

A EXECUTIVE DIRECTOR TTD AND ANR.

v.

D. NAGULU NAIDU

NOVEMBER 7, 1996

B [K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Constitution of India, 1950: Article 215.

C *Order/direction of High Court—Wilful violation of—Contempt proceedings—Employer ordered transfer of employee—Employee challenged transfer order in writ petition before High Court—Single Judge of High Court did not suspend transfer order—But directed that transfer order would be subject to final decision in writ petition—Employee filed writ appeal against order of Single Judge—Division Bench in exercise of power under Art.215 issued show-cause notice to employer as to why he should not be suitably dealt with for not having complied with earlier direction of High Court in some other proceedings—Held: Division Bench wrongly exercised powers under Art. 215.*

D
E
F The appellant ordered transfer of the respondent—employee. The respondent-employee filed a writ petition before the High Court challenging the transfer order. The Single Judge of the High Court did not suspend the transfer order but directed that the order of transfer would be subject to final decision on the writ petition. The respondent-employee filed a Writ Appeal against the order of the Single Judge. In that appeal the Division Bench in exercise of power under Article 215 of the Constitution issued a show-cause notice to the appellant as to why he should not be suitably dealt with for having not complied with the earlier direction of the High Court made in some other proceedings. Being aggrieved the appellants preferred the present appeal.

G Allowing the appeal, this Court

H HELD: When against the order of the Single Judge of the High Court the respondent had approached the Division Bench the only question which the Division Bench was to consider is whether the Single Judge was justified in not suspending the order of transfer passed by the appellant. The Division Bench had wrongly exercised

powers under Article 215 of the Constitution on the basis that some earlier order passed in some other proceeding had not been complied with. Article 215 of the Constitution, no doubt, confers ample power on the High Court to commit for contempt but when the appeal before it was in relation to legality or otherwise of the refusal of the Single Judge to pass an interim order of suspension of the transfer order, the question of exercising power of contempt under Article 215 of the Constitution for the alleged non-compliance of any earlier direction of the Court does not arise and was not called for. Even otherwise on the facts of this case it is difficult to conceive that the Appellant had wilfully violated any direction/order of the Court. [563 B-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 14221 of 1996.

From the Judgment and Order dated 4.7.96 of the Andhra Pradesh High Court in W.A. No. 620 of 1996.

K. Ram Kumar for the Appellants.

Mrs. Anjani Aiyagari for the Respondent.

The Judgment of the Court was delivered by :

PATTANAİK, J. Leave granted.

This Appeal by special Leave is directed against the judgment of the High Court of Andhra Pradesh dated 4.7.96 passed in Writ Appeal No. 620 of 1996. By the impugned order the High Court has exercised powers under Article 215 of the Constitution and directed the contemnor to be present in the Court on 15.7.1996 for receiving appropriate sentence on a conclusion that the contemnors have wilfully not given effect to the order passed in Writ Petition No. 14282 of 1994.

The respondent D. Nagulu Naidu was appointed as nominal muster roll electrician in the year 1979 under the appellant on a purely temporary basis. Pursuant to the orders issued by the Government of Andhra Pradesh dated 19.4.1988 for regularisation of persons working on nominal muster rolls from 1.1.70 to 31.3.1984, the services of the respondent was regularised by proceedings of the Executive Officer Devasthanam dated 30.10.1990. He was regularised as helper with effect from 19.4.1988. He

- A challenged the order by filing a Writ Petition contending *inter alia* that the regularisation should have been from the date of his initial appointment on 16.7.1979. He also contended that he should have been regularised as electrician. The post of electrician was not available under Tirumala Tirupati Devasthanams Employees services Rules, 1989 which was brought into force on 24.10.1989 and the post of electrician is a promotional post.
- B From the post of helper the next promotion is to Assistant Wireman and from there to Wireman, and from there to Electrician. An Electrician's post is 3 steps above the Helper's post. After the rules came into force the respondent was promoted to the post of Assistant Wireman with effect from 18.6.1992. He filed a Writ Petition bearing no.14282 of 1994 claiming relief of being entitled to the regular scale of pay attached to the post of
- C Electrician since 12.8.1979 and further contended that the order of regularisation regularising him as Helper is bad in law. The said Writ Petition was disposed of by learned Single Judge by order dated 23.1.1995 with the direction that the respondent be appointed to the post of Electrician from the date on which his juniors were appointed or atleast from the date of his extracting the work of Electrician only after the respondent acquires
- D requisite qualification for being appointed as Electrician. Since none of the juniors of the respondent had been appointed or promoted as Electrician the Executive Officer of the Devasthanam intimated the respondent that he is not entitled to be appointed as Electrician. This order of the Executive Officer dated 30.1.1996 was challenged by the respondent which was registered as Writ Petition No. 3641 of 1996 and is pending before a
- E Learned Single Judge of Andhra Pradesh of High Court. In the meantime the Chief Engineer of Devasthanam transferred the respondent from Tirupati to Tirumala office by order dated 17.5.1996. This order of transfer was again challenged by the respondent in the High Court which was registered as Writ Petition No. 10674 of 1996 and an application for interim direction was also filed which was registered as WPMP No. 12974 of 1996. The
- F learned Single Judge did not suspend the order of transfer but directed that the transfer of the respondent will be subject to final decision in the Writ Petition. This order of learned Single Judge dated 7.6.1996 was assailed by filing a Writ Appeal which was registered as Writ Appeal No. 620 of 1996. In that appeal the Division Bench issued a show cause notice
- G to the appellant as to why they should not be suitably dealt with for having not complied with the earlier direction of the High Court. By the impugned order dated 4.7.1996 the High Court having held that the appellants are guilty of contempt and having decided to exercise power under Article 215 of the Constitution, the appellants have approached this Court.
- H The question for consideration under the aforesaid circumstances is

whether the High Court was at all justified in exercising power under Article 215 of the Constitution in the Writ Appeal which had been filed by the respondents against the order of the learned Single Judge dated 7.6.1996. It is apparent that the order of transfer of the respondent from Thirupathy to Thirumala was the subject matter of challenge in Writ Petition No. 10674 of 1996 and in that Writ Petition when application for interim suspension of the order of transfer was filed, the learned Single Judge did not suspend the order but held that the order of transfer would be subject to final decision of the Writ Petition. When against that order the respondent had approached the Division Bench the only question which the Division Bench was to consider is whether the learned Single Judge was justified in not suspending the order of transfer passed by the Devasthanam Authorities. It is indeed surprising to notice that the Division Bench has exercised powers under Article 215 of the Constitution on the basis that some earlier order passed in some other proceeding had not been complied with. Article 215 of the Constitution, no doubt, confers ample power on the High Court to commit for contempt but when the appeal before it was in relation to legality or otherwise of the refusal of the learned Single Judge to pass an interim order of suspension of the order of transfer, the question of exercising power of contempt under Article 215 of the Constitution for the alleged non-compliance of any earlier direction of the Court does not arise and was not called for. Even otherwise on the facts narrated earlier it is difficult to conceive that the Devasthanam Authorities have wilfully violated any direction/order of the Court. In our considered opinion there was no occasion for the Division Bench of the High Court to invoke the powers under Article 215 of the Constitution in the facts and circumstances as already stated.

We accordingly set aside the impugned order of the Division Bench of the High Court dated 4.7.96, but in the circumstances there will be no order as to costs.

V.S.S.

Appeal allowed.