

and for the Union Territory of Chandigarh, have taken up the same position and have asked us to interpret section 7A(b) of the Taxation Act in this very fashion. Mr. Naubat Singh, learned counsel, who appears for the State of Haryana, has further given us to understand that his Government is already taking steps to amend section 7A(b) of the Taxation Act so as to expressly confine its application to cases for payment of goods tax in lump sum. So long as such an amendment is not made section 7A(b) shall be read in that manner. In order to make it workable; the authorities may prescribe a form of declaration to be given by a motor vehicle operator or owner to the taxation authorities about his not having opted for payment of goods tax on lump sum basis. On such a declaration being given, section 7A(b) will not apply to such an operator. The authorities may also, if so advised, obtain the option of truck operators or truck owners in advance about their choosing to pay tax under the principal Act on lump sum basis or otherwise. Detailed requirements in this connection will have to be worked out by the respective States. So far as we are concerned, we are clear that section 7A(b) of the Taxation Act is not intended to apply and does not apply to cases in which goods tax is not due on lump sum basis.

(5) Though various other contentions had been raised in the petition none of those has been pressed at the hearing. Both the grounds of attack directed against the impugned provision having failed, this writ petition cannot succeed, and is accordingly dismissed with costs.

N. K. S.

FULL BENCH

Before R. S. Narula, Bal Raj Tuli, and Gurnam Singh, JJ.

PARKASH CHAND,—*Petitioner.*

versus

S. S. GREWAL, CHIEF SECRETARY, PUNJAB, ETC.,—*Respondents.*

Criminal Original No. 212 of 1970.

February 13, 1974.

Contempt of Courts Act (LXX of 1971)—Section 2—Specific Relief Act (XLVII of 1963)—Section 34—Decree of a Civil Court declaring the dismissal of a Government servant as void and treating him to be still in service—Whether can be construed as enjoining upon the Government to

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reinstate the Government servant and grant him all benefits and privileges including the past and future emoluments—Such decree—Whether executable by civil process—Refusal or failure of the Government or its servant to reinstate the decreeholder—Government servant and grant him all benefits and privileges of the service—Whether amounts to contempt of Court—Contempt of Court committed for disobedience of a decree—Contemnor—Whether can take shelter behind legal advice or pendency of appeal against the decree.

Held, that when the dismissal of a Government servant is declared, by a decree of a civil Court, to be illegal, void or ineffective, a declaration as to his legal status of having remained a Government servant throughout is given as if the order of dismissal never existed. The result is that he is restored to his status of a Government servant and becomes entitled to enjoy all the benefits and privileges including emoluments for the entire period during which his dismissal remained in operation. This decree is to be construed as enjoining upon the Government to reinstate the decreeholder and grant him all benefits and privileges, including his past and future emoluments. It will entitle the Government servant concerned to claim the necessary reliefs from the Government and in case of the failure of the Government to grant those reliefs, to file a suit or other legal proceedings to enforce the rights given to him by the declaratory decree. The Government will, of course, be also entitled to plead such defences as may be open to it to defeat the claim of the Government servant. But it is not open to the Government to challenge the decree or the legal status of the decreeholder as a Government servant to which the decree restores him.

(Paras 5 and 7)

Held, that a declaratory decree cannot be executed as it only declares the rights of the decreeholder *qua* the judgment-debtor and does not, in terms, direct the judgment-debtor to do or refrain from doing any particular act or thing. Since there is no command issued to the judgment-debtor to obey, the civil process cannot be issued for the compliance of that mandate or command. The decreeholder is free to seek his legal remedies by way of suit or otherwise on the basis of the declaration given in his favour.

