

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

SPECIAL CIVIL JURISDICTION

APPELLATE SIDE

RESERVED ON: 16.05.2025

DELIVERED ON: 23.05.2025

THE HON'BLE MR. JUSTICE REETOBROTO KUMAR MITRA

WPCRC 475 OF 2013

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CAN 1 OF 2011 (OLD NO. CAN 8006 OF 2011)

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CAN 2 OF 2023

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CAN 3 OF 2024

KRISHNA CHANDRA GHOSH & ORS.

VS.

DIPOK KUMAR DUTTA

WITH

WPCRC 25 OF 2018

UTTAM KUMAR SARKAR

VS.

ASHIS KUMAR CHOWDHURY & ANR.

Appearance:

Mr. Arunava Banerjee, Adv,

Ms. Simantika Dasgupta, Adv,

Ms. Ritika Mandal, Adv.

Sk. Qareeb, Adv.

..... for the Applicants

Mr. Tapan Kumar Mukherjee, Id. AGP

Ms. Sangeeta Roy, Adv.

... for the State/Alleged Contemnor



Reetobroto Kumar Mitra, J.:

1. A Writ Petition was filed in 2003 being WP No. 2299 of 2003 by six persons, all claiming to be Assistant Teachers in Bedrabad High School, (hereinafter referred to as the School) working at the said school from their respective dates of appointment or joining.
2. The Writ Petition which was disposed of by an order of this Hon'ble Court dated 17th November, 2003.
3. The order disposing of the Writ Petition had two directions.
4. First, the Secretary of the School was directed to send all relevant papers regarding the service of the petitioner to the District Inspector of School (SE), Malda, within two weeks from the date of receipt of the order.
5. Second, the District Inspector of School (SE), Malda was directed to accord approval to the appointment of the petitioners within a period of four weeks from the date of receipt of the said papers from the Secretary.
6. It is explicit in the order that these two directions contained in the order would take effect only upon the petitioners communicating the order to the Secretary of the School and the District Inspector of Schools (SE), Malda.



7. Both the Managing Committee of the School and the State of West Bengal had carried the order of 17th November, 2003 in appeal. The appeals were filed after a delay of 8 and 9 years, respectively. The appeals were not entertained. Insofar as the appeal filed by the Managing Committee was concerned, it was dismissed for non-prosecution. The appeal preferred by the State of West Bengal was not entertained, as the prayer for condonation of delay itself was rejected.
8. Thus, the order of 17th November, 2003 remained unscathed.
9. It is the non compliance of the directions in the order dated 17th November, 2003 that has given rise to the two Contempt Applications.
10. The Writ Petitioners filed a contempt application being CPAN 1771 of 2004, sometime in 2004, alleging *inter alia* that the contemnors/respondents had not complied with the directions in the order of 17th November, 2003.
11. A Rule was issued in CPAN 1771 of 2004 and the Contempt Petition was renumbered WPCRC 475 of 2013.
12. A second Contempt Application, CPAN 1842 of 2013, was filed by Uttam Kumar Sarkar, introduced as the seventh Writ Petitioner, who was added as a petitioner in WP No. 2299 of 2003 on 11th May 2012, almost 9 years after the Writ Petition had been disposed of on 17th November, 2003.



13. A Rule, WPCRC No. 25 of 2018, was issued in CPAN 1842 of 2013 filed by Uttam Kumar Sarkar.
14. Both matters have been taken up together as the subject matter pertains to the same acts of commission or omission by the same alleged contemnors.
15. Several orders have been passed in the contempt petitions, some of which are extremely relevant.
16. Two of such orders, dated 27th March 2015 and 6th July, 2018, are of relevance. They are relevant, since, by both orders the two rules WPCRC 475 of 2013 and WPCRC 25 of 2018 were discharged and both Contempt Petitions dismissed on the aforesaid respective dates.
17. The dismissal of WPCRC 475 of 2013 was on a clear finding that the petitioners had not complied with the direction of the Court and were therefore not entitled to claim that the respondents had deliberately or wilfully violated the directions in the order of 17th November, 2003.
18. WPCRC 25 of 2018 was dismissed on 6th July, 2018 on a specific finding that the petitioner was taking a chance and there was nothing in his application which could be construed as an act of

contempt. The rule was thus discharged and the contempt petition dismissed.

