Supreme Court of India
Bihar State ... vs Ashok Kumar Sinha & Ors on 7 May, 1947
Author: .....J.
Bench: Surinder Singh Nijjar, A.K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION (CIVIL) NO. 88-89 OF 2013
IN
CIVIL APPEAL No. 8226-8227 of 2012

Bihar State Govt. Sec. Scl. Teachers Assn. ….Petitioner(s)

Versus

Ashok Kumar Sinha & Ors. ….Respondent(s)

J U D G M E N T

A.K. SIKRI, J.

1. These contempt proceedings arise out of the judgment and order dated 23.11.2012 passed by this Court in CA Nos. 8226-8227 of 2012. Before we take note of the exact nature of directions given in that judgment which according to the petitioners have been flouted contumaciously and deliberately, we would like to take note of the history of litigation culminating in passing of the said judgment.

2. The petitioner is an Association representing the teachers of the Bihar Subordinate Education Service (hereinafter referred to as BSES for brevity). They had filed a writ petition in the Patna High Court claiming merger of their cadre with the Bihar Education Service (hereinafter referred to BES for brevity). The writ petition was allowed and the LPA and the SLP filed against the same were dismissed. Since the benefits of merger of cadre were still not being granted, another writ petition was filed, which too was allowed and affirmed in LPA. Although leave was granted in the SLP filed by the State of Bihar, ultimately the Civil Appeal was dismissed by the judgment dated 19.04.2006

resulting in the outcome in favour of the petitioner.

3. In compliance of the said judgment of this Court, a Resolution merging the cadre of BSES with BES was issued on 07.07.2006 and the BSES teachers were granted benefits of the merger, like enhancement of payscale, promotion etc. At this stage, a writ petition was filed by BES Association (BESA) challenging the merger. A single judge of the High Court allowed it vide judgment dated 31.10.2007, which was affirmed by a Division Bench on 21.05.2010. This judgment was challenged before this Court by filing SLP.

4. Immediately after the judgment of the learned single judge, the State Government withdrew the Resolution of merger dated 07.07.2006 by a notification dated 19.11.2007 expressly mentioning therein that the same was being issued in light of the High court judgment dated 31.10.2007 and thereby all benefits of merger of cadre were withdrawn. Several consequential benefits had been granted to the teachers pursuant to the merger by issuing various Resolutions. These benefits were also withdrawn and in fact a Resolution was passed by the state government on 17.01.2008 directing that the teachers would get pay and other benefits, as they were getting prior to the merger, thereby nullifying the effect of earlier Resolution of merger dated 7.7.2006.

5. The Special Leave Petition was granted and appeal was ultimately heard finally. Eventually this appeal was allowed by a detailed judgment dated 23.11.2012, thereby setting aside the judgment of the High Court. This Court also quashed the notification of the State Government dated 19.11.2007, by which the benefits of merger granted to the teachers had been withdrawn. As a corollary State Government's Resolution dated 07.07.2006 was upheld and restored by which the cadre of the BSES teachers, Teaching Branch had been merged with that of BES and the State Government was directed to act accordingly.

6. The conclusive portion of the detailed judgment dated 23.11.2012 reflects raison d'etre for arriving at such a conclusion and the precise nature thereof. We, therefore, reproduce the same hereunder for the sake of further discussion:

> "44. This entire discussion leads us to only one conclusion that the learned Single Judge who heard the petition CWJC No.10091/2006, which began the third round of litigation filed on behalf of the Bihar Education Service Association, had no business to re-open the entire controversy, even otherwise. The State Govt. had already passed a resolution dated 07.07.2006 after the order of this Court dated 19.04.2006. While examining the legality of that resolution (which was defended by the State Govt. at this stage before the learned Single Judge) the entire controversy was once again gone into. The law of finality of decisions which is enshrined in the principle of res-judicata or principles analogous thereto, does not permit any such re-examination, and the learned Judge clearly failed to recognize the same.
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> 45. For the reasons stated above, these appeals (arising out of SLP Nos.26675-76 of 2010) are allowed. The judgment and order passed by the Division Bench of Patna High Court in LPA No.4182009 and other LPAs dated 21.05.2010, and that of the

learned Single Judge dated 31.10.2007 in CWJC No.100912006 are set-aside and the said Writ Petition is hereby dismissed. Consequently the notification dated 19.11.2007 issued pursuant to the decision of the Single Judge will also stand quashed and set-aside. The State Govt. Resolution dated 07.07.2006 is upheld. The state shall proceed to act accordingly. I.A. Nos.19-202011 are dismissed. As stated by Mr. Patwalia, learned senior counsel for the appellants, the appellants no longer press for the action for contempt arising out of CWJC No.86792002. Contempt Petiton Nos. 386-387/2011, will also accordingly stand disposed of, as not pressed.

46. The attitude of the State Govt. in the matter has caused unnecessary anxiety to a large number of teachers. The State Govt. must realize that in a country where there is no much illiteracy and where there are a large number of first generation students, the role of the primary and secondary teachers is very important. They have to be treated honourably and given appropriate pay and chances of promotion. It is certainly not expected of the State Govt. to drag them to the Court in litigation for years together.

47. Though the appeals stand disposed of as above, we do record our strong displeasure for the manner in which the State of Bihar kept on changing its stand from time to time. This is not expected from the State Govt. The manner in which the learned Single Judge proceeded with the Writ Petition No.1009/2006 to reopen the entire controversy, and also the Division Bench in LPA No.418/2003 in approving that approach is also far from satisfactory. If the orders passed by this Court were not clear to the State Govt. or any party, it could have certainly approached this Court for the clarification thereof. But it could not have setup a contrary plea in a collateral proceeding. We do not expect such an approach from the State Govt. and least from the High Court. Having stated this, although we have expressed out displeasure about the approach of the State Government, we refrain from passing any order as to costs."

