

(2005) 11 GAU CK 0022

Gauhati High Court**Case No:** Cont.Case (C) Nos. 360 of 1999, 50, 318 and 590 of 2000 and 127, 128 and 270 of 2001

Sailen Chutia

APPELLANT

Vs

Hemanta Sarma

RESPONDENT

Date of Decision: Nov. 9, 2005**Acts Referred:**

- Constitution of India, 1950 - Article 226, 226
- Contempt of Courts Act, 1971 - Section 11, 11, 12, 12, 20, 20

Citation: (2006) 1 GLT 813**Hon'ble Judges:** B.K.Sharma, J**Bench:** Single Bench**Advocate:** A.C.Borbora , S.N.Sharma, P.K.Barman, M.Dutta, K.N.Choudhary, B.D.Das, A.K.Phukan, A.N.Choudhary, Advocates appearing for Parties

Judgement

B.K. Sharma, J.

All the contempt petitions have arisen out of similar orders passed in the connected writ petitions. The basic facts leading to the orders passed in the writ petitions and filing of the contempt petitions are the same. The alleged contemnors are also the same. Thus, all the contempt petitions were heard analogously and are being disposed of by this common judgment and order.

2. The few basic fact necessary to appreciate the alleged contempt of this Court by way of violation of the orders passed by this Court are as follows:

3. The petitioner numbering 10 involved in the contempt petitions were appointed as L.P. School teachers in various schools in the district of Dibrugarh, pursuant to their alleged selection in the year 1986. When their services were terminated, they approached this Court by filing the writ petitions and by judgment and order dated 04.01.92 passed by the Division Bench of this Court, the writ petitions were allowed granting liberty to the respondents to take action in accordance with law.

4. After the aforesaid orders passed by the Division Bench, the Joint Director of Elementary Education, Assam by his communication dated 07.02.92 asked for certain clarifications regarding appointment of the persons from the D.I. of Schools, Dibrugarh. He was also requested to observe required formalities for cancellation of appointment orders of the irregularly appointed teachers. The specimen of the show cause notice issued to the teachers was also sent along with the said letter dated 07.02.92.

5. Pursuant to the aforesaid directions, the D.I. of Schools, Dibrugarh issued cyclostyled notice/show cause notice to the teachers in question including the petitioners without examining the independent case as was directed to be so examined by the aforesaid communication dated 07.02.92. After issuance of the show cause notice the services of the petitioners and others were terminated.

6. It is in the aforesaid backdrop, this Court was inclined to set aside and quash the orders of termination with a direction to take back the petitioner and others in service with back wages. However, liberty was granted to the respondents to carry out necessary scrutiny/verification towards issuance of appropriate show cause notice to those teachers who were not qualified to hold the post of teachers. Time limit specified for taking the petitioner in service was 15 days from the date of receipt of the orders.

7. The aforesaid order was passed by this Court on 01.02.96 in C.R. No. 788/94 alleging violation of which the Cont. Case (C) No. 50/2000 has been filed by the lone petitioner who was the writ petitioner No. 13 in CR No. 788/94.

8. Following the aforesaid order dated 01.02.96 and similar order passed in other writ petitions, number of writ petitions were disposed of providing reinstatement of the petitioners in service. Time limit stipulated for such reinstatement was 15 days, three months etc. while in some cases direction was issued to take back the petitioners in service forthwith. Benefit of back wages was also provided to the petitioners. The final orders in respect of which the present contempt proceeding is concerned are dated 06.04.98 in COP (C) No. 360/99, 01.02.96 in COP (C) No. 50/2000, 11.11.98 in COP (C) No. 318/ 2000, 01.02.96 in COP (C) No. 590/2000, 16.01.98 in COP (C) No. 127/01, 11.03.99 in COP (C) No. 128/01 and 11.11.98 COP (C) No. 270/01.

9. For a ready reference, the operative part of the order dated 01.02.96 passed in C.R. No. 788/94 giving rise to COP (C) No. 50/2000 is quoted below:

"But it appears that without verifying individual case mechanically the cyclostyle show cause notice were issued to each and very candidates and in the same way after receipt of individual show cause reply mechanically the cyclostyled order of termination were issued by the authority. This is absolutely untenable in law and the authority can not take away the source of livelihood in such a manner. The authority should have applied its mind and determined the ground for cancellation of the

appointments. On this ground of nonapplication of mind along all those orders of termination in those civil Rules No. 788/94,1494/94,901/94,1481/94,1084/94,1482/92 and the AnnexureK in C.R. No. 788/ 94 dated 08.05.92, AnnexureJ in C.R. No. 1494/ 94 dated 08.05.92, AnnexureK in C.R. No. 901/ 94 dated 08.05.92 AnnexureK in C.R. No. 1481/ 94 dated 08.05.92, Annexure1084/94 dated 07.05.92 and AnnexureK in C.R. No. 1482/94 dated 08.05.92 shall stand quashed and all the petitioners shall be taken back in service with all back wages. But I make it clear that if some of the petitioners are not qualified to hold the post of a teacher, the individual case may be scrutinized/verified by the authority by issuing appropriate show cause notice. The authority shall take back these petitioners within a period of 15 days from the date of receipt of this order. The back wages shall be paid by the authority within a period of one month".

10. The contempt petitions were entertained by issuing show cause notices as to why the contempt proceeding should not be drawn up against the respondents by orders dated 15.10.99, 21.02.2000, 21.07.2000, 08.01.01, 05.04.01 and 05.09.01 respectively. Although in the initial stage notices were issued to the Director of Elementary Education, Assam and the D.I. of Schools, Dibrugarh, but having regard to the facts and circumstances and the developments that took place during the pendency of the contempt proceeding, the Commissioner and Secretary, Govt. of Assam in the Education department and also the Secretary to the Govt. of Assam in the Education Department were added as party respondents and show cause notices were issued to them.

11. While the respective D.I. of Schools, Dibrugarh who have been arrayed as respondent No. 2 in all the contempt petitions have not filed any show cause reply, but the Director of Secondary Education, Assam, namely Shri H.K. Sarmah has filed a single show cause reply in respect of all the contempt petitions. Although contempt notice was served way back in 1999 in COP (C) No. 360/99 and thereafter in other contempt petitions, the Director of Elementary Education, Assam, namely Shri Sarmali submitted his show cause reply only on 27.05.03.

