

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CONTEMPT PETITION (C) NOS. 283-284 OF 2010
IN
CIVIL APPEAL NO(s). 4252 & 4251 OF 2010

SARITA NOUSHAD & ANR Petitioner(s)

VERSUS

S.D.TAK & ANR Respondent(s)

(With appln(s) for permission to correct the typographical mistake
and exemption from filing O.T. and office report)

Date: 02/03/2011 These petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE J.M. PANCHAL
HON'BLE MR. JUSTICE H.L. GOKHALE

For Petitioner(s) Mr. Seeraj Bagga, Adv.
Mrs. Sureshta Bagga, Adv.

For Respondent(s) Mr. Soli J. Sorabji, Sr. Adv.
Dr. Manish Singhvi, AAG
Mr. D. K. Devesh, Adv.
Mr. Irshad Ahmad ,Adv

Mr. Sunil Kumar Jain ,Adv
Mr. Aneesh Mittal, Adv.

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

The contempt proceedings accordingly disposed of
in terms of the signed order.

(Neetu Sachdeva) (Sneh Bala Mehra)
Sr. P. A. Court Master
(signed order is placed on the file)

IN THE SURPEME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

CONTEMPT PETITION (C) NOS. 283-284 OF 2010
IN

CIVIL APEAL NOS.4252 & 4251 OF 2010

SARITA NOUSHAD & ANR Petitioner(s)

VERSUS

S.D.TAK & ANR Respondent(s)

ORDER

By filing these petitions under Article 129 of the Constitution read with Section 12 of the Contempt of Courts Act, 1971, the prayer is made to initiate contempt proceedings against the respondents for violating order dated 5th May, 2010 passed by this Court in Civil Appeal Nos.4252 & 4251 of 2010 by which the two petitioners and other candidates were ordered to be appointed to the post of Civil Judge (J.D.) in Rajasthan Judicial Service after taking their oral interviews and adding the marks obtained by them in the oral interviews to the marks obtained by them in the written examination, in accordance with merits. Another prayer which is made is to direct the respondents to forthwith appoint the petitioner in each petition to the Rajasthan Judicial Service and grant compensation as well as damages on account of harassment and mental agony caused to them due to willful disobedience and violation of orders by the respondents.

The contempt petitions were placed for preliminary hearing before the Court on 18.11.2010 and after hearing the

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learned counsel for the petitioners, following order was passed-

"Mr. Seeraj Bagga, the learned counsel for the applicant states at the bar that pursuant to judgment of this Court dated 5.5.2010, the petitioner and other candidates were interviewed and selected after which the final selection list of nine candidates was forwarded by the Rajasthan Public Service Commission to the High Court and State Government for appointing the 9 candidates on judicial posts, but the appointments are delayed only because the respondents want to favour the candidates who had filed the writ petitions subsequently which were allowed including that of the son of the Registrar of the High Court.

This is a serious matter and has far reaching consequences. In view of the statement made at the bar, issue notice making the same returnable on November 26, 2010.

In addition to the normal mode of service, dasti is also permitted."

Pursuant to the notices issued by the Registry, the respondents had entered appearance through their respective learned counsel and have remained present before the Court on

different dates of hearing. This Court after hearing the

learned counsel for the parties had passed following order on

6.12.2010 -

"This Court has heard Mr. Soli J. Sorabjee, the learned senior counsel for respondent No.1 i.e. Mr. S. D. Tak, Law Secretary, Government of Rajasthan, Government Secretariat, Jaipur, Rajasthan and Mr. Sunil Kumar Jain, learned counsel for respondent No.2 i.e. Mr. T. H. Samma, Registrar General, Rajasthan High Court, Jodhpur, Bench at Jaipur, Rajasthan.

During the course of hearing of the petition, the learned counsel for respondent No.1 has brought to the notice of the Court order dated 29.11.2010 passed by the Government of Rajasthan. The said order indicates that nine candidates whose names are mentioned therein were selected and recommended by the Rajasthan Public Service

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Commission for being appointed as Civil Judge (Junior Division) & Judicial Magistrate, First Class have been appointed on probation for a period of two years from the date of assuming charge of their office. However, their appointments are made subject to following conditions-

"1. Their appointment are against the vacancies falling vacant on account of creation of purely temporary courts of Fast Track and therefore the Officer appointed against these vacancies shall not be continue until and unless substantive vacancies become available subsequently and therefore, they will not be entitled to claim any right to continue in service in case no other posts are available.

2. These appointments will be subject to the final decision of the D. B. (Civil) Writ Petition No.3310 of 2007 pending in the Rajasthan High Court as per the order dated 6.8.2010."

