(2002) 11 AP CK 0016

Andhra Pradesh High Court

Case No: Contempt Appeal No. 14 of 2002

Smt. A. Santhi Kumari, I.A.S., Secretary, A.P. Social Welfare Residential Educational Institutions Society		APPELLANT
	Vs	
K. Ravi and Another		RESPONDENT

Date of Decision: Nov. 18, 2002

Acts Referred:

- Constitution of India, 1950 - Article 215, 226
- Contempt of Courts Act, 1971 - Section 12, 12(3), 19, 19(3), 2

Citation: (2003) 2 ALD 460 : (2002) 6 ALT 326 : (2003) CriLJ 1596

Hon'ble Judges: Ghulam Mohammed, J; B. Sudershan Reddy, J

Bench: Division Bench

Advocate: S. Satyanarayana Prasad for C. Sindhu Kumari, for the Appellant; M.L. Ali, for the Respondent

Final Decision: Allowed

Judgement

B. Sudershan Reddy, J.

This Contempt Appeal is directed against the order dated 27-9-2002 made in Contempt Case No. 704 of 2002 by a learned single Judge of this Court. The learned single Judge by the said order dated 27-9-2002 punished the appellant herein with imprisonment to stand up in the Court till the Court raises and to pay Rs. 2,000/- as fine within two weeks and in default to undergo simple imprisonment for one week. The said order is challenged on various grounds by the appellant.

2. In order to consider the various submissions made on behalf of the appellant herein challenging the impugned order, it may be necessary to notice certain basic statutory features enshrined in the Contempt of Courts Act, 1971 (for short ''the Act'').

3. The Contempt of Courts Act, 1971 has been introduced in the statute-book for the purposes of securing a feeling of confidence of the people in general and for due and proper administration of justice. It is a powerful weapon in the hands of the law courts.

4. Section 2(a) of the Act defines ''contempt of court''. It means civil contempt or criminal contempt. Section 2(b) of the Act in its turn says that ''civil contempt'' means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.

5. Section 12 of the Act provides for punishment for contempt of court and it says that a contempt of court may be punished with simple imprisonment for a term, which may extend to six months, or with fine, which may extent to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court. The apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

6. Sub-section (3) of Section 12 of the Act provides that notwithstanding anything contained in the Section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

7. Section 19 of the Act provides that an appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt - (a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court; (b) where the order or decision is that of a Bench, to the Supreme Court. Pending any appeal, the appellate Court may order the suspension of the execution of the punishment or order appealed against and release the appellant on bail if he is in confinement and hear the appeal notwithstanding that the appellant has not purged his contempt.

8. Sub-section (3) of Section 19 of the Act enables an aggrieved person to pray for suspension of the execution of the punishment or order even without preferring an appeal, provided he satisfies the High Court that he intends to prefer an appeal. The rest of the provisions are not required to be noticed.

9. It has been repeatedly held by the higher Courts in India that power to punish for contempt is necessary for the maintenance of effective legal system. Such power is exercised to prevent perversion of the course of justice.

10. In Attorney General V. Times Newspapers Ltd. (1973) 3 All ER 54 Lord Diplock observed that "there is an element of public policy in punishing civil contempt, since

administration of justice would be undermined if the order of any court of law could be disregarded with impunity."

11. In Kapildeo Prasad Sah and Others Vs. State of Bihar and Others, , the Supreme Court observed that "for holding the respondents to have committed contempt, civil contempt at that, it has to be shown that there has been wilful disobedience of the judgment or order of the court. Power to punish for contempt is to be resorted to when there is clear violation of the court''s order. Since notice of contempt and punishment for contempt is of far-reaching consequence, these powers should be invoked only when a clear case of wilful disobedience of the court''s order has been made out.....Judicial orders are to be properly understood and complied with.....Disobedience of the court''s order strikes at the very root of the rule of law on which our system of governance is based." It is further observed by the Court that "wilful would exclude casual, accidental, bona fide or unintentional acts or genuine inability to comply with the terms of the order."

12. In Indian Airport Employees Union Vs. Ranjan Chatterjee and another, , the Supreme Court held that "the disobedience of orders of the court, in order to amount to "civil contempt" u/s 2(b) of the Contempt of Courts Act, 1971 must be "wilful". Proof of mere disobedience is not sufficient. Where there is no deliberate flouting of court orders but a mere misinterpretation of executive instructions, it would not be a case of civil contempt."

13. In Anil Ratan Sarkar and Others Vs. Hirak Ghosh and Others, the Supreme Court held that "mere disobedience of an order may not be sufficient to amount to a "civil contempt" within the meaning of Section 2(b) of the Act of 1971 - the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act. In the event two interpretations are possible and the action of the alleged contemnor pertains to one such interpretation - the act or acts cannot be ascribed to be otherwise contumacious in nature. A doubt in the matter as regards the wilful nature of the conduct if raised, question of success in a contempt petition would not arise."