7. It is clear from the above that the Court took the view that once decision of merger was not only upheld by this Court in its earlier judgment dated 19.04.2006, but thereafter it was even acted upon by the State Government by passing Resolution dated 07.07.2006, there was no reason for the High Court to reopen the matter in a Writ Petition at the instance of BES Association. The Court, therefore, in categorical terms upheld the Resolution dated 07.07.2006 effecting the merger of two services namely BSES and BES. Since this merger was undone by the State Government by passing another Resolution dated 19.11.2007, this latter Resolution was quashed. The effect of these directions was to restore status quo ante by reinforcing the position with the issuance of Resolution merging the two cadres on 07.07.2006 and conferring all benefits of merger on to the members of the petitioner's Association, viz. teachers belonging to erstwhile BSES.

8. According to the Petitioner, after the aforesaid judgment was given, several representations were made to the State Government, on a virtually daily basis, to restore the earlier position consequent upon the merger of the two cadres but it was of no avail. In these representations, the Petitioners also called upon the State Government to give the consequential benefits granted pursuant to

merger notification by restoring the same and stated that these benefits would include upgradation of posts, fixation of higher pay, payment of arrears, promotions etc. However, instead of implementing the directions contained in the judgment, the Petitioner received letter dated 24.01.2013 from Respondent No.4, namely, the Director (Admn.)-cum- Additional Secretary, Department of Education, Government of Bihar) stating therein that the proposal was sent for the approval of merger and the Petitioner were asked to provide details of pay scales etc. of the BSES teacher to expedite the matter. According to the Petitioner referring the matter to the Cabinet to approve the merger itself was a contemptuous act inasmuch as there was no question of fresh approval from the Cabinet regarding merger. According to the Petitioner with the upholding of the Resolution dated 7.07.2006, which was a Resolution of merger, that Resolution stood revived and restored by the Court itself and the Government was only required to grant the consequential benefits to the BSES teachers by passing formal orders in this behalf. Notwithstanding the same, in compliance with the request letter dated 24.01.2013, the Petitioner submitted the required details vide communication dated 28.01.2003. However, even thereafter nothing happened even when the matter was persued repeatedly and almost on daily basis with the Government. It is at that stage that present contempt petition was filed on 23.01.2013 alleging that the Respondents herein had deliberately, willfully and intentionally failed to comply with the directions contained in the judgment dated 23.11.2012 by refusing to grant all admissible benefits of mergers to the Petitioners.

9. Notice in this contempt petition was issued. Thereafter various orders were passed from time to time taking note of the developments happening at the government's end which included approval for merger and grant of certain benefits by the State Cabinet. It would be apt to take note of steps taken by the State Government, in brief, hereunder:

> (a) On 01.03.2013, the State Cabinet approved the proposal for merger. This proposal which was approved was of the following nature:
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> "6. At the time of issuance of Resolution No.1209 dated 07.07.2006 the estimated amount of expenditure was 64 Crore. Presently this amount is Rs.104 crores.
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> 7. (i) In compliance of the order of the Hon'ble Supreme Court dated 23.11.2012, it is proposed that the Resolution No.1209 dated 07.07.2006 be revived and Notification no.1855 dated 19.11.2007 be annulled.
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> (ii) Consequential Benefits are proposed to be given to the cadre of teachers of Bihar Subordinate Education Service (Teaching Branch) Male and Female after merger.
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> 8. Approval of Finance Departments has been obtained."
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> (b) After the approval of merger by the State Government, Resolution dated 17.04.2013 was passed by the Education Department, Government of Bihar. Though as per para 6, earlier Notification dated 19.11.2007 was withdrawn and Resolution dated 07.07.2006 was revived, in para 7 while giving consequential benefits it was mentioned that for the purpose of granting these benefits upto date list from the

Director, Secondary Education was to be obtained and Bihar Education Service Department of Examination Rules, 1973 and order of status quo given by the Supreme Court on 04.07.2011 are to be scrutinized. It was mentioned that separate orders would be issued only thereafter in this regards.

As per the Petitioner, introduction of these conditions for grant of consequential benefits was not only contrary to the judgment of the Court but even contrary to the Cabinet approval as no such conditions were prescribed in the approval granted by the State Cabinet.

(c) Thereafter orders dated 24.04.2013 were passed reviving ACP benefits which were earlier granted.

As per the Petitioner even while doing so, in Para 5 of the said order it was mischievously mentioned that after the matter for grant of consequential benefits w.e.f. 01.01.1997 was examined, in course of such examination it has been found that before issuing Resolution No.1209 dated 07.07.2006 all points were not fully considered.

(d) On 20.07.2013 press release was issued by the Government calling upon all the teachers of erstwhile BSES including heirs of deceased teachers/retired teachers to submit service books, appointment/promotion orders, testimonials of educational qualifications within three days for the purpose of granting them the benefits.

In the mean time BSES Association filed I.A. in disposed of C.A. No. 8228-8229 of 2012 seeking modification of the said judgment for direction of their seniority this I.A. was dismissed on 13.08.2013 and while doing so the Court observed that implementation of orders dated 23.11.2012 was deliberately obstructed by BSES Officers.

(e) On 13.08.2013 a Government Committee, in which BSES Officer was special invitee, prepared draft Rules.

(f) On 26.07.2013 Government Order was passed creating promotional post in the merged cadre w.e.f. 01.01.1977 to 31.12.1995 and as a result thereof 877 promotional posts were created in merged BES.