This Court had pointed out to the learned counsel for both the respondents that in 2005, Rajasthan Public Service Commission had conducted test of eligible candidates for filling up roughly 90 posts of Civil Judge (J.D.) in the regular cadre and the learned Registrar General who was present in this Court on May 5, 2010 had informed the Court that nine clear vacancies were available in the cadre of Civil Judge (J.D.) and, therefore, the three Judge Bench of this Court had directed the respondents to consider case of nine candidates for appointment as Civil Judge (J.D.) vide order dated May 5, 2010. It was pointed out to the learned counsel for the respondents and the respondents who were present in the Court that this Court had never directed the respondents to appoint the nine candidates against the vacancies falling vacant on account of creation of purely temporary courts of Fast Track nor this Court had directed that the nine candidates should not be continued in service unless and until substantive vacancies become available subsequently and that it should be made clear to them that they will not be entitled to claim any right to continue in service in case no other posts are available. It was pointed out by this Court to the learned counsel for the respondents that imposition of condition No.1 is the result of perverse reading of order dated May 5, 2010 passed by

this Court, by the two respondents or it exhibits poor understanding of the order passed by this Court, on their part. Thereupon, Shri Soli J. Sorabjee, learned senior counsel had taken instruction from the respondents and had stated at the Bar that the condition No.1 would be deleted while issuing joining orders to the nine

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candidates.

So far as condition No.2 is concerned, it is mentioned therein that the appointment of the nine candidates would be subject to the final decision of the Division Bench in S.B.Civil Writ Petition No.3310 of 2007 which is pending in the Rajasthan High Court as per order dated 6.8.2010. The order dated 6.8.2010 passed by the Division Bench in S. B. Civil Writ Petition No.3310 of 2007 is produced at Annexure R1/10 along with affidavit filed by the respondent No.1. In the concluding paragraph of the said order it is observed as under -

"In view of directions of the Hon'ble Supreme Court as contained in the order dated 5.5.2010 and the facts as stated by RPSC, though at present we are not inclined to issue interim mandamus to the effect that the petitioner be called out for interview at this stage but then having regard to the over all circumstances we are of the opinion that interest of justice shall be served if it is observed that the fresh appointments pertaining to the selections for the year 2005 shall remain subject to the final decision of this Writ Petition and it is enjoined upon respondents to put a statement to this effect in the select list published or to be published and in the consequential appointments. Ordered accordingly."

Mr. Soli J. Sorabjee, the learned senior counsel for the respondent No.1 had, after reading the above quoted order and on instructions of the respondents, mentioned that in view of the order dated 6.8.2010 passed by the learned Judges constituting the Division Bench, there was no option for the respondents but to incorporate condition No.2 in the appointment letters. Thereupon, this Court had pointed out that the order dated May 5, 2010 passed by three Judge Bench of this Court was very much before the learned Judges of the Rajasthan High Court who had passed the order dated 6.8.2010 and it would not be fair to suggest to them that though they had read the order dated May 5, 2010 passed by this Court they had made the order of the Supreme Court subject to the order to be passed by them in a writ petition pending before them. The meaningful reading of the order dated 6.8.2010 makes it evident that what is observed by the Division Bench is that fresh appointments which may be made subsequently after the passing of the order dated 5.5.2010 would be subject to the result of the writ petition pending before the Division Bench. This position being pointed out, Shri Soli J. Sorabjee, the learned senior counsel for the respondent No. 1 had immediately reacted and stated that the order of the Supreme Court can never be made subject the

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order to be passed by the High Court and after taking instructions from the respondents, Shri Sorabjee had stated at the Bar that condition No.1, mentioned in the appointment order dated 29.11.2010 shall also be deleted while issuing joining orders to the nine candidates. Shri Soli J. Sorabjee, the learned counsel for the respondent No.1 had stated at the Bar that joining orders, without

mentioning/incorporating the two conditions stated in appointment order dated 29.11.2010, shall be issued to the nine candidates within two weeks from today and prayed to adjourn the matter to 11.1.2011.

In view of the statements made at the Bar, by the learned senior counsel for the respondent No.1, the respondents are hereby directed to issue joining orders to the nine candidates whose names are mentioned in the appointment order dated 29.11.2010, without mentioning the two conditions, incorporated in the appointment order dated 29.11.2010 within two weeks from today. As prayed for, the matters are adjourned to 11.1.2011.