14. The power to punish is a powerful weapon in the hands of the courts and precisely for the said reason, the said power is required to be exercised very cautiously and unless otherwise the court is satisfied beyond doubt, it would neither be fair nor reasonable for the courts to exercise jurisdiction under the statute.

15. As regards the burden and standard of proof that is required in the matter of proof of the allegations said to be constituting the act of contempt, the Supreme Court in Chhotu Ram Vs. Urvashi Gulati and Another, observed that "as regards the burden and standard of proof, the common legal phraseology ''he who asserts must prove'' has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the ''standard of proof'', be it noted that a proceeding under the extraordinary jurisdiction of the court in terms of the

provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond all reasonable doubt." (Emphasis is of ours).

16. Similar is the view taken by the Supreme Court in Mrityunjoy Das and Another Vs. Sayed Hasibur Rahaman and Others, The jurisdiction under the provisions of the Contempt of Courts Act is held to be a special jurisdiction conferred on to the law courts to punish an offender for his contemptuous conduct or obstruction to the majesty of law and in exercise of that power the courts have to be rather cautious and use of it rather sparingly after addressing itself to the true effect of the contemptuous conduct.

17. In V.G. Nigam and others Vs. Kedar Nath Gupta and another, the Supreme Court held that "it would be rather hazardous to impose sentence for contempt on the authorities in exercise of contempt jurisdiction on mere probabilities."

18. It is fairly well settled and needs no reiteration in our hands that the actual proceedings for contempt are quasi-criminal and summary in nature, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond reasonable doubt.

19. Having noticed the settled legal position, we shall revert to the case on hand.

20. The backdrop of events leading to filing of this appeal has an unusual setting. The appellant herein is a serving Indian Administrative Service Officer posted as Secretary, A.P. Social Welfare Residential Educational Institutions Society, Hyderabad. The allegation against her is that she deliberately flouted and failed to comply with the directions of this Court issued in W.P.No.17560 of 1999, dated 5-11-1999. It is required to notice the relevant averments made in the affidavit accusing the appellant herein to have committed contempt of court in the language of the respondents:

"While so, the learned counsel appearing for respondent-society seems to have misrepresented the orders in different manner stating that the orders are in favour of the respondent-society and Writ appeal filed by them was allowed and therefore, the petitioners and other petitioners promotions can be withdrawn. The petitioners and other petitioners shocked to know the same and rushed to the society office and enquired into. Having found that the said fact is correct, immediately approached the counsel for the petitioners and got issued two legal notices dated 14-6-2002 and 17-6-2002 clarifying the Judgment of the Division Bench, even then the respondent-society has put up the file and disturbing the promotions which were already given to other petitioners and denying the promotions to the petitioners herein which amounts to deliberate disobedience of the orders of the Hon''ble Court."

21. In order to appreciate as to whether the appellant herein has committed any ''civil contempt'' within the meaning of the provisions of the Act, the relevant facts leading to filing of the Contempt Case may have to be noticed:

The respondents herein along with five others, who were working as Trained Graduate Teachers in various subjects in the schools run by the A.P. Social Welfare Residential Educational Institutions Society filed W.P. No. 17560 of 1999 invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking a writ of Mandamus to direct the said Society to consider their claims for appointment as Postgraduate Teachers by promotions (for short ''Cross promotions'') in the subjects other than the subjects into which they were appointed. They have relied upon the judgment of a Division Bench of this Court made in W.P. No. 4991 of 1996 and Batch, dated 24-10-1997.

22. This Court after considering the rival submissions allowed the said writ petition directing the appellant herein "to consider the cases of the petitioners for promotions as Post Graduate Teachers not only in the subjects in which they were appointed as Trained Graduate Teachers but also in other subjects, if they are having the Post Graduate degree with a minimum of 50% marks at P.G. level." The Court further directed the appellant herein to implement the said order within four weeks from the date of receipt of a copy of the order.

23. The appellant herein preferred W.A. No. 193 of 2000 against the said orders. The writ appellate Court by its order dated 26-2-2001 ordered maintenance of status quo. The Writ Appeal itself was disposed of on 13-6-2002 in the following manner:

"Learned counsel for the appellants states that the relief sought for in this Writ Appeal is covered by the judgment dated 29-10-2001 passed by a Division Bench of this Court in Writ Appeal No. 993 of 2000 and 566 of 2001 and, therefore, the Writ Appeal, may be disposed of following the above judgment.

Learned Counsel for the respondents states that recording the submission of the learned counsel for the appellants, the Writ Appeal may be disposed of.

