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GURMINDER SINGH KANG

v.

SHIV PRASAD SINGH & ORS.
(Civil Appeal No. 8819 of 2012)

B

DECEMBER 7, 2012

[T.S. THAKUR AND FAKKIR MOHAMED
IBRAHIM KALIFULLA, JJ.]

Contempt of Court:

C

Contempt of order of High Court – Appellant-Commissioner of Food and Civil Supplies, canceling the time bound promotions granted to respondent-employee by orders of High Court – High Court holding that the appellant committed contempt of its order, imposed upon him punishment of 2 months' simple imprisonment with fine – Held: Orders and judgments of courts are meant to be obeyed and not to be disobeyed, with impunity – Appellant came forward with a lame and flippant statement that he did not understand the implication of the order of High Court – He passed orders in total derogation of the directions contained in the orders of High Court – In the circumstances, the order of High Court does not call for interference – However, taking into account the age of appellant and the remorse conduct displayed by him, the punishment of imprisonment need not be retained – Instead, a “stern warning” is imposed apart from confirming the imposition of fine – Service law.

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Respondent No. 1, who was dismissed from service, was, by order dated 28.2.1980, reappointed at the starting basic pay of Rs.296/- with a condition that he would not be entitled to any future promotions. Subsequently, he filed a writ petition claiming that he be accorded time bound promotion as per the State Government's scheme.

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The High Court held that the employee could not be denied the benefit of the time bound promotion scheme and, by its order dated 21.8.1995, disposed of the writ petition directing the Commissioner, Food and Civil Supplies to decide the representation by a reasoned order. Accordingly, respondent no. 1 was granted two time bound promotions, the first from 1.4.1981 and the second from 9.9.1992. However, the appellant, by his order dated 25.7.2003, held that the time bound promotions granted to respondent no. 1 were contrary to reappointment order dated 28.2.1980. His pre-revised pay of Rs.296/- was fixed at the lowest of corresponding revised scale of pay, w.e.f. 1.1.1996 and the excess payment was directed to be recovered. In the writ petition filed by respondent no. 1, the High Court held that the conduct of the appellant in passing the order dated 25.7.2003 in violation of the specific order of the High Court passed in the earlier writ petition on 21.8.1995, amounted to contempt of the order of the High Court. It, therefore, imposed upon the appellant punishment of 2 months' simple imprisonment and a fine of Rs.2000/-.

Disposing of the appeal, the Court

HELD: 1.1 Orders and judgments of courts are meant to be obeyed and not to be disobeyed, with impunity. The appellant, a senior level I.A.S. Officer with not less than 30 years of experience in the State Administration came forward with a lame and flippant statement that he did not understand the implication of the order of the High Court which led him to pass such orders in total derogation of the directions contained in the orders of the High Court. From perusal of the order dated 21.8.1995, it is evident that the High Court, though was conscious of the reappointment order dated 28.2.1980, which was subject to the condition that the employee would not be entitled to any promotions, took the view that irrespective

A of the said condition, having regard to the time bound
promotions provided for under separate schemes
announced by the State Government, he could not be
denied the benefit arising therefrom. It was with that
specific observation, the authority concerned, namely, the
B Commissioner, Food and Civil Supplies was directed to
dispose of the employee's representation by reasoned
order by fixing a time limit. The order dated 21.8.1995 had
also become final and conclusive. If the appellant had any
doubt, he should have approached the High Court and
C sought for proper clarifications. Even thereafter when the
said employee filed the writ petition, the appellant ought
to have rectified his mistake and displayed his remorse
conduct by complying with the directions of the High
Court. Instead, the appellant appeared to have attempted
D to justify his action. [Para 9-10] [246-D-G; 247-B-D-E-G]

1.2 Therefore, this Court holds that the order of the
High Court that the appellant committed contempt of its
order dated 21.08.1995 does not call for interference.
However, taking into account the age of the appellant,
E who has retired from service, as well as the remorse
conduct displayed before this Court, the simple
imprisonment of two months alone need not be retained.
However, this Court imposes a "stern warning" to be
recorded as against the appellant apart from confirming
F the imposition of fine as per order of the High Court.
[Para 12] [248-C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No.
8819 of 2012.

G From the Judgment & Order dated 22.03.2004 of the High
Court of Patna in C.W.J.C. No. 9019 of 2013.

Anurag Kumar, Sudama Ojha, Dr. Maya Rao for the
Appellant.

