

Anil Ratan Sarkar & Ors vs Hirak Ghosh & Ors on 8 March, 2002

Equivalent citations: AIR 2002 SUPREME COURT 1405, 2002 (4) SCC 21, 2002 AIR SCW 1249, 2002 (4) SRJ 281, (2002) 2 JT 602 (SC), 2002 (2) SLT 441, 2002 (2) ALL CJ 1116, 2002 (2) SCALE 525, 2002 ALL CJ 2 1116, (2002) 2 CAL HN 91, (2002) 2 SUPREME 383, (2002) 3 MAHLR 125, (2002) 2 PAT LJR 160, (2002) 3 RAJ LW 444, (2002) 4 RECCRIR 517, (2002) 2 SCJ 372, (2002) ALLCRIR 868, (2002) 2 SCALE 525, (2002) 2 JLJR 59, (2002) 48 ALL LR 121, (2002) 2 ALL WC 1123, (2002) 4 ALLCRILR 506, (2002) 2 CIVLJ 632, (2002) 2 CURLJ(CCR) 440, (2002) 2 MAD LJ 157

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Bench: U.C. Banerjee

CASE NO.:

Contempt Petition (civil) 260-261 of 2001
Appeal (civil) 2906-2907 of 2001

PETITIONER:

ANIL RATAN SARKAR & ORS.

Vs.

RESPONDENT:

HIRAK GHOSH & ORS.

DATE OF JUDGMENT: 08/03/2002

BENCH:

U.C. Banerjee & Y.K. Sabharwal

JUDGMENT:

Banerjee, J.

The most accepted methodology of governmental working ought always to be fairness and in the event of its absence, law Courts would be within its jurisdiction to deal with the matter appropriately. This proposition is so well settled that we need not dilate further on to this. It is this concept of fairness which Mr.Ganguli, appearing in support of the Petition for contempt very strongly contended, is totally absent in spite of three final rounds of litigation upto this Court

between the parties. Mr. Bhaskar Gupta, learned senior advocate appearing for the alleged contemnors, however, contended that the conduct of the respondents can neither be termed to be unfair or in disregard to the orders of the Court on a true reading of the order this stand of the respondents, however, stands negated by Mr. Ganguli. The conduct, Mr. Ganguli, contended, is not only deliberate but utterly perverse and in grossest violation of the orders of this Court and by reason therefor the fruit of the litigation has not yet been made available and being decreed to the petitioner for one reason or the other for the last about 15 years. Incidentally, it would be convenient to note that the principal issue involved in the matter pertains to the entitlement of the petitioners to the scale equivalent to that of Physical Instructors in the scale of Rs.700-1600 as on 2nd July, 1984 and Rs.2200-4000 w.e.f. 1986.

Turning, however, on to the factual score, it appears that the petitioners are Science Graduates of different universities in the country and have been appointed as Laboratory Assistants in colleges and in addition to their normal duties, the petitioners were supposed to assist the teachers and help the students in practical classes, impart instructions to the students in practical classes and to perform demonstration work including preparation of the lesson units in the practical classes. According to the petitioners these Laboratory Assistants were all along being treated as teaching staff and pay and allowances including the Government share of Dearness Allowances were paid to them until the issuance of the Government Order No.288 Education (CS) dated 21st March, 1969 wherein Laboratory Assistants of non-government affiliated colleges were treated as members of the non-teaching staff. The effect of such re-designation had a direct impact as regards the payment of Dearness Allowances and obviously the same being prejudicial to the interest of the petitioners, representations followed against the Government Order, but, however, to no effect. Representations were also made by reason of the withdrawal of teaching status as the Graduate Laboratory Assistants had to discharge teaching function as well, apart from the normal conduct of the Laboratory work.

The factual score depict that subsequently in August, 1983 the State Government redesignated the Laboratory Assistants as Laboratory Instructors it is on this score that Mr. Ganguli, learned senior counsel appearing in support of the petition very strongly criticised. The change of nomenclature according to him was otherwise meaningless as there was neither any conferment of status of teachers or the grant of any pay scale consistent with the teaching status. The Government notification was attributed to be a mischievous deception and a "hoax" a rather strong criticism :

the question, therefore, arises whether there was any justification of such an attribute to the Government notification dated 10th August, 1983 : a short question consequently, thus what was the necessity for issuance of such an order would the change of nomenclature assist in any way the Graduate Laboratory Assistants? A bare perusal of the notification does not howsoever give any reason whatsoever as to the necessity of its issuance the notification on the contrary makes it clear that there would be no enhancement of pay as also the status as non-teaching staff would remain unchanged : It is only the word "Assistant" was replaced by the word "Instructors" but does that confer any material benefit to the persons concerned? The answer cannot in the factual context but be in the negative. It is on this background

and upon perusal of the notification, Mr. Ganguli's criticism seems to be rather apposite though couched in a very strong language but by reason of the fact situation of the matter in issue and if we may say so, probably justifiably so.