12. The contempt petitions were first heard on 24.02.04. Thereafter, the matter was taken up on 26.04.04 on which date upon hearing the learned counsel for the parties, the following order was passed:

"Heard Mr. A. C. Borborah, learned counsel for the petitioners. The common grievance made by these petitioners is that while setting aside the orders of termination of services of the petitioners, a direction was issued for reinstatement of the petitioners in their services. A further direction was issued for payment of wages for the working period. But the contemnors have not even paid the wages payable to the petitioners, not to speak of reinstating them in their services.

On the other hand, some Teachers who are also similarly situated like that of the petitioners, have been reinstated in services. Thus, it is the submission of the

learned counsel for the petitioners that the respondents/contemnors not only have not implemented the orders of this Court but have also acted with discrimination. Mr. H. Sarma, Director of Elementary Education, Assam, who has filed a common show cause reply has tried to justify his action by making a statement that since the posts and budgetary sanction have not been provided to him by the Government, he is not in a position to implement the orders of this Court. According to Mr. B. D. Das, learned counsel appearing for said Mr. Sarma, the orders of this Court are not implementable.

It is an admitted position that no review or appeal has been preferred against the orders of this Court by which directions were issued for reinstatement of the petitioners in services and to pay their admissible wages. The orders were issued during 1996 to 1998 but yet the orders have not been implemented.

I am prima facie satisfied that this is clearly a case of contempt and accordingly contempt proceeding is initiated against Shri H. Sarma, Director of Elementary Education, Assam. He is directed to file his show cause/affidavit, if any, in the contempt proceeding initiated by this order. The affidavit shall be filed on or before 11th May, 2004. Thereafter, the matter be listed for hearing on 17th May, 2004. Mr. S. N. Sarmah, learned Standing Counsel shall also obtain instruction from the present Commissioner & Secretary and the Secretary to the Govt. of Assam in the Education Department as to why, for violation of the orders of this Court contempt proceeding shall not be initiated against them and what action they are going to take towards implementation of the same.

Mr. Sarma shall apprise the present Commissioner & Secretary and the Secretary to the Govt. of Assam in the Education Department that if no action is taken in the matter, suo moto contempt proceeding shall be initiated against them having regard to peculiar facts and circumstances involved in this contempt proceeding."

13. After the aforesaid order dated 26.04.04, the Director of Secondary Education, Assam Mr. H. K. Sarmah filed an additional affidavit on 11.05.04. The matter was again taken up on 09.05.04 on which date the learned Standing counsel, Education Department prayed for further two weeks time while the learned counsel appearing for Mr. Sarmah produced the records. Thereafter whenever the matter was listed for hearing it became a routine affair to pray for time. The dates are 02.06.04, 09.06.04, 16.06.04, 21.07.04, 19.08.04, 07.09.04 etc. On 16.06.04 Mr. A. K. Phukan, learned Advocate General, Assam made a personal request to adjourn the matter and it was on his request the matter was adjourned to 21.07.04. On 21.07.04 also the matter was adjourned on his request to 19.08.04. Further time prayed for on 07.09.04 on behalf of the learned Advocate General, was reluctantly granted.

14. On 06.04.05, in absence of the learned Advocate General, Mr. K. N. Choudhury, learned Addl. Advocate General, Assam appeared and prayed for time till 08.04.05. It was recorded in the order dated 06.04.05 as to how repeated adjournment were

granted on the assurance of the learned Advocate General, Assam to implement the orders in respect of which the contempt petitions have been filed. It was noted that inspite of repeated adjournments, nothing had been done in the matter. On the prayer of Mr. Choudhury, learned Addl. Advocate General, the records already submitted by the Director of Secondary Education, were permitted to take back by Mr. B. D. Das, learned counsel appearing for the said Director with a direction to produce the same on 08.04.05. On 08.04.05 also nothing positive towards implementation of the orders passed by this Court was indicated by the learned Addl. Advocate General, Assam and he simply produced a note dated 07.04.05 prepared by the officials of the Education Department. By the said note an indication was made that the matter would be considered and that verification report regarding appointment of the petitioner was not available. The Court, due to the apathy shown by the respondents, took a serious view of the matter and passed the following order:

"Theses contempt petitions are pending in this Court for last 4/5/6 years. In the proceeding as recorded in the order dated 26.04.04, learned Standing counsel was requested to obtain instructions in the matter from the then Commissioner & Secretary and the Secretary to the Government of Assam in the Education Department as to why for violation of the orders of this Court passed way back in the year 1996 and 1998 by which all the petitioners were directed to be reinstated in service, contempt proceeding shall not be initiated against them. Learned Standing counsel was also requested to apprise this Court as to what action the Commissioner and Secretary would take towards implementation of the orders of this Court. It was also indicated that in absence of any action on their part towards implementation of the orders of this Court contempt proceeding would be initiated against them having regard to the peculiar facts and circumstances involved in the case.

After the aforesaid order it became a regular practice of taking repeated adjournments with the assurance of doing the needful towards implementation of the orders passed by this Court. On 19.05.04, learned Standing counsel prayed for two weeks time which was granted. On 02.06.04, prayer was made for adjournment of the cases till 09.06.04 which prayer was also granted. On 09.06.04 also further prayer was made for adjournment of the matters till 16.06.04 which was also granted. On 16.06.04, learned Advocate General, Assam made appearance in the case and on his request the matters were adjourned to 21.07.04. On 21.07.04, learned Advocate general made a prayer for further one week's time in the matter which was also granted. On 19.08.04, learned Advocate general prayed for further one week's time which was also granted.

On 07.09.04 a further prayer was made for adjournment of the matters and this Court reluctantly granted three weeks time as a last chance. It was made clear that no further adjournment would be given and the law would take its own course. A

copy of the order dated 07.09.04, as prayed for by the learned Standing counsel, education department, was also furnished for hfs necessary follow up action.

On 06.04.05, when the matters were called for at 10:30 a.m. there was none representing the respondents. However, on being informed learned Addl. Advocate General, Mr. K. N. Choudhury, entered appearance in the case and prayed for time till 2 O" Clock. When the matter was again called at 2 O"Clock, learned Addl. Advocate General prayed for time till today which was granted.

