Kumari Indira Sharma Vs P.C. Pathak, Joint Director of Education, Ist Region, Meerut and another

C.M. Contempt P. No. 2685 of 1998

Court: Allahabad High Court

Date of Decision: Nov. 4, 1999

Acts Referred:
Constitution of India, 1950 â€" Article 215#Contempt of Courts Act, 1971 â€" Section 14, 2

Citation: (2000) 1 AWC 271 : (2000) 1 UPLBEC 98

Hon'ble Judges: B.K. Rathi, J

Bench: Single Bench

Advocate: R.K. Sharma, for the Appellant; S.K. Verma, for the Respondent

Final Decision: Dismissed

Judgement

B. K. Rathi, J.
This is a contempt petition to punish the respondents for not obeying the orders of this Court dated 21.5.1996 passed in

Writ Petition No. 24300 of 1994 and order dated 6.5.1998 passed in Contempt Petition No. 432 of 1997 by which the respondents were

directed to pay the arrears of salary to the petitioner.

2. I have heard Sri R. K. Sharma, learned counsel for petitioner and Sri S. K. Verma, learned counsel for opposite parties and I have perused the

record. The facts of the case in brief arc that the petitioner was appointed as Assistant Teacher in leave vacancy, but she alleges that the vacancy

became permanent and, therefore, the petitioner was appointed in substantive vacancy. The salary of the petitioner was not paid and, therefore,

she filed a Writ Petition No. 24300 of 1994 which was allowed on 21.5.1996 and the D.I.O.S. was directed to pass appropriate orders for

payment of salary to the petitioner from the date it has not been paid. After the order, the petitioner approached the D.I.O.S. who prepared the

salary bill of the petitioner on 19.8.1996 and sent it to Deputy Director of Education 1st Region Meerut for payment. The Deputy Director of

Education did not pass the salary bill. Then petitioner filed a Contempt Petition No. 432 of 1997 which was decided by Hon''ble Mr. Justice

Bhagwan Din on 6.5.1998 and he directed the office of the Director of Education, Allahabad, to pass the salary bills, if they are still pending. It is

contended that thereafter the Director of Education on 4.7.98 wrote a letter to the respondent No. 1 to pay the arrears of salary. However, the

Joint Director of Education, even then did not pass the bill and Sri Mitra Lal who was Joint Director of Education at that time made a demand of

20% of his entire amount in advance, that the demand was not fulfilled and, therefore, the bill was not passed. Therefore, the petitioner has moved

the contempt petition for punishing the opposite parties, who have not complied with the orders of the Court in both these cases.

3. Sri Mitra Lal who was Joint Director of Education at the relevant time, filed a counter-affidavit denying the allegation of demand of bribery. He,

however, pleaded that the directions given to him by Director of Education were vague. The petitioner filed another Writ Petition No. 26938 of

1997 which was decided by Hon''ble Mr. Justice Sudhir Narain on 28.8.1997. In that case, the petitioner was directed to submit a representation

before the Joint Director of Education, respondent No. 2 who was directed to pass appropriate orders on that application. After the decision of

that writ petition, the petitioner filed a representation which was decided by opposite party No. 1 on 4.9.98 and held that the appointment of the

petitioner was not valid and she was not entitled to any salary, therefore, the petitioner is not entitled to get any salary. It is further contended that

the petitioner has suppressed the order passed by Hon''ble Mr. Justice Sudhir Narain and also the order dated 4.8.1998 passed by opposite party

No. 1, That, therefore, no contempt of the order has been committed. After the transfer of Sri Mitra Lal from the post of Joint Director of

Education, the present respondent No. 1 also filed a counter-affidavit of Sri S. K. Tewari in which it has been pleaded that the petitioner filed a

Writ Petition No. 38023 of 1998 which was got dismissed by the petitioner on 28.1.1999. that therefore, the petitioner is not entitled to arrears of

salary.

4. I have considered the arguments and carefully gone through the record. There was clear order of Hon''ble Mr. Justice A. P, Singh in Writ

Petition No. 24300 of 1994, dated 21.5.1996 to pay the entire salary to the petitioner from the date from which it was not paid. Thereafter in

Contempt Petition No. 432 of 1997. Hon''ble Mr. Justice Bhagwan Din, again directed the opposite party No. 1 to pass the salary bill within one

month and pay the salary. However, thereafter another petition was filed by the petitioner which numbered as 26938 of 1997 decided by Hon''ble

Sudhir Narain. J. on 28.8.97. In this petition, it was observed that there does not seem to be any reason not to comply with the order of this

Court. However. Hon''ble Judge had further directed that the petitioner may file a representation before the Joint Director of Education, who shall

pass appropriate orders within three weeks.

5. The contention of the opposite party No. 1 is that on the representation of petitioner in the compliance of the above order, the opposite party

No. 1 on 4.9.1998 decided that the appointment of the petitioner was illegal and she is not entitled to any salary. It is argued by the learned

counsel for the petitioner that there were directions in the two petitions to pay the salary to the petitioner and those orders became final. Therefore,

the respondent No. 1 had no jurisdiction to record any finding that the appointment of the petitioner was illegal and she was not entitled to salary. It

is also contended that the Writ Petition No. 26938 of 1997 was for the direction for release of funds for payment of the salary against the salary

bill of the petitioner prepared by the District Inspector of Schools. That Hon''ble Mr. Justice Sudhir Narain in the judgment dated 28.8.1997

observed that there does not seem to be any reason not to comply with the order of this Court (Hon''ble Judge referred to the orders of this Court

regarding payment of salary to the petitioner). However, in the last para, the Hon''ble Judge has mentioned that in case the petitioner submits a

representation along with certified copy of this order and true copy of the writ petition before respondent No. 2, he shall pass appropriate orders.

1 was inclined to accept the arguments of the learned counsel for the petitioner that on the representation of the petitioner in pursuance of this

order, the Joint Director of Education could have passed the order only regarding the release of the funds for which the petition was filed and not

regarding the validity of the appointment of the petitioner. It was already decided in the previous writ petitions and the Joint Director of Education

was not entitled to open that question, that the order of Joint Director of Education dated 4.9.1998 recording a finding that the appointment of the

petitioner was not valid is without jurisdiction and should be ignored.

6. From the above discussion, the argument of the learned counsel appears to be correct and I was Inclined to accept the argument and to order

for payment of salary to the petitioner and to punish for contempt. However, it was pointed out that the petitioner filed Writ Petition No. 38023 of

1998 for quashing the above order dated 4.9.98 passed by respondent No. 1. The file of the said petition has been summoned. That petition was

dismissed on 28.1.1999 on the request of the petitioner to withdraw the same with liberty to file a fresh petition. It has not been alleged that

thereafter any fresh petition was filed or any order in the fresh petition has been passed. The result of the withdrawal of Writ Petition No. 38023 of

1998 is that the order of opposite party No. 1 dated 4.9.98 has been confirmed by this Court. Therefore, in this contempt petition, it is not open

for me to take a different view. The result, therefore, is that the opposite party No. 1 has held that the appointment of the petitioner was Illegal and

she is not entitled to any salary and said order has been confirmed by this Court. Therefore. there is no question of payment of salary to the

petitioner and by nonpayment of salary, therefore, it cannot be said that the opposite parties have committed the contempt of the orders as alleged

by the petitioner.

7. In the result, the contempt petition fails and is hereby dismissed. In the circumstances, there is no order as to costs.