

A DR. (CAPT.) AKHOURI RAMESH CHANDRA SINHA
v.
THE STATE OF BIHAR AND ORS.

FEBRUARY 21, 1997

B [K. RAMASWAMY AND S. SAGHIR AHMAD, JJ.]

Contempt of Court :

C *Order passed by Supreme Court—Implementation of—Petitioner alleging that in spite of declaration of his seniority with consequential benefits ordered by this Court, his seniority has not been restored as per the seniority vis-a-vis the promotee officers who were not entitled to the seniority on par with him, and as such there was wilful disobedience of the orders passed by this Court—Held, as regards placement of petitioner in appropriate promotional post consequent to the fixation of his seniority, an undertaking on behalf of the Government has given to give due promotion to petitioner within 15 days—If any benefits were given to the other officers who were not entitled to the parity with the petitioner, as alleged by him, it would be open to him to have his right adjudicated in appropriate proceedings in the light of the judgment of this Court and the law—No attempt was made by the Government to misinterpret the order passed by this Court—It cannot be said that there was deliberate and wilful disobedience in implementation of the orders of this Court.*

CIVIL ORIGINAL/APPELLATE JURISDICTION : Contempt
Petition (C) No. 488-89 of 1996.

F In

I.A. Nos. 4-5 and 7.

G In

Civil Appeal No. 1578-79 of 1996.

From the Judgment and Order dated 19.8.94/6.12.94 of the Patna High Court in C.W.J.C. No. 7049/93 and 1801 of 1990.

H Akhilesh K. Pandey for the Petitioner/Appellant.

B.B. Singh for the Respondent. A

Vinod Kr. Kanth, Rudresh Singh and R.P. Wadhvani for Intervenor.

The following Order of the Court was delivered :

Application for Intervention is dismissed. B

The Petitioner has filed this Contempt Petition on the ground that the respondents-State has not obeyed the direction issued by this Court in CA No. 1578-79/1996. Counter-affidavit has been filed by the respondents. Presence of the officers who are present is dispensed with. We have heard learned counsel on both sides. C

The grievance of the petitioner is two-fold. Firstly, it is alleged that in spite of the declaration of seniority with consequential benefit given by this Court in the above appeals whereby the appellant is entitled to seniority w.e.f. September 6, 1966 with all consequential benefits, the same has not been given to him. Secondly, the officers who are not entitled as per the seniority fixed by the Court, to be above him, have been confirmed with effect from earlier dates, with consequential benefits. It is in derogation and in disobedience of the mandamus issued by this Court in the aforesaid appeals. He has further contended that even as per the proceedings produced today before the Court, the petitioner has not been restored to the position as per the seniority vis-a-vis the promotee officers who are not entitled to the seniority on par with him. Therefore, there is wilful disobedience of the order passed in the above appeals. D E

Shri B.B. Singh, learned counsel appearing for the State of Bihar, states that the delay in compliance of the directions of this Court has been properly explained by A.K. Mishra, Under Secretary of the Health Department, Government of Bihar, Patna in his affidavit. The Government has explained how they understood the orders passed by this Court and worked it out. After the receipt of the judgment through the High Court of Patna, steps have been taken in working out the directions issued by this Court in the aforesaid appeals, they have collected all the relevant material on account of which some delay had occasioned and, therefore, there is no wilful disobedience. He has stated that some of the doctors, S.N. Upadhyay and nine others whose names have been mentioned in the affidavit by the under Secretary, A.K. Mishra had rendered service in the Military between F G H

- A the year 1963 to 1966, therefore, they are equally to be treated as seniors to the petitioners. With regard to the omission to give promotion to the petitioner over the person who had already become junior but is holding the senior post, Shri B.B. Singh undertakes that he would see that the petitioner is given due promotion. This statement was made on the basis of the instructions given by the Under Secretary who is present in the Court.

- B In view of the rival contentions, the question arises : whether the respondents have deliberately and wilfully disobeyed the order of this Court. With regard to *inter-se* seniority of the petitioner and Dr. S.N. Upadhyay and others, since the controversy was not raised before this Court at the time to hearing of appeals, hence we are not inclined to go into that matter; hence, the matter does not come under the purview of the contempt. If the respondents misunderstood the scope of the judgment and have given any benefits which Dr. S.N. Upadhyay and eight others are not entitled to, i.e., parity with the petitioner, it would be open to him to have his right adjudicated in an appropriate proceedings in the light of the judgment of this Court and the law. No attempt was made by the Government to misinterpret the order passed in appeals. So, it cannot be said that it constitutes a deliberate and wilful disobedience in implementation of the orders of this Court.

- E As regards the placement of the petition in the appropriate promotional post, consequent to the fixation of seniority of the petitioner, Shri B.B. Singh has given an undertaking on behalf of the State Government and we record the same. We have no doubt that the State Government would give due promotion to the petitioner within 15 days from today.

- F Contempt petitions are accordingly disposed of.

R.P.

Petitions disposed of.