On the same day, compliance was filed by the State in this Court wherein it had been stated as to how the court orders were complied with. It was followed by another compliance report dated 26.08.2013 in the present contempt petitions.

(g) When these contempt petitions came up on 12.12.2013, the Ld. ASG appearing for the State Government stated that seniority list on 17.08.2007 shall be given effect to. This is a very crucial statement. On this statement, direction was issued by the Court

to grant consequential benefits of merger within eight weeks. Another specific direction was given to restore the position consequent to orders dated 28.06.2007 posting BSES teachers as Principals.

It resulted in partial obedience in the form of orders dated 08.01.2014 by which 100 BSES teachers were posted as Principals.

(h) On 26.01.2014, Resolution was passed creating posts of Senior Professors, Senior Lecturers' and Vice-Principals in the Government schools and upgrading the post of Principal to the highest level. Reason for this given in the Resolution is that it became necessary as no new post for BSES teachers were available after mereger.

(i) On 10.02.2014 orders were passed posting about 257 teachers. With this all serving BSES teachers were given postings.

(j) By a different order of the same date time bound promotion was granted to erstwhile BSES teachers.

(k) While all this was happening, on 12.02.2014, the State Government promulgated Bihar Education Rules, 2014. This act, according to the Petitioner shows inveterate behaviour of the respondents who have attempted undo the real effect of merger. These Rules create three sub cadres within BES. Under these Rules BSES teachers are put in teaching sub cadre, where Principal would be highest promotional post. In contrast BES Officers are put in administration sub cadre, who would continue to be controlling the schools. These Rules also provide that each sub-cadre will have its own separate seniority list. Further, teaching cadre of BSES is treated as "dying cadre".

10. A glimpse of the aforesaid steps taken after the filing of the CCP shows that some efforts are being made to comply with the directions of this Court that too after the filing of this CCP. However, the grievance of the Petitioner is that even when the orders of creation and upgradation of post etc. are issued there are so many discrepancies therein which would manifest lack of bona fides on the part of the administration to comply with the directions in letter and spirit. On the contrary in spite of merger, erstwhile BSES teachers are given step motherly treatment on the one hand, and on the other hand BES employees are still treated as the favourites of the authorities, with the result the discrimination between the two continues, even when with the merger of two cadres, they stood amalgamated into one and there was no reason to identify them as BSES and BES any longer. It is further argued that the provisions of Bihar Education Rules, 2014 (the Rules, 2014) are deliberately made with the aforesaid ragnant motive in mind and made in violation of directions in the judgment of this Court. Various discrepancies in the orders issued by the Government from time to time, as well as in the Rules, 2014 are pointed out in the manner as below:

Discrepancies in the orders of posting

1. Posting orders have been issued with complete non application of mind as even dead and retired teachers have been posted.

2. Seniority has been given a complete go by while issuing these orders. Juniors have been posted as Principals and seniors posted as Vice-Principals, Sr. Professor & Sr. Lecturers.

3. Posting the erstwhile BSES teachers in Training Colleges is impermissible under 1973 Rules as well as the new 2014 Rules.

4. These notifications have been issued on 10.02.2013 posting erstwhile BSES teachers as Vice-Principals, Sr. Professors, Sr. Lecturers. However, the new Rules were notified on 12.02.2014 and therefore on the day these postings were made, the posts were non existent.

Discrepancies in the creation & upgradation of posts

1. Posts of Sr. Professors & Sr. Lecturers are unheard of in schools. Such posts have never existed in any school, let alone govt. school and exist only in colleges.

2. Creation of these posts show malicious intent as it is an attempt to prevent erstwhile BSES teachers from occupying higher promotional posts in BES.

3. Para 7 of the Resolution dated 29.01.2014 says that these posts would get finished once the incumbents retired. The intention is therefore clear that these posts are not required and are being used to only 'park' the erstwhile teachers till they retire.

4. The BES officers had pleaded in IA 25-26 that their seniority would be affected and they would lose the higher posts. This IA was dismissed, despite that the respondents have devised this creation of posts to protect the BES officers.

5. The purported reasoning behind creating these posts is that adequate promotional posts were created for the period 01.01.1977 to 31.12.1995 in the merged BES cadre vide notification dated 26.07.2013. Even the exercise qua post 01.01.1996 period has been completed vide notifications dated 10.11.2001, 10.12.2002 and 29.06.2004 initially and then vide Resolution dated 15.06.2011 as need based posts promotional posts, which are not to be created but merely identified, have been identified for the BES.

6. Other posts/categories of posts were merged in the BES in the past but this exercise of creating posts was never undertaken. This is nothing but an attempt to overreach the orders of this Court to protect the BES officers at any cost.

Discrepancies in the Bihar Education Rules 2014 and the Cabinet Memo Approving New Rules.

1. This is the most brazen attempt to deny the petitioner the fruits of its success in three rounds of litigation upto this Hon'ble Court. AS a result of merger, the erstwhile BSES teachers would have

been entitled to the highest posts in BES, a fact admitted specifically by the BES officers themselves. As a result of these new Rules, they cannot go beyond the post of Principal, which was the basic grade/entry level post of BES till now.

2. Even though the BES officers rank much junior to them, these BES officers would continue to be the Controlling Officers of the schools in which the BSES teachers would be posted by virtue of the nature of their posts.

3. Merely giving financial benefits to the erstwhile BSES teachers is not enough and they could not be denied the higher posts within BES.

4. The real intention to somehow protect the BES officers is revealed from para 2 of cabinet memo dated 13.01.2014 which speaks of "clearing the way for unobstructed promotion of BES officers".

5. A similar attempt to bifurcate cadres after the order of merger in 2006 was shot down by the then Minister saying doing so would amount to breaching court orders and against organizational interest.

