

BADRI VISHAL PANDEY AND ORS.

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v.

RAJESH MITTAL AND ORS.

(Contempt Petition (C) No. 817 of 2018)

In

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(Contempt Petition (C) No. 309 of 2016)

In

(S.L.P (C) No. 4470 of 2014)

JANUARY 04, 2019

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[A. M. KHANWILKAR AND HEMANT GUPTA, JJ.]

Contempt – Contempt jurisdiction – Invocation of – On facts, in a industrial dispute, order passed by the Supreme Court that as and when any vacancy arises on daily wages/muster roll, the preference to be given to terminated/retrrenched employee of the department – Contempt petition by the former employees against the department that they were not reinstated and regularized against the vacant posts – Held: Special Leave Petitions were disposed of in the light of circular which contemplates that the retrrenched employees will be re-engaged in case any requirement arises and in order of seniority – There was no direction to reinstate the petitioners or to place them in minimum or regular pay scale – Contempt jurisdiction cannot be invoked on the basis of impressions, when the order of the Court does not contain any direction for reinstatement or for grant of regular pay scale – Contempt would be made out when there is wilful disobedience to the orders of this Court – Since the Order of this Court is not of reinstatement, the petitioners under the garb of the contempt petition cannot seek reinstatement, when nothing was granted by this Court – Thus, the department have not violated any order passed by this Court – U.P. Industrial Disputes Act, 1947 – s. 6Q.

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Dismissing the Contempt petitions, the Court

HELD: 1.1 The petitioners cannot claim any grievance of not engaging them in pursuance of the order passed by this Court when this Court has disposed of the Special Leave Petitions in

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A the light of circular dated 07.04.2015 which contemplates that the retrenched employees will be re-engaged in case any requirement arises and in order of seniority. Therefore, it cannot be said that the respondents have violated any order passed by this Court. [Para 26][234-G-H]

B 1.2 The circular dated 07.04.2015 is in terms of the mandate of Section 6Q of the U.P. Industrial Disputes Act, 1947 so as to maintain a list of retrenched workmen to be engaged as and when the necessity arises. The Order of this Court dated 07.09.2015 has been passed on the basis of concession given on behalf of the workmen in light of the circular dated 07.04.2015. There was
C no order of this Court to re-engage the workmen who were parties in the Special Leave Petitions. Therefore, in the absence of any specific and categorical direction of reinstatement, the petitioners cannot claim any right for reinstatement on the basis of the orders passed by this Court on 07.09.2015. Furthermore, the petitioners
D were not party in the group of Special Leave Petitions decided on 07.09.2015. The Order of this Court is to take workmen on daily wage basis as per office order dated 07.04.2015. The submission of the petitioner that they accepted the order under the impression that the workmen are being reinstated cannot be
E accepted as the order dated 07.09.2015 has been passed on the basis of the circular which contemplates that the workmen shall be reinstated as per the seniority list as and when requirement in future arises. [Paras 18-20][232-E-H; 233-A]

1.3 The argument that 550 Group D posts are available against which petitioners may be appointed is not tenable. The
F Group D posts are required to be filled on the basis of qualifications prescribed for filling up of such posts in the Rules as may be applicable to make appointments to such posts. The petitioners, if eligible, can compete for such appointments. But merely they were once engaged on muster roll, they cannot have
G right to seek regular appointment against Group D posts *dehors* the eligibility conditions prescribed in the Rules. The regular appointment can be made keeping in view the principles of public appointment which is by issuance of an advertisement giving opportunity to all eligible candidates to apply and to consider their suitability for the posts in non-discriminatory manner. The
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petitioners appointed on muster roll basis cannot claim regular appointment against the vacant Group D posts when the Award of the Labour Court was of reinstatement and not that of regular appointment. [Para 21][233-D-H] A