Today, Mr. K. N. Choudhury, learned Addl. Advocate General, Assam has produced before me the official notes all dated 07.04.05. There is nothing in the note so as to indicate that the respondents are serious towards implementation of the orders of this Court passed way back in 1996 and 1998. The note only suggests that the matter would be considered and that the verification report regarding appointment of the petitioners is not available. Thus, it is seen that the respondents have adopted an attitude of confrontation with the orders passed by this Court by which the orders of termination passed against the petitioners were set aside and directions were issued for reinstatement of the petitioners in their services.

This Court granted repeated adjournments on the assurance of the Advocate General, Assam that steps would be taken for implementation of the orders of this Court. However, now the present position of the case is as reflected above. Since it was made clear in the order dated 26.04.04 that unless steps were taken for implementation of the orders of this Court, contempt proceeding would be initiated against the Commissioner & Secretary and the Secretary to the Government of Assam in the Education department, who were holding the offices at that point of time and in view of the aforesaid inaction which clearly reflects that they have deliberately and intentionally violated the orders of this Court and playing with the time of this court kept on making false assurance, I am of the considered opinion that the Commissioner & Secretary and the Secretary to the Government of Assam who were holding the respective offices at the time of passing of the orders dated 26.04.04 and all subsequent orders are prima facie guilty of contempt of this Court's order. Accordingly, contempt proceeding stands initiated against those two officers including the present Commissioner & Secretary of the Department.

It is stated at the bar that during the relevant point of time Shri Subhash Chandra Das, IAS was the Commissioner in the Education department and Shri Lakhi Nath Tamuly, IAS was the Secretary in the Education Department. The present Commissioner & Secretary in the Education Department is stated to be Shri Paramesh Dutta, IAS.

In view of the fact that contempt proceeding stands initiated by this order against the officers, i.e. Shri Subhash Das, Shri Lakhi Nath Tamuly and Shri Paramesh Dutta, they shall appear in person before his Court on 04.05.05. They may also file show cause replies to the contempt proceeding initiated against them by this order.

Mr. B. D. Das, learned counsel for the contemner Shri H. K. Sarma, the then Director of Elementary Education, Assam, made submission before this Court on 06.04.05 on his behalf, when the matter was called up. This order has got nothing to do with the Director of Elementary Education, Assam. So far as involvement of the Director of Elementary Education, Assam in his proceeding is concerned, same will be dealt with at the time of passing of the final order.

The records earlier produced before this Court have already been returned to Mr. M. K. Choudhury, learned Sr. Standing counsel, Education department assisted by Mr. M. Dutta, learned Advocate. The records shall be produced on the next date, i.e. on 04.05.05.

Registry shall issue notice to the aforementioned persons through the Chief Secretary of the State. A copy of this order shall be furnished to Mr. M. K. Choudhury, learned Standing counsel, Education department for his necessary follow up action.

List the matter on 04.05.05. Bring this order to the notice of the Deputy Registrar (J) immediately."

15. By the aforesaid Qrder contempt proceeding was initiated against all the respondents including Shri Subash Ch. Das, IAS who at the relevant time was the Commissioner in the Education department, Mr.L. N. Tamuly, who was the Secretary of the Department and Shri Paramesh Dutta, the present Commissioner and Secretary of the Education Department. Such a course of action had to be adopted in view of non implementation of the assurance furnished to the Court for almost one year and also in view of the fact that by seer apathy shown by the respondents, the orders of this Court passed during the years of 199699 had not been implemented for years together. Adding insult to the injury, the records which were returned back as per the request of the learned Addl. Advocate General and was received by Mr. M. K. Choudhury, learned Sr. Standing counsel, Education Department assisted by Mr. M. Dutta, learned Advocate, were not returned. Accordingly direction was issued for production of the same on 04.05.05.

16. Due notices were issued to the newly added officers against whom contempt proceedings were drawn up and upon service of such notices, the newly added officers appeared in person before this Court on 10.05.05 and prayed for time to file their respective show cause reply. However, Mr. Paramesh Dutta, present Commissioner and Secretary, education department submitted his show cause reply along with an additional affidavit. He also intimated the Court about passing the order on 09.05.05 purportedly towards implementation of the orders of this Court. Once again a direction was issued for production of the records by Mr. K. N. Choudhury, learned Addl. Advocate General, Assam assisted by Mr. M. Dutta, learned Advocate.

17. The matter was again taken up on 23.05.05 and the learned counsel for the parties were heard. Although hearing was concluded, but at per the request of Mr. A. K. Phukan, learned Advocate General, Assam, the matter was directed to be listed on 30.05.05. The matter could not be taken upon on 30.05.05 due to non availability of the Bench. Thereafter the matter was again taken up on 30.08.05. On that day also request for time was made on behalf of the learned Advocate General till 06.09.05 which was accordingly granted. On 06.09.05 also a further prayer was made to grant time till 16.09.05 which was also granted. The matter was again taken up on 16.09.05 on which date also a further prayer was made to grant further time which was refused since the matter was already heard but was listed again and again only on the request of the learned Advocate General, Assam. After refusal to grant further time, the hearing stood finally concluded.

18. After such conclusion of hearing, an additional affidavit was filed by Shri Paramesh Dutta, Commissioner and Secretary, Education Department on 22.09.05 intimating the course of action he had adopted for appointment of the petitioners and others towards implementation of the orders of this Court. Be it stated here that on 06.09.05, the learned counsel appearing for Mr. Dutta produced the copies of the letter and order both dated 03.09.05 showing implementation of the aforesaid orders of this Court by way of appointing six petitioners involved in COP (C) Nos. 318/01, 270/01, 128/01, 360/99 and 590/2000. On being pointed out that there are altogether 10 petitioners and as to why the remaining 4 petitioners have not been appointed, learned counsel appearing for Mr. Dutta assured the Court of doing the needful towards their appointments. It is in this context, an additional affidavit was filed after conclusion of the hearing of the case to show that the remaining 4 petitioners have also been appointed.