(Para 8)

Held, that mere inaction on the part of the Government or its servants to take any action to reinstate a decreeholder, whose dismissal has been declared to be void or ineffective and grant him all the benefits and privileges of his service, will not amount to contempt of Court, but if the conduct of the particular Government servant, whose duty it is to give effect to the decree, shows that he has wilfully and deliberately refrained from giving effect to the decision of the civil Court, a case of contempt of

Court may arise. The essence of the offence of contempt of Court is wilful disobedience to any judgment, decree, direction, order or writ of a Court and not mere inaction to give effect to it. The conduct of the alleged contemnor must be wilful showing deliberate and conscious disregard of the Court's order or a despising or disdainful attitude towards the verdicts of Courts. Contempt proceedings cannot be resorted to by a litigant with a view to obtaining relief in accordance with the order or decree in his favour but a serious note is to be taken of a disrespectful or disdainful attitude of a person bound by the decree or order with a view to uphold the majesty, authority and dignity of the Courts of Law and Justice. The refusal or failure of the Government or its servants concerned to take any action to reinstate a decreeholder, who has obtained a declaration in his favour to the effect that the order of his dismissal was void, illegal and of no effect and to grant him all the benefits and privileges of his service flowing from that declaration, will have to be judged in each case in order to find out whether the person complained against has committed an offence of contempt of Court or not.

(Paras 9 and 10)

Held, that where the Court comes to the conclusion that the conduct of a particular person amounts to wilful disobedience of the Court's decree or order, the obtaining of legal advice or the pendency of an appeal against the decree will not ordinarily constitute a good defence. These matters will, however, be relevant to determine whether an offence has been committed or not and for the infliction of a light sentence if the offence is held to have been committed.

(Para 11)

Case referred by Hon'ble Mr. Justice S. S. Sandhawalia to a Division Bench on 17th May, 1971, for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Gurdev Singh and Hon'ble Mr. Justice Gurnam Singh further referred the case on 13th October, 1972, to a Full Bench for decision. The Full Bench consisting of Hon'ble Mr. Justice R. S. Narula, Hon'ble Mr. Justice Bal Raj Tuli and Hon'ble Mr. Justice Gurnam Singh after deciding the question referred to, returned the case on 18th February, 1974, for final disposal to the appropriate Bench.

Petition under Section 3 of the Contempt of Courts Act praying that the respondents be suitably punished under the contempt of Courts Act as they have flouted the orders of the Courts.

C. L. Lakhanpal and D. S. Keer, Advocates, for the petitioner.

I. S. Tiwana, Deputy Advocate-General (Punjab), for the respondent
No. 1.

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JUDGMENT

TULI, J.—The petitioner (Parkash Chand) was recruited as a clerk in the Punjab Public Works Department (Buildings and Roads Branch) in February, 1938, and was promoted as senior clerk in May, 1945, and as Head Clerk in September, 1946. He was dismissed from service on July 19, 1964, while serving as Head Clerk at Hissar. He challenged that order of dismissal by way of a suit for declaration that the order of his dismissal was illegal, *ultra vires*, unconstitutional and *mala fide* and that he continued to hold the post of Head Clerk in the State of Punjab with all the privileges of the service. The learned trial Court found that the order of dismissal had not been passed by the competent authority and, therefore, it was bad in law. He, accordingly, decreed the suit of the petitioner on May 8, 1969. That decree was affirmed by the District Judge in appeal on February 11, 1970. Against the appellate decree, the State of Punjab filed an appeal (R.S.A. 1330 of 1970) in this Court which was dismissed *in limine* by our learned brother Mahajan, J. on September 23, 1970. An application for permission to file a Letters Patent appeal was dismissed by the learned Judge also *in limine*. The Punjab State then moved the Supreme Court under Article 136 of the Constitution for special leave which was granted and the appeal is pending in that Court.