1.4 There is no direction in the order passed by this Court to reinstate the petitioners or to place them in minimum or regular pay scale. The contempt jurisdiction cannot be invoked on the basis of impressions, when the order of the Court does not contain any direction for reinstatement or for grant of regular pay scale. The contempt would be made out when there is wilful disobedience to the orders of this Court. Since the Order of this Court is not of reinstatement, the petitioners under the garb of the contempt petition cannot seek reinstatement, when no such relief was granted by this Court. [Para 25][234-E-F] B C

State of Punjab & Others v. Jagjit Singh & Others (2017) 1 SCC 148 : [2016] 7 SCR 350 – held inapplicable. D

State of Punjab v. Surjit Singh (2009) 9 SCC 514 : [2009] 12 SCR 394; *Sabha Shanker Dube v. Divisional Forest Officer & Others* 2018 (14) SCALE 765; *RBI v. S. Mani* (2005) 5 SCC 100 : [2005] 2 SCR 797 – referred to. E

Case Law Reference

[2009] 12 SCR 394	referred to	Para 12
2018 (14) SCALE 765	referred to	Para 12
[2016] 7 SCR 350	held inapplicable	Para 22
[2005] 2 SCR 797	referred to	Para 22

CIVIL APPELLATE JURISDICTION: Contempt Petition (C) No. 817 of 2018 in Contempt Petition (C) No. 309 of 2016 in Special Leave Petition (C) No. 4470 of 2014. G

From the Judgment and Order dated 11.01.2017 of this Hon'ble Court in Contempt Petition (C) No. 309 of 2016 in Special Leave Petition (C) No. 4470 of 2014.

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WITH

Contempt Petition (C) No. 1290/2018 in Contempt Petition (C) No. 860/2016 in S.L.P (C) No. 3540/2015 and Contempt Petition (C) No. 1291/2018 in Contempt Petition (C) No. 861/2016 in S.L.P (C) No. 3542/2015

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Vikas Singh, Sr. Adv., Prashant Bhushan, Govind Jee, Dr. Vinod Kumar Tewari, Ms. Vanshaja Shukla, Kapish Sheth, Advs. for the appearing parties.

The Judgment of the Court was delivered by

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HEMANT GUPTA, J. 1. The present Contempt Petitions arise out of an order passed by this Court on 07.09.2015 which reads as under:-

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“It is submitted by learned counsel for the petitioner that it has decided to take the respondents-workmen on daily wage basis as per the office order dated 07.04.2015 and list contained therein. Needless to say, the names of the respondents-workmen are included in the list contained in office order dated 07.04.2015 which has been filed before this Court.

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Learned counsel for the respondents submitted that as the names of the respondents-workmen are included in the list as per the aforesaid office order, they have no grievance.

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Recording such concession, the special leave petitions stand disposed of. There shall be no order as to costs.”

2. Earlier Contempt Petitions filed before this Court alleging non-compliance of the said order were disposed of on 11.01.2017 in view of the fact that the name of respondents-workmen has already been included in the seniority list.

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3. The background leading to the present contempt petitions is that U.P. Jal Nigam Construction Division (Jal Nigam in short) has engaged workmen in the category of Runner, Beldar and Lab Assistants prior to 1991. The services of the workmen engaged or appointed after 31.3.1989 were retrenched on 22nd June, 1991 or so in terms of Section 6N of the U.P. Industrial Disputes Act, 1947 (Act in short). The Writ Petition No. 5686 of 1991 challenging such order of termination was decided on 5.11.2009, when the following order was passed:-

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“3. Petitioners were engaged as daily wager in the U.P. Jal Nigam sometime in the year 1989 on various dates facing retrenchment of their services in pursuance to decision taken by the Board. U.P. Jal Nigam took a decision and had issued a circular that all the persons appointed after 31.8.1989 shall be retrenched after serving a month notice and payment of salary. Accordingly, in pursuance to decision taken by the Board petitioner’s services have been terminated after payment of one month salary. Cut off date fixed by the Jal Nigam has been impugned in the present writ petition.

