

Abhishek Kumar Singh vs G. Pattanaik on 3 June, 2021

Equivalent citations: AIR 2021 SUPREME COURT 2881, AIR ONLINE 2021 SC 280

Author: A.M. Khanwilkar

Bench: B.R. Gavai, A.M. Khanwilkar

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REPORTABLE

IN THE SUPREME COURT OF INDIA

INHERENT JURISDICTION

CONTEMPT PETITION (CIVIL) NOS. 625-626 OF 2019
IN
CIVIL APPEAL NOS. 11017-11018 OF 2018

Abhishek Kumar Singh

... Petitioner

Versus

G. Pattanaik & Ors.

...Respondents

WITH

CONTEMPT PETITION (CIVIL) NOS. 642-643 OF 2019
IN
CIVIL APPEAL NOS. 11017-11018 OF 2018

CONTEMPT PETITION (CIVIL) NOS. 671-672 OF 2019
IN
CIVIL APPEAL NOS. 11017-11018 OF 2018

CONTEMPT PETITION (CIVIL) NOS. 395-396 OF 2020
IN
CIVIL APPEAL NOS. 11017-11018 OF 2018

CONTEMPT PETITION (CIVIL) NOS. 408-409 OF 2020

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IN

DEEPAK SINGH

Date: 2021.06.03
13:28:00 IST

CIVIL APPEAL NOS. 11017-11018 OF 2018

Reason:

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CONTEMPT PETITION (CIVIL) NOS. 598-599/2020
IN
CIVIL APPEAL NOS. 11017-11018/2018

CONTEMPT PETITION (CIVIL) NOS. 669-670 OF 2020
IN
CIVIL APPEAL NOS. 11017-11018 OF 2018

CONTEMPT PETITION (CIVIL) NOS. 671-672 OF 2020
IN
CIVIL APPEAL NOS. 11017-11018 OF 2018

WRIT PETITION (CIVIL) NO. 491 OF 2020

AND

TRANSFER PETITION (CIVIL) NO. 1209/2020

JUDGMENT

A.M. Khanwilkar, J.

1. These cases essentially assail the orders dated 4.12.2018 and 2.3.2020 issued by the Chief Engineer (A□□), Uttar Pradesh Jal Nigam, Lucknow¹, pursuant to the judgment of this Court dated 15.11.2018 in Civil Appeal Nos. 11017□1018/2018 2. This Court by the aforesaid judgment, had directed the Uttar Pradesh For short, “the Chief Engineer” or “respondents” Uttar Pradesh Jal Nigam & Ors. v. Ajit Singh Patel & Ors., (2019) 12 SCC 285 Jal Nigam (the respondent corporation) to comply with the judgment of the High Court of Judicature at Allahabad 3 dated 28.11.2017 in a batch of writ petitions (leading case being Writ□A No. 37143/2017) and pass a fresh, reasoned order.

2. In pursuance of the aforementioned decision of this Court, the Chief Engineer issued order dated 4.12.2018, thereby reengaging the petitioners and other appointees to their previous place of posting. However, with a caveat that the said appointment was subject to the liberty granted by this Court and that no arrears would be paid by the respondent corporation. The order of the Chief Engineer dated 4.12.2018 is reproduced thus:

“The order dated 11.8.2017 passed by the Chief Engineer (A□□) U.P. Jal Nigam Lucknow has been set aside by Hon’ble High Court Allahabad by its order dated 28.11.2017 in W.P. No. A□37143/2017 and Review Application No. 2/2018 is also rejected by Hon’ble High Court in its order dated 25.07.2018. The Hon’ble Supreme

Court has upheld [sic] the above order passed by Hon'ble High Court in Civil Appeal No. 11017□11018/2018 titled as U.P. Jal Nigam & Ors. v. Ajit Singh & Ors.

In the above context you are expected to perform your duty at your previous posting place within 15 days from issuing of this order.

That it is being clarified that the said appointment will be subject to the liberty granted to Nigam, by the Hon'ble Supreme Court of India vide judgment dated 15.11.2018 in Civil Appeal No. 11017□11018/2018. The concerning paragraphs are extracted below:

For short, "the High Court" "15. In view of the above, the challenge to the impugned judgment dated 28th November, 2017 and 25th July, 2017 must fail but with a clarification that the competent authority is free to pass a fresh, reasoned order in accordance with law.

16. We may not be understood to have expressed any opinion either way on the merits of the course of action open to the appellants against the respondents including against the other appointees under the same selection process. All questions in that behalf are left open."4 That no Arrears prior to the fresh date of appointment will be granted by Nigam." (emphasis supplied)

3. This order, according to the contempt petitioners, is in the teeth of the decision of this Court dated 15.11.2018 and, therefore, the respondents be proceeded for having committed wilful disobedience of the order of this Court.

4. Thereafter, in terms of the liberty granted by this Court in the aforementioned judgment, the respondent corporation passed a fresh order dated 2.3.2020, annulling the appointment of the petitioners and similarly placed Assistant Engineers. In arriving at the fresh decision, reliance was placed upon the two internal inquiry reports dated 29.5.2017 and 7.7.2017; expert reports — of IIIT Allahabad dated 11.9.2018 and IIT Kanpur dated 15.9.2018; CFSL report dated 11.12.2019; and recommendation made by the Special Investigation Team (SIT) in its final report extracted in paragraph 14 ibid dated 22.1.2020 received by the respondent corporation on 18.2.2020, to cancel the recruitment process due to corruption involved. The two expert reports given by Assistant Professor at IIT Kanpur and Associate Professor at IIIT Allahabad dated 15.9.2018 and 11.9.2018 respectively, pointed out that the audit trail/checksum and time stamps of the candidates were not made available and therefore, segregation of tainted and untainted candidates was not possible, in absence of primary data. The operative portion of the order dated 2.3.2020 is reproduced below:

"20.

After the investigation conducted by the department in the case, the reports of both the experts, the relevant recommendation/conclusion of the SIT investigation and after examination of the records, it has become clear that the selection process in question is void ab initio for the above reasons.

In view of the above, the office memo number 08/A□□1/2151□□201/17 dated 03.01.2017, memo no. 09/ A□□□ / 2151□□201/17 dated 03.01.2017 and memo number 10/A□□□/2151□□201/17 dated 03.01.2017 is cancelled with effect from the date of issue i.e. date 03.01.2017 and the appointments in question are declared void from the said date.

Due to the cancellation of the above office memorandum issued on dated 03.01.2017, the orders which were circulated on 04.12.2018 to contribute again are effectively annulled.

The Assistant Engineer appointed under this process will get the protection of salary allowances etc. received so far and no recovery will be made from them. In the discharge of departmental responsibilities, the administrative and financial functions performed by them so far will remain valid.” (emphasis supplied)

5. This order has been assailed by the writ petitioner(s) directly in this Court by way of Writ Petition (Civil) No. 491/2020. We are informed that the same order has been assailed by similarly placed persons governed by the impugned order by way of writ petition(s) before the High Court of Judicature at Allahabad and also at its Bench at Lucknow. Some of them have filed transfer petition before this Court, to transfer their Writ Petition No. 13083/2020 (S/S) filed at Lucknow Bench of the High Court and to hear it along with contempt petitions pending in this Court involving overlapping issues. Accordingly, the assail in these petitions is to the aforementioned order dated 4.12.2018, as well as, order dated 2.3.2020 passed by the respondents.

6. In Contempt Petition (C) Nos. 625□□626/2019, 642□□643/2019 and 671□□672/20195, the grievance of the petitioners is that the respondents have appointed them afresh instead of reinstatement with continuity of service along with arrears of wages and thus, have wilfully violated the direction of this Court in judgment Collectively, “contempt petitions against non□payment of arrears” 15.11.2018, to give full effect to the High Court’s judgment dated 28.11.2017.