19. It will be appropriate to refer at this stage the names of the contempt petitioners which are as follows COP (C) No. 360/99 Shri Sailen Chutia; COP (C) No. 50/2000 Smti. Jasuda Chetia; COP (C) No. 318/2000 Shri Numal Gogoi and Smt. Anjana Borah; COP (C) No. 590/2000 Smti Dulumoni Senapati and Shri Uma Kanta Dulia; COP (C) No. 127/01 Smti Renu Prabha Konwar (Duarah); COP (C) No. 128/01 Smt. Manorama Gohain and Md. Sajidur Rahman and COP (C) No. 270/01 Smt. Anjali Saikia. Thus, there are altogether 10 writ petitioners involved in this contempt proceedings.

20. During the pendency of the contempt petitions and on the argument made on behalf of the respondents that the petitioners are not entitled to reinstatement in service, Mr. Paramesh Dutta, the present Commissioner and Secretary, Education Department perhaps realizing the fallacy of such an argument and as per the advice rendered by the learned Advocate General, A. K. Phukan, issued a direction to the Director of Elementary Education, Assam by his letter vide No. ELC/ COP (C) No. 360/99/19/PtI/20 dated 03.09.05 directed appointment of six petitioners involved in the COP Nos. 318/ 2000, 270/1, 128/01, 360/99 and 590/ 2000. They are Shri Numal Gogoi, Smti. Anjali Saikia, Shri Sajidur Rahman, Smt. Monorama Gohain, Shri Sailen

Chutia and Smti. Dulumoni Senapati. However, the remaining four petitioners, namely Smt. Renu Prava Konwar (Duarah) in COP (C) No. 127/01, Smti Anjana Borah in COP (C) No. 318/2000, Shri Uma Kanta Dulia in COP (C) No. 590/2000 and Smt. Jasuda Chetia in COP (C) No. 50/2000 were not appointed. Mr. Dutta has filed an additional affidavit after conclusion of hearing to show that the remaining four petitioners have also been appointed. In support of such claim made in the additional affidavit filed by Mr. Paramesh Dutta, Commissioner and Secretary, he has annexed AnnexureC letter No. ELC/COP (C) No. 360/99/19/Pt.I/27 dated 20.09.05 directing the Director of Elementary education Assam to make appointment in respect of nine teachers named in the order. Except Shri Uma Kanta Dulia involved in COP (C) No. 590/ 2000 forming part of the present proceeding, other eight teachers named in the communication are pertaining to some other contempt proceeding unconnected with the present proceeding. In the process out of the four remaining petitioners, except Shri Uma Kanta Dulia remaining three petitioners, namely Renu Prava Konwar (Duarah), Anjana Borah and Jasuda Chetia have been left out from such appointment. Thus in their case, the orders passed by this Court still remain unimplemented. However, as per the averments made in COP (C) No. 590/2000, Smt. Jasuda Chetia is said⁶ to have been appointed pursuant to filing of the contempt petition being COP (C) No. 50/2000. Thus even among the petitioners, the respondents resorted to discrimination.

21. By the aforesaid orders/ communications, out of 10 petitioners involved in the present proceedings, 7 petitioners have been appointed prospectively without any back wages with further rider that their such appointments are subject to clearance by the Finance Department. Thus the alleged implementation of the orders of this Court is not in conformity with the said orders. In terms of the said orders the petitioners, upon setting aside the orders of termination of their services, were to be reinstated in service within the specified time limit, such as forthwith, 15 days, three months etc. from the date of furnishing the certified copy of the order.

22. Thus, really speaking, the petitioners should be deemed to be in service all throughout. There is no dispute that the orders were duly received by the respondents/alleged contemnors as they stood before impleading the aforesaid three officers suo motu by this Court. The defence of the Director, Mr. Sarmah is simple. According to him although he is the controlling authority having jurisdiction over the D.I. of Schools, but in absence of any budgetary provisions to accommodate the petitioners, he was not in a position to implement the orders of this Court. While taking such a defence, time and again in his various communications he highlighted that some of the petitioners were illegally appointed. He has also taken the plea that the contempt petitions are barred by limitation. At the same time as per his own admission he had issued direction to the D.I. of Schools, Dirugarh to implement the orders of this Court. Such a direction was issued to the D.I. of Schools, Dibrugarh by Mr. Sarmah by his letter dated 03.10.2000 annexed as Annexure3 to COP (C) No. 318/2000. By the said communication he had

directed the D.I. of Schools, Dibrugarh to implement the order of this Court in letter and spirit without further delay. But in his other communications made to the Govt, he kept on highlighting that the appointments made in favour of the petitioners were illegal. He also asked for budgetary provision towards payment of salary to the petitioners.

23. During the course of hearing of the Contempt petitions Mr. B. D. Das, learned counsel appearing for the said Director, submitted that the orders passed by this Court are not implementable. If that be so, it is not understood as to why the same very Director had issued direction to the D.I. of Schools to comply with the orders of this Court in the letter and spirit by his aforesaid communication. It is also not understood as to why he had made communications with the Govt. to provide budgetary sanction towards payment of salary to the petitioners. Does the said Director wants this Court to believe that for the last more than 6 years, no posts became available to accommodate the petitioners? What prevented him in providing reinstatement of the petitioners in service for all these years? Was it enough to write some letters to the Govt. periodically in a routine manner without showing any seriousness to the orders passed by this Court? Certainly not. Confrontational attitude shown by him is writ large on the face of it. Even negligence and carelessness can amount to disobedience as has been held by the Apex Court in *Kapildeo Prasad Sah Vs. State of Bihar & Ors.* reported in (1999) 7SCC569.

24. Apart from the above, it will be seen from the show cause reply submitted by the said Director that the then Commissioner and secretary to the Govt. of Assam, Education Department by his order dated 15.09.2000 passed in respect of Smt. Jasuda Chetia who was the petitioner in C.R. No. 788/94 and the petitioner in COP (C) No. 50/2000, issued direction for her appointment. In the order which has been annexed as Annexure3 to the show cause reply, the then Commissioner and Secretary also indicated as to how the same very Director issued directions to the D.I. of Schools, Dibrugarh to reappoint 11 teachers who like that of the petitioners approached this Court by filing the writ petitions.

