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# (2014) 05 CAL CK 0040

## **Calcutta High Court**

Case No: WPST 150 of 2010

Sabnam Begum APPELLANT

Vs

The State of West

RESPONDENT

Bengal and Others

Date of Decision: May 15, 2014

#### **Acts Referred:**

Administrative Tribunals Act, 1985 - Section 17

Constitution of India, 1950 - Article 129, 215, 226

• Contempt of Courts Act, 1971 - Section 10, 15, 20

• Limitation Act, 1963 - Section 17

Citation: (2014) 3 CALLT 541: (2014) 2 CALLT 582: (2014) 5 CHN 42

Hon'ble Judges: Tapash Mookherjee, J; Nishita Mhatre, J

Bench: Division Bench

Advocate: Himadri Sekhar Chakraborty, Advocate for the Appellant; Neguive Ahmed and Mr.

Benazir Ahmed for the State, Advocate for the Respondent

Final Decision: Dismissed

## Judgement

#### Nishita Nirmal Mhatre, J.

This petition is directed against the decision of the West Bengal Administrative Tribunal in C.C.P. No. 78 of 2001. By its decision dated 23rd April, 2009 the Tribunal dismissed the contempt petition on the ground that it had not been filed within the period of limitation as prescribed under the Administrative Tribunals Act, 1985 read with Contempt of Courts Act, 1971.

2. The petitioner was selected for empanelment in the list of successful candidates for the post of Staff Officer and Instructor in the Civil Defence Organisation, West Bengal on 15th September, 1985. She was informed that after training for a period of four weeks she would be appointed on a provisional basis subject to the availability of a vacancy.

- 3. As directed by the Memo of 15th September, 1985, the petitioner reported for training. A certificate was issued by the Central Civil Defence Training Institute on 1st February, 1986 indicating that the petitioner has successfully completed her training. The petitioner was then directed by the letter dated 18th April, 1986 to appear before the Board of Officers with her original certificates and other credentials and the petitioner complied with this direction.
- 4. The petitioner had not received any information regarding her appointment with the respondents. She submitted her representations to various officers and Ministers of the Government of West Bengal on several occasions between 1987 and 1992.
- 5. However, there was no response to any of the representations made by the petitioner. She therefore preferred W.P. No. 17740(W) of 1992 before this Court. The petition was subsequently transferred to the West Bengal Administrative Tribunal as this Court had no jurisdiction to entertain the representation. On 26th April, 1997, the Tribunal allowed the application of the petitioner by directing the respondents to consider her case for employment in any existing vacancy according to the Rules. The Tribunal further observed that in the event there was no vacancy available, she should be considered for employment against a future vacancy.
- 6. The respondents preferred an application for review before the Tribunal in November, 1997. The Review Application was dismissed on 7th March, 2001. Thereafter the respondents preferred another Review Application which was also dismissed by the Tribunal. Despite the decision of the Tribunal in T.A. No. 1585 of 1997 which was decided on 26th August, 1997, the respondents took no steps to implement the same. The petitioner states that the orders of the Tribunal dated 26th August, 1997 in T.A. No. 1585 of 1997 and 7th March, 2001 in Review Application case No. 60 of 1997 and R.A. case No. 27 of 1998 were challenged by the respondents in WPST No. 664(W) of 2001 in this Court. By an order dated 24th December, 2001, the Division Bench of this Court dismissed the writ petition as it was of the opinion that there was no need to interfere with the order passed by the Tribunal. The petitioner therefore filed CCP No. 78 of 2001 before the Administrative Tribunal on 29th June, 2001.
- 7. The petitioner''s claim for being appointed to the post of Staff Officer and Instructor in the Civil Defence Organisation, West Bengal was rejected by the Director of Civil Defence by an order dated 31st January, 2002, during the pendency of the contempt petition before the Tribunal. This order of 31st January, 2002 was placed on record by the petitioner by way of supplementary affidavit in the contempt petition. By an order dated 15th July, 2002, the Director of Civil Defence was directed to appear in person before the Tribunal. That order was challenged by the respondents in WPST No. 1100 of 2002 filed in this Court. The Division Bench of this Court dismissed the writ petition.
- 8. When the contempt petition came up for hearing before the Tribunal on 28th June, 2005, the Tribunal observed that despite several opportunities being given to the

respondents to submit a status report in compliance with the order passed on 26th August, 1997, no report had been submitted. The Tribunal therefore directed that the status report regarding the implementation of its order passed in the Original Application should be produced on the next date of hearing.

