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T.R. DHANANJAYA

v.

J. VASUDEVAN

AUGUST 25, 1995

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[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

*Contempt of Court Act, 1972 :*

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*Service Matter—Court ordering creation of additional post of Engineer-in-Chief to accommodate the petitioner—Government granted time to implement the order—Petitioner denied promotion to the post on the ground of his ineligibility—Eligibility of the petitioner not questioned despite Government being a party—Held : Action of the respondent constituted deliberate and wilful disobedience of Court's Order—One month simple imprisonment awarded to the respondent.*

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D was Chief Engineer of Bangalore Municipal Corporation. As a last resort to salvage him, the Government had revalidated the Rules but was unsalvaged. He had challenged the judgment of the High Court but by that time he had retired from service as Chief Engineer. Though he was unsuccessful, while declining to interfere with the order of the High Court, this Court directed that he would be treated as employee of the corporation for purpose of all retiral benefits. The petitioner who was competing with D and became successful, apprehending that the benefits given to D by virtue of this Court's order might be construed by the Government to mean denial of the rights flowing to him under the order passed by the High Court and by this Court, and sought protection of his rights, and prayed for clarification of the order as he was not made a party to the appeal. This Court clarified that the petitioner would be entitled to all the benefits flowing from those orders. To effectuate the said rights the Corporation might create supernumerary post for the period in question and directed the State Government to issue necessary orders in this behalf.

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The Government directed the Corporation to implement the said order of this Court. The Corporation accordingly created a supernumerary post of an Additional Chief Engineer to be filled by promotion of the petitioner. However, the Government directed the Corporation to promote the petitioner to the post of Superintending Engineer for a period

of 24 days only.

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Aggrieved by the Government's order the petitioner preferred the present contempt petition.

On behalf of the petitioner it was contended that he was entitled to promotion as an Engineer-in-Chief; and that the denial thereof was a deliberate disobedience of the orders of this Court.

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On behalf of the respondent it was contended that the petitioner was not eligible for the post of Chief Engineer; that he was eligible for consequential benefits only for 24 days as superintending Engineer; and that the action of the Government does not amount to contempt of Court.

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Allowing the petition, this Court

**HELD : 1.** The Corporation created an additional post of Engineer-in-Chief pursuant to the order of this Court and directed that in the post thus created the petitioner be accommodated with consequential benefits. When the matter had remained unattended by the Government and this contempt petition was filed, the Government had requested this Court for time for implementation of the direction, which was granted. [71-B-C]

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**2.** What remained for the respondent was only implementation of the order passed by this Court in furtherance of the action taken thereunder by the Corporation. It is now clear that instead of implementing the order, an attempt has been made to circumvent the same and deny the benefits to the petitioner. The petitioner is a Corporation employee and the stand of the Government appears to be to give benefit to their employees. So, an attempt has now been made to get into the rule position and to find whether the petitioner is eligible to be considered for promotion to the post of Executive Engineer, Superintending Engineer and Chief Engineer. It is now stated that according to the rules the petitioner would be eligible only as Superintending Engineer and not as Chief Engineer. When direction was given, Government was a party to the proceedings and it was never brought to the knowledge of this Court that the petitioner was not eligible. [71-D-F]

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**3.1.** It is seen that all through the Government was a party. It was not brought to the knowledge of this Court that the petitioner was not eligible for promotion, in contradistinction with D, or any other. When the claim inter-se had been adjudicated and the claim of the petitioner had become

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A final and that of D was negated, it is no longer open to the Government to go behind the orders and truncate the effect of the orders passed by this court by hovering over the rules to get round the result, to legitimise legal alibi to circumvent the orders passed by this Court. Thus it is clear that the concerned officers have deliberately made concerted effort to disobey the order passed by this Court to deny the benefits to the petitioner. So, there is no option but to hold that the respondent has deliberately and wilfully, with an intention to defeat the orders of this Court, passed the impugned order. [71-G-H; 72-A-B]

C 3.2. There is no extenuating circumstance at all and nothing could have reasonably stood in the way of the petitioner to get appointed to the supernumerary post of Engineer-in-Chief created by the Corporation. It is only the defiant attitude of the Government which denied him that post. Accordingly the respondent is found guilty of committing contempt and is sentenced to undergo simple imprisonment for one month.