7. Whereas, in Contempt Petition (C) Nos. 395□□396/2020, 408□□409/2020, 598□□599/2020, 669□□670/2020 and 671□□672/2020 6, the grievance is that the order of the respondents dated 2.3.2020, have annulled the appointment of the petitioners, without affording opportunity of hearing to the petitioners in violation of the judgment of this Court dated 15.11.2018 in Civil Appeal No. 11017□□11018/2018.

8. In W.P. (C) No. 491/2020, the petitioners have prayed for quashing of order dated 2.3.2020 passed by the respondent and to reinstate the petitioners with continuity of service and full back wages. While, in T.P. (C) No. 1209/2020, the petitioners seek to withdraw and transfer to this Court, Writ Petition (C) No. 13083/2020 (Service Single), which is pending before the Lucknow Bench of the High Court, as the order dated 2.3.2020 (impugned therein) is already subject matter in second set of

contempt petitions including W.P.(C) No. 491/2020 before this Court.

Collectively, “contempt petitions against termination” CONTEMPT PETITIONS AGAINST REENGAGEMENT WITHOUT CONTINUITY OF SERVICE AND ARREARS OF BACK WAGES VIDE ORDER DATED 4.12.2018:

9. The factual background leading to filing of these contempt petitions is that the respondents, vide order dated 11.8.2017, annulled the recruitment process pursuant to which the petitioners were employed, thereby terminating services of the petitioners. The said order was challenged before the High Court and came to be set aside by way of common judgment dated 28.11.2017. The above judgment also directed that the petitioners be permitted to work and be paid regular monthly salary. The relevant extract of this decision is reproduced thus: □“.....

In view of the above, we are of the considered opinion that the impugned order dated 11.8.2017 has been passed in violation of principles of natural justice without issuing notice and without affording opportunity of hearing to the petitioners, no exercise was undertaken to distinguish the case of tainted and non□tainted candidates to arrive at the conclusion while passing the impugned order as such the impugned order dated 11.8.2017 is not sustainable and is liable to be set aside.

Accordingly, the impugned order dated 11.8.2017 passed by the Chief Engineer Jal Nigam (Annexure□9 to the writ petition) is hereby set aside.

The writ petitions succeed and are allowed with the further direction to permit the petitioners to work on the post of Assistant Engineer (Civil); Assistant Engineer (Electrical/Mechanical) and Assistant Engineer (Computer Science/Electronics and Communication/Electrical and Electronics) and to pay them regular salary month by month with the liberty to the respondents to pass a fresh, reasoned order after providing opportunity of hearing to the petitioners and other affected parties on the basis of observations made above. No order as to costs.” (emphasis supplied)

10. Another writ petition filed by some of the petitioners before Lucknow bench of the High Court, being Service Bench No. 19863/2017 was also disposed of on 12.12.2017, in terms of the judgment dated 28.11.2017, in the following words:

“.....

Accordingly, this writ petition is also allowed in terms of the judgment and order dated 28.11.2017 passed by this Court at Allahabad in the bunch of Writ Petitions, leading Writ Petition being Writ□A No. 37143 of 2017, Ajit Singh Patel and others vs. State of U.P. and others with a further direction to permit the petitioners to work on the post of Assistant Engineer (Civil), Assistant Engineer (Electrical/ Mechanical) and Assistant Engineer (Computer Science/ Electronics and Communication / Electrical and Electronics) and pay them regular salary as and when the same accrues to them with a liberty to the respondents to pass a fresh reasoned order after

providing opportunity of hearing to the petitioners and other parties on the basis of the observations made by this Court at Allahabad in the judgment and order dated 28.11.2017 (supra).

.....” (emphasis supplied)

11. Upon failure of the respondents to act upon the directions passed in judgment dated 28.11.2017, the petitioner(s) filed Contempt Application (Civil) No. 6218/2017 before the High Court. Meanwhile, the respondents preferred SLP (C) Nos. 5410□5419/2018 before this Court assailing the judgment dated 28.11.2017. The said special leave petitions were disposed of by an order dated 16.3.2018, holding that the respondents may approach High Court for a liberty to re□work the answer sheets on the basis of corrections. The said order reads thus: □“ORDER Mr. Rakesh Dwivedi, learned senior counsel appearing for the petitioners, points out that the petitioners having found out that there were defective questions and incorrect answer keys, the High Court should have permitted the petitioners to re□work the merit list. He submitted that the High Court has gone wrong in insisting for an individual notice in the factual matrix of this case. In this regard he has also placed reliance on a judgment of this Court in *Vikas Pratap Singh and Others v. State of Chhattisgarh and Others*, reported in (2013) 14 SCC 494.

Mr. Mukul Rohatgi, learned senior counsel appearing for the respondent(s), however, points out that whether the questions were defective or key answers were incorrect are disputed question and, therefore, liberty should be granted to the respondents to participate in the inquiry. He further submits that the decision of this Court referred to by the learned senior counsel for the petitioners may not apply to the facts of this case.

Be that as it may, having gone through the impugned judgment, we do not find that the door is yet closed. It is for the petitioners, if they are so advised, to approach the High Court itself for a liberty to re□work the answer sheets on the basis of the corrections, in case the High Court is also of the view that the corrections need to be made.

The special leave petitions are, accordingly, disposed of.

Pending application(s), if any, shall stand disposed of.” (emphasis supplied)

12. Upon disposal of the said special leave petitions, the respondents furnished an undertaking to the High Court in the Contempt Application (Civil) No. 6218/2017 that the judgment dated 28.11.2017 will be complied with on or before 15.5.2018. In the meantime, the respondents preferred a Review Application No. 2/2018 in Writ □A No. 37143/2017, wherein the High Court, vide order dated 25.7.2018, refused to interfere with the judgment dated 28.11.2017 and reiterated that it was open to the respondents to pass a fresh order. This order dated 25.7.2018 reads thus: □“The Managing Director, U.P. Jal Nigam, Lucknow and the Chief Engineer, U.P. Jal Nigam, Lucknow have both filed an application for the review of the judgement and order dated 28.11.2017 by which a bunch of these writ petitions were finally decided.

The submission of learned Advocate General of State of U.P. is that the applicants be granted liberty to segregate tainted and untainted candidates in passing a fresh order for which liberty has been given.

The order impugned in the writ petitions was of 11.08.2017 passed by the Chief Engineer, Jal Nigam which cancels the entire selection.

In allowing the petition, we have held that the order impugned in the writ petition has been passed in violation of principles of natural justice and that the selection as a whole was not liable to be cancelled without undertaking any exercise to separate the tainted candidates from the untainted one's. The court in the end while allowing the writ petitions had permitted the applicants to pass a fresh reasoned order after providing opportunity of hearing to the petitioners and the other affected parties keeping in view the observations made in the judgment.

The applicants till date have not passed any fresh order. In passing the fresh order they may consider each and every aspect of the matter and they do not require any permission of the court for the manner in which they would pass the fresh order.

In view of above, we do not consider that any liberty for the above purpose is needed from the court.

We do not find any apparent error in the judgment and order which is sought to be reviewed.

The Review Application stands disposed of.” (emphasis supplied)

13. Since the undertaking filed in Contempt Application (Civil) No. 6218/2017 was not complied with even after the disposal of the review petition, the High Court by order dated 6.8.2018, directed that upon failure to file compliance affidavit before next date of hearing, the presence of the respondents would be required for framing of charges of contempt. Likewise, in another contempt petition before the Lucknow bench of the High Court (against non-compliance of judgment dated 12.12.2017), a similar order was passed on 7.8.2018.

14. The respondents carried the matter in appeal before this Court vide Civil Appeal Nos. 11017 & 11018/2018, impugning the judgment and orders dated 28.11.2017 passed in Writ & A No. 37143/2017 and also dated 25.7.2018 in Review Application No. 2/2018. It may be useful to advert to an interim order passed by this Court in the stated appeal, dated 20.8.2018, which may have some bearing on the grounds under consideration. The same reads thus: “The only liberty granted to the petitioners and as rightly understood by the learned Advocate General appearing for the State was to segregate the tainted from the untainted as per Order dated 16.03.2018.