Be it noted that Graduate Laboratory Assistants working in government colleges have been given the status and designations of Demonstrators and have been accepted as members of teaching staff. According to the petitioners they possess similar qualifications, experience etc. but even though being similarly circumstanced, the Graduate Laboratory Assistants of sponsored and non-government private colleges of West Bengal stand discriminated against the Graduate Laboratory Assistants of Government colleges in West Bengal. The earlier writ petition which stand concluded by this court's order dated 26th July, 1994 contained detailed list of University Acts and Statutes wherein "teachers" have been defined to "include the Instructors". Needless to place on record that by reason of the act of discrimination and having failed to obtain any redress from the State-respondents the petitioners moved the learned Single Judge of the Calcutta High Court in the earlier Writ Petition for issuance of a writ of Mandamus to treat the Graduate Laboratory Assistants as teaching staff as per the definition contained in different University Act and also to give them a scale of pay equivalent to that of Physical Instructors. By a judgment and order dated 29th July, 1987 the learned Single Judge issued a writ of Mandamus upon a detailed judgment the operative portion whereof is set out herein below :-

"..The Rule accordingly is made absolute and the State Respondents are hereby commanded by the issuance of a Writ in the nature of Mandamus to treat the Graduate Laboratory Assistants who have already been redesignated as "Laboratory Instructors" as teaching staff and to pay them in accordance with the existing scale of pay prescribed for the Physical Instructors with effect from 10th August, 1983 with all arrears."

The appeal taken therefrom by the State Government resulted in confirmation of the order by the judgment of the Appellate Bench dated May 15, 1992. The State of West Bengal, however, being aggrieved and dissatisfied with the judgment and order of the Appellate Bench of the High Court moved a Special Leave Petition under Article 136 of the Constitution before this Court and this Court finally on 26th July, 1994 refused to interfere with the order and disposed of the matter with a speaking order. Relevant extracts of the same however are set out herein below :-

".. the Division Bench of the High Court upheld the findings of the learned Single Judge.

We have heard learned counsel for the parties. We see no ground to interfere with the reasoning and the conclusions reached by the learned Single Judge as upheld by the Division Bench of the High Court. We are, however, of the view that the respondents-petitioners be paid the revised scale of pay, as directed by the High Court, with effect from August 1, 1987 instead of August 10, 1983.

The arrears shall be paid to the respondents in two installments, first by the end of February 1995 and the second installment by August 31, 1995. The appeal is dismissed with the above modifications. No costs."

A bare perusal of the order of this Court dated 26th July, 1994 categorically depicts that apart from the change of date of entitlement from August 10, 1983 to 1st August, 1987, this Court in fact did in unequivocal language record its concurrence with the reasonings and conclusions of the learned Single Judge as affirmed by the Division Bench.

In the order dated 26th July, 1994, as passed, this Court also was pleased to record certain statements of Mr. Ganguli which reads as below:

"Mr. A.K. Ganguli, learned counsel appearing for the respondents has very fairly stated that his clients are not asking for the pay-scale of Lecturer. According to him, the pay scale of Physical Instructors is equivalent to that of Demonstrators i.e. pay scale to which his clients are entitled to in terms of the judgment of the Hon'ble High Court."

It is however in terms of the order of this Court as noticed herein above, the State Government on 26th December, 1994 has issued a circular in purported compliance with the order of this Court. Let us however examine the circular and assess the situation ourselves as to the compliance of the earlier order of this Court. The circular reads as below :-

"In the circumstances, the Governor is pleased to order that the scale of pay in respect of all Graduate Laboratory Instructors of non- Government colleges may be revised to Rs.1390- 45-1615-55-2055-65-2445-75-2970 with effect from 1st August, 1987 and the arrears involved on account of revision of their scale of pay paid in the manner as indicated above.

The Governor is further pleased to order that the Graduate Laboratory Instructors of Non- Government Colleges shall continue to enjoy teaching status as given to them in GO No.1039- Edn. CS dated 27.7.1988."