6. There is no direction by this Hon'ble Court to frame new Rules and the respondents are completely misreading para 42 of the judgment dated 23.11.2012. This Hon'ble Court had merely considered and rejected the submission of BES officers opposing merger on the ground of lack of new Rules.

7. Since 1973 Rules already exist, there is no occasion nor need for new Rules.

8. These Rules take away the actual benefit of merger. The very basis of the merger was to provide adequate promotional avenues to the teachers but these Rules take that away.

9. The Ld. ASG appearing for the respondents had stated before this Court on 12.12.2013 that the seniority list dated 17.08.2007 would be given effect to. These Rules completely annul that seniority list as each sub cadre would have a separate seniority list.

11. Mr. Patwalia, learned Senior Advocate who made detailed submissions on the aforesaid aspects rapped up his arguments by pointing out that Respondents continue to defy the orders of this Court which would be clear from the following:

> 1. The erstwhile BSES teachers even now are getting far lower salaries than what the BES officers, who rank much junior to them in the combined gradation list, are being paid. Similar is the case with regard to pension of retired BSES teachers. This is hostile discrimination and blatant contempt.
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> 2. Rather than getting increased, the pension of those BSES teachers, who retired prior to 09.08.1999, would actually decrease, a fact admitted by the Accountant general. This can certainly not be a consequence of merger.

3. Despite the reprimand and caution in para 46 & 47 of the judgment dated 23.11.2012, the state continues to defy the orders of this Court.

4. The petitioner are being denied the benefits despite orders of this Court because of malafides on the part of the (i) present HRD Minister, who had defended the BES as Advocate General before the High Court, (ii) one Rameshwar Singh, who was proceeded for contempt by the High Court in this very matter but is now the Finance Secretary, (iii) one Anjani Kumar Singh, against whom contempt petition was filed for defying the interim orders of this Hon'ble Court in this case but is now the Principal Secretary to the Chief Minister. These three are acting at the behest of the BES officers, who are hell bent to not get the orders of this Hon'ble Court implemented.

5. The officers bearers of the petitioner Association are being targeted. The General Secretary of the petitioner has not been paid his GPF dues even though he retired six years ago.

6. As a result the erstwhile BSES teachers have not got either the financial or promotional benefits of merger."

12. Mr. L. Nageshwar Rao, learned ASG appeared on behalf of Respondents. He countered the submissions of Mr. Patwalia by arguing that there was substantial compliance of the directions contained in the judgment dated 23.11.2012, and no case for proceedings against the respondents for contempt was made out. He drew our attention to the following steps which were taken by the State Government, which according to him, amounted to due compliance:

(i) The direction of this Court was to restore the Notification No. 994 dated 28.6.2007 within 4 weeks. Orders of postings were issued as per the said notification/list. Upon scrutiny some inadvertent mistakes were found, which have been rectified vide office notification dated 10.02.2014.

(ii) The postings are as Principal of Schools and Lecturers of Training Colleges which are the promotional posts. As regards other allegation relating to their supervision/control, the department vide notification No.436 dated 10.02.2014 has in clear terms stated in paragraph no.4 of the notification that the matter related to promotion/charge/transfer- posting/retiremental benefit/service confirmation of merged officer of Bihar education service Grade-II (merged officer of subordinate education service teaching branch) shall be dealt with under the directorate of administration of education department.

(iii) The petitioners have been posted on promotional post and previous consequential orders have been restored.

(iv) The petitioners have admitted that all the financial benefits of merger have been granted and paid.

v) Mr. Rao further pointed out that admittedly merger of the Cadre has taken place. Moreover this merger is w.e.f. 1977 and all the benefits of merger including the time bound promotions or the ACP have been granted accordingly. All the merged employees who are in service have been granted posting on higher post and pay-scale.

vi) He also submitted that the allegation regarding reduction in pension or regarding ACP is only an apprehension. A categorical statement was made at the Bar that there shall not be any reductions in pensions and as per finance department decisions the person retiring after 09.08.1990 shall also be granted 3rd ACP.

13. According to Mr. Rao, the aforesaid steps taken by the administration were sufficient to demonstrate that the judgment of this Court was complied with. He submitted that under the garb of the present Contempt Petitions, the Petitioners were now challenging the rules framed in the year 2014 which was not permissible as validity of the rules could not be gone into in contempt proceedings. Mr. Rao justified the framing of these rules on the ground that it had become necessary because of the merger of the two cadres and in fact 2014 Rules amounted to giving effect to merger that had been effected. If the Petitioners had any grievance against any of the provisions of 2014 Rules, the remedy for the Petitioners was to file separate proceedings. It was further submitted that the members of the Petitioner Association belonged to Teaching Cadre and had worked only as teachers throughout their service with no administrative experience. Therefore, they could not take any posting on administrative side because of lack of such an experience. Keeping in mind this position, 2014 Rules were framed and postings had been given as per those rules. It was also submitted that the members of the Petitioner Association were due to retire in one or two years and at the fag end of their career they could not be given administrative assignments. Moreover, the rank and pay scale is same and therefore the Petitioners are not affected adversely in any manner.

14. Mr. Rao also attempted to justify the provisions made in the 2014 Rules, which he submitted, was the prerogative of the employer. His argument was that direction of this Court was only to merge the cadre. However, what further benefits are to be given and the entitlement of the officers in the merged cadre could not be gone into in the Contempt Petitions. Moreover, it was for the Government to decide as to what provisions are to be made for the career progressions of the merged employees from two cadres. For that, Government had complete freedom. To achieve this, 2014 Rules had been framed. He thus, argued that there was no willful disobedience.