4. In a recent judgement reported in **JT 2009 (9) SC 229, A.Manjula Bhashini and others Vs. The M.D., A.P. Women Coop. Finance Corp. Ltd.**, their Lordship of Hon’ble Supreme Court held that ordinarily fixing of cut of date can not be held arbitrary unless it suffers from want of jurisdiction or violative of certain statutory provisions or constitutional mandate.

5. In the present case, nothing has been brought on record to indicate that cut off date fixed by the Jal Nigam suffers from any illegality or violative of fundamental right available to the petitioner. Initially an interim order was passed by this court but Hon’ble Supreme Court while deciding Special Leave Petition against the said interim order had set aside the same and permitted the Jal Nigam to proceed at its end.

6. In view of above, there appears to be no substantial illegality in the impugned order passed by the Jal Nigam divesting the petitioner from service. However, since the petitioners had discharged duty for about three years, it shall be appropriate for U.P. Jal Nigam to give preference to the petitioners while making any fresh selection or appointment for the post of daily wager or work charge employee or muster roll in future vacancies.”

4. The petitioner No.1 raised an industrial dispute which was referred to Labour Court, Mirzapur. The learned Labour Court ordered to pay compensation of Rs. 25,000/- and Rs. 2,000/- as litigation expenses in its Award dated 04.02.2009. The Award of the Labour Court notices a fact that the services of the workman was engaged on 1.4.1990 and terminated on 22.6.1991. It also noticed that the order of termination was stayed on 20.5.1991 in Writ Petition No. 18124 of 1991 but after the

- A decision of the said writ petition, the services of the workman was terminated in 1994.

5. Such Award was challenged by the first petitioner by filing Writ Petition-C No. 4027 of 2010. The learned Single Bench passed an order in terms of the order passed in Writ Petition-C Nos. 35846 of 1997 and 20921 of 1999. Four more writ petitions were decided along with the said writ petition filed by the first petitioner. The operative part of order reads as under:

- C “.... Earlier there was stay order and when writ petition was filed the same was dismissed in 1994 on the alternative ground to approach the labour court. The petitioners continued to work upto June, 1994. Subsequently, after dismissal of the writ petition, petitioners were again terminated on 01.07.1994. Admittedly, they have worked for more than 240 days in a calendar year. In view of the fact, all the petitioners are entitled for relief hence the present writ petition is also decided in terms of the order passed in writ petition no. 35846 of 1997 and 20921 of 1999. Accordingly, the impugned orders are hereby set aside. The respondents are directed to consider the claim of the petitioners in terms of the decision by this Court in aforesaid writ petitions.”

- E 6. The order in the Writ Petition No. 35846 of 1997, as mentioned in the above order, is of reinstatement but without back-wages. The relevant extract from the order dated 09.05.2011 reads as under:-

- F “Looking to the entire facts and circumstances, I am of the opinion that the requirement of law and justice will best be served by directing reinstatement but without any back wages. Let the petitioner be reinstated forthwith and be paid salary as is being paid to others. Impugned award is accordingly modified.”

- G 7. The Jal Nigam filed Special Leave Petition Nos. 4470/14, 4802/14, 16142/14, 16137/14 and 16139/14 against the common order of the learned Single Bench dated 9.10.2013. Special Leave Petition (C) Nos. 3542 of 2015 and 3540 of 2015 were against an order passed by the learned Single Bench of Allahabad High Court on 27.11.2012 and the order in Review Petition dated 13.12.2013 in Writ Petition Nos. 16370 and 16368 of 1999. Another Special Leave Petition (C) No. 5057 of 2014 was also taken up for hearing which was directed against an order

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dated 09.12.2013 passed by the High Court in Writ Petition No. 54570 of 2011. All such Special Leave Petitions were decided by the common order dated 07.09.2015 on the basis of office order dated 07.04.2015 wherein it was resolved that in future, as and when any vacancy arises on daily wages/muster roll, the preference will be given to terminated/retrenched employee of the department. A list of 1003 retrenched workmen were attached to such communication. The relevant extract from the office order dated 7.4.2015 reads as under: -

“1. Due to paucity of work order and excess number of muster roll employees the Department and keeping in view the financial loss caused to the Department; the said muster roll employees were terminated from service. Challenging said termination, the muster roll employees filed cases before the High Court and the Supreme Court.