We direct the petitioners to file a report, in a sealed cover, within one month from today, as to what steps have been taken pursuant to the Judgment dated 28.11.2017 passed by the High Court and the order dated 16.03.2018 by this Court in the Special Leave Petition.

List on 20.09.2018.

The petitioners may approach the High Court and seek for extension of time.” (emphasis supplied) Be that as it may, the decisions of the High Court referred to above stood confirmed by this Court vide order dated 15.11.2018, giving liberty to the respondent(s) to pass a fresh, reasoned order. The relevant portion of the decision of this Court reads thus: □“14. The limited plea taken before this Court as noted in the first paragraph of order dated 16 th March, 2018 was to allow the appellants to re□work the question and answer sheets and revise the merit list and issue fresh, reasoned order after providing opportunity of hearing to the affected candidates. That option has been kept open. It is for the appellants to pursue the same. In other words, the appellants must, in the first place, act upon the decision of the High Court dated 28 th November, 2017 whereby the order passed by the Chief Engineer dated 11th August, 2017 has been quashed and set aside. The appellants may then proceed in the matter in accordance with law by passing a fresh, reasoned order. Indeed, while doing so, the appellants may take into consideration the previous inquiry reports as also all other relevant material/documents which have become available to them. We make it clear that we have not dilated on the efficacy of the opinion given by the experts of the “IIIT Allahabad and IIT Kanpur”.

15. In view of the above, the challenge to the impugned judgment dated 28th November, 2017 and 25th July, 2017 must fail but with a clarification that the competent authority of Nigam is free to pass a fresh, reasoned order in accordance with law.

16. We may not be understood to have expressed any opinion either way on the merits of the course of action open to the appellants against the respondents including against the other appointees under the same selection process. All questions in that behalf are left open.” (emphasis supplied)

15. After the judgment of this Court dated 15.11.2018, the High Court in the Contempt Application (Civil) No. 6218/2017, vide order dated 26.11.2018, directed the respondents to comply with the judgment dated 28.11.2017 in the first instance. An order of even date was made in Contempt No. 1428/2018 by the Lucknow bench of the High Court on similar lines.

16. In terms of the directions of this Court in judgment dated 15.11.2018 and that of High Court in the two orders dated 26.11.2018, the respondents passed the impugned order dated 4.12.2018 (reproduced in paragraph No. 2 above), reengaging the petitioners, albeit, without continuity of service and arrears. The respondents also filed affidavit of compliance before the High Court.

17. In Contempt Application No. 6218/2017, the petitioner filed objections to the said affidavit of compliance on 10.12.2018 on the ground that withholding the payment of arrears is directly in teeth of the judgment dated 28.11.2017, as confirmed by this Court vide judgment dated 15.11.2018 and thus, it amounts to wilful and deliberate disobedience of the order of the Court.

18. Similarly, in Contempt No. 1428/2018, the objections were first noted in order dated 17.12.2018 and then, a detailed affidavit of objections was filed on 21.1.2019. The High Court, vide order dated 22.1.2019, observed that the reinstatement should be followed by payment of full back wages and directed the respondents to pay the same within three months. The relevant portion of the said order is reproduced thus:

“.....

The Supreme Court has observed in the case of Deepali Gundu Surwase⁷ that reinstatement ordinarily should be followed by payment of full back wages.

It is not the case of the respondents that the termination order has not been set aside by this Court. It is also not the case of the respondents that the petitioners have been gainfully employee during the period that they remained out of service due to termination order which has Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) & Ors. (2013) 10 SCC 324 ultimately been set aside. Therefore, the respondents are directed to give arrears of salary as are due to the petitioner after termination order is set aside by this Court.

The back wages of the petitioners in compliance of the orders passed by this Court in writ jurisdiction shall be paid to the petitioner within a period of three months. List this matter after three months on 29.4.2019 by which date if all arrears of salary are not paid, then the Managing Director of U.P. Jal Nigam shall appear in person to assist this Court.”

19. Thereafter, by order dated 1.4.2019, the High Court recorded that the respondents are prima facie guilty of wilful and deliberate disobedience and directed their presence before the Court on next date of hearing, for framing charge. The respondents assailed the said order by way of SLP(C) No. 10774/2019. This Court, vide order dated 7.5.2019, observed that after the decision in Civil Appeal No. 11017□1018/2018, the contempt petitions cannot be continued before the High Court and be deemed to have been withdrawn to this Court. Liberty was granted to the petitioners to pursue other remedies as per law against the impugned orders.

20. The respondents had challenged the High Court’s order dated 22.1.2019 by way of SLP (C) Diary No. 15756/2019, wherein this Court by order dated 10.5.2019, had followed the order passed in SLP (C) No. 10774/2019 to withdraw the contempt petition.

21. In these circumstances, the present contempt petitions in reference to the order dated 4.12.2018 regarding reengagement without continuity of service and arrears of back wages, arise for our consideration.

22. The thrust of the argument of the petitioners in these petitions is that the effect of judgment of High Court in setting aside the termination order dated 11.8.2017, as upheld by this Court is that the termination order stood effaced in its entirety. As such, it was necessary to issue a formal order of reinstatement along with continuity in service and arrears of pay for the relevant period. It is not open to the respondents to give any other interpretation. It was then urged that the petitioners were not gainfully employed elsewhere between the dates of termination and reinstatement and therefore, were entitled to back wages. In support, reliance has been placed upon the decision of this Court in Deepali Gundu Surwase⁸. Further, it was submitted that denial of back wages would amount to giving premium to the respondents for their wrongdoings. It was also pointed out that in Deepali Gundu Surwase⁹, the judgment of this Court in J.K. Synthetics Ltd. v. K.P. Agrawal &

Anr.10, which has been relied upon by the respondents, was held to be not a good law.

23. On the other hand, the respondents would submit that neither the High Court in its judgment dated 28.11.2017 nor this Court in its judgment dated 15.11.2018 had directed payment of arrears. Reliance was then placed on the decisions of this Court in J.K. Synthetics Ltd.¹¹ and U.P. State Brassware Corpn. Ltd. & Anr. v. Uday Narain Pandey¹², to submit that arrears cannot be claimed as a matter of right upon reinstatement, unless it has been expressly granted by the Court. In that, the petitioners are not entitled to arrears. Further, the petitioners cannot now claim arrears as it would amount to claiming a fresh relief and is beyond the scope of contempt proceedings, whilst placing reliance upon the decision of this Court in Director of Education, Uttaranchal & Ors. v. Ved Prakash Joshi & Ors.¹³ It is urged that the petitioners had accepted the terms of (2007) 2 SCC 433 (2006) 1 SCC 479 (2005) 6 SCC 98 re-engagement without any demur and therefore it was not open to them to claim back wages.

CONTEMPT PETITIONS AGAINST FRESH TERMINATION ORDER DATED 2.3.2020:

24. The fresh termination order dated 2.3.2020 came to be passed pursuant to the liberty given by this Court, leading to filing of the present petitions. The background facts are that there were several lapses by few officials of the respondent corporation and M/s. Aptech Private Limited (the testing agency) in relation to the selection process for filling up 122 posts of Assistant Engineers (113 □ Civil, 5 □ Electrical/Mechanical and 4 □ Electrical and Electronics/Electronics and Communication/Computer Science). That as per the agreement between the respondent corporation and the testing agency, the testing agency was required to display the answer key for three days and to take remedial action on the objections received. Further, the testing agency was also required to retain the data pertaining to the examination for at least one year. The testing agency breached the aforesaid conditions and interviews were conducted, without confirming if the answer key was uploaded or not. The interviews of 34,158 candidates were conducted in tearing haste on 30.12.2016 and 31.12.2016 and the final result was released on 3.1.2017, and the appointments were made on the same day i.e., 3.1.2017. Since non uploading of the answer key had deprived the candidates of the opportunity to file objections, the unsuccessful candidates approached the High Court alleging that the recruitment process was not transparent and was replete with several illegalities and irregularities. The High Court, in Writ Petition Nos. A/15948/2017 and 9794/S.B./2017 (preferred by unsuccessful or non-selected candidates), directed the respondent corporation to inquire into the said grievance and ensure that appropriate action is taken. Accordingly, two separate inquiries were conducted by the officers wherein several irregularities were found. On the basis of these inquiries, the entire selection process was declared void ab initio and an order to that effect was passed on 11.8.2017. The said order later on came to be set aside vide judgment dated 28.11.2017 of the High Court.