15. Mr. Rao referred to the following judgments:

> J.S. Parihar v. Ganpat Duggar and others, [1996 (6) SCC 291] “6. The question then is whether the Division Bench was right in setting aside the direction issued by the learned Single Judge to redraw the seniority list. It is contended by Mr S.K. Jain, the learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the

seniority list in the light of the law laid down by three Benches, the learned Judge cannot come to a conclusion whether or not the respondent had wilfully or deliberately disobeyed the orders of the Court as defined under Section 2(b) of the Act. Therefore, the learned Single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2-7-1991. Subsequently promotions came to be made. The question is whether seniority list is open to review in the contempt proceedings to find out whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the Single Judge; the Division Bench corrected the mistake committed by the learned Single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned Single Judge when the matter was already seized of the Division Bench." Indian Airports Employees' Union v. Ranjan Chatterjee and Another, [(1999) 2 SCC 537] "7. It is well settled that disobedience of orders of the court, in order to amount to "civil contempt" under Section 2(b) of the Contempt of Courts Act, 1971 must be "wilful" and proof of mere disobedience is not sufficient (S.S. Roy v. State of Orissa). Where there is no deliberate flouting of the orders of the court but a mere misinterpretation of the executive instructions, it would not be a case of civil contempt (Ashok Kumar Singh v. State of Bihar).

8. In this contempt case, we do not propose to decide whether these six sweepers do fall within the scope of the notification dated 9-12-1976 or the judgment of this Court dated 11-4-1997. That is a question to be decided in appropriate proceedings.

9. It is true that these six sweepers' names are shown in the annexure to WP No. 2362 of 1990 in the High Court. But the question is whether there is wilful disobedience of the orders of this Court. In the counter-affidavit of the respondents, it is stated that there is no specific direction in the judgment of this Court for absorption of these sweepers, if any, working in the car-park area, and that the directions given in the judgment were in relation to the sweepers working at the "International Airport, National Airport Cargo Complex and Import Warehouse". It is stated that the cleaners employed by the licensee in charge of maintenance of the car-park area do

not, on a proper interpretation of the order, come within the sweep of these directions. It is contended that even assuming that they were included in the category of sweepers working at the "International Airport", inasmuch as they were not employed for the purpose of cleaning, dusting and watching the buildings, as mentioned in the notification abolishing contract labour, they were not covered by the judgment. It is also contended that the case of such sweepers at the car-park area was not even referred to the Advisory Board under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and it was highly doubtful if they were covered by the notification.

10. On the other hand, learned Senior Counsel for the petitioners contended that going by the map of the Airport, it was clear that these sweepers at the car-park area were clearly covered by the notification and the judgment. The fact that the names of these six employees were shown in the annexures to the writ petition was proof that they were covered by the judgment. The licensee is in the position of a contractor.

11. In our view, these rival contentions involve an interpretation of the order of this Court, the notification and other relevant documents. We are not deciding in this contempt case whether the interpretation put forward by the respondents or the petitioners is correct. That question has to be decided in appropriate proceedings. For the purpose of this contempt case, it is sufficient to say that the non-absorption of these six sweepers was bona fide and was based on an interpretation of the above orders and the notification etc. and cannot be said to amount to "wilful disobedience" of the orders of this Court." All India Anna Dravida Munnetra Kazhagam v. L.K. Tripathi and others, [(2009) 5 SCC 417] "78. We may now notice some judgments in which the courts have considered the question relating to burden of proof in contempt cases. In Bramblevale Ltd., Re Lord Denning observed: (All ER pp. 1063 H-1064 B) "A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him. But there must be some other evidence. ... ... Where there are two equally consistent possibilities open to the court, it is not right to hold that the offence is proved beyond reasonable doubt."

79. In Mrityunjoy Das v. Sayed Hasibur Rahaman the Court referred to a number of judicial precedents including the observations made by Lord Denning in Bramblevale Ltd., Re and held: (SCC p. 746, para 14) "14. ... The common English phrase 'he who asserts must prove' has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the 'standard of proof', be it noted that a proceeding under the extraordinary jurisdiction of the court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have

to be established beyond reasonable doubt."

80. In Chhotu Ram v. Urvashi Gulati a two-Judge Bench observed: (SCC p. 532, para 2) "2. As regards the burden and standard of proof, the common legal phraseology 'he who asserts must prove' has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the 'standard of proof', be it noted that a proceeding under the extraordinary jurisdiction of the court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond all reasonable doubt."

81. In Anil Ratan Sarkar v. Hirak Ghosh the Court referred to Chhotu Ram v. Urvashi Gulati and observed: (SCC p. 29, para 13) "13. ... The Contempt of Courts Act, 1971 has been introduced in the statute book for the purposes of securing a feeling of confidence of the people in general and for due and proper administration of justice in the country — undoubtedly a powerful weapon in the hands of the law courts but that by itself operates as a string of caution and unless thus otherwise satisfied beyond doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the statute.""

16. In rejoinder Mr. Patwalia submitted that even a cursory glance into the 2014 Rules and the provision made therein would amply bear out that the whole intention of the Rule makers was to frustrate the effect of the judgment. According to him that would amount to contempt and from this angle the Court was competent to examine the matter even in Contempt Petitions. He further submitted that the argument raised now were precisely the grounds on which the Government had opposed the merger but the Court had rejected those arguments. Therefore, under the garb of implementation of that judgment, same very grounds could not be raised to justify making such provisions in 2014 Rules. He argued that the Report of the Committee which was relied upon by the Respondents in fact rejected the entire issues of merger. He referred to certain paras from the Report to support his submission. He also made the grievance that initially, after the rendering of the judgment of this Court, the Government had started implementing the same and had even passed certain orders creating additional post to give effect to the judgment. So much so even seniority was finalized. However, thereafter the administration turned hostile and bent backward. Therefore, the entire gamut was open to judicial review even in the contempt proceedings. He further submitted that there was ample power with this Court, particularly under Article 142 of the Constitution, to do complete justice in the matter as held in Delhi Development Authority v. Skipper Construction Co. (P) Ltd. and Another; (1996) 4 SCC 622.