Accordingly, we dispose of the Writ Appeal holding that the points raised and decided by Judgment dated 29-10-2001 in the said Writ Appeal No.993 of 2000 and 566 of 2001 shall govern the present appeal also. No costs."

24. The details of Contempt Cases filed by the respondents herein and other writ petitioners in the interregnum i.e. from the date of disposal of W.P. No. 17560 of 1999 and W.A. No. 193 of 2000, need not be noticed.

25. Two out of the seven writ petitioners (respondents herein) have filed Contempt Case No.704 of 2002 out of which the present appeal arises on 20-6-2002 after disposal of W.A. No. 193 of 2000 by a Division Bench of this Court by its Judgment dated 13-6-2002.This Court directed a show cause notice to the appellant herein, pursuant to which, the appellant herein filed a detailed counter affidavit opposing

the contempt case and inter alia contending that the order passed by the learned single Judge in W.P. No. 17560 of 1999 has merged into the judgment rendered by the Division Bench in W.A. No. 193 of 2000 and as such, the Contempt Case is not maintainable. It is also stated in the affidavit that the whole matter was under examination of the appellant herein with reference to the judgment in the Writ Appeal No.193 of 2000.

26. The appellant herein in the process of implementing the judgment rendered by a Division Bench of this Court in W.A.No.193 of 2000 consulted and obtained legal advise from the learned Advocate General with regard to the effect of the orders made in the Writ Petition and Writ Appeal referred to hereinabove.

27. The learned single Judge while hearing the Contempt Case, by his order dated 26-7-2002 issued directions directing the appellant herein to implement the order of the Court in W.P. No. 17560 of 1999 within four weeks there from and further directed the appellant herein to appear before the Court on 16-8-2002 in case of failure to implement the orders passed by the Court in the said Writ Petition.

28. On 14-8-2002 the appellant herein filed an application seeking extension of time stipulated in C.C. No. 704 of 2002, dated 26-7-2002 along with an application to dispense with her personal appearance. Thereafter, the appellant herein having considered the whole case of the respondents-writ petitioners and in the light of the opinion and advise given to her issued proceedings dated 5-9-2002 rejecting their claim for promotion as Post Graduate Teachers from the post of Trained Graduate Teachers in the subjects in which they have acquired the Post Graduate qualification.

29. The Court by its order dated 13-9-2002, having noticed the final orders passed by the appellant herein dated 5-9-2002 rejecting the claim of the respondents-writ petitioners, directed the personal appearance of the appellant herein on 27-9-2002. The Court, on 27-9-2002, having considered the matter, punished the appellant herein to stand up in the Court till raising of the Court on that day and also imposed a fine of Rs. 2,000/- to be paid within two weeks and in default to undergo simple imprisonment for a period of one week.

30. Sri S. Satyanarayana Prasad, learned Senior Counsel appearing on behalf of the appellant contends that the order under appeal suffers from legal infirmities. It is submitted that the order passed by the learned single Judge punishing the appellant herein on the ground that she has committed contempt of court is totally unsustainable. It is submitted that the order dated 5-11-1999 passed by the learned single Judge disposing of the Writ Petition No. 17560 of 1999 got merged into the judgment rendered by the Division Bench in W.A. No. 193 of 2000, dated 13-6-2002 and, in the circumstances, the Contempt Case before the learned single Judge is not maintainable in law. It is also contended that the appellant herein, pursuant to the directions of this Court, passed appropriate orders rejecting the claim of the

respondents-writ petitioners in a fair and reasonable manner. The proceedings so issued pursuant to the directions of this Court are bona fide one. No further cause as such survived requiring any adjudication as such by this Court in exercise of its contempt jurisdiction. The appellant is not guilty of committing any ''civil contempt'' since she has complied with the directions of the Court and accordingly considered the cases of the respondents herein for their promotion as Post Graduate Teachers. The learned Senior Counsel further contends that the Court in exercise of its jurisdiction under the provisions of the Act read with Article 215 of the Constitution of India cannot judicially review the order passed by the competent authority in compliance of the directions of the Court; the remedy, if any, available to the aggrieved person is to challenge the said order in a properly constituted proceedings.

31. Sri M.L. Ali, learned counsel appearing on behalf of the respondents-writ petitioners contends that the appellant herein deliberately and wilfully failed to comply with the directions of this Court dated 5-11-1999 in W.P. No. 17560 of 1999 and, in the circumstances, the order punishing her for contempt is not vitiated. It is also contended that the appellant herein deliberately flouted the orders and issued the proceedings dated 5-9-2002 in utter violation of the orders made in W.P. No. 17560 of 1999, dated 5-11-1999. The learned counsel submitted that the impugned order under appeal is not vitiated for any reason whatsoever.

32. We shall first take up the question relating to the merger of the order passed by the Court in W.P. No. 17560 of 1999 into that of the judgment passed in W.A. No. 193 of 2000 and its effect in law.