25. Meanwhile, a complaint was received by the U.P. Government (Home Department) in regard to various examinations pertaining to recruitment to several posts (including the present recruitment process). The government forwarded the same to SIT for investigation. The SIT in its initial enquiry found that the testing agency had removed the entire data pertaining to the present recruitment process from the main server, in violation of the condition to store it for a year. The said fact was

also admitted by the testing agency. Therefore, in absence of original data, assistance of the Directors of IIT Kanpur and IIIT Allahabad was sought to segregate the tainted and untainted candidates. The finding in the two expert reports, inter alia, was that the response sheet was uploaded after a long gap after the conclusion of the test which casts a doubt of manipulation in the response sheets. Further, the data provided by the testing agency did not contain the Timestamps and Mouse Clicks of the candidates and there is no mention of the Audit Trail/Checksum. Therefore, the authenticity of the answers of the candidates could not be verified and certified. Moreover, since primary data was not available and the data stored in the CD could not be authenticated, it was not possible to segregate the tainted and untainted candidates.

26. In the meantime, this Court in Civil Appeal No. 11017□11018/2018 (against judgment dated 27.11.2017 and judgment in review dated 25.7.2018), had observed that the expert reports were not available while passing order dated 11.8.2017 and gave liberty to pass a fresh reasoned order by considering the previous inquiry reports and other data that becomes available to the respondents.

27. In separate proceedings pending before the High Court in W.P. No. 12222/2017 (against recruitment for other posts), the Court passed an order dated 21.5.2019 that it was for the respondent corporation to decide to annul the entire selection process if the segregation cannot be undertaken. The said order was upheld by the High Court in Special Appeal (Defective) No. 625/2019 and 626/2019 (intra court appeals) by an order dated 31.7.2019. Furthermore, the SIT sent its final report dated 22.1.2020 to the Government, which was made available to the respondent corporation on 18.2.2020. The said report mentions that the testing agency had removed primary data from the cloud server in furtherance of a criminal conspiracy and recommended to consider cancelling all the appointments made in the exams conducted by the testing agency (including for the post of Assistant Engineer). In view of the aforesaid, and in exercise of the liberty granted by this Court, the order dated 2.3.2020 was passed on the aforesaid findings. Aggrieved therefrom, the present contempt petitions have been filed.

28. The case of the petitioners is that the High Court and also this Court had held that the termination order dated 11.8.2017, terminating the services of the petitioners (and other appointees) en masse, was invalid as it was passed without adhering to the principles of natural justice. However, the respondent corporation had yet again passed the order dated 2.3.2020 without following the principles of natural justice. By doing so, the respondent corporation in effect has restored the termination order dated 11.8.2017, under the guise of the liberty granted by this Court. The same cannot be countenanced.

29. It was urged that the decision of this Court dated 15.11.2018 contained a categorical direction for the respondent corporation to pass a fresh reasoned order after providing an opportunity of hearing to the affected parties. However, the impugned order had been passed in violation thereof. In support, reliance is placed on the decision of this Court in Haryana Financial Corporation & Anr. v. Jagdamba Oil Mills & Anr. 14 to contend that the judgments are not to be read like statutes. It was then urged that liberty to pass a fresh order 'in accordance with law' cannot be stretched to such an extent that would circumvent compliance with principles of natural justice.

30. It was contended that the reliance placed by the respondents upon decisions of High Court in W.P. No. 12222/2017 and Special Appeal (Defective) No. 625/2019 and 626/2019 is misplaced and untenable as the same has been done only to overcome the orders of this Court. It was submitted that the executive cannot sit in appeal or revision over the judicial orders. Reliance is placed on the decision of this Court in *Union of India & Anr. v. K.M. Shankarappa* 15 and *Union of India v. Ashok Kumar Aggarwal* 16, to contend that an attempt to renew an order which had been quashed by the Court, would amount to legal malice.

31. Per contra, the respondents would submit that the judgment dated 15.11.2018 had directed the respondents to act (2002) 3 SCC 496 (2001) 1 SCC 582 (2013) 16 SCC 147 upon the High Court's judgment dated 28.11.2017, wherein the petitioners were permitted to work on the post of Assistant Engineers. The respondents duly complied with the aforementioned judgment of this Court, by appointing the petitioners vide order dated 4.12.2018. It was then urged that this Court had granted liberty to the respondents to proceed in the matter in accordance with law. Therefore, contempt action cannot be maintained in respect of order dated 2.3.2020 in absence of any specific direction to afford opportunity to the petitioners despite the conclusion and opinion recorded by the competent authority that segregation of tainted and the untainted was not possible. The respondents contend that in such a case the entire selection process stood vitiated and no notice/opportunity need be given to the petitioners. Reliance is placed upon decisions of this Court in *Union of India & Ors. v. O. Chakradhar* 17, *Veerendra Kumar Gautam & Ors. v. Karuna Nidhan Upadhyay & Ors.* 18, *M.P. State Coop. Bank Ltd., Bhopal v. Nanuram Yadav & Ors.* 19, *Nidhi Kaim v. State of Madhya Pradesh & Ors.* 20, *Kunhayammed & Ors. v. (2002) 3 SCC 146 (2016) 14 SCC 18 (2007) 8 SCC 264 (2016) 7 SCC 615 State of Kerala & Anr. and Khoday Distilleries Limited v. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal* 22 to contend that the respondents have not violated the judgment dated 15.11.2018. In law, the decision of High Court dated 28.11.2017 had merged in the judgment of this Court dated 15.11.2018. It was then submitted that no additional direction can be given in a contempt proceeding as the same would amount to exercise of review jurisdiction. In support of this plea, reliance is placed upon the decisions in *Bihar Finance Service House Construction Cooperative Society Ltd. v. Gautam Goswami & Ors.* 23 and *Sudhir Vasudeva, Chairman and Managing Director, Oil and Natural Gas Corporation Limited & Ors. v. M. George Ravishekar & Ors.* 24. It was then urged that civil contempt would require wilful disobedience. Passing of order dated 2.3.2020, assuming it to be a case of disobedience, the same cannot be termed as wilful. Thus, no contempt action can be maintained. Reliance was placed on decision of this Court in *Ram Kishan v. Tarun Bajaj & Ors.* 25, (2000) 6 SCC 359 (2019) 4 SCC 376 (2008) 5 SCC 339 (2014) 3 SCC 373 (2014) 16 SCC 204 *Dinesh Kumar Gupta v. United India Insurance Company Limited & Ors.* 26 and *Kapildeo Prasad Sah & Ors. v. State of Bihar & Ors.* 27. It was then submitted that the implementation of orders can be insisted depending on its practicability. But, in the fact situation of this case, giving notice to the petitioners was not practical. Reliance is placed upon the decision of this Court in *Mohd. Iqbal Khanday v. Abdul Majid Rather* 28.

32. W.P.(C) No. 491/2020 is filed for quashing and setting aside the termination order dated 2.3.2020 and to direct the respondents to reinstate the petitioners with full back wages and continuity of service. Several applications were filed in the above petition seeking impleadment as parties. I.A. No. 116777/2020, I.A. No. 106077/2020 and I.A. No. 93552/2020 have been filed by

the successful candidates. Whereas, I.A. No. 50899/2020 is filed by the candidates who were declared unsuccessful or non-selected in the initial merit list, but whose score was revised after considering the objections to the answer key, so as to enter the (2010) 12 SCC 770 (1999) 7 SCC 569 (1994) 4 SCC 34 merit list. An application for directions being I.A. No. 50896/2020 was filed by the aforesaid unsuccessful candidates seeking to be appointed as per the revised merit list and to pay arrears from January, 2017 when they ought to have been appointed. The applications of the unsuccessful or non-selected candidates shall be dealt with a little later.