(2) In spite of the decree declaring the dismissal of the petitioner to be illegal, void and of no effect, the Punjab Government did not reinstate him nor paid him the arrears of his salary. Since he was not reinstated, salary for the future was also not paid. The petitioner then filed the present petition under section 3 of the Contempt of Courts Act against Shri Paramjit Singh, I.A.S., Secretary to Government, Public Works Department (B&R) Punjab, Chandigarh, and Shri Kewal Krishan, Chief Engineer, Public Works Department (B&R), on December 23, 1970, wherein after giving the history of the litigation he stated in paras 6 and 7 as under:—

“6. That after the judgment of the Sub-Judge and the District Judge, the petitioner had been continuously requesting orally as well as in writing to the Secretary to Government, P.W.D., B&R, the Chief Engineer, P.W.D., Buildings and Roads, Chandigarh, and also to the Minister concerned, for reinstatement and for payment of salary and allowances, etc. etc. but the respondents have not cared to do any thing in the matter.

7. That the inaction of the respondents to pay the petitioner his due salary and allowances and also to reinstate him is gross contempt of this Hon'ble Court and amounts to lower the prestige of this Hon'ble Court in the minds of the general public as they have *mala fide* flouted the orders of the Courts."

Notice of this petition was issued to the said respondents who filed their written statements in which it was mentioned that the entire case from the stage of enquiry to the filing of appeals was conducted by the Vigilance Department of the Punjab Government and not by the Public Works Department (B&R Branch). The said respondents were not, in any way, concerned with the matter nor had any occasion to pass any order thereon and, therefore, the question of any inaction on their part did not arise. Thereafter, the petitioner amended his petition and impleaded Shri S. S. Grewal, I.A.S., Chief Secretary to Government, Punjab, and Secretary, Vigilance Department, as respondent 1. Shri Grewal filed his affidavit in reply to the petition in which he stated that—

"there is one application written by the petitioner dated 5th November, 1970, and addressed to the Secretary to Government, Punjab, Vigilance Department, Chandigarh, which is available on the record of the case. In this application, the petitioner prayed that his case may be finalised etc. The Government then moved the Hon'ble High Court for permission to file Letters Patent Appeal against the judgment of Hon'ble Mr. Justice Mahajan dated 23rd September, 1970 and that application was dismissed by Hon'ble Mr. Justice Mahajan *in limine* on 11th December, 1970. The record shows that the information about the dismissal was received in the office of the Secretary to the Vigilance Department on 11th January, 1971. After the application of the petitioner referred to earlier, no further application was received in my office."

It has then been pointed out that the Government filed an application for special leave to appeal to the Supreme Court and also obtained the opinion of the Legal Remembrancer in the matter. The Legal Remembrancer gave his opinion on March 2, 1971, that the decree being a declaratory one, the petitioner shall be deemed to be in service till a different verdict is given by the Supreme Court. He

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also opined that a separate order for reinstatement was not necessary and that the non-reinstatement of a person, whose dismissal has been declared illegal, does not amount to contempt of Court. For this opinion, he relied on the decision of a learned Single Judge of this Court (R. P. Khosla, J.) in *Bua Dass Kaushal v. State and others* (1). It has then been pointed out—

“In view of this situation the office has not taken any further action to actually give the charge of the job to the petitioner or to give him the back salary. The Supreme Court judgment is being awaited. If the Supreme Court dismisses the State appeal, action will be taken to give all the reliefs to the petitioner which are permissible under the law.”

It is further stated by Shri Grewal in his affidavit that—

“the deponent holds the Hon'ble High Court in high esteem. It has never occurred to him to show any contempt to the order of the High Court. In fact, the deponent has the highest respect for the High Court and the administration of justice. The deponent has been advised that a declaratory decree is not enforceable and cannot be executed. The deponent, was also advised that during the pendency of the matter before the Supreme Court the question of reinstatement or payment of salary can wait. Even otherwise, if the petitioner is reinstated and later on the Supreme Court accepts the appeal of the Government, the employee concerned would have been granted the pay as also would have worked when he was not entitled to do so, it will become extremely difficult to recover the arrears if the same are paid to him. Moreover, if he is allowed to work, he would also be drawing his salary and that cannot be recovered even if the Supreme Court gives a verdict in favour of the Government because it would then be urged that the employee concerned has got the salary for the job that he has done.”

