



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Contempt Petition No. 722/2012

In

S.B. Civil Writ Petition No.2300/2001

Smt. Anupama Singh W/o Shri Naresh Chand, R/o C/o Shri Jagannath Prasad Kushwaha, Lavkush Nagar, Bamanpura, Bayana, District Bharatpur (Raj.)

-----Petitioners

Versus

1. Shri Badri Narayan Sharma, Principal Secretary, Medical and Health Department, Govt. Secretariat, Jaipur.

2. Shri B.k. Dosi, Addl. Director (Admn.), Directorate Of Medical And Health Department, Tilak Marg, C-Scheme, Jaipur.

3. Shri N.k. Srivastava, Chief Medical And Health Officer, Bharatpur (Raj)

4. Rohit Kumar Singh, Additional Chief Secretary, Govt. Secretariat, Jaipur (Raj).

-----Respondents

For Petitioner(s) : Mr. Rajendra Sharma

For Respondent(s) : Dr. V.B. Sharma, AAG

HON'BLE MR. JUSTICE SUDESH BANSAL

Judgment

Reportable

Reserved on :

05/01/2022

Pronounced on :

10/01/2022

1. This civil contempt petition has been filed, alleging non-compliance of the judgment and order dated 28.04.2008 whereby and whereunder, following directions were issued in favour of the petitioner:-

*"Consequently, the writ petition stands allowed.
Respondents are directed to allow the petitioner to*



join service as Female Health Worker in pursuance of order Ann.3 dated 8th July, 2000 within one month and consequential benefits flowing thereof be paid to her within three months. No order as to costs”

2. Learned counsel for the petitioner submits that when the aforesaid directions were not complied with, the petitioner filed S.B. Civil Contempt Petition No.618/2008 and during the course of said contempt petition, the respondents allowed the petitioner to join services on the post of Woman Health Worker w.e.f. 08.05.2008, pursuant to her appointment order dated 08.07.2000. At that point of time, respondents assured to extend the consequential benefits to the petitioner as well within a period of six weeks and therefore, the contempt petition was disposed of vide order dated 19.08.2011 with liberty to file fresh contempt petition, if new cause of action arises.

3. Learned counsel for the petitioner submits that the respondents did not adhere to their assurance and remained fail to grant the consequential benefits to petitioner, therefore against part of non-compliance of the judgment dated 28.04.2008, this contempt petition has been filed.

4. The respondents have filed reply to the contempt petition, alleging *inter alia* that consequential benefits pursuant to the appointment to the petitioner have also been granted vide order dated 25.10.2011, copy of which has been placed on record as Annexure CR/1.

5. Learned counsel for the respondents submits that since there is no specific directions in the judgment dated 28.04.2008 to pay



the back wages and actual monetary benefits to the petitioner, the petitioner has been given benefit on notional basis from July, 2000 to May, 2008 and an amount of Rs.26,746/- has been found payable to the petitioner vide order dated 17.08.2011. The respondents have offered this amount to the petitioner by way of cheque No.431993 dated 25.10.2011, but the petitioner refused to accept the same contending that this is a part payment of back wages, whereas she is entitled for full back wages w.e.f. the date of her initial appointment i.e. 08.07.2000 onwards. The respondents have placed on record the order dated 17.08.2011 as also the copy of cheque with the letter of refusal by the petitioner to receive the cheque. Thus, the counsel for the respondents submits that the judgment dated 28.04.2008 has been complied with and there is no deliberate defiance on the part of respondents. As such the proceedings of contempt petition be dropped.

6. The petitioner has filed rejoinder, alleging *inter alia* that the consequential benefits include the payment of actual monetary benefits of back wages and therefore, though the petitioner has been allowed to join services in pursuance to the appointment order dated 08.07.2000 but she is also entitled to get all the back wages from the date of her appointment. Therefore, according to the petitioner, the respondents are guilty of non-compliance of the part of judgment dated 28.04.2008 due to not granting the back wages and actual monetary benefits by awarding only notional benefits. To buttress his submissions, learned counsel for the petitioner has placed reliance upon the judgment of Hon'ble



Supreme Court passed in the case of **Commissioner Karnataka Housing Board Versus C Muddaiah reported in [2007 (7) SCC 689]** wherein in para No.34 following principle has been propounded which reads as under:-

"We are conscious and mindful that even in absence of statutory provision, normal rule is "no work no pay". In appropriate cases, however, a Court of Law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The Court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The Court may in the circumstances, direct the Authority to grant him all benefits considering "as if he had worked". It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a Court of Law and if such directions are issued by a Court, the Authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant-Board, therefore, has no substance and must be rejected."