- 9. Instead of complying with this order, the respondents preferred another writ petition being WPST No. 529 of 2005. That writ petition was also dismissed by the Division Bench while directing the Tribunal to hear the matter finally as early as possible. This order was passed on 22nd August, 2005.
- 10. It appears that the respondents filed one more writ petition challenging the order passed on 26th August, 1997 in T.A. No. 1585 of 1996 and also certain orders which were passed in the contempt petition pending before the Tribunal. That writ petition was registered as WPST No. 662 of 2008. By an order dated 17th June, 2008 the Division Bench of this Court held that since interim orders which were passed in the contempt petition by the Tribunal had been challenged in the writ petition, there was no need to interfere with the same. However, the Tribunal was directed "to decide the question of limitation first before going into the merit of this matter at the time of final hearing".
- 11. Not being satisfied with the order, the respondents again moved this Court by filing a Review Application against the order dated 17th June, 2008 which is apparently pending before this Court.
- 12. The petitioner"s contempt petition which was pending before the West Bengal Administrative Tribunal since 2001 was dismissed on the ground that it was barred by limitation. The Tribunal observed that the petitioner had learnt about the violation of its order when one Shukla Gomes was appointed in a vacancy on 18th July, 1999 although she was junior to the petitioner. The Tribunal found that the contempt petition was preferred on 29th June, 2001, after one year had elapsed from the date of knowledge of the breach of the order passed by the Tribunal. It was therefore of the view that since the contempt petition is barred by limitation no further action could be taken in the matter. The contempt petition was dismissed.
- 13. Thus, the issue before us is whether the Tribunal was right in dismissing the contempt petition. There is no dispute that the Tribunal had on 26th August, 1997 allowed the application filed by the petitioner for appointment in service by directing that she should be appointed in any existing vacancy according to the Rules and if there was no vacancy, the petitioner must be appointed against any future vacancy which may arise. It appears from the record that the petitioner was aware of the fact that one Shukla Gomes had been appointed on 18th July, 1999 which is apparent from the pleadings in the contempt petition. However the petitioner waited till the Review Application which was filed by the respondents against the original order dated 26th August, 1997 was disposed of by the Tribunal. The Review Application was decided on 7th March, 2001 while the contempt petition was filed on 29th June, 2001. The Tribunal has held that the existence or the

filing of the Review Application by the respondents ought not to have deterred the petitioner from filing the contempt petition within the stipulated period of limitation.

- 14. The issue therefore is whether the petitioner"s contempt petition could be said to be barred by the period of limitation as contemplated under the Administrative Tribunals Act, 1985 read with the Contempt of Courts Act, 1971. u/s 17 of the Administrative Tribunals Act, 1985, the Administrative Tribunal has been vested with the same jurisdiction, powers and authority in respect of contempt of itself as the High Court has and it can exercise all powers which are vested in the High Court under the Contempt of Court Act. u/s 20 of the Contempt of Courts Act, no Court can initiate proceedings for contempt, either on its own motion or otherwise, after the expiry of the period of one year from the date on which the contempt is alleged to have been committed.
- 15. In the case of Pallav Sheth Vs. Custodian and Others, the Supreme Court considered the provisions of Section 20 of the Contempt of Courts Act and Section 17 of the Limitation Act. The Court dealt with the issue of limitation and held that rules had been framed by certain High Courts indicating that the proceedings for contempt are initiated with the filing of an application or petition before the Court. If such proceedings are not initiated within a period of one year from the date on which the contempt is alleged to have been committed then the Court would not have jurisdiction to punish a party for committing contempt. However, when proceedings are properly initiated by filing of the petition before the Court within the period of limitation, the provisions of Section 20 would not be impediment for the Court to exercise its jurisdiction. The Court observed as follows:
- 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. Venugopal 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 Vs. D.K. Mittal and Another [OVERRULED], , to the effect that initiation of proceedings u/s 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 contemner 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 instance, 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 u/s 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, dehors the contempt of Courts Act, 1971 is enshrined in Art. 215 of the Constitution. Such an interpretation of Section 20 would harmonise that section with the powers of the Courts to punish for contempt which is recognised by the Constitution.