33. The ground for filing the above writ petition is that the termination order dated 2.3.2020 is violative of Articles 14, 19(1)

(g) and Article 21 of the Constitution of India. That, the respondent corporation had malafidely tried to improve its case at every stage by adding new grounds. For instance, in the first inquiry report dated 29.5.2017, the Chief Engineer stated that the sanction for a few posts was made by Board of Directors of the respondent corporation, which was not competent to do so, as only the Government had authority to sanction posts. Further, the candidates with lower marks in the written test were given higher marks in the interview and that the entire selection process was rushed through within a period of less than one month from the date of advertisement issued on 13.12.2016 and appointment orders issued on 3.1.2017, presumably because election code of conduct was about to come into force. Thereafter, in second inquiry report dated 7.7.2017, the Chief Engineer added that the respondent corporation could not have recruited without permission of the Finance Department of the Government in view of the loan of Rs.300 crores given by the Government to the respondent corporation. Further, the examination results were published without inviting objections, some of the answers in the answer key and some questions in the question paper were wrong and that answer sheets of 4 successful candidates were identical.

34. Then, in the termination order dated 11.8.2017, it was added that the permission of Election Commission of India should have been taken as the Model Code of Conduct had come into effect prior to joining date. Before the High Court, it was urged that the respondent corporation was facing shortage of funds and was not in a position to pay so many additional employees and that provision was not made for reservation of posts in accordance with law. Thereafter, in the review application, the ground taken was that on the basis of revaluation, some of the selected candidates would not even have been eligible for the interview.

35. The petitioners would submit that the writ petition is maintainable in view of violation of their fundamental rights under Articles 14, 19(1)(g) and 21 of the Constitution. Reliance is placed upon the decision of this Court in *Romesh Thappar v. State of Madras*²⁹. It was urged that the action of the respondents in adding new grounds at each stage shows that the respondent corporation despite being 'State' under Article 12 of the Constitution, has been prosecuting the matter like a desperate private litigant, under dictation.

36. The petitioners would then urge that the impugned order had been passed by the respondents whilst relying upon the opinion of experts that there was a possibility that the response filed by certain candidates 'might have been doctored', which is a mere speculation, without any data in its

support. It was submitted that the data upon which the respondents relied, to pass the order dated 2.3.2020, was available even at the time of passing of the judgment dated 15.11.2018 by this Court; and is in the nature of 'being repacked in a fresh package' and the same 1950 SCR 594 cannot be permitted as per decision of this Court in Manohar Lal (Dead) by LRs. v. Ugrasen (Dead) by LRs. & Ors.³⁰.

37. It was urged that the respondents deliberately did not ask the testing agency for checksum data until one year period of storing had expired. It was then pointed out that the testing agency, in an affidavit before the High Court (in W.P. (S/S) No. 7647/2020 – relating to another examination), had stated certain facts concerning the present selection process. Particularly, that the primary data was not deleted but merely moved from the cloud server to data storage centre in accordance with its Data Retention Policy and is still available with the testing agency and that the respondent corporation had never approached them for obtaining the same. Therefore, the opinion given by the two experts was based on conjectures and surmises that the primary data is not available.

38. It was submitted that the SIT Report dated 22.1.2020 and the reports of Central Forensic Science Laboratory (CFSL) dated 28.8.2019, 19.11.2019, 11.12.2019 and 1.1.2020 (considered by the SIT in its report) relied upon by the respondents in passing the impugned order ought to have been served upon the (2010) 11 SCC 557 petitioners before taking any adverse action against them, in light of dictum in Union of India & Ors. v. S.K. Kapoor³¹. Further, the SIT report is in the nature of a final report by an investigative agency and cannot be treated as conclusive proof of malpractices. Moreover, the petitioners cannot be made to suffer at the cost of any malfeasance by the testing agency.

39. It was urged that the documents relied upon by the respondents have never been proved or subjected to scrutiny by a fact-finding authority or tribunal, nor had the petitioners been given an opportunity to meet the assertions made therein. That the testing agency had by letter dated 7.11.2017 intimated the SIT that primary data was stored in data storage facility and not the hard drive, despite which, the SIT raided its office on 10.9.2018 and seized random hard drives of 'dump data' and sent the same to CFSL. Therefore, the very basis of CFSL's analysis is flawed.

40. Further, despite the finding in SIT report that the testing agency was a part of criminal conspiracy for deleting the primary data, the respondents continued to engage the testing agency for conducting examinations. The respondent corporation procured a (2011) 4 SCC 589 letter dated 31.8.2020 from the Addl. Chief Secretary, Government of U.P. recommending to the DGP, SIT that the testing agency be blacklisted, about three years after the irregularities came to its knowledge, which clearly demonstrates malafides. It was then submitted that there is no substance in the argument that the selection process was hastily completed as the same was in full compliance with the advertisement and applicable SoP and Rules of the respondent corporation. Moreover, the said argument was rejected by the High Court in judgment dated 28.11.2017.

41. It was then urged that the only liberty granted to the respondents is to rework the answer sheets based on the corrections, after giving candidates an opportunity of hearing. Further, the respondent corporation had failed to discharge the burden that the response sheets were manipulated and

argued of inability to verify the veracity of examination process, which cannot be permitted.

42. The submission that principles of natural justice were violated was akin to the submissions made in the above contempt petitions. It was submitted that there can be no exception to the principle of audi alter partem. Reliance is placed upon decision of this Court in Nisha Devi v. State of Himachal Pradesh & Ors.³² and Indian Institute of Information Technology, Deoghat Jhalwa, Allahabad & Anr. v. Dr. Anurika Vaish & Ors.³³ to submit that when termination order was set aside for not hearing the affected parties before passing it and liberty is granted to pass a fresh reasoned order, the employer—State cannot pass another fresh termination order without hearing the affected persons yet again.

43. On the other hand, the respondents would raise a preliminary objection as regards the maintainability of the Writ Petition as the alternate remedy under Article 226 of the Constitution was not exhausted, whilst placing reliance on decisions of this Court in P.N. Kumar & Anr. v. Municipal Corporation of Delhi³⁴, Kanubhai Brahmabhatt v. State of Gujarat³⁵, Kunga Nima Lepcha & Ors. v. State of Sikkim & Ors.³⁶, Confederation of All Nagaland State Services (2014) 16 SCC 392 (2017) 5 SCC 660 (1987) 4 SCC 609 1989 Supp (2) SCC 310 (2010) 4 SCC 513 Employees' Assn. & Ors. v. State of Nagaland³⁷ and Amrit Lal Berry v. Collector of Central Excise, New Delhi & Ors. ³⁸. It was also pointed out that parties similarly placed to that of the petitioners filed writ petition before the High Court being W.P. (C) No. 13083/2020 (Service Single) and even the petitioners ought to have approached High Court.

44. With reference to petitioners' reliance on affidavit filed by the testing agency, the respondents would submit that the onus was on the testing agency to give correct and complete data to the SIT for investigation. It was pointed out that the SIT had recorded the statement of Mr. Vishvajeet Singh, Technical and Delivery Head of the testing agency, wherein he stated that the examination data was kept in the cloud only for a month, after disk. Further, the testing agency had itself accepted in the certificate provided to the SIT under Section 65—B of the Indian Evidence Act, 1872³⁹, that the original primary data had been deleted and the backup data does not contain any system logs. And that, the deletion of primary server data made it impossible (2006) 1 SCC 496 (1975) 4 SCC 714 For short, 'the 1872 Act' to re—analyse the response sheets using the secondary data provided in the form of CDs, as the same is not accurate. It was then urged that the respondent corporation had taken prompt action against its officials involved in the irregularities committed in the recruitment process.