7. Heard counsel for both the parties.
8. It is not in dispute that as far as directions to allow the petitioner to join services as Female Health Worker had already been complied with and further according to the respondents, the consequential benefits flowing pursuant to the order of appointment of petitioner dated 08.07.2000 have also been accorded vide order dated 25.10.2011.



9. A perusal of the order dated 25.10.2011 goes to show that pay increment was given to petitioner for the period w.e.f. 01.07.2000 to 07.05.2008, though notionally and from the date of joining of petitioner in service, actual monetary benefits have been calculated as Rs.26,746/- and the same were offered to the petitioner. According to respondents, the petitioner has not rendered services during the aforesaid period, as such no actual monetary benefits/back wages are required to be given therefore, the petitioner is not entitled to claim actual monetary benefits/back wages for such period during which she has not rendered services and more so there are no clear directions in the order dated 28.04.2008 to pay actual monetary benefits/back wages to the petitioner w.e.f. 08.07.2000 onwards. In the order dated 28.04.2008, no specific directions were given to pay the actual monetary benefits. The respondents treated the term "consequential benefits" to provide the notional benefits by giving pay increment and seniority treating the appointment of petitioner w.e.f. 08.07.2000.

10. It is well settled principle of law that if two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. Reference of the judgment passed by Hon'ble the Supreme Court in case of **Ram Kishan Versus Tarun Bajaj reported in (2014) 16 SCC 204** may be given to substantiate the principle of law.

11. The Hon'ble Supreme Court, in the case of **Anil Ratan Sarkar Versus Hiral Ghosh reported in [(2002) 4 SCC 21]** has opined that the powers under the Contempt of Court Act



should be exercised with utmost care and caution and that too rather sparingly and in the larger interest of the society and for proper administration of the justice delivery system in the country.

In para No.15 of the aforesaid judgment following observations have been made:-

"15. It may also be noticed at this juncture 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 and lastly, 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."

12. The Division Bench of this Court in **D.B. Civil Contempt Petition No.1520/2019 titled as Smt. Lalita Sharma Versus Dr. R. Venkeshwar & Ors.** and other connected contempt petitions decided on 20.12.2021 has observed that whether the actual monetary benefits/back wages would be payable to the petitioner from the date of promotion or from the earlier date is a matter requires proper adjudication for which the petitioner should avail appropriate remedy in law and fresh adjudication of disputed issue is not permissible in the contempt proceeding.

13. In case of Commissioner, Karnataka Housing Board (supra), referred by counsel for petitioner, the writ petition was allowed by the Single Judge of High Court with direction to the Board to re-assign seniority of the petitioner therein and to grant other



consequential benefits to him. Since consequential benefits were not extended to the petitioner, he filed contempt petition in respect thereof but the same was dismissed. Thereafter, the petitioner filed a substantive petition seeking payment of consequential benefits, arrears of salary claiming that she is entitled for the same after allowing her writ petition regarding re-assignment of her seniority and the prayer was made that the Board may be directed to extend monetary benefits as per the judgment rendered in her writ petition. In the subsequent fresh writ petition, the Supreme Court considered the principle of law as propounded in para No.34 reproduced herein above. Therefore, in that case a fresh adjudication of the dispute was made for the substantive and separate proceedings in the writ jurisdiction and no such directions were issued in the proceedings of contempt. Thus, the aforesaid principle of law propounded by Hon'ble the Supreme Court is not applicable to the facts of the present case, where the court is considering the proceedings in contempt petition.

14. In the opinion of this Court also, the claim of petitioner for payment of actual monetary benefits/back wages for the period during which she has not rendered services, is not liable to be adjudicated in the contempt proceedings and non-payment of such monetary benefits by the respondents to the petitioner, may not be treated as non-compliance of the order dated 28.04.2008, more particularly when there is no specific directions in explicit terms to pay the actual monetary benefits/back wages to the petitioner w.e.f. 08.07.2000 onwards. The respondents, while considering the consequential benefits to the petitioner pursuant to directions passed in the order dated 28.04.2008, have passed



an order in speaking terms dated 25.10.2011, giving pay increment to the petitioner notionally and giving actual monetary benefits for the period, after allowing joining to the petitioner in service. The petitioner should have challenged the order dated 25.10.2011 by appropriate and separate proceedings in law, if she was inclined to claim entitlement for the back wages/actual monetary benefits for the period during which she did not rendered services. After passing the order dated 25.10.2011, the respondents may no longer be alleged defaulter for non-compliance of the order dated 28.04.2008 and in that view of matter, the respondents may not be held guilty for non-compliance of the order dated 28.04.2008.

15. Accordingly, the contempt petition does not survive any further and is accordingly dismissed. Notices are discharged.

(SUDESH BANSAL),J

SAURABH