25. Thus from the above, it will be seen that four different pleas have been taken by the said Director as defence to the present contempt proceedings. They are (i) since his request for budgetary sanction towards reinstatement of the petitioners in service and payment of salary to them have not been met with by the Govt., he is not in a position to reinstate the petitioners in service; (ii) he had issued direction to the D.I. of Schools, Dibrugarh to implement the orders of this Court in letter and spirit; (iii) the orders are not implementable and (iv) the contempt petitions are barred by limitation. Thus, to save his skin from the contempt proceeding, the said Director has taken all possible pleas and in the process merely flouted the orders of this Court passed way back in 1996/99. His stand is that although he was the controlling authority, his responsibility came to an end with the aforesaid request made to the Govt.

26. From his own stand, it will be seen that he was pursuing the matter towards implementation of the orders, although not in letter and spirit, till 2001 when the last communication dated 14.12.01 was made to the Commissioner and secretary asking for budgetary sanction. Thus even if the argument of the said Director that he was pursuing the matter with the Govt. is to be accepted, that by itself will nullify his claim that the contempt petitions are barred by limitation. There is something more as has been discussed below, which will also nullify the claim of the said Director as regards the plea of limitation.

27. The point of limitation although was urged, but not agitated seriously by the learned counsel for the respondents. It was only by Mr. B. D. Das, learned counsel for the Director and Mr. K. N. Choudhury, learned Addl. Advocate General, Assam, who made appearance during absence of Mr. A. K. Phukan, learned Advocate General, Assam, raised the issue of limitation. According to them, the contempt petitions having not been filed within one year of alleged violation of the Courts orders, are barred by limitation prescribed U/s. 20 of the Contempt of Courts Act, 1971. Section 20 of the Act prescribes limitation of one year from the date on which the contempt is alleged to have been committed. In the instant case, it is a recurring cause of action for the petitioners. As per the own admission of the Director, he kept on perusing the matter with the Government towards implementation of the orders, even after filing of the contempt petitions, about which a mention has been made above.

28. Coupled with the above, the present Commissioner and Secretary to the Govt. of Assam, in the Education Department passed the orders on 09.05.05, 03.09.05 and 20.09.05 purportedly towards implementation of the orders. He has also filed additional affidavit on 22.09.05 indicating purported implementation of the orders. Thus, the contempt petitions are all well within the period of limitation. Even if the narrow, technical, misplaced, unacceptable and unwarranted plea of limitation is to be accepted, then also at least COP (C) No. 360/99 is within the period of limitation.

29. To buttress the plea of limitation, the learned counsel placed reliance on the decision of the Apex Court in Pallav Seth Vs. Custodian and others reported in AIR 2001 SC 2763. I have gone through the decision and also the decision in OmPrakash Jaiswal Vs. D. K. Mittal reported in AIR 2000 SC 1136, reported in the former decision. Although the decision was relied upon, but none of the learned counsel made any submission as to how the same is applicable in the context of one year from the date of committing the alleged contempt".

30. As discussed above, the directions were issued by this Court for reinstatement of the petitioners in service upon setting aside the orders of termination. With the setting aside of the orders of termination, the petitioners even without any orders for reinstatement should be deemed to be in service maintaining continuity. Back wages were also directed to be paid. It reminded a recurring cause of action, more particularly when the respondents themselves pursued the matter and never

abandoned. They passed the final order only on 03.09.05 and 20.09.05. The Apex Court decision only speaks of filing of contempt petition within one year of alleged commission of contempt and not within one year of the decisions/orders. The Apex Court has also observed as follows:

"30. There can be no doubt both this Court and High Courts are Courts of Record and the Constitution has given them the powers to punish for contempt. The decisions of this Court clearly show that this power cannot be abrogated or stultified. But if the power under Art. 129 and Art. 215 is absolute can there be any legislation indicating the manner and to the extent that the power can be exercised? If there is any provision of law which stultifies or abrogates that power under Art. 129 and/or Art. 215 there can be little doubt that such law would not be regarded as having been validly enacted. It however, appears to us that providing for the quantum of punishment or what may or may not be regarded as acts of contempt or even providing for a period of limitation for initiating proceedings for contempt cannot be taken to be a provision which abrogates or stultifies the contempt jurisdiction under Art. 129 or Art. 215 of the Constitution.

31. This Court has always frowned upon the grant or existence of absolute or unbridled power. Just as power or jurisdiction under Art. 226 has to be exercised in accordance with, if any, enacted by the legislature it would stand to reason that the power under Art. 129 and/or Art. 215 should be exercised in consonance with the provisions of a validly enacted law. In case of apparent or likelihood of conflict the provisions should be construed harmoniously.

41. One of the principles underlying the law of limitation is that a litigant must act diligently and not sleep over its rights. In this background such an interpretation should be placed on Section 20 of the Act which does not lead to an anomalous result causing hardship to the party who may have acted with utmost diligence and because of the inaction on the part of the Court a contemner cannot be made to suffer. Interpreting the section in the manner canvassed by Mr. Benugopal would mean that the Court would be rendered powerless to punish even though it may be fully convinced of the blatant nature of a contempt having been committed and the same having been brought to the notice of the Court soon after the committal of the contempt and within the period of one year of the same. Section 20, therefore, has to be construed in a manner which would avoid such an anomaly and hardship both as regards the litigant as also by placing a pointless fetter on the part of the Court to punish for its contempt. An interpretation of Section 20, like the one canvassed by the Appellant, which would render the constitutional power of the Courts nugatory in taking action for contempt, even in cases of gross contempt, successfully hidden for a period of one year by practicing fraud by the contemner would render Section 20 as liable to be regarded as being in conflict with Art. 129 and/or Art. 215. Such a rigid interpretation must therefore, be avoided.