The circular, however, not been able to put an end to the petitioners' grievance by reason wherefor, the same was further challenged by way of a writ petition under Article 226 before the learned Single Judge who, however, was pleased to quash the same upon recording concurrence to the contentions as raised by the petitioners. The learned Single Judge categorically recorded that the petitioners being Graduate Laboratory Instructors, question of further classifying them does not and cannot arise and upon reliance of the annual report as noticed above quashed and set aside the circular. The State Government however being aggrieved went before the Appellate Court and the Appellate Bench however allowed the appeal and opined that the Government Order dated 26th December, 1994 cannot be said to be arbitrary or contrary to the decision of this Court.

The further factual score depicts that as against the decision of the Hon'ble High Court pertaining to the Government order dated 26th December, 1994, the petitioners herein moved this Court under Article 136 and this Court upon a detailed judgment dealt with the issue and came to a conclusion to the following effect :

"This Court at an earlier occasion unequivocally upheld the reasonings of the learned Single Judge in the earlier writ petition as accepted by the Appellate Bench and on the wake of such a finding of this Court question of decrying a pay scale which is otherwise available to another teacher (in this case the Physical Instructor) does not and cannot arise more so by reason of the earlier order of this Court. Administrative ipse dixit cannot infiltrate on to an arena which stands covered by judicial orders."

It is on the basis of the aforesaid, the appeals were allowed and the order of the Appellate Bench of the High Court of Calcutta stood set aside and quashed and that of the learned Single Judge stood restored. This Court, however, further directed that the entitlement by reason of the revision should be made available from 1st August, 1987 as directed by this Court in its earlier judgment dated 26th July, 1994. The petitioners, however, consequent upon the said judgment and order called upon the State officials being the alleged contemnor No.1 to comply with the directions of this Court and subsequently, the contemnor No.2 issued a notice requiring the petitioners to attend the hearing before the Principal Secretary, Department of Higher Education on 18th May, 2001. Some correspondence exchanged between the parties whereas the petitioners contended immediate compliance with the order of this Court, the alleged contemnors tried to feign ignorance about the earlier litigation and requested for supply of all copies of the relevant documents which, as the record depicts, stand supplied immediately thereafter. There has however been a total silence thereafter and the petitioners felt it incumbent upon themselves to bring it to the notice of this Court by way of a petition under the Contempt of Courts Act.

Before proceeding with the matter further, certain basic statutory features ought to be noticed at this juncture. The Contempt of Courts Act, 1971 has been introduced in the Statute Book for the purposes of securing a feeling of confidence of the people in general and for due and proper administration of justice in the country undoubtedly a powerful weapon in the hands of the law Courts but that by itself operates as a string of caution and unless thus otherwise satisfied beyond doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the Statute. The observation as above finds support from a decision of this Court in *Chhotu Ram v. Urvashi Gulati & Anr.* (2001 (7) SCC 530), wherein one of us (Banerjee, J.) stated as below :-

"As regards the burden and standard of proof, the common legal phraseology "he who asserts must prove" has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the "standard of proof", be it noted that a proceeding under the extraordinary jurisdiction of the court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond all reasonable doubt."

Similar is the situation in *Mrityunjay Das & Anr. v. Sayed Hasibur Rahaman & Ors.* (2001 (3) SCC 739) and as such we need not dilate thereon further as to the burden and standard of proof vis- a-vis the Contempt of Courts Act - Suffice it to record that powers under the Act should be exercised with utmost care and caution and that too rather sparingly and in the larger interest of the society and for proper administration of the justice delivery system in the country. Exercise of power within the meaning of the Act of 1971 shall thus be a rarity and that too in a matter on which there exists no doubt as regards the initiation of the action being bona fide. It may also be noticed at this juncture that mere disobedience of an order may not be sufficient to amount to a "civil contempt"

within the meaning of Section 2(b) of the Act of 1971 the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act and lastly, in the event two interpretations are possible and the action of the alleged contemnor pertains to one such interpretation the act or acts cannot be ascribed to be otherwise contumacious in nature. A doubt in the matter as regards the wilful nature of the conduct if raised, question of success in a contempt petition would not arise.

It is on these broad features however let us analyse the action of the respondents for the purposes of ascribing it to be willful and contumacious : whereas Mr. Ganguli answered by reference to the contextual facts as a deliberate and willful act, both Mr. Altaf Ahmad, the learned Additional Solicitor General and Mr. Bhaskar Gupta, learned senior advocate appearing for the alleged contemnors, rather strongly ventilated their negation to the accusations of Mr. Ganguli.

