

(1998) 04 GAU CK 0001

Gauhati High Court

Case No: COP (C) No. 131 of 1997

Bijoy Mandal and Others

APPELLANT

Vs

Jay Priya Prakash

RESPONDENT

Date of Decision: April 2, 1998

Acts Referred:

- Contempt of Courts Act, 1971 - Section 12

Citation: (1998) 2 GLT 382

Hon'ble Judges: A.P. Singh, J

Bench: Single Bench

Advocate: R. Baruah, for the Appellant; B.D. Das and H.K. Sarma, for the Respondent

Final Decision: Dismissed

Judgement

A.P Singh, J.

This contempt application has been filed against the Respondent J.P. Prakash, Commissioner and Secretary, Govt. of Assam, Education Department, Dispur and Sri Ananda Chandra Pegu, District Elementary Education Officer, Respondent No. 2 on the charge that the said Respondents have wilfully disobeyed and failed to comply the order dated 9.5.95 passed by this Court in Civil Rule No. 394/95.

2. In the Civil Rule applicants who are Petitioners herein this Court issued a direction that Akash Ali Mollah Respondent No. 3 herein (Respondent No. 4 in the writ petition) shall issue order for appointing Petitioners in compliance of the directions made to him in that regard by the Director, Elementary Education who was Respondent No. 3 in the Civil Rule (Respondent No. 2 herein). It was stated in the writ petition that despite allotment of 280 posts of M.E. School teachers by the Director for the District of Lakhimpur and repeated direction issued in that regard by the said Director, Respondent No. 3 did not carry out the directions so as to make the appointments. On these allegations this Court without recording any finding as to availability of posts and entitlement of Petitioners for being appointed against the

alleged vacant posts of M.E. School teachers passed the following order:

In this case the Petitioners have approached this Court for issuance of a writ in the nature of Mandamus or any other appropriate writ directing the Respondents more particularly Respondent No. 4 to issue appointment letters in implementation of the orders issued by the Respondent No. 3.

3. The facts of the case of the Petitioners may be stated as follows:

All the Petitioners are qualified persons to be appointed Middle English School teacher. The State Govt. conferred upon the 3rd Respondent all the powers of the Head of Department in respect of Petitioners' appointment, transfer of teachers and staff and disciplinary matters. By order dated 16.11.91 the State Government created 550 posts for Middle School on usual scale of pay. By letter dated 9.12.93 the 3rd Respondent furnished copies of sanctioning letters. On receipt of the said letter the State Government furnished copies of the sanctioned letters and wrote to the 3rd Respondent to exercise powers as contemplated under letter dated 16.11.91. Therefore, by Annexure 8(1) to 8(13) the 3rd Respondent made allotment and directed the 4th Respondent to implement Annexure 8(1) to 8(13) orders by issuing appointment letters to all the Petitioners. However, the 4th Respondent did not comply with the said orders. The Petitioners therefore approached the 4th Respondent. The 3rd Respondent after hearing the Petitioners issued Annexure-9 letter dated 8.12.94 asked the 4th Respondent to submit his views within 10 days from the date of issue of this letter. In spite of that no appointment has been made. Hence the present petition.

4. I have heard Mr. RG. Baruah, learned Counsel appearing on behalf of the Petitioners and Mr. A. Sariff, learned Additional Senior Government Advocate, Assam and also perused the petition with annexures.

5. On perusal of the petition it is abundantly clear that there is a sheer disobedience in the part of Respondent No. 4 in not complying with the order of his superior officer i.e. Respondent No. 3. This also shows a sheer disregard to a higher officer by Respondent No. 4. Be that as it may, as the Respondent No. 3 made the orders of allotment and directed the 4th Respondent to comply with the said orders. I dispose of this writ petition with a direction to the 4th Respondent to issue appointment letters within a period of one week from the date of receipt of this order.

6. Pursuant of the order of the Court quoted herein would demonstrate that before issuing the direction to Respondent No. 4 this Court did not have the occasion to consider his own explanation which he could have offered in reply to the charge of disobedience of the orders of his superior.