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Gopal Singh, Samir Ali Khan, Chandan Kumar for the Respondents. A

The Judgment of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. Leave granted. B

2. This civil appeal arises out of the order dated 22.3.2004 passed by the High Court of Judicature at Patna in CWJC No.9019/2003 by which the appellant herein was found guilty of contempt of its order dated 21.8.1995 passed in CWJC No.4369/1994. While convicting him for contempt, the learned Judge imposed simple imprisonment of two months apart from a fine of Rs.2000/-. The order was, however, suspended for a period of four weeks to enable the appellant to approach this Court. Notice was issued by this Court in the Special Leave Petition on 15.4.2004 and the impugned order of the High Court was also stayed. C D

3. At the very outset, it is pertinent to mention that this Court by order dated 11.09.2009 dismissed the Special Leave Petition as against respondent No.1 as the petitioner failed to file application for substituted service in regard to respondent No.1. E

4. We heard learned counsel for the appellant as well as learned counsel for the respondent. We have also perused the order impugned in this appeal. To briefly state the facts, one Shiv Prasad Singh who was In-charge Block Supply Officer of Aurangabad was dismissed from service in the year 1977 on charges of bribery, by the Commissioner, South Chhotanagpur Division, Ranchi. Subsequently, considering his representation, he was reappointed by memo No.1471 dated 28.2.1980. While reappointing him, the said order mentioned that Shri Shiv Prasad Singh would get the basic starting pay of Rs.296/- and will not be entitled for any future promotions. The said order became final and Shiv Prasad Singh was reappointed as per F G H

A order dated 28.2.1980. The said Shiv Prasad Singh filed
 CWJC 4369 of 1994 wherein he prayed for a direction to
 accord time bound promotion as per the State Government's
 scheme. Irrespective of the specific directions contained in
 reappointment order dated 28.2.1980, the said writ petition was
 B disposed of by order dated 21.8.95. The said order was to the
 following effect:-

C "It is no doubt that the order as contained in annexure
 '1' was passed in the year 1980 and the petitioner did not
 assail the same in any Court of law since then, but in my
 opinion when the Government introduced the scheme of
 time bound promotion, he can not be denied the benefit
 arising therefrom only on account of the impugned order
 (annexure 1) if he is otherwise eligible and found suitable.
 D However, it has rightly been pointed out by the learned
 standing counsel that as the representation of the petitioner
 is still pending before the Commissioner, Food and Civil
 Supply, Govt. of Bihar (respondent No.2) be directed to
 dispose of the same.

E Accordingly, after having heard the learned counsel
 for the parties, the writ application is disposed of with the
 direction to the Commissioner, Food and Civil Supplies,
 Government of Bihar (respondent NO.2) to dispose of the
 representation of the petitioner by a reasoned order within
 F three months from the date of receipt/production of a copy
 of this order, the certified copy of which shall be produced
 along with the copy of the said representation before
 respondent No.2 by the petitioner within two weeks."

G 5. Pursuant to the said order Shiv Prasad Singh was
 granted first time bound promotion from 01.04.1981 and
 second time bound promotion from 09.09.92. His salary was
 fixed in the revised scale of Rs.5500-9000. The appellant
 herein by his order dated 25.7.2003 in his capacity as the
 Commissioner Food and Supplies and Commerce,
 H Government of Bihar held that the grant of time bound promotion

GURMINDER SINGH KANG v. SHIV PRASAD SINGH 245
[FAKKIR MOHAMED IBRAHIM KALIFULLA, J.]

one on 01.04.1981 and other on 09.09.1992 were in A
contravention of the conditions contained in the reappointment
order dated 28.2.1980 and so saying cancelled the said
promotions. The salary was also fixed in the pre-revised scale
of Rs.296/-. The corresponding revised scale was stated to be B
Rs.5000-8000/-.

6. Consequent to the said orders dated 25.7.2003
necessary orders revising salary in the lowest scale of
Rs.5000-8000/- was fixed from 01.01.1996 and the excess
payment was also directed to be recovered from him. C
Aggrieved by the order dated 25.7.2003, the said Shiv Prasad
Singh filed a writ petition namely, CWJC No. 9019 of 2003.
While examining the grievances in the Writ Petition of Shiv
Prasad Singh the learned Judge of the Patna High Court took
the view that the order passed by the appellant dated 25.7.2003 D
was in violation of the specific orders passed in CWJC 4369
of 1994 dated 21.8.1995 and directed the appellant to show
cause why he should not be punished for contempt. Thereafter,
the appellant stated to have filed his reply and not being satisfied
with the stand taken by the appellant, the learned Judge E
concluded that the conduct of the appellant in having passed
the order dated 25.7.2003 was in violation of the order dated
21.8.1995 and, therefore, the said conduct of the appellant
amounted to contempt of the order of the Court. On the above
said basis, the learned Judge ultimately imposed the F
punishment of two months' simple imprisonment apart from
payment of fine of Rs.2000/-.

7. We heard Mr. Anurag Kumar, learned counsel for the
appellant who strenuously contended that the appellant could
not understand the implication of the order dated 21.8.95 in the
proper perspective when he passed the order dated 25.7.2003 G
and that in any event since he has tendered an unconditional
apology he should be dealt with leniently.