33. We have already noticed that the appellant herein preferred W.A.No.193 of 2000 against the order dated 5-11-1999 made in W.P. No. 17560 of 1999 by the learned single Judge, which was disposed of by the writ appellate Court by its judgment dated 13-6-2002 holding that the points raised and decided by the judgment dated 29-10-2001 in W.A. No. 993 of 2000 and 566 of 2001 to govern the present appeal also. The Division Bench followed the judgment dated 29-10-2001 passed by another Division Bench of this Court in W.A. Nos. 993 of 2000 and 566 of 2001.It is not a case where the appeal preferred by the appellant herein has been dismissed at the admission stage confirming the order passed by the learned single Judge in W.P. No. 17560 of 1999.The writ appeal itself has been disposed of in terms of the Judgment dated 29-10-2001 in other Writ Appeals referred to hereinabove. In the circumstances, there cannot be any doubt whatsoever that the order passed by the learned single Judge in W.P. No. 17560 of 1999 got merged into the judgment dated 13-6-2002 made in W.A. No. 193 of 2000 by a Division Bench of this Court.

34. The question that falls for consideration is as to what is the effect of merger of the order passed by a learned single Judge in the Writ Petition into that of the judgment of the writ appellate Court in the Writ Appeal referred to hereinabove?

35. In Kunhayammed and Others Vs. State of Kerala and Another, the Supreme Court observed that "the doctrine of merger is neither a doctrine of constitutional law nor a doctrine statutorily recognised. It is a common law doctrine founded on principles of propriety in the hierarchy of justice delivery system." It is further observed that "logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When decree or order passed by inferior Court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior Court has disposed of the lis before it either way - whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior Court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the Court, tribunal or the authority below."

36. The Supreme Court, however, observed that "the doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject matter of challenge laid or capable of being laid shall be determinative of the applicability or merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it."

37. It is no doubt true that an appeal under clause 15 of the Letters Patent Act against the judgment of a learned single Judge before a Division Bench cannot be equated to that of a decree or order passed by an inferior court, tribunal or authority. It is only an intra court appeal. Nonetheless, the jurisdiction under Clause 15 of the Letters Patent Act is capable of reversing, modifying or confirming the order put in issue before it. Under Clause 15 of the Letters Patent Act, the Division Bench may reverse, modify or affirm the judgment-decree or order appealed against while exercising its Letters Patent jurisdiction.

38. In Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, the Supreme Court has emphasised three pre-conditions attracting applicability of doctrine of merger. They are: (i) the jurisdiction exercised should be appellate or revisional jurisdiction; (ii) the jurisdiction should have been exercised after issue of notice; and, (iii) after a full hearing in presence of both the parties. It is in such a situation, the appellate or revisional order would replace the judgment under appeal and constitute the only final judgment.

39. It is thus clear that once an appeal is entertained in exercise of the jurisdiction under Clause 15 of the Letters Patent Act the order impugned before the Division Bench becomes an order appealed against. Any order passed thereafter would be an appellate order and would undoubtedly attract the applicability of doctrine of merger. The fact whether the order passed by the appellate Court is one of reversal

or of modification or of dismissal affirming the order appealed against would not make any difference. Once the appellate Court applies its mind to the order put in issue before it and exercises its Letters Patent jurisdiction after issue of notice and disposes of the appeal after full hearing in presence of both the parties such order would be an appellate order and would attract the applicability of doctrine of merger.

40. In the instant case, we have noticed that the writ appellate Court disposed of the appeal preferred by the appellant herein in exercise of its jurisdiction under Clause 15 of the Letters Patent Act after full hearing of both the parties to the appeal and the Writ Appeal itself has been disposed of holding that the points raised and decided by the Judgment dated 29-10-2001 in W.A. Nos. 993 of 2000 and 566 of 2001 to govern the subject-matter of the present appeal preferred against the order of the learned single Judge. The order passed by the learned single Judge in W.P. No. 17560 of 1999 accordingly definitely stood modified. The Judgment made in W.A. No. 193 of 2000 by the Division Bench is in exercise of the jurisdiction under Clause 15 of the Letters Patent Act, which is capable of reversing, modifying or affirming the order put in issue before it. It is not a case of rejection of writ appeal in lemini. The appeal has not been rejected (i) as barred by time, or (ii) being a defective presentation nor on the ground of any locus. The writ appellate Court while deciding the appeal followed its own judgment rendered in W.A.Nos.993 of 2000 and 566 of 2001.

41. For the aforesaid reasons, we hold that the order passed by the learned single Judge in W.P. No. 17560 of 1999 has been subjected to a remedy available under the law before the Division Bench. The said order got merged into the judgment passed by the writ appellate Court and it is the order of the writ appellate Court, which is final, binding and operative order and it is that order which subsists and remains operative and capable of enforcement in the eye of law.