Lastly, it has been submitted that no *mandamus* has been issued to the State to reinstate the employee concerned and that the declaratory decree merely declares the rights of the persons concerned which can be enforced if the law so permits. There is no decree in

(1) Cr. O. No. 14 of 1965 decided on 26th April, 1965.

favour of the petitioner for any arrears of salary nor is there any decree in his favour ordering the State to reinstate him. All the same, if the Supreme Court gives the verdict against the State, the reliefs which are available to the petitioner in accordance with law would be given to him.

(3) The contempt petition came up for hearing before Sandhwalia, J., and the learned Judge was of the opinion that a number of significant and far-reaching questions arose in the petition for which there was no binding precedent. He, therefore, directed that a larger Bench may be constituted to hear the petition. The questions posed by the learned Judge were as under:—

- (1) Does a declaratory decree granted in favour of a public servant declaring his dismissal to be illegal, void and unconstitutional, entitle him to claim reinstatement to his original post ?
- (2) Would such a public servant be entitled to the payment of his past and future emoluments by virtue of the decree alone ?
- (3) Is such a decree inexecutable by civil process and if so, can resort be had to contempt proceedings against the officials of the State for refusing to give effect to such a decree ?
- (4) Would the fact that an appeal has been preferred by the State against such a decree make any difference, where no stay has been prayed for, or if prayed, has been declined by the appellate Court ?

The petition was then placed for hearing before a Division Bench consisting of Gurdev Singh and Gurnam Singh, JJ. Gurdev Singh, J., wrote the main order in which it is mentioned that the controversy before the Bench centred round the following questions:—

- (1) Whether a decree of a Civil Court declaring the dismissal of a person like the petitioner as illegal and *ultra vires* and treating him to be still in service can be construed as enjoining upon the Government to reinstate the decree-holder and grant him all the privileges of his post, including the arrears of his salary, etc.?
- (2) Whether refusal or failure of the Government to take any action to reinstate such a person and grant him the privileges of that post amounts to contempt ?

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- (3) In case question No. 2 is answered in the affirmative, whether the State officials concerned can take shelter behind the legal advice tendered to them ?

After referring to various judgments, it was observed by Gurdev Singh, J.—

“Whether there has been disobedience of an order or decree of this Court in the case before us, depends upon the question whether the declaratory decree obtained by the petitioner, implies any direction to the State or to its servants to do something to reinstate the petitioner and give him all benefits and privileges, which he was enjoying at the time he was dismissed from service. As there is no clear authority on this matter and on some other questions that arise in this case, I am of the opinion that the matter be settled by a larger Bench. I would, accordingly, refer the following questions to a Full Bench for its opinion:—

- (1) Whether a decree of a Civil Court declaring the order of dismissal of a public servant as void and illegal and treating him to be still in service can be construed as enjoining upon the Government to reinstate the decree-holder and grant him all benefits and privileges, including his past and future emoluments ?
- (2) Whether such a decree is executable by a civil process?
- (3) Whether the refusal or failure of the Government or its servants concerned to take any action to reinstate such a decree-holder and grant him all the benefits and privileges of his service, amounts to contempt of Court?
- (4) If question No. 3 is found in the affirmative, whether the State or its officials concerned can take shelter behind the legal advice tendered to them or the fact that an appeal against the decree is pending, though no order staying the operation of the decree had been obtained.

My learned brother Gurnam Singh, J., also agreed that the case be referred to a Full Bench for the decision of the questions formulated by Gurdev Singh, J., and that is how this petition has come up for hearing before us.

(4) I shall deal with these four questions referred to us by the Division Bench in *seriatim*.

Question 1.

(5) The legal position of a Government servant was stated as under by the Supreme Court in *Roshan Lal Tandon v. Union of India and another* (2) in para 6 of the report:—

“It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emoluments of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee.”