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4. In light of the decisions passed by the Hon’ble High Court, and the Hon’ble Supreme Court, it is hereby resolved that in future as and when any vacancy arises on daily wage/ muster roll; preference will be given to the terminated/retrenched employees of the department. List of terminated muster employees has been provided to the office concerned to the Executive Engineer, vide letter reference number – 424/A-4/191-0037/15 dated 09.03.2015.”

8. The Contempt Petition No. 817 of 2018 has been preferred by 62 petitioners but only the first petitioner was the party before this Court in a bunch of Special Leave Petitions which were decided on 07.09.2015. The Contempt Petition Nos. 1290 and 1291 of 2018 are by the petitioners who were the respondents in the Special Leave Petitions filed by the Jal Nigam. Thus, only three of the petitioners were parties before this Court in the Special Leave Petitions.

9. In the written submissions filed by the counsel for the petitioners, it is averred that an impression was given by the Jal Nigam that it shall comply with the directions of reinstatement passed by the High Court. The relevant extract reads as under:

“Therefore, an impression was given by the Nigam before this Hon’ble Court that the Respondent Nigam shall comply with the directions passed by the Hon’ble High Court (reinstatement

- A without back wages) in terms of office order dated 07.04.2015 and list contained therein. The fact of having prepared list of retrenched employees in terms of seniority was raised by the Nigam before this Hon'ble Court for the first time in SLP (C) 5057 of 2014. It is important to mention that the authenticity of the names contained in the office order dated 07.04.2015 and list contained therein is not known to the Petitioners and the Petitioners have brought to the notice of this Hon'ble Court."
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10. In respect of an earlier Contempt Petition No. 309 of 2016, which was disposed of on 11.01.2017, it is again averred that the impression was given that Jal Nigam shall do the needful to comply with the order dated 07.09.2015. The extract from the written submissions reads as under:

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- D "That again an impression was given to this Hon'ble Court that the Respondent Nigam shall do the needful to comply with the order dated 07.09.2015 passed by this Court in S.L.P. (C) 5057 of 2014. The Respondent Nigam in gross defiance of the undertaking given before this Hon'ble Court, deliberately and wilfully disobeyed specific directions of this Hon'ble Court to reinstate the Petitioners, as daily worker/ muster roll employees, without back wages, which led to filing of second contempt petition no. 817 of 2018."

- E 11. Learned counsel for the petitioners relies upon communication dated 15.04.2017 to contend that 550 vacant Group D posts are available, therefore, petitioners can be reinstated and regularised against the vacant posts thus available. Therefore, it is contended that the erstwhile daily wagers engaged on muster roll basis are required to be reinstated.

- F 12. It is also submitted that this Court has passed orders from time to time to comply with the directions issued by this Court. The Jal Nigam has employed thirty-two workmen only as daily wage workers / muster roll employees. The learned counsel for the petitioners has thus sought reinstatement of the petitioners at the minimum of pay scale applicable to the regular employees working on the same posts. Reliance is placed upon *State of Punjab v. Surjit Singh* reported in (2009) 9 SCC 514, *State of Punjab & Others v. Jagjit Singh & Others* reported in (2017) 1 SCC 148 and *Sabha Shanker Dube v. Divisional Forest Officer & Others* reported in 2018 (14) SCALE 765.
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13. It is further contended that there was a direction for reinstatement of the workmen by the High Court and there was no reason for the petitioners to give up their claim on the basis of circular dated 07.04.2015 on the basis of which Special Leave Petitions were disposed of. Therefore, the circular dated 07.04.2015 has, in fact, prejudiced the claim of the petitioners.