It is at this stage that the earlier order passed by this Court may be of some relevance and the same reads as below:

"A teacher cannot possibly be allowed a pay scale of a non-teaching post. The same is a contradiction in terms and we need not dilate thereon. The criterion of fixation of pay scale is dependent upon the placement of the person concerned in the event the placement is in a teaching post obviously one expects to get a pay scale fixed for a teacher and not for a non- teaching member of the staff. Apparently the High Court has not dealt with the issue in this perspective and thus clearly fell into an error in categorising a teacher with a non-teaching pay scale. The circular clearly authorises the Graduate Laboratory Instructors of non- government colleges to continue to have the teaching status but decries the financial benefits therefor! Would the same be not an arbitrary exercise of powers or can it by any stretch be suggested to be otherwise rational and indiscriminatory. This Court at an earlier occasion unequivocally upheld the reasoning of the learned Single Judge in the earlier writ petition as accepted by the Appellate Bench and in the wake of such a finding of this Court question of decrying a pay scale which is otherwise available to another teacher (in this case the Physical Instructor) does not and cannot arise more so by reason of the earlier order of this Court."

Significantly, the Secretary, Department of Finance, Government of West Bengal, has with meticulous care recorded the statements as in the earlier affidavit filed before this Court though, however, with a preface that the statements in the counter affidavit stand out to be the outcome of his understanding of the order of this Court dated 20th April, 2001 and it is on the basis of the said understanding, the proposal for grant of scale of pay of Rs.1420 to Rs. 3130 stands concurred by him. Obviously, the notification dated 2nd July, 1984 issued by the Government of West Bengal as regards the revision of scale of pay of the Physical Instructors was also the resultant effect of such an understanding. It is in this context, the Finance Secretary of the State Government has stated as below :-

"Subsequently by a Notification dated 2nd July, 1984 issued by the Government of West Bengal, the State Government on the recommendation of the University Grants Commission and Government of India revised the scale of pay of the Physical Instructors to Rs.700/-

- Rs.1600/- which was equal to the scale of pay of the lecturer. At that point of time also the scale of pay of Demonstrators continued to be Rs.500/- to Rs.900/-."

In the earlier judgment, this Court while noting down certain record of proceedings observed as below :-

"On this score, a chart has been produced in the Court on 20.3.2001 which however cannot by any stretch be said to be in support of the contentions of the State that there were existing two different grades and scales of pay amongst Physical Instructors, one being qualified Physical Instructors and the other being unqualified Physical Instructors.

Significantly the annual report as published by the Education Department of the State Government unmistakably records the existence of one grade of Physical Instructors under para 8.16. The annual report details out teachers of government colleges in the manner as below:

"8.16. Teachers of government colleges Sl. Category of teachers Pay Scale No. (Basic) w.e.f.1.1.1986

5. Demonstrator Rs.1740-3000

4. Physical Instructor Rs.2200-4000

3. Lecturer Rs.2200-4000

2. Professor/Vice-Principal Rs.3700-5700 (Grade II)

1. Principal Rs.4500-7300"

Para 8.2.1 also records the details of the administration of non-government colleges as below:

The teachers of non-government colleges are of the following categories (basic):

1. Laboratory Instructors Rs.1390-2970
2. Demonstrators
3. Physical Instructor as in government
4. Lecturer colleges.
5. Principal This itself however negates the contentions as raised by the State. Laboratory Instructors in non-government colleges are termed as teachers with scale of pay Rs.1390-2970 whereas Physical Instructors were also termed as teachers and scale of pay appears to be similar "as in government colleges" i.e. Rs.2200-4000. Secondly, in para 8.2.4 revised pay scale of the non-teaching posts (Group B pay scale) has been noted to be Rs.1390-2970. It thus leaves no manner of doubt that whereas the petitioners were shown as teachers of non-government colleges they were in fact granted the scale of pay applicable only to Group B employees belonging to non-teaching staff and thus granted a non-teaching scale."