42. In our considered opinion, the Contempt Case filed by the respondents-writ petitioners, which itself arises out of the order passed by the learned single Judge in W.P. No. 17560 of 1999, is not maintainable in law since the order passed by the learned single Judge no more subsists in the eye of law. The order passed by the learned single Judge is sunk or disappeared and stood absorbed into the order of the writ appellate Court.

43. It is a different matter altogether that the respondents-writ petitioners could have invoked the contempt jurisdiction and filed a Contempt Case before the Division Bench, which disposed of W.A. No. 193 of 2000, if the appellant herein had wilfully violated the order passed by the writ appellate Court. We do not propose to further dilate this issue since the respondent-writ petitioners did not avail any such remedy.

44. The next question that falls for consideration is as to whether the appellant herein had committed any civil contempt at all?

45. We have already noticed that W.P. No. 17560 of 1999 filed by the respondents herein and others has been allowed by this Court directing the appellant herein to consider the cases of the respondents-writ petitioners for promotion as Post Graduate Teachers not only in the subject in which they were appointed as Trained Graduate Teachers but also in other subjects, if they are having the Post Graduate degree with a minimum of 50% marks at P.G. level. We have also noticed that the said order has been modified by a Division Bench of this Court in W.A. No. 193 of 2000.

46. Be it as it may, the appellant herein by the order dated 5-9-2002 having considered the claim of the respondents herein rejected their claim for promotion as Post Graduate Teachers from the post of Trained Graduate Teachers in the subjects in which they acquired Post Graduate qualification. The said proceedings themselves have been issued in compliance with the order dated 5-11-1999 made in W.P. No. 17560 of 1999 and also the judgment dated 13-6-2002 in W.A. No. 193 of 2000.

47. The appellant herein in detail referred to the facts leading to filing of W.A. Nos. 993 of 2000 and 566 of 2001 by the Andhra Pradesh Residential Educational Institutions Society aggrieved by the order dated 30-12-1999 in W.P. No. 21559 of 1999 and order dated 27-4-1999 in W.P. No. 20758 of 1999 respectively. Those writ appeals were allowed by the Division Bench setting aside the orders passed by the learned single Judge in the writ petitions referred to hereinabove. The appellant herein came to the conclusion that the writ petitioners in W.P. Nos. 21559 and 20758 of 1999, out of which W.A.Nos.993 of 2000 and 566 of 2001 arose, prayed for grant of similar relief as that of the respondents herein (writ petitioners in W.P. No. 17560 of 1999) and though such relief was granted by a learned single Judge of this court, the same was reversed on an appeal preferred by the A.P. Residential Educational Institutions Society. It is under those circumstances, the appellant herein came to the conclusion that the respondents-writ petitioners are not entitled for any promotion as Post Graduate Teachers from the post of Trained Graduate Teachers in the subject in which they acquired Post Graduate qualification.

48. In our considered opinion, the order dated 5-9-2002 passed by the appellant herein rejecting the claim of the respondents-writ petitioners for their promotion cannot be held to be contumacious. It is not in the teeth of the order passed by this Court in W.P. No. 17560 of 1999 whereunder the Court directed the appellant herein to consider the cases of the respondents-writ petitioners for their promotions as Post Graduate Teachers. The said order dated 5-9-2002 cannot be characterised as an order suffering from lack of bona fides.

49. However, the learned single Judge having perused the judgment of the Division Bench in W.A. No. 193 of 2000 and also the order in W.A. Nos. 993 of 2000 and 566 of 2001 came to the conclusion that "a Division Bench of this Court ruled that one need not have teaching experience in the subject in which he holds Post-Graduate Degree for considering his case for promotion." This understanding is based upon another judgment rendered by a Division Bench of this Court in W.P.No.20533 of 1995 and batch filed by one Giridhar Kishore and others. We do not propose to express any opinion whatsoever with regard to the reasoning given by the learned Judge in support of the conclusions drawn that a teacher need not have teaching experience in the subject in which he holds Post Graduate Degree for considering his case for promotion. Suffice it to notice that there is no reference to the order passed by a Division Bench of this Court in Giridhar Kishore''s case (W.P. No. 20533 of 1995), in the order passed by the learned single Judge in W. P. No. 17560 of 1999. Precisely for the said reason, the learned Judge in the order under appeal observes that ".....that I have in mind the Judgment of this Court in Giridhar Kishore''s case while passing the order.....Since the Division Bench disposed of the writ appeal filed by the respondents against my judgment in terms of Giridhar Kishore''s case, the respondents are duty bound to consider the case of the petitioners for promotion in the subjects in which they are holding Post-Graduate degree subject to the fulfilment of other qualifications....."

