

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CONTEMPT PETITION (CIVIL) Diary No. 3911/2022

(Arising out of impugned final judgment and order dated 13-11-2021 in C.A. No. 6649/2021 13-11-2021 in C.A. No. No. 6650/2021 13-11-2021 in C.A. No. No. 6651/2021 13-11-2021 in C.A. No. No. 6652/2021 passed by the Supreme Court Of India)

ARJUN SINGH & ORS.

Petitioner(s)

VERSUS

R D DHIMAN & ORS.

Respondent(s)

WITH

CONMT.PET.(C) Nos. 99-100/2022 in C.A. No. 6651/2021 (XIV-A)
(FOR ADMISSION)

Date : 20-04-2022 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.R. SHAH
HON'BLE MRS. JUSTICE B.V. NAGARATHNA

For Petitioner(s) Mr. Rajesh Kumar Gautam, AOR
Mr. Anant Gautam, Adv.
Mr. Nipun Sharma, Adv.

Mr. Abhinav Agrawal, AOR
Mr. Rajiv K. Virmani, Adv.
Mr. Gaurav Jain, Adv.
Mr. Atul Malhotra, Adv.
Ms. Swati Bhardwaj, Adv.

For Respondent(s) Mr. K.M. Nataraj, ASG
Mr. Abhinav Mukerji, AOR
Mrs. Bihu Sharma, Adv.
Ms. Pratishtha Vij, Adv.
Mr. Akshay C. Shrivastava, Adv.

UPON hearing the counsel the Court made the following
O R D E R

We have heard Shri Rajesh Kumar Gautam, learned counsel appearing on behalf of the petitioners and Shri K. M. Nataraj, learned ASG along with Shri Abhinav Mukerji, learned counsel appearing on behalf of the respondents/contemnors.

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From the record, it emerges that this Court passed a detailed judgment and order dated 13.11.2021 in Civil Appeal Nos.6649-50/2021 and other allied appeals and passed the following order-

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8.1 It is required to be noted that even as per the Regulation dated 01.11.2006, there was no requirement of passing SAS Part II examination for the direct recruit AAOs. The requirement of passing SAS Part II examination was for the promotion from the post of Superintendent (D/A) to the post of AAO and for the promotion in the promotion quota. However, when the amended notification dated 02.01.2010 came to be issued, it provided passing of SAS Part II 10 examination for the post of AAO and the eligibility criteria was minimum two years service as AAO and must have passed SAS Part II examination. As observed hereinabove, as such for the post of AAO and as per the Regulation dated 01.11.2006 as such there was no requirement of passing SAS Part II examination so far as direct recruits to the post of AAO are concerned. Requirement of passing SAS Part II examination was only for promotion to the post of AAO from the post of Superintendent (D/A). For direct recruits as AAO, the only requirement was postgraduate degree in commerce (reproduced hereinabove). Therefore, it is not understandable requirement of passing of the SAS Part II examination for promotion to the post of AAO. When there was no requirement of passing SAS Part II examination for the lower post, i.e., post of AAO so far as direct recruits is concerned, there cannot be any requirement of passing of the SAS Part II examination for the promotional post of AAO. As such after the appointment as AAO either as a promotee or as a direct recruit, all shall be at par. Therefore, the requirement of passing of SAS Part II examination as per the amended notification dated 02.01.2010 for the promotion to the post of AAO can be said to be arbitrary and illogical and the same is rightly read down by the High Court. What is not even required for the lower post, i.e., for the post of AAO so far as the direct recruits is concerned, the same cannot be made applicable to the promotional post of AAO. The High Court is 11 absolutely justified in holding that such a requirement shall be for the promotion from the post of Superintendent (D/A) to the post of AAO only
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and consequently shall not be applicable for promotion to the post of A0.

8.2 Now, so far as the submission on behalf of the appellants that they were promoted to the post of A0 in the year 2010 onwards and their promotions have been set aside after long time and therefore in a petition filed in the year 2017, i.e., after approximately a period of 6-7 years, the High Court ought not to have set aside the promotions of the appellants to the post of A0 is concerned, it is required to be noted that till 2015, a litigation was pending before this Court at the instance of the direct recruits and their status as regular employees as AAOs came to be determined by this Court pursuant to the decision of this Court dated 13.01.2015 in Civil Appeal No. 390 of 2015. Only thereafter they were issued the regular appointment orders and their seniority was fixed and only thereafter the cause of action has arisen to claim further promotion to the post of A0.

At this stage, it is required to be noted that even while allowing the appeals filed by the direct recruits, this Court specifically directed that they shall be treated as regularly appointed AAOs w.e.f. the date of their initial appointment and this Court specifically directed to provide the 12 direct recruits with consequential benefits including seniority etc. Thus, as such there was no delay at all as sought to be contended on behalf of the appellants.

