

## **Kapildeo Prasad Sah & Ors vs State Of Bihar & Ors on 25 August, 1999**

**Equivalent citations: AIR 1999 SUPREME COURT 3215, 1999 (7) SCC 569, 1999 AIR SCW 3182, 1999 LAB. I. C. 3234, (1999) 6 JT 216 (SC), 1999 (9) SRJ 106, 1999 (2) UJ (SC) 1370, 2000 (1) SERVLJ 134 SC, (2000) 1 SERVLJ 134, 1999 (3) BLJR 2367, 1999 (4) ARBI LR 359, 1999 (5) SCALE 183, 1999 (7) ADSC 837, 2000 (1) UPLBEC 264, 1999 BLJR 3 2367, 1999 (6) JT 216, 1999 UJ(SC) 2 1370, (2000) 1 UPLBEC 264, (1999) 4 ARBILR 359, (1999) 5 SERVLR 17, (1999) 2 EASTCRIC 263, (2002) 4 LABLJ 1007, (1999) 3 LANDLR 508, (1999) 4 SCT 101, (2000) 4 SCJ 585, (1999) 7 SUPREME 382, (1999) 5 SCALE 183, (1999) 3 BLJ 632, (2000) 1 CIVLJ 580, (1999) 2 CURLR 844, (1999) 3 CIVILCOURTC 441, (1999) SC CR R 771, 1999 SCC (L&S) 1357**

**Author: D.P. Wadhwa**

**Bench: D.P.Wadhwa, S.Saghir Ahmad**

PETITIONER:

KAPILDEO PRASAD SAH & ORS.

Vs.

RESPONDENT:

STATE OF BIHAR & ORS.

DATE OF JUDGMENT: 25/08/1999

BENCH:

D.P.Wadhwa, S.Saghir Ahmad.

JUDGMENT:

D.P. Wadhwa, J.

Leave granted.

On refusal of the Patna High Court to initiate proceedings for contempt against the respondents, the appellants have come to this court.

The appellants were working as Assistant Teachers in different elementary schools in Godda district in the State of Bihar. They are in the category of untrained teachers. Their services were terminated. Some of the teachers similarly placed filed writ petitions in the High Court against their termination and the matter ultimately reached this Court. It is not necessary to go into the various stages of the litigation except to note that this Court by order dated November 30, 1992 in Birendra Kumar & Ors. vs. State of Bihar (CA 1 of 1992) directed as under :

"We, therefore, direct once again that if there are vacancies and if there are not trained teachers available the untrained teachers who were employed prior to the new rule came into operation, would be reinstated in service if after subjecting them to the selection process they are found suitable. If there are no vacancies, they would be empanelled according to their seniority and would be appointed according to their seniority in the vacancies arising in future. Unless this panel is exhausted, no new appointment of untrained teachers will be made from outside. It is understood that those eligible for being so appointed will be the ones who were appointed before the new rule came into operation.

While making the appointments of those who were so in service prior to the date of appointment, the State Government will relax the age limit, if necessary.

We are informed that the appellants involved in the present case were paid salaries till 30th June, 1991. We also understand from Mr. B.B. Singh, learned advocate appearing for the State that all the vacancies have been filled in till 1.1.1992. If there were vacancies and yet the appellants were not appointed in the said vacancies such of the appellants who were eligible to be appointed and yet were not appointed in spite of the vacancies, would be entitled to the salaries from 1st July, 1992 till their appointment. However, if there were no vacancies and all the appellants or some of them have to be appointed in the new vacancies which may be available hereafter, they will not be entitled to the salaries from 1st July, 1992, till the date of their appointment. However, when they are appointed the period of break in service not exceeding one year will be taken into consideration for benefits other than salary.

The appeal is disposed of accordingly with no order as to costs."

Appellants and some other teachers like them got similar orders from the High Court in their respective writ petitions. The main order passed by the High Court is dated January 20, 1993 in CWJC No.7000/92. In this judgment the High Court noticed the appointments made in some districts and the number of existing vacancies. State had contended that only one regular vacancy existed when according to the petitioners, there were not less than 2,000 vacancies. Counter affidavit filed by the State did not indicate if all the 2,000 vacancies had been filled up. With the consent of the counsel for the petitioners and the Advocate General that these petitions may also be disposed of in the light of the aforementioned direction of the Supreme Court the High Court directed it accordingly. High Court said : "We may however, direct the State to fill up posts in terms of the aforementioned direction of the Supreme Court with utmost expedition and preferably within

two months from the date of receipt of a copy of this order." Similar orders were passed in other writ petitions filed by untrained teachers as well.