42. The decision in Om Prakash Jaiswal's case (2000 AIR SOW 722: AIR 2000 SC 1136:2000 Cri. LJ 1700) (supra), to the effect that initiation of proceedings under Section 20 can only be said to have occurred when the Court formed the prima facie opinion that contempt has been committed and issued notice to the contender to show cause why it should not be punished, is taking too narrow a view of Section 20 which does not seem to be warranted and is not only going to cause hardship but would perpetrate injustice. A provision like Section 20 has to be interpreted having regard to the realities of the situation. For instances, in a case where a contempt of a subordinate Court is committed a report is prepared whether on an application to Court or otherwise, and reference made by the subordinate Court to the High Court. It is only thereafter that a High Court can take further action under Section 15. In the process, more often than not, a period of one year elapses. If the interpretation of Section 20 put in Om Prakash Jaiswal's case (supra) is correct, it would mean that notwithstanding both the subordinate court and the High Court being prima facie satisfied that contempt has been committed the High Court would become powerless to take any action. On the other hand if the filing of an application before the subordinate Court or the High Court making of a reference by a subordinate Court in its own motion or the filing an application before an Advocate General for permission to initiate contempt proceedings is regarded as initiation by the Court for the purposes of Section 10, then such an interpretation would not impinge on or stultify the power of the High Court to punish for contempt which power, de hors the Contempt of Courts Act, 1971 is enshrined in Art. 215 of the Constitution, such an interpretation of Section 20 would harmonize that section with the powers of the Courts to punish for contempt which is recognized by the Constitution."

31. In the case of Om Prakash Jaiswal (supra) the Apex Court made the following observations:

"15.... The heading of Section 20 is "limitation for actions for contempt". Strictly speaking this section does not provide limitation in the sense in which the term is understood in the Limitation Act. Section 5 of the Limitation Act also does not, therefore, apply. Section 20 strikes at the jurisdiction of the Court to initiate any proceedings for contempt.

16. A look at the concept of contempt and need for and circumspection to be exercised before initiating proceedings for contempt would show the necessity for enacting Section 20 and devising therein the concept of initiation of proceedings for contempt." Availability of an independent judiciary and an atmosphere wherein Judges may act independently and fearlessly is the source of existence of civilization in society. The writ issued by the Court must be obeyed. It is the binding efficacy attaching with the commands of the Court and the respect for the orders of the Court which deter the aggrieved persons from taking the law in their own hands because they are assured of an efficacious civilized method of settlement of disputes being available to them wherein they shall be heard and their legitimate

grievances redeemed. Any act or omission which undermines the dignity of the Court is therefore viewed with concern by the society and the Court treats it as an obligation to zealously guard against any onslaught on its dignity."

32. As regards the continued wrong about which a discussion has been made above, same finds support from the following observations of the Apex Court in the case of *Pallav Seth V. Custodian* reported in *All India Law Reporter* 200 27 63:

" 19. In *Firm Ganpat Ram Rajkumar V. Kalu Ram*, 1989 Supp (1) SCR: (AIR 1989 SC 2285) where an order of this Court ordering delivering of premises had not been complied with, an application was filed for initiation of contempt proceedings. A contempt was raised on behalf of the alleged contemner based on section 20 of Contempt of Courts Act, 1971. Dealing with this contention, this Court observed as follows (para 7 of AIR):

"Another point was taken about limitation of this application under Section 20 of the Act. Section 20 states that no Court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. In this case, the present application was filed on/or about 3rd November, 1988 as appears from the affidavit in support of the application. The contempt considered, inter alia, of the act of not giving the possession by force of the order of the learned Sr. SubJudge, Narnaul dated 12th Feb., 1988. Therefore, the application was well within the period of one year. Failure to give possession if it amounts to a contempt in a situation of this nature is a continuing wrong. There was no scope for application of S. 20 of the Act."

20. The above mentioned observations indicate that the contention based on Section 20 was not accepted for two reasons firstly that the application for initiating action for contempt was within one year of the date when the contempt was alleged to have been committed and secondly failure to give possession amounted to continuing wrong and, therefore, there was no scope for application of Section 20 of the Act. This case is important for the reason that the Court regarded the filing of the application for initiating contempt proceedings as the relevant date from the point of view of limitation."

33. From the above discussion of the factual and legal aspect of the matter, I am of the considered opinion that the submission relating to limitation is misplaced.

34. As has been observed by the Apex Court in the case of *Kapildeo Prasad Sah vs. State of Bihar & Ors.* as reported in (1999) 7 SCC 569,

"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 Courts 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."

35. This Court by order dated 26.04.04 noticing that no review or appeal has been preferred against the orders of this Court in respect of which the present contempt proceeding has arisen found a prima facie case against the said Director so as to initiate contempt proceeding against him. At the same time a request was made to the learned Standing counsel, Education Department to make contact with the then Commissioner and the secretary to the Govt. of Assam in the Education Department as to what action they would take towards implementation of the orders of this Court.

36. After the aforesaid order dated 26.04.94, it became a routine affair to pray for adjournment even upon appearance of Mr. A. K. Phukan, learned advocate General, Assam on behalf of the said Commissioner and Secretary. In the process almost 1 year elapsed but nothing was done. Situated thus, contempt proceeding was drawn up against the said Commissioner & Secretary, the Secretary and the present Commissioner and Secretary of the Deptt. by order dated 08.04.05.

37. Amidst the aforesaid developments the matter got further aggravated due to nonimplementation of the assurance given by the learned Advocate General, Assam towards implementation of the orders of this Court. At a later stage, Mr. K. N. Choudhury, learned Addl. Advocate General, Assam entered appearance on behalf of the present Commissioner and Secretary, Shri Paramesh Dutta. While the former Commissioner and Secretary, Mr. Subash Das and Secretary Mr. L. N. Tamuly made their position clear as to how they made all out efforts towards implementation of the orders of this Court during their tenure from the order dated 26.04.04 passed by this Court till they had demitted their offices, Mr. Paramesh Dutta, the present Commissioner and Secretary took a strange stand as per which the aforesaid orders of this Court are not implementable. In fact, he also passed an order dated 09.05.05 annexed to the show cause reply stating the said order to be in purported compliance of the aforesaid orders of this Court. By the said order he took the stand that the aforesaid orders of this Court cannot be implemented. Thus, he and the Director sat on appeal over the orders of this Court directing reinstatement of the petitioners in service.

