the appellant got their promotions. This was followed by a legal notice of 16.08.2022 and thereafter on 01.02.2023, a

contempt petition was filed before the Division Bench against the respondents herein seeking relief in terms of prayers made by him in the

representation.

12. The contemnors filed a reply on 20.07.2023 rebutting the claim of the appellant and contended that they having released the amount of Rs.

19,446/-, being the reduction in pay for three years, necessary compliances had been made. They prayed for the dismissal of the Contempt Petition.

The Division Bench, as set out earlier, closed the contempt case.

Contentions:

13. We have heard Mr. Abhijit Basu, learned senior advocate for the appellant ably assisted by Ms. Tatini Basu, advocate and Ms. Praveena Gautam,

learned counsel, who effectively presented the case for the respondent-contemnors.

14. Mr. Abhijit Basu, learned senior counsel for the appellant contended that once the employee was exonerated with the quashing of the penalty

proceedings, the employee has to be granted promotion by opening the sealed cover with retrospective effect along with the monetary benefits.

Learned senior counsel contended that the appellant became entitled to promotion with effect from July, 2001 and he is entitled to consequential

benefits from the said date. Learned senior counsel further contended that the appellant's promotion in 2012 and his subsequent inability to get

promoted to the higher scale is wholly irrelevant for the purpose of the present case because of the appellant's entitlement for promotion to Scale-

III with effect from July, 2001. Learned senior counsel contended that even in the year 2012, the promotion granted was without any pay hike in

benefits. Learned senior counsel contended that the promotion has to be made effective from July, 2001 and it should remain effective till his

superannuation and all consequential benefits including monetary benefits should be given by the respondents. Learned senior counsel relied on C.O.

Arumugam & Ors. v. State of T.N. & Ors., 1991 Supp (2) SCC 199 (para 5) and Union of India & Ors. v. K.V. Jankiraman & Ors., (1991) 4

SCC 109 (para 26).

15. Ms. Praveena Gautam, learned counsel for the respondents submits that the result of the appellant for promotion from Scale-II to Scale-III, which

was kept in abeyance due to the ongoing disciplinary proceedings, was cancelled vide letter dated 30. 08.2022, before the filing of the Writ Petition. In

spite of the same, the learned counsel contends that the appellant did not challenge the cancellation of promotion dated 30.08.2002. Learned counsel

relied on Bachhaj Nahar v. Nilima Mandal & Anr., (2008) 17 SCC 491 to contend that in the absence of pleadings no relief can be granted.

16. Learned counsel Ms. Praveena Gautam further contends that in the operative order of the learned Single Judge only consequential benefits were

given and not promotions or notional promotion up to Scale-V were ordered. According to the learned counsel, the only consequential benefits to

which the appellant became entitled, on the setting aside of the minor penalty imposed on him, was the payment of the arrears in salary occasioned by

the said penalty and nothing more. According to the learned counsel, consequential benefits would not include promotion with effect from 28.07.2001

as the same stood cancelled as early as on 30.08.2002 and was not challenged.

17. Learned counsel further contends that while the appellant may have a right to be considered for promotion, the appellant does not have a right to

promotion. According to the learned counsel, the appellant was promoted from Scale-II to Scale-III in the year 2012 and was unsuccessful in the

subsequent promotion exercises of 2016, 2017 and 2018 for promotion from Scale-III to Scale-IV. Learned counsel contends that the appellant has

forgone his right to challenge the cancellation by accepting the subsequent promotion and appearing in the further promotion exercises. Learned

counsel vehemently opposes the plea made in the representation of the appellant that he be placed as the last candidate of each promotion exercise

where his 2001 batchmates from Scale-II to Scale-III got their promotions. Learned counsel relied on C haduranga Kanthraj URS and Anr. V. P.

Ravi Kumar & Ors. (2024 INSC 957) to contend that a court in contempt cannot go behind the main order and would not enter into the questions

which have not been dealt with and decided in the judgment or order, the violation of which is complained of by the applicant.

18. Learned counsel contends that no contempt is made out, since two interpretations were possible and hence the action of the respondents cannot be

held as contumacious. Learned counsel relies on the judgment of Govt. of West Bengal & Ors. vs. Dr. Amal Satpathi & Ors., (2024 INSC 906) to

contend that promotion becomes effective on assumption of duties and since the appellant has superannuated, he is not entitled to retrospective

financial benefits. Learned counsel distinguishes the judgment in K.V. Jankiraman (supra) to contend that in the absence of a challenge to the

cancellation order, the said judgment cannot be made applicable.

19. We have carefully considered the submissions of the learned counsel for the parties and perused the records.

20. The undisputed facts are that in contemplation of the disciplinary enquiry, the appellant participated in the exercise for promotion from MMG/S-II

to MMG/S-III and that his promotion was kept in abeyance. It is very clear that he was promoted and the promotion was kept in abeyance. The

communication of the cancellation reads as follows:

“We refer to your representation 22.04.02 requesting for declaration of your promotion result from MMG/S III-2000.

We have been informed,

“On referring the matter to our higher authorities, we are advised that the promotion of Mr. K. Samba Murthy from MMG/S II to MMG/S III which was kept in

abeyance has been treated as cancelled.”

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21. It is also undisputed that after the penalty was imposed in the disciplinary proceedings and confirmed right up to the Reviewing Authority, the

learned Single Judge of the High Court set aside the disciplinary proceedings and ordered that the appellant was entitled to all consequential benefits.