45. It was submitted that the respondents had rightly cancelled the entire recruitment process and terminated the services of all the recruits in accordance with law as the illegality was of such nature that the tainted candidates could not have been segregated from the untainted and the veracity of the entire examination process was doubtful. Further, it was urged that if the tainted and untainted candidates could be segregated, the show cause notice would have been issued to the concerned candidate. However, since the segregation was not possible and did not take place, the entire recruitment process had to be cancelled in view of O. Chakradhar⁴⁰. Thus, no individual show cause notice was necessary in law. This submission of the respondents is similar to the stand taken by them in the above contempt petitions.

46. It was then urged that even if an opportunity of hearing is given to the candidates, it would be an empty formality as the respondents do not have primary data to compare actual correct answers given by the candidates, as it would be impossible to segregate the tainted and untainted candidates in absence of the primary data. Even if an opportunity of hearing is granted, the decision of the respondent corporation would remain the same. Reliance in that regard was placed upon decision of this Court in *Dharampal Satyapal Limited v. Dy. Commissioner of Central Excise, Gauhati & Ors.*⁴¹.

RE: IMPEADMENT APPLICATIONS BY NON-SELECTED CANDIDATES:

47. Coming to the impleadment applications filed by non-selected candidates, their case is that upon objections raised by the candidates that the answer key was not released, the respondents had published the answer sheet and answer key on 28.2.2017. The applicants found various errors therein and being aggrieved, they had filed W.P. Nos. 10667/2017 and 21876/2017 before the High Court, wherein the High Court (2015) 8 SCC 519 directed the respondents to conduct an enquiry in the alleged irregularities. Pursuant thereto, an inquiry was conducted wherein the errors were taken note of and accordingly, the testing agency had submitted a revised list to the respondents. In that revised merit list, these applicants had stood higher in the merit list than the appointees. The respondents, instead of reworking the appointments in accordance with the revised list, had annulled the entire selection process first vide order dated 11.8.2017 (which was later set aside) and then again by order dated 2.3.2020.

48. These applicants would submit that various grounds noted by the respondents in the order dated 2.3.2020 had already been rejected by the High Court in its judgment dated 28.11.2017, whereby the earlier order dated 11.8.2017 was set aside. The High Court in the said judgment had held that there was no prohibition imposed against appointment on regular selection in the model code of conduct and the post of Assistant Engineers were regular in nature. That the requirement mandating prior sanction of the State Government was not applicable to the present case as the requirement was made by G.O. dated 13.12.2016 whereas the selection process in question had commenced on 19.11.2016. That the permission to advertise the posts was made by the Chairman, which was ratified by the Board of Directors of the respondent corporation. The argument of malafide in the selection process was rejected by the High Court and the said judgment was upheld by this Court.

49. It was urged that the testing agency undertook the exercise of rectification of incorrect entries in the key and submitted a report to the respondents dated 8.8.2017 containing the revised merit list and therefore, the only option available to the respondents was to act upon the revised merit list. It was submitted that cancellation of entire selection process (by order dated 2.3.2020) when it was merely a case of certain infirmities in the evaluation, would be unreasonable, arbitrary and disproportionate. In support of this plea, reliance is placed upon decisions of this Court in *Union of India & Ors. v. Rajesh P.U. Puthuvalnikathu & Anr.*⁴², *Rajesh Kumar & Ors. v. State of Bihar & Ors.*⁴³ and *K. Channegowda & Ors. v. Karnataka Public Service Commission & Ors.*⁴⁴.

(2003) 7 SCC 285 (2013) 4 SCC 690 (2005) 12 SCC 688

50. It was then urged that the principle of proportionality has been recognised as an aspect of Article 14 by this Court in *Modern Dental College and Research Centre & Ors. v. State of Madhya Pradesh & Ors.*⁴⁵ and in view whereof, the cancellation of entire selection process, being disproportionate, is violative of Article 14.

51. Further, it was urged that even in the case of malpractice and malafide, entire selection process should not be cancelled but the tainted and untainted candidates ought to be segregated. In support of this plea, reliance was placed on decisions of this Court in *Inderpreet Singh Kahlon & Ors. v. State of Punjab & Ors.*⁴⁶, *Girjesh Shrivastava & Ors. v. State of Madhya Pradesh & Ors.*⁴⁷ and *Joginder Pal & Ors. v. State of Punjab & Ors.*⁴⁸. It was then urged that the mandate of decisions of High Court dated 28.11.2017 and 25.7.2018 and of this Court dated 16.3.2018 and 15.11.2018 was to rework the answer sheets and a limited liberty to that effect was given to the respondents. The applicants would then take a stand similar to (2016) 7 SCC 353 (2006) 11 SCC 356 (2010) 10 SCC 707 (2014) 6 SCC 644 that of the petitioners in the above contempt petitions, to submit that the judgment of a court has to be understood in its entirety and cannot be read as a statute, whilst relying upon the decision of this Court in *Purnendu Mukhopadhyay & Ors. v. V.K. Kapoor & Anr.*⁴⁹. Therefore, the order dated 2.3.2020 passed by the respondents is against the mandate of the above judgments. RE: TRANSFER PETITION:

52. In T.P. (C) No. 1209/2020, the petitioners have approached this Court under Article 139A for transfer/withdrawal of Writ Petition (C) No. 13083/2020 (Service Single) pending before the High Court to this Court as the subject matter of the said writ petition (impugned order dated 2.3.2020) is already pending challenge before this Court in W.P. No. 491/2020 and companion contempt petitions. In W.P. (C) No. 13083/2020 (Service Single) before the High Court, the petitioners have relied upon opinion of their own expert, Dr. A.V. Subrahmanyam, Assistant Professor at IIIT Delhi, who had discredited the IIT and IIIT reports and opined that the ‘checksum’ method of fingerprinting not having (2008) 14 SCC 403 been deployed shall have no bearing on the candidates as they had no role to play in the same.

53. These petitioners would submit that the issue of veracity and weight of experts shall be examined in a departmental inquiry and cannot be gone into before this Court. Further, the petitioners urge that they would like to present their expert and to cross examine other experts, so that the truth could be distilled. That the respondents ought to have had a departmental inquiry by giving the petitioners an opportunity to hear, so that the parties could have led their evidence and the decision should have been taken on the basis of the outcome of such inquiry.

54. We have heard Mr. Mukul Rohatgi, Ms. Meenakshi Arora, Mr. Ravindra Raizada, learned senior counsel, Mr. Gaurav Mehrotra, Mr. Kumar Shivam and Mr. Rohit Anil Rathi, learned counsel for the petitioners; Mr. Nizam M. Pasha for the impleaded petitioners; Ms. Sanskriti Pathak, learned counsel for applicants (candidates successful as per revised merit list); and Mr. Vikas Singh, learned senior counsel for the respondents.

55. The broad points that arise for our consideration are:

1. Whether the order dated 4.12.2018 passed by the respondents is in the teeth of judgment of this Court dated 15.11.2018, requiring compliance of judgment of High Court dated 28.11.2017, for deliberate failure to reinstate with continuity of service and to pay arrears to the petitioners?
2. Whether the termination order dated 2.3.2020 passed by the respondents is in wilful disobedience of and in the teeth of judgment of this Court dated 15.11.2018, for not following the principles of natural justice and is thus non est in law?