8.3 Now, so far as the prayer on behalf of the appellants that they may not be reverted is concerned, the aforesaid cannot be accepted. If such a prayer is granted in that case, the effect of the impugned judgment and order passed by the High Court with which we agree shall be nullified. As a necessary consequence to the impugned judgment and order passed by the High Court, now the entire list for the promotion to the post of A0 will have to be re-shuffled and the cases of the direct recruits are required to be considered for promotion to the post of A0 from the date on which their junior came to be promoted on the post of A0. Therefore, necessary consequences will have to be followed. If the prayer of the appellants not to revert them and to continue them on the promotional post is accepted, in that case, there may arise many complications including the effect on the further promotional posts from the post of A0 to Senior A0 and thereafter to the post of Dy. CAO/Dy. CA/Dy. FA, therefore, the aforesaid prayer is rejected."

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Pursuant to the directions issued by this Court, the appellants before this Court were required to be reverted as their promotions were cancelled by the High Court with which we confirm. The posts which were fallen vacant on their reversion were required to be filled-in by the employees like the appellants who succeeded before this Court in the year 2015. Their seniority was to be re-fixed and their cases were required to be considered for promotions which were given to the appellants by this Court which came to be set aside by the High Court. Though, the judgment and order was passed by this Court on 13.11.2021, it is reported that all those appellants came to be reverted within a period of approximately 4-5 months and that too after the contempt proceedings were initiated before this Court.

It also emerges from the record that thereafter, after notice was issued by this Court in the present contempt proceedings, the respondents came out/filed a compliance report on affidavit in which it was stated that the judgment and order passed by this Court of which the non-compliance is alleged has been fully complied with. The same was disputed by the petitioners. A detailed affidavit dated 09.04.2022 was filed pointing out non-compliance. Thereafter, learned counsel for the respondents took time and a further affidavit dated 16.04.2022 was filed and the respondents came out with a corrigendum and again submitted that on issuance of the corrigendum, the judgment and order passed by this Court has

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been fully complied with. The aforesaid was also disputed and the matter was adjourned to today so as to enable the respondents to file a further counter tendering unconditional apology and to see to it that the judgment and order passed by this Court of which the contempt is alleged is fully and truly complied with.

Today, a further affidavit is filed in which while tendering unconditional apology, it is stated and the respondent no.2 has come out with a case that he undertakes to take all such steps to fully comply with the judgment of this Hon'ble Court and all other directions passed by this Hon'ble Court. Meaning thereby, as on today, the respondents have not fully and truly complied with the judgment of this Court and such directions passed by this Court. In para 4, it is requested to grant some further time to the respondents to thoroughly examine and verify the record and the relevant Rules in the context of the judgment of this Court, meaning thereby, before filing the earlier two affidavits in which they have stated that they have fully complied with the judgment and order dated 13.11.2021, respondent no.2 did not examine and verify the record and the relevant Rules, thereby respondent no.2 misled this Court and made incorrect statement before this Court and that too on Oath twice.

At this stage, Shri K. M. Nataraj, learned ASG appearing on behalf of respondent no.2 prays for further two weeks time

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to comply with the directions and the judgment and order passed by this Court fully and truly and in its true spirit. It is pointed out that six persons were promoted earlier who are reverted and all those posts are required to be filled in from and amongst the applicants and other similarly situated employees. It is also pointed that similarly out of three posts of Deputy Chief Auditor, only two posts have been filled in and one post is lying vacant. It is also pointed out that even the respective petitioners are not paid the consequential/monetary benefits which they are entitled to pursuant to the earlier orders passed by this Court.

Before we pass any further order taking into consideration the aforesaid aspect, we adjourn the matter at the request of Shri K. M. Nataraj, learned ASG appearing on behalf of respondent no.2 for a period of two weeks so as to enable respondent no.2/respondents to take all corrective measures and to comply with our earlier judgment and order fully and truly. We caution respondent no.2 that while complying with the order passed by this Court there shall not be any feeling of revenge and he should act as a model employer and that there shall not be any bias in implementing the order passed by this Court. Once an order is passed by this Court or any other Court, the employers have to accept the same as it is even if it is liked or not liked by them. They have to implement the order passed by the Court as they are.

We direct that the present order be placed before the
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Managing Director and Chairman of the HP State Electricity Board for perusal so that they should know what is happening in their establishment.

It is reported that respondent no.2 is personally present before this Court today and he shall remain personally present before this Court on the next date of hearing too.

Put up on 10.05.2022.

(NEETU SACHDEVA)
COURT MASTER (SH)

(NISHA TRIPATHI)
BRANCH OFFICER