50. It is interesting to notice that there is no plea as such raised in the affidavit filed in support of the Contempt Case complaining breach of any specific direction issued requiring compliance by the authority concerned. The entire allegation is levelled against the learned Standing Counsel for the Society as if he misrepresented the orders "in different manner stating that the orders are in favour of the respondent-society and Writ Appeal filed by them was allowed and therefore, the petitioners and other petitioners promotions can be withdrawn." There is no reference to the Giridhar Kishore''s case. The affidavit itself has been filed much prior to the proceedings dated 5-9-2002 issued by the appellant herein. No additional affidavit has been filed attributing any mala fides to the appellant herein. No grounds are raised in the Contempt Case alleging that the order dated 5-9-2002 issued by the appellant herein is contrary to the letter and spirit of the order passed by the learned single Judge in W.P. No. 17560 of 1999.

51. The process for civil contempt will invariably depend upon proving a breach of the order which has been made or given. This requirement has two facets, namely (i) the existence of the breach and (ii) the proof thereof. The necessity of determining whether there has been a factual breach of an order on the part of the person brought before the Court clearly demands that the terms of the order itself be expressed in clear and unambiguous language. The person accused of contumacious conduct should know with complete precision what it is he is required to do or to abstain from doing. The requirement of clarity has been admirably stated in a leading American case, where it was said of an injunction that:

52. It should be as definite, clear and precise in its terms as possible, so that there may be no reason or excuse for misunderstanding or disobeying it; and, when practicable, it should plainly indicate to the defendant all of the acts which he is restrained from doing, without calling on him for inferences or conclusions about which persons may well differ.

53. There is no material on record to hold that the appellant herein wantonly and deliberately disobeyed any clear, specific and unambiguous directions issued by the Court.

54. The respondents-writ petitioners miserably failed to establish beyond reasonable doubt the breach of the order by the appellant herein. There is neither any breach nor proof of the same as is required in law.

55. It is entirely a different matter altogether that the conclusions drawn by the appellant herein may be erroneous. The understanding of the purport of the order passed by this Court in W.A. No. 193 of 2000 may be an erroneous one. Every erroneous order cannot be equated to that of a contumacious one.

56. In J. Parihar Vs. Ganpat Duggar and others, the Supreme Court observed that "once there is an order passed by the Government on the basis of the directions issued by the court, there arises a fresh cause of action to seek redressal in an appropriate forum." It may be necessary to notice the facts in the said case in order to appreciate the ratio of the decision:

The controversy in the said case related to the preparation of the seniority list of the Engineers in Rajasthan Civil Engineering Services. The High Court by order dated 6-10-1988 declared the seniority list prepared with retrospective effect in terms of the amended Rules as unconstitutional; it accordingly quashed the list and directed preparation of the seniority list afresh to determine the inter se seniority on that basis and to grant promotion to the appellants within the specified time. The said order has been reiterated by order of another Division Bench dated 9-9-1989. When the seniority list came to be prepared the contempt proceedings were initiated u/s 12 of the Contempt of Courts Act, 1971. The learned single Judge on consideration of the merits held that the authorities had not wilfully disobeyed the orders of the Court. The learned Judge, however, directed the authorities to prepare the seniority list in a particular manner and promotions should be accorded accordingly. On an appeal preferred by the authorities, the Division Bench set aside the directions issued by the learned single Judge. The aggrieved individuals filed appeals in the Supreme Court by Special Leave. The Supreme Court adverting to the facts on hand held:

"The question is whether seniority list is open to review in the contempt proceedings to find out whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the court, there arises a fresh cause of action to

seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible u/s 12 of the Act. Therefore, the Division Bench has exercised the power u/s 18 of the Rajasthan High Court Ordinance being a judgment or order of the Single Judge; the Division Bench corrected the mistake committed by the learned Single Judge."

57. In Indian Airports Employees'' Union (3 supra), the Supreme Court held that "disobedience of orders of the court, in order to amount to "civil contempt" u/s 2(b) of the Contempt of Courts Act, 1971 must be "wilful". Proof of mere disobedience is not sufficient." It is further held that "where there was genuine difference of opinion between rival parties as to whether the cases of the workmen were covered by the relief granted by court and resolution of the said difference involved interpretation of court order, notification and other relevant documents, the only alternative is to get the issue resolved in appropriate proceedings. The decision taken by the authority placing a particular interpretation itself cannot be held to be a contumacious one."

58. Similar is the view taken by the Supreme Court in Chhotu Ram (5 supra), in which it is held that "when promotion was considered in accordance with normal rules, practice and procedure in the light of the directions of the Court and if the candidate was not found fit and if an order has been passed to that effect, the same would not amount to committing any contempt as such."59.