CONSIDERATION

56. At the outset, we deem it appropriate to first answer the preliminary objection regarding maintainability of writ petition under Article 32 of the Constitution of India. We have no hesitation in rejecting this preliminary objection for more than one reason. It is well established position that if the termination order is assailed on the ground of violation of principles of natural justice or fundamental rights guaranteed under Part III of the Constitution, such a grievance can be brought before the constitutional Court including by way of writ petition under Article 32 of the Constitution of India. It is a different matter that this Court may be loath in entertaining the grievance directly under Article 32 and instead relegate the petitioner(s) before the High Court to first exhaust the remedy under Article 226 of the Constitution of India. That is also because this Court will then have the advantage of the judgment of the High Court on relevant aspects. In other words, it is not a question of maintainability of writ petition, but one of exercise of discretion with circumspection in entertaining writ petition under Article 32 in such matters. Further, in the present case, there are other proceedings pending in the form of contempt petitions and a transfer petition wherein the termination order dated 2.3.2020 is the subject matter. Thus, the arguments in these cases will be overlapping. In that, the self same order has been impugned in the writ petition filed before this Court. The fact that other affected similarly placed persons have filed writ petitions directly before the High Court and which are stated to be pending, can be no impediment for this Court in entertaining and deciding the writ petition. For, the issue regarding the purport of orders passed by this Court needs to be answered appropriately in contempt petitions only by this Court. It is not open to the High Court to interpret or explain the order passed by this Court in previous proceedings between the parties. The High Court can only follow the dictum of this Court which is binding on it. Accordingly, we are not impressed by the preliminary objection taken by the respondents regarding the maintainability of writ petition under Article 32 of the Constitution by similarly placed persons directly filed before this Court to assail the impugned order dated 2.3.2020, which is also subject matter of second set of contempt petitions.

57. As aforesaid, we are dealing with two sets of contempt petitions. The first set complains about non compliance of order dated 28.11.2017 passed by the High Court, which came to be upheld by this Court consequent to disposal of special leave petitions being SLP(C) Nos. 5410-5419/2018 vide order dated 16.3.2018, and more particularly, reiterated by this Court in its order dated 15.11.2018⁵⁰ directing the respondents to first act upon the decision of the High Court dated 28.11.2017 and only thereafter proceed in the matter in accordance with law by passing a fresh, reasoned order. It is not in dispute that after the judgment of this Court dated 15.11.2018, a

consequential order was passed by the High Court on 26.11.2018. The respondents thus issued order dated 4.12.2018 (reproduced in paragraph 2 above), reengaging the petitioners on the concerned posts without continuity of service and arrears.

58. The grievance of the petitioners is that the unambiguous direction given by the High Court and upheld by this Court was to reinstate the petitioners on the same position with full back wages. No more and no less. The respondents were, therefore, obliged to issue order of reinstatement with continuity of service and back wages. The argument is attractive at the first blush, but on deeper scrutiny of the orders passed by the High Court and finally by this Court, it is noticed that the direction is limited to permit the petitioners to work on the posts of Assistant Engineer (Civil), Assistant Engineer (Electric/Mechanical) and Assistant Engineer (Computer Science and Electronics and Communication/Electrical and Electronics) and to pay them regular salary month by month as and when it becomes due and payable to them. That can be discerned from the last paragraph of the order dated 28.11.2017 (reproduced in paragraph 9 above). On similar lines, the High Court disposed of another writ petition challenging the termination order dated 11.8.2017 passed by the respondents, vide order dated 12.12.2017 (reproduced in paragraph 10 above). In these orders, the expression used by the High Court is “to permit the petitioners to work on the concerned posts and to pay them regular salary as and when the same accrues to them”. The order dated 28.11.2017 passed by the High Court was upheld by this Court on 16.3.2018. In that order, after recording contentions of both sides, while disposing of petitions it is observed as follows: □“.....

Be that as it may, having gone through the impugned judgment, we do not find that the door is yet closed. It is for the petitioners, if they are so advised, to approach the High Court itself for a liberty to re□work the answer sheets on the basis of the corrections, in case the High Court is also of the view that the corrections need to be made.” The respondents had, therefore, pursued review petition as per the liberty given by this Court. The same came to be disposed of by the High Court on 25.7.2018. On perusal of that order (reproduced in paragraph 12 above), there is nothing to indicate that the High Court expressly directed reinstatement of petitioners with continuity of service and back wages, as such. Even in the decision of this Court dismissing the appeals filed by respondents, vide order dated 15.11.2018 (reproduced in paragraph 14 above), no such direction has been issued. The limited direction is that the respondents must first act upon the decision of the High Court dated 28.11.2017 and only thereafter proceed in the matter in accordance with law by passing a fresh, reasoned order.

59. After cogitating over the orders passed by the High Court and this Court referred to above, it becomes amply clear that the High Court had quashed and set aside the first termination order dated 11.8.2017 solely on the ground that it was passed in violation of principles of natural justice and further observed that the selection as a whole was not liable to be cancelled without undertaking an exercise to separate the tainted candidates from the untainted. While so observing, it was made clear that the respondents were free to pass a fresh, reasoned order in accordance with law.

60. In light of the aforesaid discussion, we have no hesitation in accepting the explanation offered by the respondents that going by the text of the orders passed by the High Court and this Court, it was open to the respondents to issue order (dated 4.12.2018) to reengage the petitioners on the same

posts from the date of order and to pay them regular salary month by month thereafter or as and when it would accrue to them. The orders passed by the High Court and this Court, as aforementioned, do not contain explicit direction to reinstate the petitioners with continuity of service and back wages as such. Instead, the expression used is only “to permit the petitioners to work on the posts” which were held by them at the time of their termination and “to pay them regular salary month by month” and “as and when the same accrues to them”. Thus understood, it is not a case of wilful disobedience of the orders of the Court.

61. Arguendo, the interpretation as propagated by the petitioners of the stated orders dated 28.11.2017 passed by the High Court and 16.3.2018 of this Court, is a possible view. Being another possible view, the benefit must then be given to the respondents. For, it would certainly not be a case of wilful disobedience as enunciated by this Court in *Sushila Raje Holkar v. Anil Kak (Retired)*⁵¹ which follows the dictum of this Court in *State of Bihar v. Rani Sonabati Kumari*⁵², *Purnendu* (2008) 14 SCC 392 AIR 1961 SC 221 *Mukhopadhyay* and *Maruti Udyog Limited v. Mahinder C. Mehta & Ors.*⁵⁴.

62. It is well settled that contempt action ought to proceed only in respect of established wilful disobedience of the order of the Court. This Court in paragraph 12 of the decision in *Ram Kishan*⁵⁵ observed thus: “12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is “wilful”. The word “wilful” introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. “Wilful” means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a “bad purpose or without justifiable excuse or stubbornly, obstinately or perversely”. Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. “Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct.” (Vide *S. Sundaram Pillai v. V.R. Pattabiraman*⁵⁶, *Rakapalli Raja Ram Gopala Rao v. Nara*⁵⁷ (2007) 13 SCC 220 (1985) 1 SCC 591 *gani Govinda Sehararao*⁵⁷, *Niaz Mohammad v. State of Haryana*⁵⁸, *Chordia Automobiles v. S. Moosa*⁵⁹, *Ashok Paper Kamgar Union v. Dharam Godha*⁶⁰, *State of Orissa v. Mohd. Illiyas*⁶¹ and *Uniworth Textiles Ltd. v. CCE*⁶².)” (emphasis supplied) It is useful to recall the exposition in *Director of Education, Uttaranchal*⁶³ and also in *K.G. Derasari & Anr. v. Union of India & Ors.*⁶⁴; wherein this Court observed that in exercising contempt jurisdiction, the primary concern must be whether the acts of commission or omission can be said to be contumacious conduct of the party who is alleged to have committed default in complying with the directions given in the judgment and order of the Court. Further, the Court ought not to take upon itself power to decide the original proceedings in a manner not dealt with by the Court passing the judgment and order. It is also not open to go into the correctness or otherwise of the order or give additional directions or delete any direction, which course could be

adopted only in review jurisdiction and not contempt proceedings.

(1989) 4 SCC 255 (1994) 6 SCC 332 (2000) 3 SCC 282 (2003) 11 SCC 1 (2006) 1 SCC 275 (2013) 9 SCC 753 (2001) 10 SCC 496

63. Reliance placed on Deepali Gundu Surwase⁶⁵ by the petitioners is inapposite. It was a case of wrongful termination and entitled the petitioner therein relief of back wages. The respondents have instead relied upon the exposition in *P. Karupaiah (Dead) through Legal Representatives v. General Manager, Thruvulluvar Transport Corporation Limited*⁶⁶ and *J.K. Synthetics Ltd.*⁶⁷ which has restated the legal position regarding back wages. It has been held that it is not automatic or natural consequence of reinstatement. Suffice it to mention that for reasons already recorded hitherto including that the limited direction given by the High Court and not disturbed by this Court was to permit the petitioners to work on the concerned posts and to pay them regular salary as and when the same accrues to them, the plea under consideration needs to be recorded only to be rejected.