Similar is the situation in the counter-affidavit filed presently in this matter as well : Is this fair ? The answer having regard to the factual backdrop cannot but be in the negative. It is neither fair nor reasonable on the part of a senior Civil Service Personnel to feign ignorance or plead understanding when the direction of this Court stands crystal clear in the judgment. Government employees ought to be treated at par with another set of employees and this Court on an earlier occasion lent concurrence to the view of the learned Single Judge that the Circulars issued by the State Government cannot but be ascribed to be arbitrary : Government is not a machinery for oppression and ours being a welfare State as a matter of fact be opposed thereto. It is the people's welfare that the State is primarily concerned with and avoidance of compliance with a specific order of the Court cannot be termed to be a proper working of a State body in terms of the wishes and aspirations of the founding fathers of our Constitution. Classless, non-discriminate and egalitarian society are not meaningless jargons so that they only remain as the basic factors of our socialistic state on principles only and not to have any application in the realities of every-day life : one section of the employees would stand benefited but a similarly placed employee would not be so favoured why this attitude ? Obviously there is no answer. Surprisingly, this attitude persists even after six rounds of litigation travelling from Calcutta to Delhi more than once the answer as appears in the counter-affidavit is an expression of sorrow by reason of the understanding cannot be countenanced in the facts presently under consideration. A plain reading of the order negates the understanding of the State Respondents and the conduct in no uncertain terms be ascribed to be the manifestation of an intent to deprive one section of the employees being equally circumstanced come what may and this state of mind is clearly expressed in the counter-affidavit though however in temperate language. The

question of bona fide understanding thus does not and cannot arise in the facts presently. Is it a believable state of affairs that the order of the learned Single Judge as early as the first writ petition, has not been properly understood by the senior most bureaucrat of the State Government : the same misunderstanding continues in terms of the appellate Court's order and the third in the line of order is that of the apex Court. The understanding again continues even after the second writ petition was filed before the learned Single Judge at the High Court and the similar understanding continues even after the so to say clarificatory order by this Court, as appears from the order dated 20th April, 2001. Even in the counter-affidavit, filed in Contempt Petition, the understanding still continues we are at a loss as to what is this understanding about : the defence of 'understanding' undoubtedly is an ingenious effort to avoid the rigours of an order of Court but cannot obliterate the action the attempted avoidance through the introduction of the so-called concept of lack of understanding cannot, however, be a permanent avoidance, though there may be temporary and short-lived gains. The order of this Court cannot possibly be interpreted as per the understanding of the Respondents, but as appears from the plain language used therein. Neither the order is capable of two several interpretations nor there is any ambiguity and the same does not require further clarity. The order is categorical and clear in its context and meaning. The Court's orders are to be observed in its observance, rather than in its breach.

This matter is pending in Courts since more than last 15 years, but unfortunately the litigious spirit of the State-respondent have not minimised even to the slightest extent - the spirit continues and so is the deprivation. The defence of understanding is not only moonshine but a deliberate attempt to over-reach this Court's order and as such willfulness in the matter of disregard of this Court's order is apparent on the face of it and we are not prepared to accept the same as a defence of an action for deliberate and willful disregard of an order of Court. We find that the actions on the part of the respondent-authorities are not only unreasonable but deliberate and spiteful and that too in spite of a specific direction in all the five judgments so far obtained by the petitioners in their favour. Avoidance is written large and it would be difficult for us to consume the same without any particular rhyme or reason. In the contextual facts there cannot be any laxity as otherwise the Law Courts would render itself useless and its order to utter mockery. Feeling of confidence and proper administration of justice cannot but be the hall-mark of Indian Jurisprudence and contra action by Courts will lose its efficacy. Tolerance of Law Courts there is, but not without limits and only upto a certain point and not beyond the same.

On the wake of the aforesaid, we do find that the respondents have willfully and deliberately violated the orders of this Court in the guise of a totally non-acceptable and sham defence of understanding and thus rendered themselves punishable under the provisions of Article 142 of the Constitution and also under the Act of 1971.

Be it placed on record that by the order dated 1st February, 2002, this Court directed the presence of all the alleged contemnors on the next date, i.e. on 8th March, 2002 since the order was to be pronounced in the presence of the respondents. The Office-Report, however, depicts that one of the respondents has filed an application for exemption from appearance. We do feel it expedient to allow the application for exemption, though by reason therefor the consequence of the findings as above cannot be pronounced as of date. In that view of the matter, let this matter appear two weeks

hence in the list (22nd March, 2002) for further orders. The respondents are directed to be present in Court on the next date of hearing. No further notice need be served to the respondents excepting the applicant in I.A. No2 of 2002.

..J. (Umesh C. Banerjee) ..J. (Y.K. Sabharwal) March 8, 2002.