19. By an order of 5th April, 2023, on the alleged concession of the counsel appearing for the contemnors, both aforesaid orders of dismissals dated 27th March, 2015 and 6th July, 2018 were recalled. I have deliberately used the term “alleged concession” as the same has been denied by the contemnor, (DI) while he filed his compliance report dated 3rd March, 2025. He categorically stated that he had never authorised counsel to grant any such concession.
20. Thus, the two Contempt Petitions were revived.
21. Compliance reports have been filed by the alleged contemnors, one in 2023 and the last, as recently as in March, 2025. One of the original petitioners Sukumar Sarkar filed an exception in the form of a reply to the compliance report of 2023. It is bare and makes no whisper about non-service of the order, which was categorically taken in the compliance Report.
22. These are the admitted facts relating to the Contempt Petitions.
23. Counsel for the petitioners has submitted that the order of 17th November, 2003 is a mandatory order, which ought to have been complied by the authorities without questioning the same.



24. He has also argued that the Secretary and the District Inspector, have both been blaming each other for non-compliance of the order of This Hon'ble Court.
25. Thus, counsel submits there is a clear case of contempt, as the contemnors have deliberately and wilfully not complied with the directions of this Hon'ble Court made on 17th November, 2003 and are thus liable to be penalized.
26. Counsel for the respondents/contemnors has given a detailed explanation. In fact, he submitted that there has been no violation of the directions contained in the order of 17th November, 2003.
27. He has submitted that the second portion of the order, which directed the District Inspector of Malda to approve the appointment of the petitioners as Teaching Staff of Bedrabad High School, was dependent on the first part, which required the supply of relevant documents by the Secretary of the School to the contemnor/District Inspector within two weeks from the date of receipt of the order. Thus, without receiving these requisite papers, the DI could not have regularised the appointment.
28. The second explanation given by the District Inspector relates to the fact that the school was upgraded from a Junior School to a Senior High School, resulting in the creation of six teaching posts, which had

immediately been filled up. Thus, there were no vacant posts to which the petitioners could have been approved as Assistant Teachers.

29. He submitted that the petitioners, on account of the promulgation of the School Service Commission Act, 2005, were not qualified to be appointed to the aforesaid posts as Assistant Teachers. School Service commission Act, 2005 had introduced new and higher parameters for appointment of persons to the post of Assistant Teacher, which the petitioners did not have.
30. I have heard the learned counsel appearing for both parties extensively and have gone through the records of the cases.
31. A brief background is relevant to understand the case made out by the petitioners and the defence/explanation rendered by the contemnors.
32. The school was upgraded on or about 1st May, 2000, as a Senior High School.
33. However, as it appears from the records, the District Level Inspection Team, upon conducting an inspection, had found that the school did not maintain any records either for its teaching or non-teaching staff. In fact, for such violation, the Managing Committee of the School was removed and an Administrator was appointed on 21st March, 2003, who continued till 31st August, 2004.



34. It is on 1st September, 2004 that the new Managing Committee took charge of the school.
35. The school, upon getting the status of a High School, was accorded six additional posts of Assistant Teacher. The Secretary of the School ought to have informed the District Inspector of School of such vacancy, and the District Inspector ought to have complied with the directions of this Hon'ble Court on 17th November, 2003 upon such vacancy having arisen or new posts created.
36. However, since the petitioners had not served a copy of the order on the Secretary of the School or the School itself, the relevant documents of the petitioners had not been forwarded to the DI. Thus, DI could not have known the purport of the order before filling up the six posts in the School of Assistant Teachers.
37. In spite of several queries from the Court, the petitioners were unable to disclose any evidence of service of the order dated 17th November, 2003, on the Contemnors, either by way of letter or electronic means or digital means on the Secretary of the School or on the District Inspector.
38. All that was disclosed was a letter on the advocate's letterhead informing that an order had been passed on 17th November, 2003 by the Court. Neither a copy of the order nor a copy of the Writ Petition was ever served on them. Thus, the School Authorities (which term I use



deliberately) nor the District Inspector of School were aware that of the directions contained in the order passed by the Hon'ble High Court on 17th November, 2003.