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14. The Jal Nigam in the counter affidavit asserted that the circular dated 07.04.2015 was issued in pursuance of directions of the High Court in Writ Petition No. 5686 of 1991 as reproduced in para 3 of this Judgment. It was decided that in case of necessity of engaging daily wagers in future, preference will be given to muster roll employees as per the list of 1003 workmen annexed in the said office order. It is also pointed out that in terms of interim order passed by this Court earlier in the present contempt petition, an advertisement was issued in the newspaper to call 100 retrenched employees as per the seniority list circulated on 07.04.2015 for the purpose of their re-instatement. Such advertisement was published as it was difficult task to contact first 40 retrenched employees in order of seniority after lapse of 27 years. In response to such advertisement, 32 employees have responded and have been appointed on 06.09.2018. It is also averred that there was paucity of work and also accumulated losses, therefore, retrenchment was affected in the year 1991. It is also stated that there was no undertaking or direction to re-engage the retrenched daily wagers and that the earlier Contempt Petitions having been dropped, therefore the present petitions do not merit any consideration as the order of this Court has been complied with.

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15. In the written submissions filed by the counsel for the Jal Nigam, there is an assertion that there have been no vacancies for daily wages in the Jal Nigam since the order dated 07.04.2015 was passed and that in the absence of any such vacancies, no occasion to employ any of the retrenched employees arises and there is no wilful and deliberate disobedience by the respondents.

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16. It is further stated that 550 posts in Group D posts are not for daily wagers / muster rolls and that Jal Nigam has not appointed any employee even in Group D post even for last five years because it is facing financial strains. It is also asserted that consequent to implementation of recommendation of the 6th Pay Commission not to engage workers on “non-technical” posts through recruitment, it was

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- A decided to outsource non-technical work, if required. It is asserted that Jal Nigam has not outsourced any non-technical work since the year 2010. It is also stated that Jal Nigam was established under Uttar Pradesh Water Supply and Sewerage Act, 1975. The execution of projects of water supply and sewerage were earlier carried out on ‘Deposit Work Basis’, where the Jal Nigam would purchase material and engage daily wage labourers to complete the project, under the supervision of the permanent technical staff. But, due to increasing financial stress, the work model has been changed to seek execution of projects through Contractors. In the new work model, the Project would be awarded to the contractor whose bid is the lowest. The process has eliminated the need for the Jal Nigam to employ daily wage labourers for execution of projects.

17. We have heard Learned Counsel for the parties and have also gone through the written submissions submitted. The re-engagement of retrenched workmen is governed by Section 6Q of the Act which contemplates that where the workmen are retrenched, and the employer proposes to employ other persons, he shall, in such manner as may be prescribed give an opportunity to the retrenched workmen to offer themselves for re-employment, and the retrenched workmen who offer themselves for re-employment shall have preference over other persons.

18. We find that the circular dated 07.04.2015 is in terms of the mandate of Section 6Q of the Act so as to maintain a list of retrenched workmen to be engaged as and when the necessity arises.

19. The order dated 07.09.2015 has been passed on the basis of concession given on behalf of the workmen in light of the circular dated 07.04.2015. There was no order of this Court to re-engage the workmen who were parties in the Special Leave Petitions. Therefore, in the absence of any specific and categorical direction of reinstatement, the petitioners cannot claim any right for reinstatement on the basis of the orders passed by this Court on 07.09.2015. Still further, 61 petitioners were not party in the group of Special Leave Petitions which were decided on 07.09.2015.

20. The Order of this Court dated 07.09.2015 is to take workmen on daily wage basis as per office order dated 07.04.2015. The argument that they accepted the order under the *impression* that the workmen are being reinstated cannot be accepted as the order dated 07.09.2015 has been passed on the basis of the circular dated 07.04.2015 which

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contemplates that the workmen shall be reinstated as per the seniority list as and when requirement in future arises. The Order of the Court cannot be interpreted on the basis of the impressions which may be drawn by the petitioners, in view of the specific order passed by this Court on 07.09.2015. A