"16. In Vinay Chandra Mishra, this Court dealt with the scope and width of the power of this Court under Article 142. After referring to the earlier decisions of the Court in extenso, it is held that:

"... statutory provisions cannot override the constitutional provisions and Article 142(1) being a constitutional power it cannot be limited or conditioned by any statutory provision".

It is also held that:

> "... the jurisdiction and powers of this Court under Article 142 which are supplementary in nature and are provided to do complete justice in any matter ...." In other words, the power under Article 142 is meant to supplement the existing legal framework — to do complete justice between the parties — and not to supplant it. It is conceived to meet situations which cannot be effectively and appropriately tackled by the existing provisions of law. As a matter of fact, we think it advisable to leave this power undefined and uncatalogued so that it remains elastic enough to be moulded to suit the given situation. The very fact that this power is conferred only upon this Court, and on no one else, is itself an assurance that it will be used with due restraint and circumspection, keeping in view the ultimate object of doing complete justice between the parties. Now, coming to the facts of the case before us, the question is not what can be done, but what should be done? We are of the opinion that even while acting under Article 142 of the Constitution of India, we ought not to reopen the orders and decisions of the courts which have become final. We do not think that for doing complete justice between the parties before us, it is necessary to resort to this extraordinary step. We are saying this in view of the contention urged by S/Shri Salve and Dhavan that since the DDA has taken over not only the plot but also the construction raised by Skipper thereon (free from all encumbrances) in addition to the sum of Rs 15.89 crores (said to have been paid by Skipper towards the sale consideration of the said plot), the monies required for paying the persons defrauded should come out of the kitty of DDA. It must be remembered that the plot, the construction raised thereon and the monies already paid towards the sale consideration of the said plot have all vested absolutely in the DDA free from all encumbrances under and by virtue of the decision of the Delhi High Court dated 21-12-

1990/14-1-1991, which decision has indeed been affirmed by this Court by dismissing the special leave petition preferred against it. It may not be open to us to ignore the said decisions and orders, including the orders of this Court, and/or to go behind those decisions/orders and say that the amount received by DDA towards sale consideration from Skipper or the value of the construction raised by Skipper on the said plot should be made available for paying out the persons defrauded by Skipper. We must treat those decisions and orders as final and yet devise ways and means of doing complete justice between the parties before us.

The contemner should not be allowed to enjoy or retain the fruits of his contempt."

17. He also referred to the judgment in the case of Ashish Ranjan v. Anupma Tandon and another; (2010) 14 SCC 274.

"20. In addition to the statutory provisions of the Contempt of Courts Act, 1971 the powers under Articles 129 and 142 of the Constitution are always available to this Court to see that the order or undertaking which is violated by the contemnor is effectuated and the court has all powers to

enforce the consent order passed by it and also issue further directions/orders to do complete justice between the parties. Mutual settlement reached between the parties cannot come in the way of the well- established principles in respect of the custody of the child and, therefore, a subsequent application for custody of a minor cannot be thrown out at the threshold being not maintainable. It is a recurring cause because the right of visitation given to the applicant under the agreement is being consistently and continuously flouted. Thus, the doctrine of res judicata is not applicable in matters of child custody."

18. He concluded his submissions by arguing that there were three rounds of litigation earlier and the Petitioners were fighting for justice since 1977 when decision was taken by the Government to merge the two cadres. By framing 2014 Rules, the Government negated the effect of merger thereby leaving the petitioners in lurch once again and now the plea was taken to approach the Court again with fourth round of litigation. He pointed out that during this period, most of the members of the Petitioner Association had retired and very few who were left were going to retire in near future. The whole intention of the authorities was to tire out these petitioners and frustrate their efforts which should not be countenanced.

19. At the outset, we may observe that we are conscious of the limits within which we can undertake the scrutiny of the steps taken by the respondents, in these Contempt proceedings. The Court is supposed to adopt cautionary approach which would mean that if there is a substantial compliance of the directions given in the judgment, this Court is not supposed to go into the nitty gritty of the various measures taken by the Respondents. It is also correct that only if there is willful and contumacious disobedience of the orders, that the Court would take cognizance. Even when there are two equally consistent possibilities open to the Court, case of contempt is not made out. At the same time, it is permissible for the Court to examine as to whether the steps taken to purportedly comply with the directions of the judgment are in furtherance of its compliance or they tend to defeat the very purpose for which the directions were issued. We can certainly go into the issue as to whether the Government took certain steps in order to implement the directions of this Court and thereafter withdrew those measures and whether it amounts to non-implementation. Limited inquiry from the aforesaid perspective, into the provisions of 2014 Rules can also be undertaken to find out as to whether those provisions amount to nullifying the effect of the very merger of BSES with BES. As all these aspects have a direct co-relation with the issue as to whether the directions are implemented or not. We are, thus, of the opinion that this Court can indulge in this limited scrutiny as to whether provisions made in 2014 Rules frustrate the effect of the judgment and attempt is to achieve those results which were the arguments raised by the respondents at the time of hearing of C.A. No. 8226-8227 of 2012 but rejected by this Court. To put it otherwise, we can certainly examine as to whether 2014 Rules are made to implement the judgment or these Rules in effect nullify the result of merger of the two cadres.