59. In Lalith Mathur V. L. Maheswara Rao, (2000) 10 SCC 285 , the Supreme Court observed that "the High Court cannot issue directions in exercise of its jurisdiction under Article 226 of the Constitution of India in a contempt proceeding compelling the authorities to act in any particular manner." The observations made may have to be understood in the contextual background of the facts in the said case:

An employee of A.P. State Cooperative Rice Federation, which was wound up and he ceased to be an employee of that Federation, filed a writ petition in the High Court seeking reliefs, inter alia, that his representation for absorption in alternative government service may be directed to be considered by the State Government. The writ petition was allowed and the direction was issued to the State Government to consider and dispose of the representation. The State Government having considered the representation rejected the claim of the employee for absorption in government service. The employee, instead of challenging the order by which his representation was rejected in a fresh writ petition, filed a contempt petition in

which he relied upon a judgment of the High Court in Writ Petition No. 22230 of 1997 and batch decided on 15-10-1997, and the High Court too, relying upon that decision, disposed of the contempt case directing the authorities to absorb the petitioner in any suitable post in any government department or public undertaking within three months from the date of receipt of a copy of the order. It is under those circumstances, the Supreme Court held:

"The above will show that the High Court has directed the State Government to absorb the respondent against a suitable post either in a government department or in any public sector undertaking. This order, in our opinion, is wholly without jurisdiction and could not have been made in proceedings under the Contempt of Courts Act or under Article 215 of the Constitution.

The High Court in the writ petition had issued a direction for the consideration of the respondent''s representation by the State Government. This direction was carried out by the State Government which had considered and thereafter rejected the representation on merits. Instead of challenging that order in a fresh writ petition under Article 226, the respondent took recourse to contempt proceedings which did not lie as the order had already been complied with by the State Government which had considered the representation and rejected it on merits."

60. It is unnecessary to burden this Judgment with similar precedents and suffice it to notice that the Supreme Court consistently held that the jurisdiction of the High Court under Article 226 of the Constitution and its jurisdiction under the Contempt of Courts Act, 1971 read with Article 215 of the Constitution are not one and the same. (See: Diamond Plastic Industries V. Govt. of Andhra Pradesh & others 2002 (6) Supreme 207 and Dilip MItra & another V. Swadesh Chandra Bhasdra & others 2002 (6) Supp 249).

61. In T.V. Chowdary Vs. Riata Industrial Corporation, in more or less similar circumstances, a Division Bench of this Court, speaking through P. Venkatarama Reddi, J (as His Lordship then was), observed:

"We agree with the learned Advocate General that the learned single Judge outstepped the jurisdiction vested in the Court while deciding the contempt application by dealing with the merits of the order passed by the appellant. It is trite to say that the scope and purport of the contempt jurisdiction is to see whether the order of the Court has been complied with in substance or deliberately flouted. There is no positive direction to dispose of the application in a particular manner. Whether or not the concerned authority disposed of the mining lease application in accordance with law, is a matter on which some debate or controversy is possible. Whereas it is the contention of the writ petitioners that the order passed is not in accordance with law, it is the contention of the appellant that the order passed by him is in conformity with law. The legality or propriety of the order passed by the appellant is liable to be tested in an independent proceeding either by way of

revision or by filing writ petition. We are not for a moment saying that the order passed by the appellant is valid. On that aspect, we express no opinion. At best, we are only concerned with the limited question whether the order of rejection was passed in a pre-determined manner, and whether the whole exercise is farcical and colourable. We are unable to reach that conclusion. As observed already, we cannot subject the order to judicial review and go into the controversial questions as to whether the order passed is in accordance with law. As far as the Court dealing with contempt is concerned, it can only embark upon a limited enquiry as indicated above. Viewed from this perspective, we are not in a position to say that the direction of the Court in W.P. No. 12386 of 1991 has been violated. We are fortified in our view by the recent decision of Supreme Court in J. Parihar Vs. Ganpat Duggar and others, . We do agree with the learned Counsel for the writ petitioners that there are substantial grounds to challenge the order in question. But, as already observed, that has to be done in an appropriate proceeding, but not in a contempt application. There is one other aspect, which we would like to advert to. The direction given by the learned single Judge virtually amounts to a direction to pass an order granting the mining lease, because in the course of discussion, the learned single Judge expressed that there could possibly be no legal objection for the grant of lease. This, in our view, goes beyond the scope of the direction granted in the writ petition. The learned Judge while dealing with the contempt application ought not to have granted such direction."

62. Similar is the view taken by another Division Bench of this Court in Prof. Pannalal, Registrar, Osmania University, Hyd. Vs. Holy Bharathi P.G. College, Hyd. and others, .