22. Admittedly, thereafter, the Bank of Baroda which was the employer reported to the Court hearing the Writ Appeal that in view of the

superannuation of the appellant, all that they wanted was that the questions of the law be left open. The net result was that the learned Single

Judge’s order remained intact and has since attained finality. The further undisputed fact is that in the meantime, pending the Writ Petition, the

appellant was promoted in 2012 from Scale-II to Scale-III and he assumed the promoted post.

23. In this background, the only question that arises in these proceedings is: Ought not the respondents have granted the benefit of promotion from

MMG/Scale-II to MMG/Scale-III with effect from 28.07.2001 with all monetary benefits to the appellant.

24. Admittedly, the only compliance made by the respondents was to pay the amount of Rs. 19,446/- being the reduction in pay for three years. The

learned Single Judge set aside the disciplinary proceedings on a ground for which the appellant was not at fault. A junior officer, who was competing

for promotion with the appellant, was made the enquiry officer and a clear case of likelihood of bias was made out by the appellant and it was

accepted by the learned Single Judge. The employer Bank did not even contest this position before the Division Bench and merely wanted the

question of law to be left open. The appellant was not at fault for the defect in the enquiry. No fresh enquiry was initiated nor was any liberty sought

from the Division Bench.

25. In this scenario, are we to deny the appellant the benefit of promotion from 28.07.2001 when he was ordered to be promoted but which order was

kept in abeyance and which was cancelled only because of the result of the enquiry?

26. We think not. That will be very unfair and we are not prepared to put our imprimatur on such an interpretation. We are also not impressed with the

submissions of Ms. Praveena Gautam, learned counsel that there were no pleadings about the illegality of the cancellation order and no prayer for

setting aside the order of cancellation was made. On the facts of this case, we find that such relief will be encompassed in the phrase

“consequential benefits” which the learned Single Judge clearly granted. In any event, ends of justice cannot be sacrificed on the altar of

technicalities.

27. We also do not find the judgment in Dr. Amal Satpathi (supra) to be applicable. Unlike in the present case, the result of the promotion was not

kept in abeyance in that case. There, before the approval for promotion could be received to the post of Chief Scientific Officer, the incumbent had

superannuated. In this case, in 2012, the appellant assumed the promoted post. The only question was about giving him the benefit from 28.07.2001,

when he was entitled. The argument that granting relief to the appellant would tantamount to travelling beyond the main order, does not carry weight

insofar as granting the appellant promotion from Scale-II to Scale-III with effect from 28.07.2001.

28. Merely paying him Rs. 19,446/-, which admittedly is the reduced pay for three years, cannot amount to compliance with the order of the learned

Single Judge. The objection to the maintainability of the Contempt Petition before the Division Bench is also a non-starter. It is a hyper-technical

argument and in any event the Division Bench did not dismiss the Contempt Petition on maintainability.

29. The respondent-authorities should have on their own extended the benefit once the writ appeal was disposed of and the order of the learned Single

Judge stood affirmed. The learned Single Judge, as early as on 20.07.2017, allowed the writ petition filed by the appellant in 2008, namely, Writ

Petition No. 7616 of 2008. The writ appeal was also disposed of on 30.03.2022 and the interim order stood vacated. The appellant has been running

from pillar to post, for the last two decades. On 10.07.2022, when he sought compliance, all that the respondent-authorities did was to pay him a

“ princely ” sum of Rs. 19,446/-, which was the reduced pay for the three years. Alas, even after succeeding in a long drawn and hard-fought legal

battle the appellant was left only with a pyrrhic victory.

30. Insofar as promotion with effect from 28.07.2001 for the post of Manager Grade-III is concerned, we order that the appellant should be granted

the same with all monetary benefits since the fundamental defect in the enquiry was due to no fault of the appellant. The defect was also accepted by

the Bank when they did not press the appeal. The benefit of promotion to Manager Grade-III from 28.07.2001 is covered in the expression

“ consequential benefits ” as ordered in the judgment of the learned Single Judge dated 20.07.2017 in Writ Petition No. 7616 of 2008. We say so on

the facts of the present case.

31. There is one more additional aspect. It is not clear from the record as to on what ground the appellant was denied promotion in 2016, 2017 and

2018 exercises, for scales upward of Manager Scale-III. The judgment of the learned Single Judge is dated 20.07.2017. We also find that by an order

of 13.09.2017, the Division Bench suspended the order of the learned Single Judge. The Division Bench disposed of the matter on 30.03.2022. We

cannot venture into that arena while adjudicating the present Contempt Petition hence. We reserve liberty to the appellant to resort to such remedies

as may be available to him in law insofar as his claim of denial for further promotions from upwards of Management Grade-III is concerned. We

order that, in the event of any proceedings being initiated, all questions may be permitted to be raised by the parties which will be decided on their own

merits. We also direct that such proceedings should not be rejected on the grounds of limitation or laches.

32. We are, for the present, not inclined to proceed against the respondents for action in contempt. We grant an opportunity to them to pass orders

within four weeks from today remedy the situation by granting promotion to the appellant from Manager Scale-II to Scale-III from 28.07.2001 and

grant him all monetary benefits with interest at the rate of 6% per annum, from the respective dates the monetary benefits fell due.

33. With the above observations, the Appeal is partly allowed. The impugned judgment dated 24.08.2023 passed by the High Court for the State of

Telangana at Hyderabad in Contempt Case No. 311 of 2023 is set aside. Parties will act as per the directions in this judgment. No order as to costs.