

Sr. No.08
Regular List

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH

AT SRINAGAR

CCP (D) No. 6/2024

Sheikh Mohammad Hussain and others

...Appellant(s)/Petitioner(s)

Through: Mr. R.A. Jan, Sr. Advocate with
Mr. Syed Bhat, Advocate

Vs.

Atal Dulloo and others

...Respondent(s)

Through: Mr. D.C. Raina, Advocate General
Mr. Ab. Rashid Malik, Sr. AAG
Mr. Santosh, Secretary Finance through VC
Mr. Bopinder Singh, Secretary PWD through VC

CORAM:

HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

05.08.2024

Pursuant to the directions given in the morning whereby this Court had directed the contemnors being the Chief Secretary, Finance Secretary, Secretary GAD and Secretary PWD R&B to join the proceedings through Video Conferencing at 2:30 PM in order to obviate the inconvenience to them of personally appearing before this Court to answer the charge of contempt, the Principal Secretary, Finance and the Secretary PWD R&B have joined the proceedings through Video Conferencing. The secretary GAD has not joined as he is on leave.

2. As regards the Chief Secretary, the Ld. Advocate General, as per instructions received by him, informed this Court that the Chief Secretary is desirous to join the proceedings and is in the process of joining the Video Conference in a few minutes and the delay was solely on account of connectivity issues. However, that never happened. A short while later, the Law Secretary Mr. Achal Sethi

appeared through Video Conferencing and informed the Court that the Chief Secretary is unable to appear through Video Conferencing as he is busy in a meeting. As of now, this Court is unable to ascertain as to who is lying, whether it is the person who informed the Ld. Advocate General that the Chief Secretary is keen to join the proceedings and shall do so in a few moments or whether it was the Law Secretary who was instructed to state incorrectly on behalf of the Chief Secretary. Both these versions are starkly disparate and in gross contradiction to each other.

3. The principal order which is sought to be enforced by this contempt petition was passed on 10.08.2023. The operative portion of the order is paragraph Nos. 13 and 14 which is reproduced hereunder:

13. There can be no dispute to the legal proposition that the Chief Engineer being a higher post than the Superintending Engineer will be legally entitled to higher pay scale. As to what higher pay scale is to be given to the Chief Engineer, it certainly would be in the wisdom of authority. However, by any stretch of reasoning, the Chief Engineer cannot be placed at the same pay scale and at par with the Superintending Engineer which is a lower part which is reflected in the Government Order No. 22-JK(GAD) of 2023 dated 06-01-2023. Conferring same pay scales to two posts of different hierarchy certainly would violate Article 14 and 16 of the Constitution of India. Accordingly, we are of the view that the pay scale of the Chief Engineer would be required to be revised correspondingly vis-à-vis the post of Superintendent Engineer by making it higher than the one granted to the Superintendent Engineer.

14. Accordingly we allow this petition by modifying the order impugned order dated 22.03.2021 passed by the CAT with the direction that the Chief Engineers and other higher ranking engineers shall be entitled to corresponding higher pay scale than the one given to Superintending Engineers. The said exercise shall be undertaken by the authorities as early as possible preferably within a period of three months. We also make it clear that if any of the present petitioners are entitled to the benefit of higher pay scale, the same shall be granted to them.

4. Today, counsel for the contemnors informed this Court that a Special Leave petition (SLP) has been filed in the Supreme Court in the month of June 2024, against the principal order. On being questioned about the delay of ten months in filing the Special Leave Petition, the Principal Secretary, Finance Department, informed the Court that the sanction to file the SLP was granted in February 2024. However, on being pointed out that there was a further delay of four months in filing the Special Leave Petition after the sanction was granted, the Principal Secretary Finance conveyed to the Court that he regrets the delay of four months and will ascertain the cause for the delay and affix responsibility.
5. Upon checking the website of the Supreme Court, it appears that the Special Leave Petition against the principal order was filed on 25.06.2024 and Diary No. is 27885/2024. There are seven defects identified by the Registry of the Supreme Court but not a single one has been cleared till date i.e., two months after filing the Special Leave Petition.
6. From the manner in which the Union Territory Government has conducted itself, it is clear that there is an absolute lack of sincerity of purpose on its part to comply with the order passed by this Court. It reflects a sorry state of affairs that exists in the Union Territory of Jammu and Kashmir with regard to judicial proceedings and judicial orders.
7. The number of contempt petitions pending before the High Court as on date is a little over six thousand. In other words, there are at least six thousand litigants in the UT of Jammu and Kashmir who despite

having orders in their favour are unable to savour the benefit of these orders. In some cases, there may be more than one petitioner in a contempt petition which would raise the number of persons awaiting the benefit of this court's orders, phenomenally above six thousand. A few of these contempt matters are pending between ten to fifteen years and the cases pending between one to five years are the ones that run into thousands and has reduced the justice dispensation system in the UT to a cruel joke. A contempt case must be concluded ideally in three to five hearings in which the order is complied with, or there is no need to comply with it as the superior Court or the larger bench has stayed or set aside the principal order itself, or the contemnor is punished in accordance with law.

8. This reflects a shocking scenario where the Executive is ignoring the orders passed by this Court consistently with utter disdain, cocky that this Court shall take no measures imperilling their liberty for their disobedience. This environment has come to exist on account of the excessive latitude being shown by this Court, time and again, only to maintain a harmonious relationship between the judiciary and the executive. A tradition existed where the contemnors were given repeated adjournments, a multitude of "statement of facts" and "reports" were called for resulting in contempt petitions pending for four to five years. But traditions are what things were. If contempt cases are to linger on inordinately without compliance, the very existence of this Court is meaningless. The "couldn't careless" attitude of the executive gives an impression to this Court that it has to resort to firm measures to ensure that the orders passed by this Court and by other courts judicially inferior to the High Court, are complied

with in letter and spirit and are taken more seriously than the way it has been till date.

9. In order to restore a semblance of sanity by achieving compliance of its orders, this Court has to take precipitate measures and shall not hesitate to do so. It is, however, recording these observations herein so that the UT and the bureaucracy is put on guard that what has been happening till now with the orders of this Court shall no longer be tolerated. Once an order is passed, it shall be complied with in letter and spirit, stayed or set aside by a superior Court or a larger bench or, the contemnor be prepared to face the consequences for contempt of Court.
10. **List this case on Thursday i.e., 08.08.2024 as case no. 1.**
11. All the four contemnors herein are directed to remain present in person before this Court on the next date, as this Court could not conduct an effective hearing today on account of the absence of the Chief Secretary, the Contemnor No.1. If any of them does not comply with the direction for personal appearance on 08/08/2024, this Court shall resort to coercive measures to secure their presence. A copy of this order be given to the AG Office under signature of the Bench Secretary.

(JAVED IQBAL WANI)
JUDGE

(ATUL SREEDHARAN)
JUDGE

SRINAGAR
05.08.2024
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