

(2018) 10 JH CK 0030

Jharkhand High Court

Case No: Cont. Case (Civil) No. 362 of 2018

Paras Kumar
@APPELLANT@Hash Kamal
Kishore Sone

APPELLANT

Vs

RESPONDENT

Date of Decision: Oct. 30, 2018

Hon'ble Judges: Pramath Patnaik, J

Bench: Single Bench

Advocate: Krishna Murari, Ajit Kumar, Rahul Kamlesh, Aprajita Bhardwaj

Final Decision: Disposed Off

Judgement

Pramath Patnaik, J.

1. The instant Contempt Petition has been filed for non- compliance of order dated 09.02.2018 passed in W.P. (S) No. 6306 of 2017.

2. Heard Mr. Krishna Murari, learned counsel for the petitioner and Mr. Ajit Kumar, learned Advocate General for the Opposite Parties.

3. Learned counsel for the petitioner submitted that by the aforementioned order, the O.P. No. 1 was directed to give a suitable post to the petitioner

according to his seniority as per the Gradation List of Class-I Engineers of Road Construction Department within a period two weeks from the date of

passing of order dated 09.02.2018. But, in spite of specific order, the contemnor did not place the petitioner on a suitable post rather the contemnor

remitted the services of the petitioner to Road Construction Department vide notification dated 04.04.2018 to work under his juniors, upon which, the

petitioner reported with protest. Aggrieved thereof, the petitioner left with no option knocked the doors of this Court by filing the present Contempt

Petition. It has further been submitted that even after filing of the present contempt petition, till date the petitioner has been transferred in different

departments just like shuttle cock for about ten times in spite of categorical, unambiguous order dated 09.02.2018 passed in W.P. (S) No. 6306 of 2017

to work under his juniors; by which not only the dignity but at the same time the reputation of petitioner has been jeopardized and has been subjected to

mental agony but also by such act the majesty of this Court has been put to danger. The contemnors are very much aware that the petitioner is going

to superannuate on 31.10.2018; hence the contemnor have transferred and posted the petitioner in different departments to kill time and are defying

the order passed by this Court and are not complying the order passed by this Court.

To show the chronological events in the matter, learned counsel for the petitioner has drawn attention of this Court at paragraph 7 of I. A. No. 9892 of

2018 to show the attitude of the contemnor and submitted that it is a willful and deliberate violation of unambiguous order passed by this Court.

Learned counsel for the petitioner further by drawing attention of this Court to order dated 12.10.2018 submitted that this Court took cognizance the

fact that petitioner by notification dated 30.08.2018 was posted in Building Construction Corporation Limited under one Junior Officer-Mr. Arvind

Kumar Singh. Accordingly, this Court directed to comply the order passed in writ application or for appearance of contemnor/Opp. Party No. 1. Even

after passing of specific order by this Court, the petitioner vide notification dated 23.10.2018 has been posted as In-Charge Chief Engineer, which is

relatively lower post to that of Engineer-in-Chief granted to the person at serial no. 135 and 105 whereas the petitioner is at serial no. 4. Lastly,

learned counsel for the petitioner submitted that at present one sanctioned post of Engineer-in-Chief in the same Rural Works Department is vacant;

hence, in order to give a dignified superannuation necessary direction may be passed in this regard.

4. As against this, learned Advocate General, appearing for the contemnors submitted that after passing of order dated 12.10.2018, the contemnors

reviewed the matter and accordingly issued notification dated 23.10.2018 whereby the services of the petitioner has been given to Rural Works

Department, Government of Jharkhand to place him on the vacant post of In-charge, Chief Engineer and after accepting the services of the petitioner

issued further notification dated 24.10.2018 whereby the petitioner has been posed on the post of In-charge, Chief Engineer (Monitoring) under Rural

Works Department, Government of Jharkhand. It has further been submitted that presently no engineer junior to him has been placed on the superior

post than the petitioner (Chief Engineer I/C) in the Rural Works Department. Learned counsel for the contemnor further submitted that as a matter of

fact the petitioner is basically a Superintending Engineer and no right is accrued upon the petitioner to get his choice posting as made out in I.A. No.

9892 of 2018. However, with all fairness, learned Advocate General submitted till filing of last affidavit of contemnor, impugned order was not

completely complied; there is delay but it was not deliberate or intentional and only in order to comply the order of this Court, the respondent has

issued notifications of posting to accommodate the petitioner on a suitable post but as of now, by issuance of notification dated 23.10.2018 and

24.10.2018, the petitioner has been posted on a suitable post where no junior to him has been placed above the petitioner.

5. Before advertng to the rival submissions of the parties, it would be apt to quote the relevant portion of order dated 09.02.2018 passed in W.P. (S)

No. 6306 of 2017:

“Having heard the learned counsel for the respective parties and on perusal of the record, the writ petition is disposed of with a direction to the

Respondent No. 2, the Secretary, Road Construction Department, Government of Jharkhand, Ranchi to give a suitable post to the petitioner, according

to his seniority as per the Gradation list of the Class-1 Engineers of Road Construction Department, as expeditiously as possible, preferably within a

period of two weeks.

6. From the last show cause affidavit dated 25.10.2018 pursuant to order dated 12.10.2018 passed by this Court, it appears that the contemnor after

reviewing the order issued notification dated 23.10.2018 thereby placing the petitioner in Rural Works Department as In-Charge Chief Engineer and

further vide notification dated 24.10.2018 the petitioner has been posted on the post of In-Charge Chief Engineer (Monitoring) under Rural Works

Department, Government of Jharkhand. Admittedly, basically, the petitioner is a Superintendent Engineer and as a matter of right he cannot claim

posting on a post of his choice but the department must take into consideration even posting the officers on In-charge basis, as has been held time and

again by Honâ€™ble Apex Court. In the case at hand, in the Rural Works Department no other person/engineer junior to him has been placed/posted

above the petitioner. Furthermore, it is the exclusive domain of the State to post the officers/engineers on In-Charge basis as per the requirement and

this Court precludes from passing order to place/post the person of his choice, provided it is found that the same violates the fundamental right of the

persons, as enshrined in the Constitution of India. Even otherwise also, the scope and ambit of Court in contempt application is very limited and in the

case at hand, where the Court has passed order to give a suitable posting of the petitioner according to his seniority, which appears to be substantially

complied with.

7. For the discussions made herein above, as the order has substantially been complied with, the contempt proceeding is dropped. Consequently, I.A.

No. 8064 of 2018 and I.A. No. 9892 of 2018 stands disposed of.

8. However, before parting with this order, it would be apt to mention here that after passing of order by Court of competent jurisdiction, the authority

must necessarily either go for appeal in order to challenge the legality and validity of order passed by the Court or comply the order in its true spirit

and should not compel the Court or wait for any adverse order to come for appearance of contemnor(s) or for imposition of cost for compliance of

order passed by the Court. In the case at hand, the contemnor though complied the order but after passing of some stern order which ought to have

been avoided. This Court hopes and trusts that the Opp. Parties shall take care of these things in future.