39. The connected issue and the reason why I deliberately used the phrase "School Authorities" instead of the Secretary of the School, is that on 17th November, 2003, there was no Secretary functional in the school, which was being run by an Administrator till 31st August, 2004, as aforesaid. The petitioner was unable to produce a single document to prove that he had served a copy of the order on the contemnors. This, in spite of the fact that the contemnors had repeatedly, through his affidavit of 2nd July, 2018 by the District Inspector and by multiple compliance reports (14th July, 2023 and 3rd March, 2025), stated that he had never been served with a copy of the order.

40. The other, rather interesting, issue emanates from the sudden disappearance of the majority of the petitioners as appearing petitioners in the Contempt Petition. The petitioners were initially six in number. The petitioners were 1. Krishna Chandra Ghosh, 2. Sukumar Sarkar, 3. Dulal Ghosh, 4. Fasihur Rahaman Chaudhuri, 5. Bodiur Rahaman, and 6. Mita Rani Das.

41. Fasihur Rahaman Chaudhuri, in compliance of an order of 27th April, 2012, (in some other proceeding) had been appointed as an Assistant Teacher in the school on 10th August, 2012. However, the

said Fasihur joined on 26th December, 2013. An enquiry was made and it was found that Fasihur was serving as a Para Teacher and an Assistant Teacher simultaneously in two schools and drawing salary from both.

42. Sukumar Sarkar, had been functioning as the Secretary of the School from 7th December, 2007 till 6th March, 2011. Being one of the petitioners, had knowledge of the order, in spite whereof, he had not sent any papers pertaining to the petitioners herein to the District Inspector of School.
43. Mita Rani Das was also found to be working as an approved Para Teacher in a different school from 2005 till date.
44. The directions on the Secretary of the School would take effect only after service of the order on him. Upon “receipt of the order” he would send all relevant documents pertaining to the petitioners service “within two week”. The petitioner was unable to show service of the order on the Secretary.
45. The explanations given by the District Inspector of School cannot be ignored. The District Inspector of School could have been said to have violated the order only if he was aware of the order and had thereafter acted contrary to the directions contained therein. This would have established his wilful and deliberate intent to disobey the order. In the present case, he was not aware of the order, the responsibility of service

of which had been cast on the petitioners' advocate by this Court. The non-compliance, if at all, cannot be attributed to a wilful or deliberate intent of the contemnors.

46. After a lapse of about 8 years, the present Contempt Petition was served on the contemnors. Clearly, the petitioners have themselves not been diligent in following the directions of this Court.
47. Post-2005 in view of the promulgation of the School Service Act 2005, the regularization for the petitioners' appointment as an Assistant Teacher could not have been considered, as the same would have been impermissible in law. Clearly, the Court cannot insist upon compliance with such directions at a belated stage, after the passage of almost 22 years from the date of passing of the order.
48. The explanation given by the contemnors that all the sanctioned posts created due to upgradation of the concerned school were filled up through the School Service Commission during 2004 and 2005 cannot be overlooked under any circumstances.
49. Even as late as April 2023, the School and the District Inspector attempted to comply with the directions of the order of 17th November, 2003, in due deference. However, the regularization of the appointment of the petitioners as Assistant Teachers of the School could not be done, as the

very basis of the appointment of the petitioners was found to be irregular and contrary to the established procedure for appointment.

50. The diligence of the petitioner is found to be lacking, as both Contempt Petitions were dismissed and Rules issued therein were discharged by orders dated 27th March, 2015 and 6th July, 2018. The Court had come to a specific finding that the petitioners in both Contempt Petitions had not pursued their rights and remedies as stipulated in the order of 17th November, 2003, with diligence, and hence, an intent of deliberate and willful violation by the contemnors could not have been alleged. It is true that the orders discharging the Rules and dismissal of Contempt Petitions were recalled by the order of 5th April, 2023. It cannot be overlooked, nor lose sight of the fact, that the petitioners had taken a chance with the Contempt Petition, and had not been diligent in pursuing their rights, and had indeed taken a chance before this Hon'ble Court.