38. Before dealing with the stand of the present Commissioner and Secretary, Mr. Dutta, it will be appropriate to deal with the stand of the then Commissioner and Secretary and the Secretary of the department, namely Shri Subash Das and Shri L. N. Tamuly. They came to the picture pursuant to the order of this Court passed on 26.04.04 and it is their stand in the show cause reply that they made all out efforts towards implementation of the orders of this Court till such time they were shifted to other departments. Unlike the present Commissioner and Secretary, it is not their case that the orders are not implementable. In fact, in their show case reply they

have shown as to how they had taken action towards implementation of the orders, but before they could do so they were transferred to some other departments and consequently, the orders remained unemployments. While Mr. Das was the Commissioner and Secretary upto 31.07.04, Mr. Tamuly was the Secretary upto 05.11.04. They came into picture after the order passed on 26.04.04., They have fully explained the action they had taken from the date of the said order till they were transferred to other departments. It appears that they took positive steps towards implementation of the orders of this Court. In such a situation, I am of the considered opinion that they can not be held guilty of contempt of Court for violation of the aforesaid orders.

39.1 now examine the defence"of Mr. Dutta, the present Commissioner and secretary. He has filed several affidavits. In the first affidavit filed on 09.05.05 it is his stand that when the select list of 1986 was not implemented, series of writ petitions were filed seeking implementation of the same and the Division Bench of this Court issued directions for implementation. Such orders were carried on appeal before the Apex Court and the Apex Court at the first instance issued direction for preparation of the corrected list and thereafter by order dated 20.01.99 provided for appointment of the persons named in the letter dated 24.08.98 submitted by one Shri Dimbeswar Saharia which was annexed as AnnexureS/3 to the affidavit filed by Mr. Paramesh Dutta who happened to be the Joint Secretary of the Department at that time. Thus, it is the stand of Mr. Dutta that it was only those teachers named in the said letter dated 28.04.98 who alone were entitled to be appointed and thus, by necessary implication the petitioners stood excluded from the purview of appointment.

40. Mr. Dutta filed another affidavit (Additional) on 10.05.05 annexing therewith the copies of the affidavits filed by and one Shri Kamini Kr. Jakharia, the then Deputy Secretary to the Govt. of Assam in the education department before the Apex Court.

41.1 have given my anxious consideration going through the said two affidavits. It is simply not understood as how the stand before the Supreme Court in respect of the orders passed by this Court for implementation of 1986 select list can have any bearing to the present proceeding. Interestingly, Mr. Dutta, the Commissioner and Secretary has verified all the statements made in the affidavit filed on 09.05.05 to be true to his knowledge except paragraph 12 and 13 in which a mention has been made in respect of the orders passed by the Apex Court. Such an affidavit filed by him is not in conformity with the requirements of general rules for filing affidavit enumerated in Chapter IV of the Gauhati High Court Rules, more particularly, Rule 27 thereof. The orders passed by the Apex Court have nothing to do with the orders passed by this Court. Shri Dutta can not bring his personal experience and knowledge in his capacity as Joint Secretary to the Govt. of Assam in the Education Department that he had gathered by filing affidavit before the Apex Court in connection with another proceeding unconnected with the present one.

42. Mr. Dutta the present Commissioner and Secretary amidst the aforesaid developments and when the matter was seriously being pursued by Mr. A. K. Phukan, learned Advocate General, Assam, passed an order dated 09.05.05 purportedly towards compliance of the orders of this Court. In the order he has even stated that the select list of 1986 remained valid for one year, but as per his own affidavit filed before the Apex Court, the list remained valid upto 01.01.91 on the basis of the order of extension passed by the Got. Such statement was made in paragraph 5.2 of the affidavit filed before the Apex Court which has been annexed as Annexure A/2 to the additional affidavit filed on 10.05.05. Thus to this extent, Shri Dutta has made a false statement in his order dated 09.05.05. In the said order Shri Dutta has taken altogether a different stand making a reference to the proceedings before the Apex Court unconnected with the orders passed by this Court. No such stand has been taken by anyone of the alleged contemnors including the former Commissioners and the Secretary of the Deptt. Rather all of them issued orders and pursued the matter so as to implement the orders of this Court. In any case, by referring to the orders passed by the Apex Court in 1999 in another proceeding unconnected with the orders of this Court, for violation of which the present contempt proceeding has been initiated, Mr. Dutta cannot sit on appeal over the said orders passed by this Court way back in 1996.

43. If the aforesaid stand of Mr. Dutta is correct, then it is not understood as to why he has made the aforementioned communication dated 03.09.05 to the Director of Elementary Education, Assam to appoint the petitioners named in the communication towards compliance of the orders of this Court. It is also not understood as to why he has filed the affidavit dated 22.09.05 annexing therewith the AnnexureC communication dated 20.09.05 by which he has issued direction to make appointment in respect of similarly situated contempt petitioners. It is also not understood as to why the three petitioners involved in the present proceeding have been left out.

44. By his aforesaid communication and statement made in the additional affidavit filed on 22.09.05 it has been shown that the orders of this Court have been implemented, but the case of the three petitioners have been left out. Of course, Smt. Jasuda Chetia, the petitioner in COP (C) No. 50/2000 is said to have been appointed pursuant to filing of the contempt petition. Further in the contempt petition, the petitioners have shown as to how similarly situated persons have been appointed even before filing of the contempt petitions in respect of whom also similar orders as in the instant case had been passed. The Director and the present Commissioner & Secretary have not denied such a position. This position has already been reflected in one of the orders passed in the present contempt proceeding.

45. The orders passed by this Court have attained its finality. The respondents and for that matter Mr. Paramesh Dutta, the present Commissioner and Secretary,

education department cannot take the plea that in view of the proceeding before the Apex Court unconnected with the present case has given rise to the present situation. It has been discussed above as to how the proceeding before the Apex Court and the orders passed therein have no bearing with the present proceeding. The law relating to finality of the order passed by the judicial forum is well settled. The orders of this Court violation of which has been alleged in this proceeding has attained its finality and shall remain in the field till such time they are set aside either on review or on appeal. If any authority is required, one may refer to the decisions of the Apex Court reported in

1) AIR 1999 SC 1796 (Vallapally Plantation Pvt. Ltd. Vs. State of Kerala,

2) (1998) 9 SCC 138 (Authorized Officer Vs. M.M. Krishnamurthy Chetty),

3) AIR 1996 SC 906 (State of Kerala Vs. M. K. Kunhy Kannan) and 4) 1997 (2) GLT 447 (President Manipur Congress Committee Vs. Speaker Manipur Legislative Assembly).