20. As noted above, the resolution of merger earlier was passed on 7.7.2006 after rendition of the judgment dated 19.4.2006 by this Court in the second round of litigation. This was preceded by a Note for the Cabinet regarding merger. A perusal of this Cabinet Note shows that the total history about the various proceedings culminating into judgment dated 19.4.2006 is given. We have to keep in mind that original Resolution for merger is Resolution No. 3512 dated 11.4.1977 which is directed

to be implemented. In the Cabinet Note dated 3.7.2006 it is noted as under:-

> "In the year 1977, the number of total created/ sanctioned post of the male and female teachers was 2465, against which total working strength were 1336, which decreased to 880 by the year 2006. Out of this if 301 units belonging to Jharkhand is deducted, it comes to 579 only.

14. It is to be noted that in view of the provisions contained in resolution No. 3521 dated 11.4.1977 several departments have merged the lower scales with the higher ones. But the incumbents of this cadre of the Education Deptt. have been denied their promotions after 1977 which was otherwise due. Where as the incumbents of Inspecting Branch of this cadre are reported to have been promoted upto 2001."

21. Thereafter, the proposal for creation of more posts is contained in Para 15 which reads as under:

> "15. Therefore, consequent upon complying the orders of the Hon'ble Courts it is proposed to upgrade 2465 created/ sanctioned posts of teachers of subordinate education service male and female cadre to Bihar Education Service Class-2 w.e.f. 1.1.1977."

22. Resolution to this effect was passed on 7.7.2006. Thereafter, combined gradation list of the merged cadre of BES dated 17.8.2007 was issued. In this consolidated seniority list of officers of combined BES Service, the employees of both the merged cadre is shown as per their seniority. This was the precise manner in which the authorities had understood the scheme of merger and acted earlier pursuant to the judgment dated 19.4.2006. Directions contained in the judgment dated 23.11.2012 in C.A. Nos. 8226-8227 of 2012 are reiteration of earlier judgment dated 19.4.2006. In fact, it is specifically held that Resolution dated 7.7.2006 is valid and later Resolution dated 17.1.2008 annulling the earlier Resolution dated 7.7.2006 has been quashed. It thus becomes obvious that the respondents were to revive the earlier order/ Resolution of merger as well as combined gradation list issued earlier. These remedial steps were necessitated to carry out the direction of the judgment. Let us see whether such steps are taken now or 2014 Rules are in the teeth of the aforesaid directions.

23. We find that Cabinet proposal dated 1.3.2013 regarding merger was prepared on 1.3.2013 which referred to the earlier Resolution No. 1209 dated 7.7.2006, in the following manner:

> "At the time of issuance of Resolution No. 1209 dated 7.7.2006 the estimated amount of expenditure was 64 crore. Presently this amount is Rs. 104 crores.
>
> (I) In compliance of the order of the Supreme Court dated 23.11.2012, it is proposed that the Resolution No. 1209 dated 7.7.2006 be revived and Notification No. 1855 dated 19.11.2007 be annulled.

> (ii) Consequential benefits are proposed to be given to the cadre of teachers of Bihar Subordinate Education Service (Teaching Branch) Male and Female after merger.
>
> Approval of Finance Departments has been obtained."

24. Significantly, Resolution dated 2.4.2013 passed by the Government revived earlier Resolution No. 1209 dated 7.7.2006 and withdraws Notification No. 1855 dated 18.11.2007. So far so good. The only thing that remained was to revive the combined seniority/ gradation list also which was issued on 17.8.2007 and give further benefits of promotion, postings, ACP etc. based thereupon.

25. We find that first order dated 24.4.2013 was issued for grant of ACP. While giving this benefit, seed of mischief is sown as is clear from the following portion therein:

> "For implementation of the order of the Supreme Court dated 23.11.2012, the grant of consequential benefits with effect from 1.1.1977 to the merged officers is being examined. In the course of such examination, it has been found prima facie that before issuing Resolution No. 1209 dated 7.7.2006, all points were not fully considered."

26. It is a matter of record that Resolution No. 1209/2006 was passed by the Cabinet which means that it was the decision at the highest level. It was not open to some officer sitting in the Education Department to make such comments by exhibiting his superior knowledge about the purported issued, that too in an order granting ACP to the merged teachers as a consequence of merger. This was the starting point to reopen the settled issue of merger of two cadres.

27. We would like to point out here that officers of erstwhile BES i.e. BES Association had filed I.A. 25-26 of 2013 in this very decided appeal i.e. C.A. No. 8226-8227 of 2012 seeking to rake up the same issue about the gradation list. This was specifically contended that merger takes effect from the date when posts are created. Apprehension was expressed that affect the vested right of seniority of the members of BES Association (BESA) who are already in the cadre, particularly Respondent Nos. 2, 3 and 51 and some other members of BESA. It was mentioned that some of the officers were holding the post of sub- Director or RDDE who were appointed in December, 1983 and they may have to face reversion. However, this I.A. was dismissed by the Court.

28. Notwithstanding the aforesaid, we find that 2014 Rules seek to achieve the same result which was neither the intent of merger nor was permitted by this Court at the instance of BESA in their application. On the contrary, as noted below, by an ingenious method, effect of merger is undone thereby.

29. These 2014 Rules created four sub-cadres within BES which are as under:

> "3. Constitution of service: The Bihar Education Service shall be a state service. There shall be following four sub cadres in this service:-

a) Bihar Education Service (Administration sub cadre)

b) Bihar Education Service (Teaching sub cadre), (Dying Cadre)

c) Bihar Education Service (Research & Training sub cadre) and

d) Bihar Education Service (Isolated sub cadre)." Rule 4 states that none of the officers of one sub-cadre will be transferred and posted in another sub cadre.