21. The argument that 550 Group D posts are available against which petitioners may be appointed is not tenable. The Group D posts are required to be filled on the basis of qualifications prescribed for filling up of such posts in the Rules as may be applicable to make appointments to such posts. The petitioners, if eligible, can compete for such appointments. But merely they were once engaged on muster roll, they cannot have right to seek regular appointment against Group D posts *dehors* the eligibility conditions prescribed in the Rules. The regular appointment can be made keeping in view the principles of public appointment which is by issuance of an advertisement giving opportunity to all eligible candidates to apply and to consider their suitability for the posts in non-discriminatory manner. The petitioners appointed on muster roll basis cannot claim regular appointment against the vacant Group D posts when the Award of the Labour Court was of reinstatement and not that of regular appointment. B C D

22. The judgment referred to by the learned counsel for the petitioners in *Jagjit Singh & Others* (supra) is not applicable in respect of a daily wager engaged on muster roll. The question examined therein was whether temporarily engaged employees are entitled to minimum of the regular pay scale, along with dearness allowance etc. on account of their performing the same duties which are discharged by those engaged on regular basis, against sanctioned post. This is not the case of reinstatement of a retrenched workmen arising out of an Industrial Dispute. In *RBI v. S. Mani*, (2005) 5 SCC 100, it was held that in law, 240 days of continuous service by itself does not give right to claim of permanence. Section 25F provides for grant of compensation if a workman is sought to be retrenched in violation of the conditions referred to therein. A direction for reinstatement for non-compliance with the provisions of Section 25F of the Industrial Disputes Act would restore to the workman the same status which he held when terminated. In the present case, the order of the Writ Court is of reinstatement. The reinstatement can be on the same post and on the same terms from which services were retrenched subject to availability of such posts. E F G

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A 23. In the case of **Surjit Singh**(supra), the question examined was in respect of applicability of the doctrine of “equal pay for equal work”. The respondents therein were appointed as daily wagers without following any recruitment process. The question of reinstatement in pursuance of Award of Labour Court was not the issue raised or decided.

B In an Industrial Dispute, the nature of engagement, whether on muster rolls, daily wages or ad-hoc basis is not the relevant consideration for an Award of reinstatement. The only question required to be examined is as to whether the workman has worked for 240 days in a preceding calendar year and as to whether the workman has been paid retrenchment compensation. The question of regularization or equal pay for equal work

C was not the dispute raised or examined by the Labour Court.

24. Similarly, in **Sabha Shanker Dube** (supra), the Appellants were daily rated workers employed in Group ‘D’ posts in the Forest Department in the State of Uttar Pradesh. The claim in the Writ Petitions was of regularization of their services and the payment of the minimum

D of the pay scales available to their counterparts working on regular posts and treating them as being in continued service while condoning the breaks in their service. For the reasons recorded above, even the issue raised in the said judgment is not helpful to the arguments raised by Mr. Bhushan, learned counsel for the petitioners.

E 25. Still further there is no direction in the order passed by this Court to reinstate the petitioners or to place them in minimum or regular pay scale. The contempt jurisdiction cannot be invoked on the basis of impressions, when the order of the Court does not contain any direction for reinstatement or for grant of regular pay scale. The contempt would be made out when there is wilful disobedience to the orders of this Court.

F Since the Order of this Court is not of reinstatement, the petitioners under the garb of the contempt petition cannot seek reinstatement, when nothing was granted by this Court.

26. Still further, 61 petitioners cannot claim any grievance of not engaging them in pursuance of the order passed by this Court when this

G Court has disposed of the Special Leave Petitions in the light of circular dated 07.04.2015 which contemplates that the retrenched employees will be re-engaged in case any requirement arises and in order of seniority. Therefore, it cannot be said that the respondents have violated any order passed by this Court.

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BADRI VISHAL PANDEY v. RAJESH MITTAL
[HEMANT GUPTA, J.]

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27. Thus, we do not find any merit in the present contempt petitions, accordingly, they are dismissed. The Rule is discharged. However, the services of the workmen who have already been engaged shall not be affected by this order. A

The pending applications, if any, shall stand disposed of.

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Nidhi Jain

Contempt Petitions dismissed.