From these observations it is quite clear that when the dismissal of a Government servant is declared to be illegal, void or ineffective, a declaration as to his legal status of having remained a Government servant throughout is given as if the order of dismissal never existed. The result is that he is restored to his status of a Government servant and becomes entitled to enjoy all the benefits and privileges including emoluments for the entire period during which his dismissal remained in operation subject to the law of limitation or other defences open to the Government. Such a question was raised before a Division Bench of this Court in *L. G. Danerum v. State of Delhi* (3), and Falshaw, C.J., speaking for the Bench, made the following pertinent observations:—

“In my opinion if a Government servant sues for a declaration that the termination of his services suffers from such grave defects as to be of no effect, and consequently that

(2) A.I.R. 1967 S.C. 1889.

(3) L.P.A. 90-D of 1961 decided on 8th March, 1963.

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he is to be treated as having been in service throughout, it is not necessary for him to sue for pay since if he succeeds with his declaration, the other consequences will automatically follow."

A learned single Judge of the Allahabad High Court in *Ram Babu Rathaur v. Divisional Manager, Life Insurance Corporation of India and others* (4) stated the position thus:

"Therefore, if because of the provisions of section 21(b) of the Specific Relief Act it is not possible to order the reinstatement of an employee or to specifically enforce the contract of employment, it is not possible to achieve the same result by the expedient of quashing the order of dismissal and thus force the employer to reinstate the petitioner under threat of proceedings for contempt of court if effect is not given to the order of this Court by the employer. Secondly, this Court will assume that the orders passed by it will be obeyed in substance whatever be the form of the order. The logical result of quashing the order of dismissal would be that the petitioner should be reinstated to his office by the respondent."

Reliance was placed on the following observations in *R. v. Speyer* (5):—

"This is the King's Court; we sit here to administer justice and to interpret the laws of the realm in the King's name. It is respectful and proper to assume that once the law is declared by a competent judicial authority, it will be followed by the Crown."

More forceful observations on this matter were made by the Supreme Court in *The State of Bihar v. Rani Sonabati Kumari* (6) in para 44 of the report which are as under:—

"Before concluding, we consider it proper to draw attention to one aspect of the case. It is of the essence of the rule of law that every authority within the State including the Executive Government should consider itself bound by and obey the law. It is fundamental to the system of polity

(4) A.I.R. 1961 All. 502.

(5) 1916—1 K.B. 595.

(6) A.I.R. 1961 S.C. 221.

that India has adopted and which is embodied in the Constitution that the Courts of the land are vested with the powers of interpreting the law and of applying it to the facts of the cases which are properly brought before them. If any party to the proceedings considers that any Court has committed any error, in the understanding of the law or in its application, resort must be had to such review or appeals as the law provides. When once an order has been passed which the Court has jurisdiction to pass, it is the duty of all persons bound by it to obey the order so long as it stands, and it would tend to the subversion of orderly administration and civil Government, if parties could disobey orders with impunity. If such is the position as regards private parties, the duty to obey is all the more imperative in the case of Governmental authorities, otherwise there would be a conflict between one branch of the State polity, viz., the Executive and another branch—the Judicial. If disobedience could go unchecked, it would result in orders of Courts ceasing to have any meaning and judicial power itself becoming a mockery. When the State Government obeys a law, or gives effect to an order of a Court passed against it, it is not doing anything which detracts from its dignity, but rather, invests the law and the Courts with the dignity which are their due, which enhances the prestige of the executive Government itself, in a democratic set-up.”

(6) In *S. R. Tewari v. The District Board, Agra, and another* (7), it was observed as under in para 5 of the report :

“Under the common law the Court will not ordinarily force an employer to retain the services of an employee whom he no longer wishes to employ. But this rule is subject to certain well-recognized exceptions. It is open to the Courts in an appropriate case to declare that a public servant who is dismissed from service in contravention of Article 311 continues to remain in service, even though by so doing the State is in effect forced to continue to employ the servant whom it does not desire to employ. Similarly under the industrial law, jurisdiction of the labour industrial tribunals to compel the employer to

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employ a worker, whom he does not desire to employ, is recognized. The Courts are also invested with the power to declare invalid the act of a statutory body, if by doing the act the body has acted in breach of a mandatory obligation imposed by statute, even if by making the declaration the body is compelled to do something which it does not desire to do."

