

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(S).3298 of 2020
(Arising out of SLP(C)No.2978 of 2020)

DR. JITENDRA GUPTA

PETITIONER(S)

VERSUS

DR. C. CHANDRAMOULI, IAS
(SECRETARY, DoP&T,
GOVERNMENT OF INDIA)

RESPONDENT(S)

With

Contempt of Court Petition No.416 of 2020
(Dr. Jitendra Gupta vs. Dr. C. Chandramouli)

O R D E R

ASHOK BHUSHAN, J.

Leave granted.

2. The appeal and contempt petition have been filed by the same person, Dr. Jitendra Gupta. The appeal has been filed against the judgment of the Delhi High Court dated 24.12.2019 rejected the Contempt Case(C) No.1140

of 2019 filed by the appellant where contempt proceedings were requested to be initiated for violation of judgment of Division Bench dated 02.07.2019 of the High Court passed in W.P.(C)No.5648 of 2018. The contempt petition has been filed in this Court for initiating contempt proceedings against the respondent for disobedience of the order dated 03.02.2020 passed by this Court in SLP(C)No.2978 of 2020 out of which C.A.No.3298 of 2020 has arisen.

3. Back ground facts giving rise to these proceedings need to be briefly noted.

Dr. Jitendra Gupta, the appellant, is an IAS Officer, Bihar Cadre of 2013 Batch. While posted as Sub-Divisional Officer in District, Kaimur, State of Bihar, a First Information Report was lodged against the appellant. Disciplinary proceedings were also initiated by the State of Bihar against the Officer. The appellant alleging victimization and persecution by the State of Bihar filed writ petition in the Patna High Court. The High Court quashed the criminal

proceedings vide judgment dated 28.10.2016 which order was also upheld by this Court on 06.02.2017. The appellant applied for Cadre transfer from Bihar by his representation dated 21.03.2017. A writ petition was filed in this Court being Writ Petition(C)No.338 of 2017 which petition was disposed by this Court by order dated 09.05.2017 directing the Central Government to look into the grievance of the appellant and take appropriate action within three months. After the order by this Court dated 09.05.2017, the Central Government considered the case of the appellant and sought consent from the Government of Haryana by letter dated 19.07.2017. The State of Haryana communicated its consent for Cadre transfer of the appellant. The Central Government vide Order dated 06.12.2017 declined to approve the appellant's Cadre transfer from Bihar to Haryana. Challenging the order dated 06.12.2017, the appellant filed O.A.No.292 of 2018 in the Central Administrative Tribunal which application was allowed by the Central Administrative Tribunal vide its

judgment dated 22.03.2018. The Tribunal set aside the order dated 06.12.2017 and directed the Union of India through its Secretary, Department of Personnel & Training to consider the case of the appellant for inter-State Cadre transfer for State of Haryana under Rule 5(2) of IAS (Cadre) Rules, 1954 or for Central Government deputation under Rule 6 of the said Rules. The State of Bihar was directed not to withhold its consent for the inter-State deputation/Central deputation.

4. The State of Bihar aggrieved by the aforesaid order dated 22.03.2018 filed the writ petition in the Delhi High Court being Writ Petition (C)No.5648 of 2018. Before the High Court counsel for the Union of India made a statement that Union of India does not propose to challenge the judgment of the Tribunal. The writ petition came to be dismissed by the Division Bench of the Delhi High Court vide its judgment dated 02.07.2019. While dismissing the writ petition

following directions were issued by the High Court in paragraph 48:

"48. We thus find that there is no merit in the present petition and the same is dismissed with the following directions:

- (i) The consent communicated by the State of Bihar to the Central Government vide letter dated 5.3.2019 for Central Deputation be treated as a consent for transfer. The Central Government is directed to initiate the process of transfer of the petitioner forthwith and issue an order transferring respondent no.1 to a cadre outside the Bihar cadre. Needless to state that the willingness/consent of respondent No.1 would also be sought for the transfer as per law. The entire process should be completed within a period of four weeks from today.
- (ii) The State of Bihar is directed to pay a sum of Rs.5,00,000/- (Rupees five Lacs) towards compensation/damages in favour of respondent No.1 within a period of four weeks from today, and to pay all other outstanding dues, which may not have been paid to him."