51. It is an accepted proposition of law that a Contempt Petition is between the Court and the contemnors, with little or no role for the petitioners (persons alleging the act of contempt).

52. An act of commission and or omission, to be construed as an act of contempt, has to be committed with an intention not to obey, that is to say, to deliberately and wilfully violate the directions of the order of the Court. Unless it is shown that the order has been deliberately and wilfully violated by the contemnors, it cannot be construed to be an act of

contempt of an order of the Court. In the present case, there are no such acts of omission or commission by the alleged contemnors, which can be said to be either deliberate or wilful. In fact, there are no acts of commission or omission which can be construed to be in violation of the directions of the order dated 17th November, 20223. It is clear that the order directed the regularization of the petitioner's appointment as an Assistant Teacher of the said school, subject to availability of vacant sanctioned posts. It has been shown from the records that there were no such sanctioned posts available for the petitioner's appointment to be regularised.

53. There is an additional issue in so far as WPCRC 25 of 2018 is concerned, that of limitation. The order with the direction to the contemnors had been made on 17th November, 2003 and the Writ Petition was disposed of. In view of the disposed of Writ Petition, on 11th May 2012, the petitioner in WPCRC 25 of 2018 was added as a petitioner. This person (Uttam Kumar Sarkar) initiating CPAN 1842 of 2013 culminated in WPCRC 25 of 2018 upon rule being issued. The said act of commission or omission could not be taken by Uttam Kumar Sarkar from the date of his impleadment as a petitioner in the disposed of Writ Petition. The acts of commission or omission, if, at all, had to be construed from the date when the directions were made in the order of 17th November, 2003. Thus, the second petition by Uttam, CPAN 1842 of 2013 resulting in WPCRC 25 of 2018 is completely barred by the law of limitation.



54. In the circumstances, one cannot lose sight of the fact that contempt is an execution of sorts, which is why Section 20 of the Contempt of Courts Act, 1971 stipulates a strict timeline for initiation of proceedings. Such timeline is limited to a period of one year from the date on which the contempt is alleged to have been committed.
55. In the present case, such act would be deemed to have been committed on 1st January, 2004, being the expiry of the period of six weeks (two weeks for the Secretary to give the papers plus four weeks for the DI to regularise the appointment) from the date of passing of the order, i.e., 17th November, 2003. The Contempt Petition having been filed in 2013 belies the statutory bar that the act of contempt has to be brought to the notice of the Court within a period of one year from the date of commission or omission of such act. The Contempt Petition was filed in 2013.
56. In the circumstances aforesaid, I find the explanation given by the District Inspector of School to be acceptable and dismiss the Contempt Petition as against him. I find the explanations given by the District Inspector of School to be acceptable.
57. The rule issued against the District Inspector is discharged, and the Contempt Petition stands dismissed.



58. Consequently, all pending applications, if any, stand disposed of in terms of this order.
59. Insofar as the second contemnor is concerned, the Secretary of Bedrabad High School, it is clear that till 2004, the said person was not the Secretary of the school, since it was being run by an Administrator till August, 2004. In fact, one of the petitioners, Sukumar Sarkar, had been Secretary from 2007 to 2011, who ought to have complied with the directions in the order of 17th November, 2003. Thus, the responsibility of the Secretary (at a later stage since there was no such Secretary at the material time) cannot be foisted on the present incumbent, who had also not been served a copy of the order and in any event, since the action is barred under Section 20 of the Contempt of Courts Act, 1971.
60. Thus, the rule against the respondent no. 2 is also discharged and the Contempt Petition is dismissed.
61. Consequently, all pending applications, if any, stand disposed of in terms of this order.
62. There shall, however, be no order as to costs.



63. Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance with all formalities.

(Reetobroto Kumar Mitra, J.)