These observations were reiterated in *Executive Committee of U.P. State Warehousing Corpn., Lucknow v. Chandra Kiran Tyagi* (8). In para 20 of the report it has been said :

"But when a statutory status is given to an employee and there has been a violation of the provisions of the statute while terminating the services of such an employee, the latter will be eligible to get the relief of a declaration that the order is null and void and that he continues to be in service, as it will not then be a mere case of a master terminating the services of a servant."

(7) After careful consideration of the matter, in the light of the judgments referred to above, I am of the opinion that a decree of a civil Court declaring the order of dismissal of a public servant as void and illegal and treating him to be still in service is to be construed as enjoining upon the Government to reinstate the decree-holder and grant him all benefits and privileges, including his past and future emoluments. Such a decree will entitle the Government servant concerned to claim the necessary reliefs from the Government and in case of the failure of the Government to grant those reliefs, to file a suit or other legal proceedings to enforce the rights given to him by the declaratory decree. The Government will, of course, be also entitled to plead such defences as may be open to it to defeat the claim of the petitioner. But, it will not be open to the Government to challenge the decree or the legal status of the decree-holder as a Government servant to which the decree restores him. Question 1 is answered accordingly.

Question 2.

(8) A declaratory decree, in my opinion, cannot be executed as it only declares the rights of the decree-holder *qua the* judgment debtor and does not, in terms, direct the judgment-debtor to do or

to refrain from doing any particular act or thing. Since there is no command issued to the judgment-debtor to obey, the civil process cannot be issued for the compliance of that mandate or command. The decree-holder is free to seek his legal remedies by way of suit or otherwise on the basis of the declaration given in his favour. Question 2 is answered accordingly.

Question 3.

(9) The answer to this question cannot be given in categorical terms. Mere inaction on the part of the Government or its servants to take any action to reinstate a decree-holder whose dismissal has been declared to be void or ineffective and grant him all the benefits and privileges of his service will not amount to contempt of Court, but if the conduct of the particular Government servant, whose duty it is to give effect to the decree, shows that he has willfully and deliberately refrained from giving effect to the decision of the civil Court, a case of contempt of Court may arise. The present petition was filed under section 3 of the Contempt of Courts Act, 1952, which did not contain any definitions of the phrase 'contempt of Court' or 'civil contempt' or 'criminal contempt', with the result that it was left to the learned Judge dealing with the matter to come to the conclusion whether contempt had been committed or not in a particular case. The Contempt of Courts Act, 1971, has now defined 'contempt of Court', 'civil contempt' and 'criminal contempt' and those definitions can serve as a good guide for deciding whether any contempt was committed by the respondents in this case. In that Act, 'Contempt of Court' is defined in section 2 to mean 'civil contempt' and 'criminal contempt'. 'Civil contempt' has been defined to mean wilful disobedience to any judgment, decree, direction, order, writ, other process of a Court or wilful breach of an undertaking given to a Court. In view of this definition of civil contempt, wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court has to be proved. What amounts to wilful disobedience has been explained by the Supreme Court in *S. S. Roy v. State of Orissa and others* (9) as under:—

"The error must be a wilful error proceeding from improper or corrupt motives in order that he may be punished for contempt of Court. On the facts found, the appellant

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can certainly be said to have acted without proper care and caution but there is nothing on the record to suggest any wilful culpability on his part and it has been expressly held by the learned Judges of the High Court that he was not actuated by any corrupt or dishonest motive. In these circumstances, we think that the order passed by the High Court cannot be supported."