30. It follows from the above that the teaching sub cadre, to which category members of the petitioner association belong to, is not only isolated again but even treated as "dying cadre". In order to ensure that members of BESA continue to enjoy their promotions which were given earlier and those are not disturbed, it is further provided that persons belonging to teaching cadre namely the petitioners would not be transferred and posted in administrative sub cadre. What BESA attempted to achieve by means of C.A. Nos. 25-26/2013 and was declined by this Court, is now accomplished with this methodology.

31. To add insult to the injury caused to the petitioner, Rule 27 of the Rules gives option to the members of other sub cadre for inclusion in a different cadre fulfilling the prescribed qualifications, but no such option is given to the teaching cadre. This Rule 27 reads as under:

"27. The officers appointed/ promoted and working on the above posts of this sub cadre and having the prescribed qualification of these posts shall give the option for inclusion in this sub cadre. In case of having no qualification or not giving option for inclusion in this sub cadre or in case of working on deputation basis, they shall be reverted back to their own cadre, if they are appointed on these posts, they shall remain on their posts but they shall not get the benefit of regular promotion in this sub cadre."

32. By placing the erstwhile BSES teachers in teaching sub cadre, are allowed to go upto the position of Principal which is the highest promotional post in their sub cadre. On the other hand BES Officers who are put in administrative sub cadre would continue to control the schools. Moreover, each sub cadre is to have its separate seniority list. It means the combined gradation list is given a go bye and even by bringing BSES in BES, segregation between the two cadres is achieved with these provisions. To our mind the aforesaid provisions of 2014 Rules negate the very effect of merger which was envisaged way back in the year 1977. In spite of succeeding in three rounds of litigation, the petitioners are not only treated as a distinct and separate class with the creation of the aforesaid sub cadre, the benefit which could accrue to them in a combined seniority list, as a result of merger, have been snatched away from them. What was given to these petitioners by the respondents in compliance of the judgment earlier, has now been taken away with the promulgation of 2014 Rules.

33. Lest we may be misunderstood, we make it clear that it is the prerogative of the Government to frame service rules in one or the other manner. In case provisions contained in those Rules offend

the rights of any of the employees, they have an independent right to challenge the same which can be judicially scrutinized by the Courts, applying the settled principles of judicial review. However, if such an exercise is undertaken on the premise that it is done to comply with the directions contained in the judgment and the Court finds that, ex facie, it is not so and on the contrary offends the directions in the judgment, such a move cannot be countenanced.

34. It is also crystal clear and borne from the record that the whole exercise was done to go out of way to help BES Officers. In fact, Mr. Rao even argued on these lines by pointing out that the promotions in BES cadres were made in two stages i.e. upto 31.12.1995 in one stage and from 1.1.1996 till now in the second stage. From 1.1.1996 no promotion was given to BES because it was need based and since the posts were to be identified, only the additional charge was given to them. What is lost sight of, in this entire arguments, is that, the merger is to take effect from 1977 and even Resolution to that effect is passed by the Cabinet. Further once that is done and the combined gradation list issued in the year 2007 was to be necessarily revived, further steps were to be taken from that stage. This Court is not suggesting that those of the petitioners who become senior to their counterparts in BES, should be given automatic promotion to second or third stages which was the apprehension expressed. These officers, as a result of merger and combined gradation list, would take their rightful place and thereafter their career progression would be permissible as per the Rules. For this purpose it was open to the Government to frame the Rules and make provisions laying down eligibility conditions. However, by well crafted technique of creating sub cadres and treating teaching category as dying sub cadre, almost the same result, which was the position before the merger, is achieved. It is obvious that such provisions in 2014 Rules are made with the sole intention to frustrate the effect of the judgment. We have no hesitation to say that this would amount to contempt of the Court.

35. Having held so, let us consider as to what steps are required for proper implementation of the judgment. Since the statement is made by Mr. Rao, which is contained in Government written response as well, that the petitioner would be given all due benefits of ACP and their pension will also be not reduced, we take to that statement on record. What remains is the restoration of combined gradation list and posting of the officers of the petitioner's association and their promotions on that basis. Having regard to the concession made by Mr. Patwalia in the form of solution suggested by him, it is not necessary for us to give directions to the administration to make all consequential amendments in the 2014 Rules. Mr. Patwalia, submitted that if Rule 27 is amended to give option to the teachers as well, the petitioners would be satisfied with the same. We are of the opinion that it is a very fair suggestion to solve the problem.

36. We thus, dispose of these Contempt Petitions with the following directions:

> (i) The combined gradation list issued on 17.8.2007 is revived and is to be acted upon and implemented by the Respondents/ Authorities, or Suitable amendment in the alternative be made in Rule 27 of 2014 Rules giving option to the teachers also, as permitted to other sub cadres.

(ii) It would be open to the respondents not to demote those BES Officers who are holding administrative assignment on the higher posts. However, that would not be at the cost of those petitioners belonging to teaching sub cadre who, as a result of combined seniority list, have become senior to BES Officers. We leave it to the Government to find whatever solution they have to deal with this issue.

(iii) Consequential benefits which may accrue to the petitioners shall be accorded to them.

(iv) The entire exercise be done and accomplished within a period of 3 months.

(v) On failure on the part of the respondents/ administration to take the aforesaid steps, it would be open to the petitioners to move an I.A. in these very Contempt Petitions seeking its revival with prayer to proceed further against the respondents in accordance with law.

vi) The petitioner shall also be entitled to the costs of these proceedings, which we fix at Rs. 50,000/-.

.....J.

[Surinder Singh Nijjar] .....J.

[A.K. Sikri] New Delhi May 07,2014