[72-G-H; 73-A-B]

D CIVIL APPELLATE JURISDICTION : Contempt Petition No. 234 of 1994.

IN

E Civil Appeal No. 797 of 1993.

From the Judgment and Order dated the 16th July, 1991 of the Karnataka Administrative Tribunal at Bangalore in Application No. 1443 of 1991.

F Rama Jois, Ranganatha Jois and P. Mahale for the Appellant.

Santosh Hegde, K.R. Nagaraja, Gopal Singh (N.P.), M. Veerappa and M.T. George (N.P.) for the Respondents.

The following Order of the Court was delivered :

G One D. Dasegowda, the then Superintending Engineer, a government employee on deputation to Bangalore Municipal Corporation (for short, 'the Corporation') as Chief Engineer, was appellant in Civil Appeal No. 797 of 1993. As a last resort to salvage him, the Government had revalidated the Rules but was unsalvaged. He had challenged the judgment of the Division Bench of the High Court of Karnataka but by that time he

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had retired from service as Chief Engineer. Though he was unsuccessful, while declining to interfere with the order of the Division Bench of the High Court, this Court directed that he would be treated as employee of the Corporation for purpose of all retiral benefits. Subsequently, the petitioner who was competing with Dasegowda and became successful, filed I.A. No. 3 in this Court, apprehending that the benefits given to Dasegowda by virtue of this Court's order dated February 19, 1993 in Civil Appeal No. 797 of 1993 might be construed by the Government to mean denial of the rights flowing to him under the order passed by the Division Bench of the High Court and by this Court, and sought protection of his rights, and prayed for clarification of the order as he was not made a party to the appeal. The order dated March 19, 1984 made in his favour by the Division Bench of the High Court in W.P. Nos. 20147-48/79 was upheld by this Court in S.L.P. (C) Nos. 7317-19/84. Pursuant thereto, by order dated July 26, 1993, passed in the aforesaid I.A., this Court clarified thus:

"The applicant, Dhananjaya, apprehends that by virtue of the orders passed by this Court in the above appeal, it may be construed that he is not entitled to the benefits arising out of the orders passed by the Division Bench of the Karnataka High Court as confirmed by this Court referred to above. It is clarified that this Court did not intend to upset the rights given to the applicant-Dhananjaya by virtue of the order passed by this Court in the above appeal. *He will be entitled to all the benefits flowing from those orders. Under these circumstances, whatever rights that have been accrued to the applicant-Dhananjaya, he is entitled to all the benefits, and to effectuate the said rights, if it is necessary, it may be open to the Corporation to create supernumerary post for the period in question and give the benefits to the applicant for which he is entitled as per the judgment of the Division Bench. The State Government is directed to issue necessary orders in this behalf.*

It is further clarified that this clarification does not have the effect of construing that the appellant- Dasegowda will not be entitled to the status and pensionary benefits as flowing from the order passed by this Court in the appeals."

(Emphasis supplied)

Pursuant to the said order, the Government directed the Corporation

A to implement the order of this Court, by its order No. HUD 168 MNU 93, Bangalore dated the 2nd September, 1993, reading as below :

B "In the circumstances explained above the Bangalore City Corporation is directed that Sri T.R. Dhananjaya be given all the benefits flowing out of the order of the High Court dated 19.3.1984 in Writ Petition Nos. 20147/1979 and 20148/1979 as affirmed by the Supreme Court of India in SLP (C) No. 7317-19-1984.

C This Order is passed in obedience of the direction of the Supreme Court of India contained in the Order dated 26.7.1993 passed in I.A. No. 3 of CA 797/1993.

It is further directed that the Bangalore City Corporation shall give effect to the said Order of the Supreme Court of India."

D On its receipt, the Corporation convened a meeting of the Taxation and Standing Committee for Finance and the said Committee in its Subject No. 136/93 dated September 21, 1993 noticing all the disputes and directions issued by this Court resolved to create one post of Additional Chief Engineer w.e.f. 1st August, 1990 in the scale of Rs. 4550-5600 and to grant consequential benefits emanating therefrom in accordance with Section 88(2) (3) of the Act. The Corporation in its general meeting held on April 4, 1994 resolved thus :