Under the orders of the Supreme Court and those of the High Court which followed, the State Government was to fill up the existing vacancies, if any, by appointing the appellants and other untrained teachers who were eligible to be appointed against those vacancies and in case vacancies did exist as on January 1, 1992 the teachers so appointed against those vacancies would be entitled to salary from July 1, 1992 till their appointment. This was so as salaries had been disbursed up to June 30, 1991. If there were no vacancies, these untrained teachers had to be appointed in the new vacancies which might be available thereafter and in that case they were not be entitled to the salary from 1st July 1992 till the date of their appointment.

Appellants were appointed on October 4, 1994 pursuant to the directions of the High Court on October 4, 1994 by an order issued by the District Superintendent of Education, Godda. Appellants are receiving their salaries w.e.f. October 4, 1994. They claimed that it was case of reappointment under the orders of the Court and that since they were appointed against vacancies existing prior to January 1, 1992, they were entitled to salary from July 1, 1992 till October 3, 1994. They made their claim for the arrears of salary and since there was no response from the State Government, they filed petition for initiation of contempt proceedings against the State as well as its functionaries being the Director, Primary Education; Deputy Commissioner-cum-Chairman of the District Establishment Committee, Godda; and District Superintendent of Education, Godda district. Since it was the case of the respondents that no vacancy existed in the Godda District as on January 1, 1992, High Court by the impugned order dated July 8, 1998 dismissed the contempt proceedings. High Court said that there was no violation of the order passed by the High Court and if the appellants alleged that any direction of the Supreme Court had been violated, then it was not for the High Court to initiate any contempt proceedings. Aggrieved, appellants have come to this Court.

Here again the stand of the respondent has been that there has not been any violation of any order either of this Court or of the High Court. They are specific in their stand that no available vacancy existed before January 1, 1992 and as such the appellants were not entitled to the arrears of salary. Respondents have also contended that the orders appointing the appellants did not show that they were appointed against any vacancy existed before January 1, 1992. Appellants have also not stated before us as to how they claim that any vacancy existed as on January 1, 1992. Yet they state that there has been deliberate inaction on the part of the respondents which showed that they had no regard and respect for Court's orders and that the respondents were wilfully and deliberately flouting the orders and direction of the courts.

Once the respondents take the stand that there was no vacancy existing as on January 1, 1992 in the Godda District and in the absence of any evidence to the contrary, it cannot be said that the orders of the courts have been contravened.

For holding the respondents to have committed contempt, civil contempt at that, it has to be shown that there has been wilful disobedience of the judgment or order of the court. Power to punish for contempt is to be resorted to when there is clear violation of the court's order. Since notice of

contempt and punishment for contempt is of far reaching consequence, these powers should be invoked only when a clear case of wilful disobedience of the court's order has been made out. Whether disobedience is wilful in a particular case depends on the facts and circumstances of that case. Judicial orders are to be properly understood and complied. Even negligence and carelessness can amount to disobedience particularly when attention of the person is drawn to the court's orders and its implication. Disobedience of court's order strikes at the very root of rule of law on which our system of governance is based. Power to punish for contempt is necessary for the maintenance of effective legal system. It is exercised to prevent perversion of the course of justice.

In his famous passage, Lord Diplock in *Attorney General vs. Times Newspapers Ltd.* [(1973) 3 All.E.R. 54] said that there is also "an element of public policy in punishing civil contempt, since administration of justice would be undermined if the order of any court of law could be disregarded with impunity". Jurisdiction to punish for contempt exists to provide ultimate sanction against the person who refuses to comply with the order of the court or disregards the order continuously. Initiation of contempt proceedings is not a substitute for execution proceedings though at times that purpose may also be achieved.

No person can defy court's order. Wilful would exclude casual, accidental bonafide or unintentional acts or genuine inability to comply with the terms of the order. A petitioner who complains breach of court's order must allege deliberate or contumacious disobedience of the court's order.

Nothing has been shown that the claim of the respondents that appellants have not been appointed against any vacancy existing on January 1, 1992 is not true or that the respondents are intentionally or deliberately advancing this plea to deprive the appellants of their right to the arrears of the salary for some ulterior motive. That being so, it was not a case where proceedings for contempt could have been initiated against the respondents. High Court is right in dismissing the contempt petition. However, since there is a serious dispute whether any vacancy existed or not as on January 1, 1992 against which appellants or anyone of them could have been appointed the matter certainly needs examination but perhaps only by way of an interlocutory application in the writ petition and not by way of contempt. Thus, though upholding the order of the High Court, we send the matter back to the High Court to go into the question if any vacancy existed as on January 1, 1992 and, if so, pass appropriate orders.

With these observations, this appeal stands disposed of.