

Contempt Petition C-01/DB/2019,
Purushottam Shah & others. vs. Sri Anahd Vardhan & others.
Dated: 13.05.2019

Present: Sri V.P.Sharma Counsel for the petitioner.

Present contempt petition has been moved on behalf of petitioners-applicants for initiating contempt proceedings against opposite parties/ alleged contemnors for willful and deliberate disobedience of judgment and order dated 07.09.2018, passed by this Tribunal. Operative portion of the judgment rendered on 07.09.2018 in claim petition no. 06/DB/2017 reads as below:

“The claim petition is allowed, and setting aside the impugned order dated 18.01.2017 (Annexure: A 1), a direction is hereby issued to the respondents to redraw the seniority list of the Foresters afresh as per Rules, within a period of three months from today.”

It is the submission of Ld. Counsel for the petitioner that the seniority list of the Foresters has not been redrawn, as per directions, within stipulated time.

The question, which arises for consideration is—whether the matter should be taken for the motion or not?

It is revealed, from the perusal of the record, as agreed by Sri V.P.Sharma, Learned Counsel for the petitioner., that petitioner has not filed any execution application before filing the contempt petition.

Section 5(7) of the U.P. Public Services (Tribunal) Act, 1976, provides for execution of the judgment, passed by the Tribunal. It reads as below:-

“5(7). The order of the Tribunal finally disposing of a reference shall be executed in the same manner in which any final order of the State Government or other authority or officer or other person competent to pass such order under the relevant service rules as to redressal of grievances in any appeal preferred or representation made by the claimant in connection with any matter relating to his employment to which the reference relates would have been executed.”

[Emphasis supplied]

Further, Chapter XVII of the Uttar Pradesh State Public Services Tribunal Rules of Practice, 1997, provides for the execution proceedings. On receipt of application for execution of the decision/order or direction made by the Tribunal, notice of the execution application shall be served on the person, against whom it is prayed for. The Registrar shall present the record before the Bench, to which, such work is assigned by the Chairman. Thereupon, necessary direction/orders for execution of the decision shall be

made by the Member, having regard to the provisions of Order XXI of the Code of Civil Procedure.

Rule 5 of the U.P. Public Services (Procedure) Rules, 1992 provides for presentation of scrutiny of petitions.

A conjoint reading of the aforesaid provisions reveals that the petitioner should normally file an execution application, and should file the contempt petition only when other remedies are exhausted, save in exceptional circumstances. The same has not been done in the instant case. No exceptional circumstance has been shown as to why contempt petition has been filed directly. This Tribunal has although power to punish for contempt under Section 5-A of the U.P. Public Services (Tribunal) Act, 1976, but only when „due process“ in the execution proceedings has been exhausted. Contempt jurisdiction is not a substitute to execution proceedings.

It will not be out of place to quote Sections 9, 13 and 22 of the Contempt of Courts Act, 1971, in reference to present application, herein below:

“9. Act not to imply enlargement of scope of contempt.- Nothing contained in this Act shall be construed as implying that any disobedience, breach, publication or other act is punishable as contempt of court which would not be so punishable apart from this Act.

13. Contempts not punishable in certain cases.—Notwithstanding anything contained in any law for the time being in force,—

(a) no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice;

(b).....

22. Act to be in addition to, and not in derogation of, other laws relating to contempt.—The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law relating to contempt of courts.”

Order XXI Rules 30 and 37 CPC provide for arrest and detention in the civil prison for execution of the decree for payment of money. Order XXI Rule 41 CPC and subsequent Rules provide for attachment of property.

Section 12 of the Contempt of Courts Act, 1971, provides for simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees or with both.

The weapon of contempt cannot be used for purposes of executing a decree or implementing an order for which law provides appropriate procedure. Normally, it cannot be used for execution of a decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the Court is to be exercised for

maintenance of the Courts' dignity and majesty of law. Contempt is a matter between the Court and the contemnor. Aggrieved has no right to insist that Court should exercise its jurisdiction.

At this stage of dictation, Ld. Counsel for the petitioner seeks and is permitted to withdraw present contempt petition, with liberty to file the execution application, in accordance with law, before taking recourse to the contempt jurisdiction.

Order accordingly.

The contempt petition is thus closed under Rule 50 of the Uttar Pradesh Public Services Tribunal (Procedure) Rules, 1992, with liberty, as above.

One of the objects of contempt jurisdiction is enforcement and compliance of the orders of the Court. Execution application is moved by the person, only to execute the order passed in his favour.

Considering aforesaid objects of execution application/ contempt jurisdiction, a request is made to Opposite Parties No. 1 & 2 to comply with the order dated 07.09.2018 passed by this Tribunal in claim petition No. 06/DB/2017. Why any occasion to file contempt petition/ execution application should arise?

Registry is directed to send a copy of this order to Respondents No. 1 and 2 along with copies of judgment rendered on 07.09.2018 in claim petition No. 06.DB/2017, within a week, for compliance.

JUSTICE U.C.DHYANI
CHAIRMAN

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