What is relevant to notice is that the order dated 5.5.2010 passed by this Court was before the High Court and therefore, it is wrong to interpret that the appointments which were to be made pursuant to order dated 5.5.2010 were subject to the result of S. B. Civil Writ Petition No.3310 of 2007.

At this stage, it would be relevant to mention that by order dated May 5, 2010 passed by three Judge Bench of this Court, one SLP and seven writ petitions directly filed in this Court claiming appointments pursuant to the test conducted by Rajasthan Public Service Commission in 2005, were dismissed as withdrawn. Subsequent writ petitions/review petitions are also dismissed by this Court. Therefore, the respondent No.2 should bring to the notice of the Division Bench hearing S. B. Civil Writ Petition No.3310 of 2007.

The Registry is directed to send copy of this order to the Hon'ble the Chief Justice of Rajasthan High Court for information."

The order sheet indicates that thereafter the matter was placed before the Court for further hearing on 11.1.2011 and this Court had passed the order on that day indicated hereinbelow -

"Mr. Soli Sorabjee, the learned senior counsel for the respondent No. 1 has pointed out that the

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direction given by this Court vide order dated December 6, 2010 to delete two conditions which were mentioned in the appointment orders dated 29.11.2010 has been complied with and that the joining orders issued to the petitioners, do not contain those conditions. The statement made by the learned senior counsel for respondent No. 1 is not controverted by the learned counsel for the petitioners.

On the request of Mr. Seeraj Bagga, the learned counsel for the applicants/petitioners, the matters are adjourned to February 22, 2011 to enable him to file rejoinder affidavit to the reply filed by the respondent No. 1.

The learned counsel for the respondent No. 2 prays to permit the said respondent to file an affidavit. The prayer is accepted and it is ordered accordingly."

Thus, the above quoted orders make it evident that

after issuance of notice in the Contempt matters, necessary appointments were made and appropriate action has been taken by the respondents.

Today, during the course of the hearing, Mr. Soli J. Sorabji, the learned senior counsel for the respondent No.1 has referred to reply affidavit filed by respondent No.1 i.e. Mr. S. D. Tak on 1.12.2010. The learned senior counsel referred to the dates and events mentioned in the said affidavit and contented that appropriate steps were taken from time to time by respondent No.1 to comply with the direction contained in order dated 5th May, 2010 passed by this Court. It was also brought to the notice of the Court that respondent No.1 who has a distinguished judicial career has tendered unconditional apology for any action which may be considered by this Court as violation or transgression

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of the orders passed by this Court and it was pleaded that contempt proceedings should be closed so far he is concerned.

As far as the respondent No.2 is concerned, he had earlier filed affidavit and after mentioning relevant facts had mentioned as under in paragraph 9 of the reply-

"It is submitted that despite of the above submissions if the Hon'ble Court finds the respondent guilty of committing contempt of this Hon'ble Court, he humbly apologises unconditionally and prays for discharge of the notices."

This tender of apology was not considered to be sufficient and, therefore, the respondent No.2 has filed further affidavit on 11.2.2011. A conjoint reading of the two affidavits makes it evident that appropriate steps were ought to be taken by the respondent No.2 for the purpose of complying with order dated 5th May, 2010 passed by this Court but other authorities had caused delay in completing certain formalities. The allegations which were made by the petitioners against the respondent No.2 in respect of his son who had also appeared in Rajasthan Judicial Service

Examination, 2005 are controverted by him. The respondent No.2 has also tendered unconditional apology for violation, if any, of the order passed by this court. Having considered the different replies filed by the respondents what this Court proposes to do is to draw the attention of the respondents to the provisions of Article 144 of the Constitution. There is no manner of doubt that if the

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contempt petitions had not been filed god alone knows when the order dated 5.5.2010 passed by this Court would have been complied with by the respondents. Even after issuance of notice in these contempt proceedings faulty orders appointing petitioners and others were passed which were subsequently rectified. This indicates the mindset of the respondents. The record does not indicate that implementation of order of this Court was undertaken by any of the respondents with any sense of urgency and responsibility. However, as the main grievance of the petitioners stands redressed and when the respondents have tendered unconditional apology, this Court is of the opinion that interest of justice would be served if the proceedings against the respondents are closed. The respondents have assured that in future they will take care to see that every order passed by this Court would be implemented as early as possible and without any avoidable delay.

For the foregoing reasons, it is held that no further steps are required to be taken against the respondents and the proceedings are ordered to be closed. The contempt proceedings accordingly stand disposed of.

.....J.
(J.M. PANCHAL)

NEW DELHI
MARCH 2, 2011

.....J.
(H.L. GOKHALE)