8. While entertaining this appeal, the appellant was
directed to be present in Court. Accordingly, he also appeared H

A before us on 8.10.12. It was submitted before us by the learned
 counsel for the appellant that the appellant retired as Chief
 Secretary of State of Bihar and that he regrets for whatever had
 happened in passing the order dated 25.7.2003 and that he
 did not intend to violate the orders of the Court. The learned
 B counsel, therefore, contended that considering the age of the
 contemnor and having regard to the remorse conduct
 displayed, he may be dealt with leniently.

9. Having perused the order of the learned Single Judge
 C who has considered the matter *in extenso*, we find that the
 conclusions of the learned Judge in having held that the stand
 of the appellant that he was not able to understand the spirit of
 the order in the proper perspective cannot be accepted, was
 well justified. The appellant was a senior IAS officer and it was
 D found that he had nearly 30 years of experience as an officer
 in the administrative service. When we peruse order dated
 21.8.95, we find that the High Court, though was conscious of
 the conditions contained in the reappointment order dated
 28.2.80, took the view that irrespective of the said condition,
 E namely, that the order of reappointment was subject to the
 condition that Shiv Prasad Singh would not be entitled for any
 promotions, however, found that having regard to the time
 bound promotions provided for under separate schemes
 announced by the State Government, any such condition in the
 F order dated 28.2.80 would not operate against the detriment
 of the said employee, namely, Shiv Prasad Singh. That such
 conclusion has been clearly set out in the order which has been
 extracted by us in the earlier part of this order. It was with that
 specific observation the authority concerned, namely, the
 Commissioner, Food and Civil Supply of Government of Bihar
 G was directed to dispose of the employee's representation by
 reasoned order by fixing a time limit. The order dated 21.8.95
 had also become final and conclusive. Pursuant to the said
 order when the then Commissioner Food and Civil Supplies
 Government of Bihar passed orders, granting the first time
 H bound promotion from 1.4.81 and second time bound

**GURMINDER SINGH KANG v. SHIV PRASAD SINGH 247
[FAKKIR MOHAMED IBRAHIM KALIFULLA, J.]**

promotion from 9.9.92 and by fixing the salary of the employee concerned in the proper scale, even assuming the appellant who was stated to have been subsequently posted as Commissioner of Food and Civil Supplies had any doubt as to the nature of the order passed on 21.8.95, he should have taken the Royal Road of approaching the High Court and sought for proper clarifications instead of taking his own decision to reverse the orders granting time bound promotions to the peril of the employee and that too without even referring to the order dated 21.8.95. Even thereafter when the said employee filed the present Writ Petition in CWJC No.9019 of 2003, the appellant ought to have rectified his mistake and restored the benefits of time bound promotions granted in favour of the employee concerned and thereby displayed his remorse conduct by complying with the directions of the High Court.

10. The order of the learned Single Judge impugned in this appeal discloses that instead of displaying such fair conduct before the Court, he appeared to have attempted to justify his action by resorting to an escape route and stated to have offered his regret and unconditional apology as a last resort to pardon him from being punished for any contempt action. Orders and judgments of the Court are meant to be obeyed and not to be disobeyed, with impunity. Of late, we come across several such instances, where high level officers of the Administration display scant regard for the orders of the Court and always come forward with lame excuses. The case on hand is one such instance where the appellant who was a senior level I.A.S. Officer with not less than 30 years of experience in the State Administration came forward with a lame and flippant statement that he did not understand the implication of the order of the High Court which led him to pass such orders in total derogation of the directions contained in the orders of the High Court.

11. In the light of the above conclusion of ours, on going through the orders impugned in this appeal, we do not find any

A scope to interfere with the order of the learned Single Judge. Before us the learned counsel stated that the appellant has retired from service and while appearing before us the learned counsel submitted that the appellant expresses his deep regrets and sincere apologies without any reservation for
B whatever conduct displayed by him in the matter of non-compliance of the orders of the High Court dated 21.8.95.

12. We, therefore, hold that the orders impugned in this appeal in having concluded that the appellant committed
C contempt of its order dated 21.08.95 does not call for interference. We, however, take into account the age of the appellant as well as the remorse conduct now displayed before us, as submitted by learned counsel appearing for the appellant, we are of the view that the simple imprisonment of two months alone need not be retained. We, however, impose a "stern
D warning" to be recorded as against the appellant apart from confirming the imposition of fine of Rs.2000/- to be paid as per the order of the learned Judge impugned in this appeal. We further direct that the said fine amount of Rs.2000/- shall be paid,
E as directed by the learned Judge, within four weeks from the date of receipt of copy of this order. Failing compliance of the said condition, the sentence of simple imprisonment of two months shall stand revived. With the above directions, this appeal stands disposed of.

F R.P.

Appeal disposed of.