E "Therefore, be it resolved that a post of Engineer-in- Chief be created in the pay of Rs. 5000-6300 and the same be filled by deputation from the Government. It be further resolved that the post of Chief Engineer now in existence be filled by promotion of an official of the Corporation than by deputation. It be further resolved that *a supernumerary post of an Additional Chief Engineer be created and the said post be filled by promotion of Sri T.R. Dhananjaya in accordance with the Government Order with effect from the supernumerary date.*"

G (Emphasis supplied)

When the matter went to the Government, the Government in its impugned proceedings dated July 10, 1995 stated thus :

H "18. Whereas the resolution of the Bangalore City Corporation as

referred to the above at Sl. No. (ix) falls short of due compliance to the orders passed by the Hon'ble Supreme Court of India on 26.7.1993 in IA No. 3 of CA No. 797/93 separate action as contemplated under law is being taken to deal with the said resolution.

19. And now, therefore, on account of the failure of Bangalore City Corporation to accord the appropriate benefits as mentioned above to Sri T.R. Dhananjaya, the Government of Karnataka deems it necessary to pass the following order :

The Bangalore City Corporation is hereby directed to accord such benefits to Sri T.R. Dhananjaya as are indicated in para 16 of the preamble. The Bangalore City Corporation is further permitted to create supernumerary posts as detailed below for the purpose of granting such benefits.

Sl. No.	Cadre	Period
1.	Superintending Engineer	From 17.11.1990 to 11.12.1990

This Order is issued in compliance with the orders of Hon'ble Supreme Court of India in I.A. No. 3 of CA No. 797/93 and the undertaking given by the Government of Karnataka in various cases before the Hon'ble High Court of Karnataka and the Hon'ble Supreme Court of India, including the undertaking given to the Hon'ble Supreme Court of India on 10.5.1995 in Contempt Petition No. 234 of 1994."

The present contempt petition is considered and disposed of in aforesaid background facts.

It is submitted by Sri Rama Jois, Learned counsel appearing for the petitioner, that the Government has grossly violated the order passed by this Court by denying to the petitioner the benefits arising out of the order passed by the Division Bench of the High Court, which was affirmed by this Court in the S.L.P. Nos. 7317-19/1984. It is further submitted that the directions issued by this Court on July 26, 1993 clearly indicate that whatever rights the petitioner was entitled to, i.e., promotion as an Engineer-in-Chief, were to be given with consequential benefits and that the denial thereof is a deliberate disobedience of the orders of this Court.

A Shri Santosh Hegde, the learned Senior Counsel for the respondent contended that the order of the Division Bench of the High Court and the order passed by this Court cannot be construed to mean that any other persons who are legitimately entitled to the post of Chief Engineer are to be denied the right as that would amount to contravention of the rules. He argued that the Government has considered claims of all the persons in accordance with the rules and found that the petitioner was not eligible even for the post of Chief Engineer, that he was eligible for the consequential benefits only for 24 days as Superintending Engineer and that one Venkatesh was eligible to be promoted as Chief Engineer. Accordingly, he was given the promotion as Chief Engineer. The petitioner challenged it and the High Court in the writ petition upheld the right of Venkatesh which has become final. It was further urged, on behalf of the respondent, that since the petitioner was not eligible to be considered for promotion to the post of Additional Chief Engineer, he was not given the benefits and, therefore, the action of the Government in passing the impugned order does not amount to contempt of the Court.

The question, therefore, is whether the State Government has implemented the direction of this Court and the earlier order in its letter and spirit and whether the impugned order of the Government is contumacious.

E It would be clear from the record that the Government intended to salvage the post of Dasegowda as he was deputed to the Corporation by the Government as its nominee. In all the proceedings, the Government failed and ultimately even its attempt to salvage Dasegowda by making amendment to the rules and revalidation did not yield the desired result, since the High Court declared those revalidation rules to be ineffective as far as Dasegowda was concerned. It is an admitted fact that the dispute between the petitioner and Dasegowda was considered by the Division Bench of the High Court and the right of the petitioner was upheld and that of Dasegowda was denied. Others who joined in the litigation dropped out in midstream. The petitioner alone persisted and became successful. When the petitioner apprehended that by virtue of this Court's order giving the consequential benefits due to retirement of Dasegowda from Corporation and directing the Corporation to release the retiral benefits, it might be construed that he was not entitled to the benefits arising out of the orders passed by the High Court as confirmed by this Court in special leave petitions, this Court clarified that the rights given to the petitioner were

not in any way jeopardised and that he was entitled to all the consequential benefits that would flow from the order passed by the Division Bench of the High Court. It was further clarified that if need be, an additional post of Chief Engineer may be created to give benefits to the petitioner. The Government was directed to issue necessary orders in this behalf.