64. Be that as it may, keeping in mind the settled legal position, we have no hesitation in concluding that the case at hand does not qualify the test of contumacious, much less wilful disobedience of the order of the Court by the officers of the respondents as such. In other words, the basis on which the (2018) 12 SCC 663 (paragraph 10) contempt action against the respondents in reference to order dated 4.12.2018 issued by the respondents, has been initiated is tenuous. Hence, the same is rejected.

65. We would now revert to the second set of contempt petitions, which emanate from termination order dated 2.3.2020 issued by the respondents. These petitions essentially proceed on the allegation that the respondents committed wilful disobedience of the order of this Court dated 15.11.2018 passed in Civil Appeal Nos. 11017□1018/2018 in not affording prior opportunity of hearing to the petitioners and similarly placed persons despite express direction contained in the said order. For considering this grievance, we may reproduce the relevant portion of the order dated 15.11.2018, which reads thus: □

14. The limited plea taken before this Court as noted in the first paragraph of order dated 16th March, 2018 was to allow the appellants to re□work the question and answer sheets and revise the merit list and issue fresh, reasoned order after providing opportunity of hearing to the affected candidates. That option has been kept open. It is for the appellants to pursue the same. In other words, the appellants must, in the first place, act upon the decision of the High Court dated 28 th November, 2017 whereby the order passed by the Chief Engineer dated 11th August, 2017 has been quashed and set aside. The appellants may then proceed in the matter in accordance with law by passing a fresh, reasoned order. Indeed, while doing so, the appellants may take into consideration the previous inquiry reports as also all other relevant material/documents which have become available to them. We make it clear that we have not dilated on the efficacy of the opinion given by the experts of the “IIT Allahabad and IIT Kanpur.” (emphasis supplied)

66. The Court had set aside the termination order dated 11.8.2017 issued by the respondents, solely on the ground that it was in violation of principles of natural justice. At the same time, liberty was

given to the respondents to pass a fresh order in accordance with law including by undertaking exercise of segregating the tainted from the untainted candidates. Indeed, the Court expected that before taking any precipitative action against the petitioners, the respondents must afford opportunity of hearing to them. This observation is contextual. It would come into play dependent upon the opinion eventually formed by respondents after due consideration of the material collated by them to distinguish the tainted and untainted candidates, was possible or otherwise. Had the respondents concluded that it was possible to segregate tainted from untainted candidates, they would have been obliged to comply with the directions given by the High Court and restated by this Court in order dated 15.11.2018, to afford prior opportunity of hearing to the petitioners and similarly placed persons before passing fresh, reasoned order. However, from the subject termination order dated 2.3.2020, which is a speaking order, it is crystal clear that after due enquiry and taking into consideration all aspects of the matter, in particular the enquiry reports and the opinion of the experts including final report of SIT, the respondents were of the considered opinion that it was not possible to segregate tainted from the untainted candidates for reasons recorded in that order. We are not inclined to go into the correctness of the said reasons, because it is subject matter of challenge in writ petitions pending before the High Court (as pointed out in Annexure R□ 29 of the Supplementary Affidavit), filed not only by Assistant Engineers, but also by Junior Engineers, Routine Grade Clerks and others.

67. We would, therefore, confine our analysis as to whether the respondents were justified in passing subject termination order dated 2.3.2020 without giving prior opportunity of hearing to the petitioners. In light of the conclusion reached by the respondents in the stated order dated 2.3.2020 — that it was not possible to segregate the tainted from the untainted candidates, in law, it must follow that the respondents could annul the entire selection process and pass the impugned order without giving individual notices to the petitioners and similarly placed persons. We are fortified in taking this view in terms of the exposition in *O. Chakradhar*⁶⁸ and the subsequent decisions of this Court in *Joginder Pal*⁶⁹, *Veerendra Kumar Gautam*⁷⁰ and *Vikas Pratap Singh & Ors. v. State of Chhattisgarh & Ors.* ⁷¹, adverted to in paragraph 12 of the judgment dated 15.11.2018 ⁷² of this Court while disposing of earlier appeals between the parties.

68. In other words, since the respondents have concluded that it was not possible to segregate tainted from the untainted candidates because of the reasons noted in the termination order dated 2.3.2020, in law, there was nothing wrong in respondents issuing the said termination order without affording prior opportunity to the petitioners and similarly placed persons. Had it been a case of even tittle of possibility in segregating the tainted from the untainted candidates, which exercise the respondents were permitted to engage in, in terms of the decision of this Court dated 15.11.2018, it would have been a different matter. In that case alone, the petitioners and similarly placed (2013) 14 SCC 494 persons could complain of wilful disobedience of the order passed by this Court dated 15.11.2018.

69. Having said thus, we must conclude that even the second set of contempt petitions in reference to the subject termination order dated 2.3.2020 being in violation of direction given by this Court to afford opportunity to the petitioners vide order dated 15.11.2018, must fail.

70. Considering the fact that multiple writ petitions have been filed by different groups of affected persons before the High Court being similarly placed persons against the subject termination order dated 2.3.2020 and as the same are pending, as aforesaid, to obviate even slightest of prejudice being caused to the petitioners in those cases, who are not before us, we refrain from examining the arguments regarding the justness and validity of the stated order and leave all other contentions open to the parties to be pursued before the High Court in pending proceedings. Consequently, we would dispose of the transfer petition, as well as, the writ petition by relegating the petitioners therein including the applicants in intervention/impleadment applications, to pursue their grievance in the form of writ petitions before the High Court, which could be heard by the High Court analogously along with all other pending writ petitions involving overlapping issues to obviate any inconsistency and conflicting findings regarding the same subject matter in any manner. Indeed, in the event the High Court agrees with the conclusion recorded by the respondents in the stated order dated 2.3.2020, that it is not possible to segregate the tainted from the untainted candidates, the High Court would be bound by the observations made by us in this judgment. For, in that eventuality, in law, it would not be necessary for the respondents to give prior hearing or afford opportunity to the petitioners and similarly placed persons before annulling the entire selection process and issuing the termination order under challenge.

71. Accordingly, while discharging the show-cause notices issued in the concerned contempt petitions and disposing of all the contempt petitions, we deem it appropriate to relegate the petitioners in the transfer petition and the writ petition filed in this Court, before the High Court to pursue their remedy under Article 226 of the Constitution to assail the order dated 2.3.2020 with further direction that all petitions involving overlapping issues and referred to in Annexure R-29 of the Supplementary Affidavit or any other writ petition pending or to be filed, list whereof be furnished by the parties to the High Court, for being heard analogously. We request the High Court to expeditiously dispose of the writ petitions, leaving all contentions other than decided in this judgment, open to the respective parties to be raised before the High Court. The same be decided on its own merits as per law.

72. In view of the above, we pass the following order: (1) Show-cause notices issued in the respective contempt petitions stand discharged. Contempt petitions are dismissed;

(2) The transfer petition stands rejected, as a result of which the writ petitions referred to therein will now proceed before the High Court in terms of this judgment;

(3) The writ petition is disposed of with liberty to the petitioners therein including applicants in intervention/impleadment applications to pursue their remedy before the High Court by way of writ petition under Article 226 of the Constitution, if so advised. That writ petition be decided on its own merits in accordance with law keeping in mind the observations made in this judgment along with other pending or fresh writ petitions involving similar issues; and (4) We request the High Court to take up all writ petitions involving overlapping issues together for analogous hearing expeditiously. We leave all contentions open except the issues decided in this judgment.

73. There shall be no order as to costs. All pending interlocutory applications stand disposed of in terms of this judgment.

.....J. (A.M. Khanwilkar)J. (B.R. Gavai) New Delhi;

June 03, 2021.