In the case in hand, Shri S. S. Grewal has explained that before any decision could be made by him on the petitioner's letter dated November 5, 1970, he filed the present petition in this Court giving no time to the Government to take a decision. The Government was of the view that an appeal should be filed in the Supreme Court which was actually filed and is still pending. The fact that special leave to appeal was granted by the Supreme Court shows that there was some substance in the plea raised by the State Government. It cannot, therefore, be said in the circumstances of this case, that Shri Grewal wilfully disobeyed the decree of the Court and thus committed contempt of Court. A similar matter came up before my learned brother Narula, J., in *Raghunath Rai v. P. Sahai and another* (10) and the learned Judge in that case held :

"Inasmuch as respondent No. 2 was not a party to the decree, and no process was ever issued to him by any Court to do any particular thing, and the decree itself was not executable, but merely declaratory and the fact that an appeal against the decree was pending in this Court and it was only on the legal advice received by the Divisional Superintendent from the experienced Law Officer of the Railway Administration, that he did not immediately direct payment of the salary of the petitioner, it is impossible to hold that respondent No. 2 is guilty of wilful disregard of the decree of the lower appellate Court declaring the dismissal of the petitioner from service to be wrongful or unconstitutional. No question of disobedience of the decree can arise in this case as the said decree does not call upon the Union of India to do any particular thing. There is no doubt that neither the respondent nor anyone else concerned in the matter can refuse to abide by the said decree or disregard it. Though

(10) 1968 Curr. L.J. 704.

I am in substantial agreement with the general propositions of law laid down by the Allahabad High Court in *Ram Babu Rathaur's case* (4) (supra), I do not think it either possible or advisable to extend that analogy to the extent of enabling suitors to substitute contempt proceedings for execution proceedings. I think that contempt proceedings cannot be used as a lever for obtaining speedy execution of even executable decrees instead of resorting to the normal procedure prescribed by law for executing such decrees. Indeed there does not appear to be any process available in law to execute a mere declaratory decree. Nor can mere delay in implementing a decree be deemed in all cases to amount to a contemptuous disregard of the decree. In *Rani Sonabati Kumari's case* (6) (supra), the Supreme Court was concerned with the violation of an injunction. But some of the observations of their Lordships do indicate that wilful disregard of a declaratory decree may in some cases amount to contempt of the Court which passed that decree."

With respect, I find myself in complete agreement with the view expressed by him. The proceedings for contempt of Court cannot be used as a lever to obtain a relief in accordance with the decree from the judgment-debtor. These proceedings have to be resorted to uphold the dignity of the Court. Dua, C.J., speaking for a Division Bench of the Delhi High Court, in *Gian Chand Bali v. L. P. Singh* (11) observed as under :—

"Contempt of Court, it may be remembered, is a summary process and has to be used only from a sense of duty and under pressure of public interest. These summary powers, if they are to be effective and are to uphold the dignity of the Court, must not be used too readily and too frequently, without compelling reasons, at the instance of aggrieved litigants who, more often than not, are inspired by a desire to utilise the machinery of these powers for enforcing their civil rights. These powers have to be used only in serious cases where deliberate contempt is clearly established on the part of the contemner. The great importance of upholding the dignity,

(11) 1968 Delhi Law Times 135.

power, prestige and authority of the Courts of law and justice in a democratic society founded on Rule of Law, and of implicit obedience to the orders of the Courts, can be minimised only at the risk of weakening the foundations of our constitutional set-up and correspondingly endangering our very democratic existence. This Court would accordingly be failing in its constitutional obligation to ignore disobedience of its orders or of those of its subordinate Courts, from any quarter in this Republic, however high. But the usefulness of this power necessarily depends on the wisdom and restraint with which it is exercised. Merely because the alleged contemners in the present case on some occasion represented that the petitioner was a new entrant, possibly for the reason that the appeal presented by the Union of India was still awaiting disposal in the High Court, it cannot be said that they have committed punishable contempt of Court by disobeying the trial Court's decree. Contempt of Court, it is undeniable, lies, broadly speaking, in despising of the authority, justice or dignity of the Court, and the persons whose conduct tends to bring the authority and administration of law into disregard or disrespect or interferes with or prejudices the parties or witnesses, or tends to obstruct the Court in the discharge of its duties, is normally understood to be guilty of contempt; and it is equally undeniable that this Court would be quick to take all lawful steps against the guilty for vindicating the Court's authority.