### Later in Para 44, the Court held as follows:

- 44. Action for contempt is divisible into two categories, namely, that initiated suo motu by the Court and that instituted otherwise than on the Court"s own motion. The mode of initiation in each case would necessarily be different. While in the case of suo motu proceedings, it is the Court itself which must initiate by issuing a notice. In other cases initiation can only be by a party filing an application. In our opinion, therefore, the proper construction to be placed on Section 20 must be that action must be initiated, either by filing of an application or by the Court issuing notice suo motu, within a period of one year from the date on which the contempt is alleged to have been committed.
- 16. Thus, the requirement in contempt proceedings is that the proceedings must be filed within one year of the alleged contempt having been committed. The High Court may then proceed to exercise its jurisdiction in the contempt proceedings even after the expiry of one year from the date of the order which has been disobeyed was passed. Where the High Court exercises its jurisdiction suo motu, it must issue notice within one year of the alleged breach of its order.
- 17. In the Case of Shyamal Krishna Chakraborty Vs. Sukumar Das and Others, the Division Bench of this Court, having regard to the provisions of Articles 215 and 226 of

the Constitution of India the Court was of the view that when an application is filed by litigant bringing notice of the Court about its order being flouted within one year of the order being passed, the application or petition cannot be barred by limitation because procedural formalities had not been completed by the Court over which the petitioner had no control. The Court held that once the petition is presented within one year of the date of the alleged contempt then the petition is maintainable although the necessary formalities under the Calcutta High Court Rules had not been complied within that period of time.

- 18. In the case of Sri. Subrata Kundu and Others Vs. Sri. Kshiti Goswami and Others, this Court concluded that though the contempt petition was filed beyond the period of limitation the High Court"s jurisdiction cannot be limited or regulated by the Contempt of Courts Act in view of Article 215 of the Constitution of India. The Court condoned the period of five years of delay in view of the fact that it was only after this Court had observed that the contempt proceedings were the appropriate remedy that the petitioner in that case approached the Administrative Tribunal, bringing to its notice the contempt committed by the State and its officers.
- 19. In the present case there is no doubt that the contempt petition has been filed before the Tribunal after the expiry of one year from the date of the order passed in the Original Application, i.e., more than one year after 26th August, 1997. An application for review was filed by the respondents before the Tribunal on 25th November, 1997. That application was registered as R.A. No. 16 of 1997. The application was dismissed on 9th September, 1998. Soon thereafter on 5th February, 1999 the respondents preferred another Review Application which was dismissed on 7th March, 2001. Thus the pendency of the Review Petition would indicate that there was no guietus to the order passed by the Tribunal on 26th August, 1997. Instead of complying with the order of the Tribunal the Respondents appointed Shukla Gomes on 18th July, 1999. Therefore, the cause of action for filing the contempt petition arose on 18th July, 1999 when the petitioner became aware that somebody else had been appointed in the vacancy which had arisen, in breach of the order of 26th August, 1997. Therefore, the period of limitation would start running from 18th July, 1999. The petitioner ought to have filed the petition by 17th July, 2000. The petitioner chose not to bring to the notice of the Tribunal the fact that its order had been breached, within the period of limitation prescribed, probably because several proceedings were initiated by the State at every stage to avoid implementation of the order of the Tribunal. However, the filing of the several review petitions and writ petitions by the State and its officers did not put a fetter on the petitioner's right to approach the Tribunal, complaining of the wilful and deliberate breach of its order by filing a contempt petition.
- 20. The reliance placed on the aforesaid judgments by the learned Counsel for the petitioner is of no avail. We cannot exercise powers vested in the High Court under Article 215 of the Constitution as the contempt complained of is not of disobedience of an order of the High Court but that of the Administrative Tribunal.

- 21. Contempt proceedings are quasi criminal in nature. The provisions of the Act must be construed strictly. Considering the ratio in the various judgments cited at the bar it is apparent that the Tribunal has not committed an illegality by dismissing the contempt proceedings on the ground of limitation. The Division Bench of this Court in WPST No. 662 of 2008 had directed the Tribunal to consider the issue of limitation before going into the merits of the matter. The jurisdiction which the administrative tribunal exercises while dealing with matters of contempt is delineated in the Administrative Tribunals Act. It is confined to those powers which the High Court may exercise under the Contempt of Courts Act. However, it is not conferred with the powers vested in the High Court under Article 215 of the Constitution of India. Therefore the Tribunal was right in rejecting the application on the ground of limitation.
- 22. The petition is therefore dismissed.
- 23. Urgent certified photocopies of this judgment, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.