The Corporation created an additional post of Engineer-in-Chief and directed that in the post thus created Dhananjaya be accommodated with consequential benefits. When the matter had remained unattended by the Government and this contempt petition was filed, Sri Hegde, learned Senior Counsel appearing for the Government, had requested this Court on May 10, 1995 for time for implementation of the Direction, when the following order was passed:

"Mr. Hegde, the learned senior counsel appearing for the State seeks for and is granted time till after vacation for implementation of the order. List the matter after vacation."

When this order was passed, what remained for the respondent was only implementation of the order passed by this Court in furtherance of the action taken thereunder by the Corporation. It is now clear that instead of implementing the order, an attempt has been made to circumvent the same and deny the benefits to the petitioner. As stated earlier, the petitioner is a Corporation employee and the stand of the Government appears to be to give benefit to their employees. So, an attempt has now been made to get into the rule position and to find whether the petitioner is eligible to be considered for promotion to the post of Executive Engineer, Superintending Engineer and Chief Engineer. It is now stated that according to the rules the petitioner would be eligible only as superintending engineer and not as Chief Engineer. When direction was given in I.A. 3 of 1993, Government was a party to the proceedings and it was never brought to our notice that the petitioner was not eligible. On the other hand, the Division Bench of Karnataka High Court upheld the right of the petitioner which became final.

Question is whether it is open to the respondent to take at this stage this volte-face step. It is seen that all through Government was a party, when the direction was given in I.A. No. 3 filed by the petitioner, it was not brought to our notice that the petitioner was not eligible for promotion, in contradiction with Dasegowda, or any other. When the claim *inter se* had

A been adjudicated and the claim of the petitioner had become final and that of Dasegowda was negated, it is no longer open to the Government to go behind the order and truncate the effect of the orders passed by this Court by hovering over the rules to get round the result, to legitimise legal alibi to circumvent the orders passed by this Court. Thus it is clear that the concerned officers have deliberately made concerted effort to disobey the orders passed by this Court to deny the benefits to the petitioner. So, we are left with no option but to hold that the respondent has deliberately and wilfully, with an intention to defeat the orders of this Court, passed the impugned order.

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C Sri Hegde submits that the respondent-contemner was *bona fide* under the impression that he had to consider the *inter se* seniority of all the persons; he had no intention to deliberately disobey the orders of this Court and that therefore, sentence of imprisonment may not be awarded as punishment. He also argued that the contemner is at the fag end of his career, and so, sentence of imprisonment may not be imposed.

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Having considered these contentions and given our due consideration, we think that there is no justification to accede to the contentions raised by the learned counsel to take a lenient view. The reasons are obvious. As stated earlier, pursuant to the orders passed by this Court the Government had passed an order directing the Corporation to implement the Order. When the Corporation had passed a resolution creating a supernumerary post and to fill that post by accommodating Dhananjaya with consequential benefits, the Government was only to give effect to the order as passed by this Court on July 26, 1993. But instead of giving effect to the resolution, the Government volte-face exercised the power to see that the order is not given effect to. If the respondent had really harboured under any doubt, would have asked for clarification. Instead, the court was prayed for extension of time on May 10, 1995 for compliance which accordingly was given.

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G Question is whether there is any extenuating circumstance to show leniency in imposing the sentence. Considering the question in this backdrop, we are of the opinion that there is no extenuating circumstance at all, as after promoting Venkatesh, nothing at all could have reasonably stood in the way of the petitioner to get appointed to the supernumerary post of Additional Chief Engineer created by the Corporation. It is only

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the defiant attitude of the Government which derived him that post.

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Accordingly, while finding the respondent guilty of committing contempt, we sentence him to undergo simple imprisonment for one month. In addition, the Government is directed to give effect to the resolution passed by the Corporation with all the consequential benefits as ordered earlier. The contempt petition is ordered accordingly.

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The registry of this Court is directed to communicate this order to the Director General of Police, Government of Karnataka, on receipt whereof he would implement the order and submit its compliance to the Registry within one week from the date of its receipt and also within one week after sentence was served by the respondent.

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V.S.S.

Petition allowed.