7. Nothing emerges from the order or from the available materials on the record whether before the Court passed the order any opportunity was provided to Respondent No. 4 to put up his side of case in his defence. An attempt to verify this

aspect was made by summoning the file of the Civil Rule which however despite that was not made available on the ground that it was untraceable. Learned Counsel for the Petitioner, applicant herein too failed to inform the Court from his order sheet whether the notices issued in the Civil Rule by the Court were served on Respondents despite steps taken by him for effecting the seizure. Nor he could inform the Court that Respondents were given sufficient opportunity to file their reply to writ allegations. Respondent No. 1 has filed counter affidavit in his affidavit he has stated in para 2 as follows:

3. That with regard to statements made in paragraphs 7, 8, 9, 10, 11, 12, 13 and 14 to the contempt petition, the deponent denies that he has disobeyed the order passed by this Hon'ble Court in Civil Rule No. 394/95 and categorically stated that he has received the order in reference only on 15.5.97. In this regard the deponent states that after receipt of the order and on enquiry of the matter it has been found that the allotment orders in respect of the Petitioners were in non-existent posts and therefore it is not possible on the part of the Director, Elementary Education and the District Elementary Education Officer to implement orders. In this regard the deponent states that the records of the deponent's office revealed that the Government by letter dated 22.3.95, 28.3.95 and 30.3.95 specifically debarred the officials from acting upon the order of allotment of post issued by the Director of Elementary Education.

8. Action for contempt of Court is not allowed for pressurising the authorities to do something which by law is impermissible by law. Making of appointment in Public service is dependent on the following factors:

(a) Post is available for the appointment.

(b) The post so available has been advertised and application have been invited for filling those posts.

(c) Persons claiming right of appointment on the posts possess the requisite qualification for appointment against the post and have been selected for appointment against the posts by a duly constituted selection committee.

(d) Despite their selection-they are being denied appointment whereas similarly situated persons have been appointed.

9. The last is also required to be established as it is open to the State to make or not to make appointments even though pursuant to its earlier decision for making appointment it held the selection.

10. In the writ petition or in the order passed by the Court none of the above situations have been shown to exist. What was shown was that the Govt. of Assam created 550 posts of M.E. School teachers wherein sanction orders were obtained and Respondent No. 3 was directed to appoint the applicants. There was no averment in the writ application that the Petitioners were selected for appointment

against the posts as per the recruitment Rules applicable.

11. The Court passed the order on being satisfied that Respondent No. 3 was guilty of insubordination inasmuch as he was not carrying out the orders issued by the Additional Director for appointing Petitioners.

12. Mr. Joy Prakash, Government Advocate contended that from the averment of the affidavit of Respondent No. 1 it does not appear that the Petitioners were ever selected for appointment against the post of Assistant Teacher in L.P./M.E. School or that they were entitled for being appointed on the post as per the service Rules. On the contrary from stand taken by Respondent No. 1 it would appear that the post in question on which appointment is claimed by Petitioners were not available and that allotment made by Respondent No. 2 and direction issued for filling the post Respondent No. 2 to Respondent No. 3 was wholly illegal. The Government has issued orders stopping appointments as per the orders of Respondent No. 2 and that the Government circular issued in that regard was sent for compliance to all including Respondent Nos. 2 and 3. If in the circumstances prevailing in the case Respondent No. 3 failed to carry out the direction issued by this Court for making appointment of the applicants can be held guilty of committing contempt of Court.

13. Before a person can be punished for contempt u/s 12 of Contempt of Court Act, 1971 he must be found guilty of wilful disobedience of the orders of the Court. Where however despite Courts orders requiring him to do a thing under statutory rules or for his own limitations he is not capable of carrying out the orders in that event he cannot be said to be guilty of wilful disobedience of Court's orders so as to incur liability of punishment u/s 12 of the Act In the present case though it is established that despite the service of the order on 9.5.95 the Respondent No. 3 has not carried out the order of the Court but inability of the Respondent carrying out the order is fully explained from what has been said in the C.A. filed by the Respondent No. 1. There is sufficient reasons explaining the inability of Respondent No. 3 to comply with the direction of the Court. He, therefore, cannot be held guilty of wilful disobedience of Court orders. From what has been said by Respondent No. 1 in his counter affidavit there was sufficient ground for Respondent No. 3 not issuing appointment orders in favour of Petitioner as per the order of the Additional Director of this Court.

14. Hence no charge of contempt of Court u/s 12 of the Act is made out against the Respondent No. 3 simply because he had failed to carry out this Court's order. The application is according dismissed. Notices issued to the Respondents are discharged.