

'B
C.A.No. 6968 OF 1999
ITEM No.104

Court No.10

SECTION XVI

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

Civil Appeal No.6968/1999

S.N. CHOUDHURY & ORS. Appellant(s)

VERSUS

MANOJ K. GHOSH & ORS. Respondent (s)

(With Office Report)

Date :22/04/2004. This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE P.VENKATARAMA REDDI
HON'BLE MR. JUSTICE S.B. SINHA

For Petitioner (s)Mr.L. Nageshwara Rao,ASG
Mr.J. Kar,Mr.Rana Mukherjee,
Mr.Siddharth Gautam,Mr.Goodwill Indeevar,
Mrs.Sumita Ray,Advs.
For Respondent (s)
Mr.Ranjan Mukherjee,Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is allowed. The appellants to pay a cost of Rs.5,000/- to the contesting respondents.

(Vijay Kumar Sharma) (Janki Bhatia)
AR cum PS to Hon.Judge Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6968/1999

S.N. CHOUDHURY & ORS...Appellants

Versus

MANOJ K. GHOSH & ORS...Respondents

O R D E R

By the impugned order the Division Bench of the High Court at Calcutta declined to interfere with the order dated 5.1.94 passed by the learned single Judge in exercise of contempt jurisdiction. Before referring to that order dated 5.1.94, it is relevant to advert to the earlier proceedings leading to the filing of the contempt application. As per the order passed by the learned single Judge on 15.9.87 as modified by the order dated 11.11.91, the writ petition filed by the respondents who were working as Peshkars in Judicial Department was disposed of with the following directions:

"The petitioners who are the Peshkars shall be allowed pay protection of Rs.370-10-535/- corresponding to the Basic Grade of Rs.230-5-426/- with effect from the 1st March, 1974 if they were allowed or are found to be entitled to pay protection subject to the condition that no arrear adjustment would be admissible prior to 1.7.87....."

It may be mentioned that the pay scale of Rs.370-10-535 is the one admissible to selection grade Muharrirs which is a post lower to Peshkars. Alleging non-implementation of the said order, a contempt application was filed. By an order dated 23.4.93, the respondents in the writ petition (appellants herein) were directed to comply with the order 15.1.87 read with the modified order within the specified time frame. The learned Judge further directed as follows:

"In implementing the orders as aforesaid, if any particulars are required, the petitioners shall furnish such particulars so that the aforesaid orders may be fully implemented. The respondent authorities shall also be entitled to call for the Service Records, if necessary for implementing the aforesaid orders."

Thereafter, the competent authority i.e. Director of Lands Records and Surveys, West Bengal, passed an elaborate order dated 22.7.93 recording the conclusion that the respondent-employees were not entitled to pay protection for various reasons given therein. It is not necessary to advert to those reasons in detail, nor we are concerned with the correctness or otherwise of the reasons assigned by the said authority while disposing of the representation of the employees pursuant to the direction of the High Court in the writ petition and the contempt application. The respondent-employees thereafter invoked the contempt jurisdiction of the High Court once again complaining that the earlier order of the court was not complied with in spirit and in substance. The learned single Judge of the High Court by order dated 5.1.94 went into the entire issue and construed what the learned Judge meant by 'pay protection' by observing as follows:-

"In my view, the intent and the purport of the orders passed by this court have not been understood by the concerned officer in passing the order dated 2.12.91. Pay protection which has been given in terms of the order passed by this court is to the extent that the petitioners should not get a lesser pay than that paid to the Mohurrirs who are holding the feeder posts. If the Mohurrirs are getting the scale of Rs.370-535/- holding a lower post, there is no justification why pay protection shall not be given to the Peshkars. They shall be entitled to the pay scale of Rs.370-535/- at least."

So holding the learned Judge directed the appellants herein to comply with the orders passed by the court and give the benefit of pay-scale of Rs.370-535/- to the Peshkars from 1.3.74 subject to the result of the appeal, if any preferred against the order in C.O.No.11286(W)/87. The contempt petition was accordingly disposed of. Against this order the appellants herein filed an appeal FMA No.348/96. The Division Bench of the High Court dismissed the appeal by observing that the direction given by the learned single Judge did not go beyond the scope of the contempt jurisdiction. According to the Division Bench the order passed by the learned single Judge on 5.1.1994 was only to effectuate the earlier order which was meant to be obeyed by the appellants.

We find it difficult to endorse the reasoning of the Division Bench of the High Court. We have no doubt that the learned single Judge exceeded his jurisdiction under the Contempt of Courts Act by examining the issue de novo whether the petitioner-employees were entitled to pay protection and endeavoured to explain in what sense the Court meant to grant the benefit of pay protection. The learned single Judge examined the correctness of the reasons given by the Director of Lands Records and Survey as if he was sitting in judgment over the legality of the Director's order in exercise of original jurisdiction under Article 226 of the Constitution. It is to be noted that the order in the writ petition is not a categorical and unqualified order. In fact excepting the operative part of the order we find no reasoning in it. The order presupposes that the question of pay protection should be examined accord

ing to law. If the respondent-employees were aggrieved by the Order passed by the competent authority, the obvious course left to them was to question that order in an appropriate forum. When two interpretations are possible as regards the entitlement to pay protection in the light of relevant rules and other relevant facts touching the service conditions and the decision taken cannot be said to be a mere pretence to circumvent the judgment, the question of invoking the contempt jurisdiction does not arise even if the order is assumed to be erroneous. Viewed from any angle, we are of the view that the Division Bench ought to have set aside the order of the learned single Judge purportedly passed in contempt jurisdiction. The appeal is accordingly allowed.

It is distressing to note that when the writ petition came up for hearing before the learned single Judge on 15.9.87 and on 11.11.91 when the application for modification came up for hearing, no one appeared for the respondents in the writ petition. This has led to the passing of an ex-parte order without the assistance of the Government counsel culminating into the proceedings for contempt. In the peculiar circumstances of the case, therefore, we consider it just and proper to direct the State of West Bengal represented by Secretary to Finance Department to pay a sum of Rs.5,000/- as costs to the appearing respondents (respondent Nos.1, 23 and 27) within two weeks. Respondent No.27 can receive the same on behalf of the other appearing respondents also. The disposal of this appeal will not come in the way of of the respondent-employees pursuing appropriate remedy against the order dated 22.7.93 passed by the concerned authority.

.....J
(P.Venkatarama Reddi)

.....J
(S.B Sinha)

New Delhi,
April 22, 2004