5. After the order of the High Court dated 02.07.2019, the letter dated 13.12.2019 was issued by the

Government of India to the appellant. In paragraph 2 of the letter following was communicated:

"2. In compliance of the judgment of the Hon'ble High Court of Delhi dated 02.07.2019, you are requested to convey your willingness/consent for inter cadre transfer to Nagaland, Andhra Pradesh or Manipur cadre which are having the maximum shortage of IAS officer as on date so that the matter could be considered further in this Department."

6. The appellant aggrieved by the letter dated 13.12.2019 filed Contempt Case(C) No.1140 of 2019 in the Delhi High Court. The High Court was of the view that no prima facie case of willful disobedience of the direction given by the Division Bench of the High Court is found, hence the contempt petition was rejected by order dated 24.12.2019. Aggrieved by the said judgment SLP(C)No.2978 of 2020 has been filed giving rise to C.A.No.3298 of 2020.

Contempt of Court Petition(C)No.416 of 2020

7. SLP(C) No.2978 of 2020 came before this Court. This Court passed following order on 03.02.2020:

"Issue notice. Notice is accepted by Mr. Kanu Aggarwal, learned counsel.

It is assured by Mr. Tushar Mehta, learned Solicitor General appearing on behalf of the respondent, that the needful of posting the petitioner in Haryana Cadre will be done within three weeks from today. The statement is placed on record. In view of the above, the Special Leave Petition is disposed of.

Pending interlocutory application(s), if any, is/are disposed of."

8. The Contempt Petition (C)No.416 of 2020 was filed alleging disobedience of the judgment of this Court dated 03.02.2020. The respondent has also filed IA D.No.13383 of 2020 to recall the order dated 03.02.2020 passed in SLP(C) No.2978 of 2020. When the Contempt Petition No.416 of 2020 as well as application for recall of the order came before this Court on 25.06.2020 this Court observed:

"We have requested the learned counsel to find out an amicable solution in the meantime. List the matter before an appropriate Bench in the 3rd week of July, 2020."

9. Again the contempt petition and SLP were listed before this Court on 11.08.2020 this Court passed the following order:

“Considering the facts and circumstances of the case, without prejudice to the rights of the parties, let the Central Government as well as the officer concerned workout some States in which the petitioner can be posted and let the proposal be placed before this Court on the next date of hearing. Otherwise, we will decide the matter.

List on 21.08.2020.”

10. The application for recall the order was heard by this Court on 07.09.2020 and on which date this Court made the following order:

“.....We are of the view that the sufficient ground has been made out to withdraw the statement made by the applicant.

We order accordingly and order dated 03.02.2020 is withdrawn to the following extent:

“....that the needful of posting the petitioner in Haryana cadre will be done within three weeks from today. The statement is placed on record. In view of the above, the special leave petition is disposed of. Pending interlocutory application(s), if any, is/are disposed of.”

Counter affidavit be filed within a week.

List the special leave petition on 15.09.2020."

11. After the above order dated 07.09.2020 both SLP as well as contempt petition were heard.

12. We have heard Shri Sachin Datta, learned senior counsel for the appellant/applicant and Shri Tushar Mehta, learned Solicitor General for the respondent.

13. Shri Datta submits that the order of the Delhi High Court dated 02.07.2019 has not been complied by the respondent. He submits that the respondents were required to issue order in regard to inter-cadre transfer of the appellant as State of Haryana has given consent for transfer. It was not open for the respondent to ask for consent of the appellant with regard to State of Nagaland, Manipur and Andhra Pradesh for inter-cadre transfer of the appellant. He submits that reasons cited in the letter are not relevant for the issue. He submits that inter-cadre transfer in the

case of the appellant is on account of the extreme hardship to the appellant. By considering the case of extreme hardship a large number of officers, IAS officer, Central Government has always accommodated at their choice. He submits that letter dated 13.12.2019 was contemptuous and the Delhi High Court ought to have initiated contempt petition which erred in rejecting the same.