63. However, Sri M.L. Ali, learned counsel for the respondents herein relied upon a decision of this Court rendered by a learned single Judge in R.E.S. Junior College V. R.V. Iyer 1988 (2) ALT 553 in support of his submission that the decision of the authority concerned taken pursuant to the directions of the Court itself can be reviewed even in contempt proceedings. In the said case, the petitioner filed a writ petition seeking a Mandamus directing the government to admit the petitioner-institution to grant-in-aid. The Government resisted the claim. The Court, by judgment dated January 21, 1988, allowed the writ petition and directed the respondents to admit the petitioner institution to grant-in-aid within two months from the date of receipt of that judgment. The Contempt application was filed complaining that despite the expiry of two months, the respondent took no action to comply with the order and thereby he deliberately or wilfully disobeyed the orders of the Court, punishable u/s 12 of the Contempt of Courts Act, 1971. The Government resisted the Contempt application on the ground that in view of the subsequent enactment of the Andhra Pradesh Educational Institutions Grant-in-aid (Regulation) Act (Act 22 of 1988), the judgment of the Court became unenforceable. The learned Judge having gone into the merits, struck down the Section 7 (a) and (b) of the said Act. But, it is required to notice that a Division Bench of this Court in

Govt. of A.P. vs. V.S.S. High School 1989 (2) ALT 151 reversed the said judgment in toto. The learned counsel for the respondents perhaps would not have relied upon the above judgment had he made some effort to know as to whether the judgment upon which reliance is placed still holds the field. No further comment is necessary.

64. In the light of the aforesaid discussion, we hold that the appellant herein did not commit any contempt whatsoever in passing the order dated 5-9-2002 rejecting the claim of the respondents-writ petitioners for their promotion as Post Graduate Teachers. There is no attempt on the part of the appellant herein to flout the orders passed by this Court in any wilful and deliberate manner. This is a bona fide exercise of jurisdiction vested in her in compliance with the directions of this Court. The only course left open to the respondents is to challenge the said order in properly constituted proceedings, if they are so advised.

65. It is clear from the decisions referred to hereinabove that the jurisdiction of this Court under the provisions of the Contempt of Courts Act, 1971 is not similar to that of the jurisdiction under Article 226 of the Constitution of India to judicially review the decision making process by the State and its instrumentalities. They operate in different fields. An order passed by the authorities pursuant to the directions of the Court, even if vitiated by an error, cannot be judicially reviewed by this Court in exercise of its contempt jurisdiction.

66. In appropriate cases if the Court comes to the conclusion that the order passed by the authorities in purported compliance of the directions of the Court is not a bona fide one, but a deliberate attempt to overreach the Court''s order and wilfulness in the matter of disregard of an order of the Court is apparent on the face of it and there is no possibility to accept the same as defence of action for deliberate and wilful disregard of an order of the Court, it shall always be open for the Court to proceed further under Article 215 of the Constitution of India and also under the provisions of the Contempt of Courts Act, 1971. Such a contingency may arise where there is a clear, deliberate and wilful attempt on the part of the authorities in flouting the specific directions of the Court without any rhyme or reason.

67. The High Courts are Courts of record and Article 215 of the Constitution has given them the powers to punish for contempt. This power to punish for contempt of itself cannot be abrogated or stultified. Provisions incorporated in the Act 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 are in conformity with Article 215 of the Constitution of India. Therefore, even the power under Article 215 of the Constitution of India is required to be exercised in consonance with the provisions of the validly enacted law. (For the proposition, see: Pallav Sheth Vs. Custodian and Others,).

68. For the aforesaid reasons, we hold;

(a) The Contempt Case filed by the respondents herein is totally misconceived and not maintainable in law since the order passed by the learned single Judge in W.P. No. 17560 of 1999 got merged into the judgment passed by the Division Bench in W.A. No. 193 of 2000, dated 13-6-2002. On account of such merger, the order passed by the learned single Judge in W.P. No. 17560 of 1999 has become unenforceable. The judgment passed by the Division Bench while disposing of the W.A. No. 193 of 2000, which has become final, alone is in operation and thus enforceable.

(b) The appellant herein did not commit any civil contempt since proceedings dated 5-9-2002 have been issued pursuant to the directions of the learned single Judge. There is no wilful or deliberate attempt on the part of the appellant herein to intentionally flout or disobey the orders passed by this Court.

(c) The proceedings dated 5-9-2002 issued by the appellant herein are not susceptible to be judicially reviewed while adjudicating the contempt case and the matter could have been left open to enable the respondents to challenge the said order by initiating appropriate proceedings.

69. For the aforesaid reasons, the Contempt Appeal is allowed. The impugned order under appeal is set aside.

70. Leave is granted to the respondents-writ petitioners to assail the legality and correctness of the proceedings dated 5-9-2002 issued by the appellant herein, if they are so advised.

71. There shall be no order as to costs.