46. In the case of Authorized officer (supra) the Apex Court dealing with the binding orders of Court observed that even the orders which may not be strictly legal become final and are binding if they were not challenged before the superior Courts, made the following observations:

"2. According to the appellant once the judgment on the basis of which the High Court had directed to dispose of the dispute relating to the excess land had been reversed by this court, the Authorized officer was justified in following the judgment of this Court instead of the judgment of the High Court. It need not be pointed that the order passed by the High Court attained finality as it was not challenged before the Supreme Court. The order passed by the High Court directing the Authorized Officer to examine the dispute in the light of the judgment of the High Court in the case of Naganatha Ayyar V. Authorized Officer (84 LW 69) became final although the judgment on which the grievance had to be examined itself was reversed later by this Court. We find no fault with the reasoning of the High Court. It is well settled that even orders which may not be strictly legal become final and are binding between the parties if they are not challenged before the superior courts. In the result the appeal fails and it is dismissed. No costs."

47. In the case of Vallapally Plantation (supra) it was held that the orders passed by the competent authority will not lose the status of finality in view of the subsequent change in law by later decision of the High Court taking contrary view regarding legal position.

48. In view of the above, the orders of this Court which have since attained its finality cannot be set at naught by referring to some interim orders of the Apex Court in the proceeding unconnected with the proceeding before this Court. If the orders passed by the Apex Court have any bearing to the present case, it was incumbent on the part of the respondents to make their stand clear by carrying the

orders of this Court to the superior Courts. The well settled principle of finality to the orders passed by the Court clinches the issue and the present Commissioner and Secretary, Mr. Paramesh Dutta cannot in his wisdom hoodwink the Court by referring to some other proceeding before the Apex Court attributing to the same to be his personal knowledge unconnected with any record. In spite of orders passed by this Court for production of the records both pertaining to contempt proceeding which in fact, once submitted by Mr. B. D. Das, learned counsel appearing for the Director and was allowed to be taken back at the request of Mr. K. N. Choudhury, learned Addl. Advocate General, were never produced in spite of clear direction of this Court which itself constitutes contempt of this Court. Similar directions were issued for production of the records pertaining to the affidavits filed by Mr. Dutta and the order dated 09.05.05 passed by him during the pendency of the proceeding. However, he has chosen not to produce the records and thus naturally will have to face the consequence for not doing so.

49. In view of the aforesaid factual as well as legal aspect of the matter, I am of the considered opinion that while the then Commissioner and the Secretary, namely Shri Subash Das and Shri L." N. Tamuly respectively are not guilty of contempt of this Court, Mr. Paramesh Dutta, present Commissioner and Secretary to Govt. of Assam, Education Department and Mr. H. K. Sarmah, the then director of Elementary Education, Assam and the respective D. I. of Schools, Dibrugarh, namely Shri Sushil Baruah and Shri Kumud Gogoi who have not even responded to the contempt proceeding, are held guilty of contempt of Court for willful and deliberate violation of the aforesaid orders passed by this Court.

50. All the contemnors, more particularly Mr. Paramesh Dutta by their confrontational attitude with the judicial orders passed by this Court which have since attained finality, has further aggravated the situation. His later conduct by way of making prospective appointment only in favour of 7 petitioners out of 10 petitioners cannot salvage the situation. The direction of the Court was to reinstate the petitioners in service forthwith, within 15 days and within three months. Now after about 6 to 9 years, because of monitoring made by this Court the said orders have been implemented, but only prospectively and with a rider of subject to clearance by the finance Deptt. Thus, apart from the fact that three of the ten petitioners are yet to be appointed, the appointments of the petitioners have not been materialized in the form in which they were to be materialized as per the orders of this Court. However, having regard to the good gesture shown by the learned counsel for the petitioners making it clear that the petitioners would be happy with their respective reappointments/reiristatements, without back wages, I refrain myself from expressing any comment and passing any order in that aspect of the matter.

51. I place on record my words of appreciation for the persuasions made by Mr. A.K. Phukan, learned Advocate General, towards implementation of the orders of this

Court, but for whose efforts perhaps the things would have been different and after holding the aforesaid persons guilty of contempt of this Court, this Court would have required to pass further order towards implementation of the orders of this Court.

52. The concession made by the petitioners cannot salvage the situation for the contemnors. This is a unique case of its kind in which the orders passed by this Court way back in 1996, remained unimplemented for long 9 years. The contemnors sat on appeal over the orders and tried to hoodwink the Court with untenable pleas. Confrontational attitude with inconsistency in approach adopted by the Commissioner & Secretary and the Director is writ large on the face of it and has further aggravated the situation. It need not be emphasized that the foundation of the judiciary is the trust and confidence of the people in its ability to deliver fearless and impartial justice and as such no action can be permitted which may shake the very foundation itself. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. Power to punish for contempt is for maintenance of effective legal system. In the instant case the kind of approach adopted by the contemnors certainly calls for exercising the contempt jurisdiction with adequate punishment.

53. In view of the above, while holding the present Commissioner and Secretary, Shri Paramesh Dutta, the then Director of Elementary Education, Mr. H. K. Sarmah and the respective D.I. of Schools, Dibrugarh, namely Shri Sushil Baruah and Shri Kumud Gogoi, guilty of contempt of this Court, I pass the following orders:

(i) All the contemnors are punished with simple imprisonment for a term of one month with fine of Rs. 20000 each.

(ii) The remaining three petitioners about whom mention has been made above, shall be deemed to be reinstated in service alongwith the other petitioners in whose favour orders have been passed from the same date. However, if they have already been appointed, this direction shall be ignored.

(iii) The petitioners on the basis of their reappointments/reinstatements will be entitled to receive their salary and the same shall not be delayed in the name of nonreceipt of finance concurrence. Necessary formalities in this regard shall be carried out forthwith by the Finance Department and the Education department so that the petitioners get their salary regularly from the date of their appointments.

(iv) The officers who have been held guilty of contempt of this Court are also made liable for the cost of this proceeding which is fixed at Rs. 20,000/- to be borne in equal shares by each one of them. The cost shall be realized by the Registry as per the High Court Rules.

54. The punishment regarding simple imprisonment for one month will be effective on expiry of 30 days from today. The Registry shall take appropriate steps in this

regard.

55. The contempt petitions are disposed of in terms of the above orders.

56. Bring this judgment and order to the notice of the Deputy Registrar (J).