14. Shri Tushar Mehta, learned Solicitor General appearing for the respondent submits that no contempt was committed by the respondent. He submits that under the order of the Delhi High Court dated 02.07.2019 it was the Central Government who was to take decision regarding inter-cadre transfer of the appellant as per law. Shri Mehta referred to Rule 5(2) of IAS (Cadre) Rules, 1954 as well as O.M. dated 08.11.2004. He has relied on Clause 2(viii) of the O.M. dated 08.11.2004. He submits that if a request on the ground of threat is made the Central Government may initially send the officer on a three years deputation of State of its

choice. He submits that the choice is of the Central Government where the officer is to be sent from one cadre to another cadre. He submits that no contempt was committed by the respondent in issuing the letter dated 13.12.2019. He further submits that the appellant cannot be sent to a State of his choice, it is the prerogative of Central Government to take a decision in which inter-cadre transfer is to be affected.

15. We have considered the submissions of the learned counsel for the parties and perused the records.

16. The Central Administrative Tribunal in its judgment dated 22.03.2018 after quashing the order dated 06.12.2017 has directed the Central Government to consider the case of the appellant for inter-State deputation to Haryana. The Delhi High Court in the operative portion of the judgment in paragraph 48 directed the Central Government to initiate the process of inter-cadre transfer of the appellant forthwith and issue an order transferring the appellant to a cadre outside the Bihar cadre. The High Court has also

directed the willingness/consent of the officer, i.e., the appellant would also be sought for the inter-cadre transfer as per law. In paragraph 43 of the judgment, the Delhi High Court has also observed:

"43. There is no doubt, that the decision on transfer of cadre falls in the domain of the Central Government, and it is the prerogative of the Central Government to examine the said issue. We have no intention, whatsoever, to interfere with the same. We would thus leave it to the Central Government to take a decision on the Cadre to which the respondent no.1 should be transferred. We may, however, add a caveat, that the State of Haryana is the home State of respondent No.1, and he had given a preference to be transferred to the said State. It is also undisputed that the State of Haryana has already conveyed its no-objection to such a transfer. Thus, while considering the case of Respondent No.1 for inter-cadre transfer, the aspect may also be considered by the Central Government. The Central Government must complete the process of inter-cadre transfer as soon as possible, but not later than four weeks from the date of this judgment and till then *status qua* on the respondent no.1 being placed at Delhi would continue. Needless to state that he would be paid his full salary including any arrears, if outstanding."

17. Learned counsel for the appellant has submitted that observation made in paragraph 43 of the Delhi High Court judgment that State of Haryana is the home State

of the appellant was incorrect and the home State of the appellant is U.P. which cannot be disputed.

18. In the facts of the present case, we are of the view that present was not a case of any willful disobedience of the direction of the High Court dated 02.07.2019 and the High Court rightly refused to initiate contempt proceedings.

19. We, however, notice that this Court in the SLP giving rise to this appeal as well as contempt petition filed by the appellant in this Court passed two orders on 26.06.2020 as well as on 11.08.2020 with the hope that matter may be amicably settled, and the issue between the appellant and the Central Government be settled amicably but learned Solicitor General submits that no amicable settlement could be arrived at as hoped by this Court.

20. Under the order passed by the Delhi High Court dated 02.07.2019, the appellant's inter-cadre transfer under Rules 1954 is to be affected by the Central Government. The proceedings of inter-cadre transfer are

awaiting finalization for the last more than two years. The appellant who is ready to render his services in any other State, which State needs to utilize his services for the welfare of the people. There is no doubt that it is the Central Government which is authority competent to transfer the appellant from one cadre to another. We are also of the view that the appellant cannot insist that he should be transferred to State of Haryana. We, however, are inclined to grant a liberty to the appellant to make a fresh representation to the Secretary, Department of Personnel and Training, Government of India in reference to letter dated 13.12.2019 within two weeks from today with regard to his inter-cadre transfer in light of judgment of Delhi High Court dated 02.07.2019. It shall be open for the appellant to give his willingness/consent with regard to any other State. The representation may be considered by the competent authority sympathetically and appropriate decision be

communicated at an early date preferably within two months from the date of receipt of the representation.

21. The civil appeal is disposed of accordingly. The Contempt of Court Petition(C) No.416 of 2020 is rejected.

.....J.
[ASHOK BHUSHAN]

.....J.
[R. SUBHASH REDDY]

.....J.
[M.R. SHAH]

**NEW DELHI;
SEPTEMBER 25, 2020.**