

Court No. - 14

Case :- CONTEMPT No. - 670 of 2021

Applicant :- Syed Amjad Husain

Opposite Party :- Navneet Sahgal, Addl. Chief Secy. Info. & Pub. Relation, Lko. & Anr.

Counsel for Applicant :- Sunil Kumar Chaudhary, Kapil Misra

Hon'ble Abdul Moin, J.

1. Heard Sri S.C. Mishra, learned Senior Advocate, assisted by Sri Kapil Mishra and Sri Sunil Kumar Chaudhary, learned counsel for the applicant, and learned AGA through Video Conferencing in terms of order of Hon'ble Chief Justice taking into consideration COVID-19 situation.
2. Present contempt petition has been filed alleging non-compliance of the judgment and order dated 07.12.2020 passed by the writ Court in Writ Petition No.26677 (SS) of 2019 in re: Syed Amjad Hussain vs. State of U.P. and others, a copy of which has been filed as Annexure-1 to the contempt petition. By the said order, the respondents were directed to allow the petitioner to continue on the post on which he was working prior to passing of the impugned orders and pay him salary and allowances accordingly. Being aggrieved with the aforesaid order, the respondents filed a Special Appeal Defective No.125 of 2021 in re: State of U.P. vs. Syed Amjad Hussain and another, which was dismissed vide judgment and order dated 12.03.2021, a copy of which has been filed as Annexure-6 to the contempt petition.
3. It is contended by learned counsel for the applicant that despite the special appeal having been dismissed by the Division Bench, the respondents have not proceeded to comply with the order passed by the writ Court.

4. On 08.04.2021, this Court had issued notice to respondent nos. 1 and 2. As per office report, notices have been served on respondent nos. 1 and 2 through their respective offices.

5. Today, learned Standing Counsel submits that he does not have any instructions in the matter.

6. Non-sending of instructions in the contempt petition more particularly when notices have already been served upon the respondent nos. 1 and 2 through their office thus prima facie indicates the cavalier attitude on the part of the respondents.

7. In this view of the matter, let respondent nos.1 and 2 appear in person before this Court on 29.06.2021. On the said date, they shall also file their affidavits indicating therein (a) as to why the instructions have not been sent to the office of the learned Chief Standing Counsel despite service of notice upon them through their offices, (b) as to why the order passed by the writ Court has not been complied with despite the special appeal having been dismissed by the Division Bench, and (c) as to why action be not initiated against them for deliberate and wilful disobedience and defiance of the order passed by the writ Court as affirmed by the Division Bench in the special appeal.

8. List this case on 29.06.2021.

9. The Court also takes judicial notice of the fact that as per the office report dated 05.06.2021, the Chief Judicial Magistrate has reported vide his report dated 21.06.2021 that the notices have been served on respondents no. 1 and 2 **through their respective office**. The Court has also gone through the notices pertaining to respondents no. 1 and 2 on which an endorsement has been made that the notice has been served through office.

10. Rule 6 of the Rules framed under Section 23 of the Contempt of Court Act, 1971 (hereinafter referred to as "Act, 1971") as finds place in Chapter XXXV-E of the Rules of the Court categorically provides that where an order has been made directing that notice be issued to any person to show

cause as to why he should not be punished for contempt of Court, a date shall be fixed for hearing and a notice thereof be given to person concerned.

For the sake of convenience, Rules 6 of the Rules is reproduced below:-

6. Documents accompanied notice Where an order has been made directing that notice be issued to any person to show cause why he should not be punished for contempt of Court, a date shall be fixed for the hearing and a notice thereof in the prescribed form given to the person concerned. The notice of a criminal contempt shall also be served on the Government Advocate: The notice shall be accompanied by copies of the application, motion and the affidavit or a copy of the reference by a subordinate court as the case may be, and a copy of the charge or charges as framed by the court and shall require the person concerned to appear either in person or through counsel unless otherwise ordered before the Court at the time and on the date specified therein to show cause why he should not be punished for Contempt of Court. Notice of every proceeding under Section 15 of the Act shall be served personally on the person charged, unless the Court for reasons to be recorded directs otherwise.

(Emphasis by the Court)

11. Earlier too, upon finding that contempt notices were being affected on the orderly of the officer concerned or the official attached with the said officer to whom the notice had been issued, the Registrar General of this Court had directed all the learned District Judges subordinate to the High Court vide his order dated 21.03.2001 that care should be taken of following Rule 6 of the Rules. For the sake of convenience, the administrative order dated 21.03.2001 is reproduced below:-

"From:

S.S. Kulshrestha, H.J.S.
Registrar General,
HIGH COURT OF JUDICATURE AT
ALLAHABAD

To,
All the District Judges,
Subordinate to High Court of Judicature at
Allahabad

C.L. No. 13

Dated: March 21, 2001

Sub: Service of contempt notice on the addressee.

Sir,

Under the Contempt of Courts Rules (as provided in Ch.XXXV-E Rule 6 of Rules of the Court), affecting of personal service on the alleged contemner is an essential requirement. It has been observed by Hon'ble court with concern that while affecting service of notice care to the rules are not taken. Instances have also come into the notice of the Hon'ble court that service on the contemner is preferred to have been affected on his Orderly or official attached with him. This is in clear violation of the rules and cannot in any way be presumed personal service. Hon'ble courts directions given in the Civil Misc. Contempt Application No. 3311 of 2000 Narendra Bahadur Mishra Vs. Ravindra Nath Tripathi and others are also enclosed herewith for circulating amongst the judicial officers for ensuring compliance in such matters.

I am therefore desired to request you to bring into the notice of all the judicial officers the directions given in the aforesaid case and they be asked to remain careful while sending the report about service of notice on the alleged contemner.

Yours faithfully.

Encl. As above.

Registrar General"

12. This has been followed by another administrative order dated 07.04.2009 which though pertains to timely submission of service reports in contempt matters yet it was emphasized that summons are to be served upon alleged contemnor.

13. From Rule 6 of the Rules, the administrative orders dated 21.03.2001 and 07.04.2009 it is amply clear that contempt Court notices are to be served on the alleged contemnor and **not** in his office or upon his orderly or any officer attached with the alleged contemnor. Despite almost more than two decades having lapsed since the issuance of the administrative order dated 21.03.2001 and the rules having been framed in this regard way back in the year 1977 yet the rules and the administrative orders are not being complied with and the notices for contempt are being served upon officer concerned through their office.

14. The Court was inclined to take a strict view in the matter but as a last opportunity it is provided that henceforth the concerned Chief Judicial Magistrate shall ensure that the contempt notices are served on the addressee alone and not in his office or on any subordinate official attached with him.

15. It is also provided that in case the officer concerned effecting service feels any difficulty in service of the contempt notice upon the alleged contemnor personally then the said fact would clearly be indicated in the notice itself and be informed to the Court concerned upon which it would be open for the Court to take other suitable action against the alleged contemnor/addressee.

16. Let a copy of this order be sent by the office to all the District Judges subordinate to the High Court within a week for strict compliance.

Order Date :- 7.6.2021

A. Katiyar