* * * *

Without expressing any opinion as to whether or not the respondents could have adopted a more accommodating attitude towards the petitioner—a point on which something may be said in the petitioner's favour — we are certainly not satisfied that they have committed any contempt of Court by disobeying the decree made in favour of the petitioner by the Subordinate Judge in question.”

In that case, the petitioner had obtained a declaratory decree from the Court of a Subordinate Judge declaring him to be “a permanent Government servant with effect from 1st March, 1930”. The Union of India, which was one of the defendants to the suit, filed

an appeal in the High Court and pending the decision of that appeal did not pass any orders giving effect to that declaration. The petitioner in that case was in the Police Department in permanent capacity in the North West Frontier Province since March 1, 1930. He was transferred to Delhi Police Service on August 13, 1947, and joined duty as Deputy Superintendent of Police at Delhi in substantive/permanent capacity. He was then deputed to Himachal Pradesh by the Government of India to serve as an Excise and Taxation Officer in August, 1952. The Himachal Government treated him as a new entrant in Government service with effect from August 29, 1952, when he assumed charge of the post of Excise and Taxation Officer. This order of the Himachal Government led the petitioner to file the suit for a declaration that he was a permanent Government servant with effect from March 1, 1930. As a consequence of that decree, the Himachal Government did not withdraw its earlier order nor passed any fresh order giving effect to that declaration in spite of various letters written by the petitioner. It was in that context that a petition under section 3 of the Contempt of Courts Act was filed against various officers of the Government wherein the above observations were made. The learned Chief Justice further observed in the last paragraph of the judgment—

“Proceedings for Contempt of Court must not be treated as a substitute for execution proceedings enforcing the decrees and orders made in favour of the decreeholders.”

(10) From the above discussion, it is abundantly clear that the essence of the offence of contempt of Court is wilful disobedience to any judgment, decree, direction, order or writ of a Court and not mere inaction to give effect to it. The conduct of the alleged contemner must be wilful showing deliberate and conscious disregard of the Court's order or a despising or disdainful attitude towards the verdicts of Courts. It has to be remembered that contempt proceedings cannot be resorted to by a litigant with a view to obtaining relief in accordance with the order or decree in his favour but a serious note is to be taken of a disrespectful or disdainful attitude of a person bound by the decree or order with a view to uphold the majesty, authority and dignity of the Courts of Law and Justice. The refusal or failure of the Government or its servants concerned to take any action to reinstate a decree holder, who has obtained a declaration in his favour to the effect that the order of his dismissal

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was void, illegal and of no effect and to grant him all the benefits and privileges of his service flowing from that declaration, will have to be judged in the light of the observations made above in order to find out whether the person complained against has committed an offence of contempt of Court or not. Question No. 3 is accordingly answered in the above terms as a categorical answer is not possible.

Question 4.

(11) The answer to this question depends on the conduct of the official concerned. If the Court comes to the conclusion that the conduct amounts to wilful disobedience of the Court's decree or order, the obtaining of legal advice or the pendency of an appeal will not ordinarily constitute a good defence. These matters will, however, be relevant to determine whether an offence has been committed or not and for the infliction of a light sentence if the offence is held to have been committed. This matter was considered by a Division Bench of this Court (G. D. Khosla, C.J. and Dulat, J.) in *S. Kirpal Singh and another v. The State and another* (12). In that case, a learned Single Judge of this Court had set aside the order of dismissal of Ram Niwas made by the Market Committee on the ground that his dismissal was illegal. Ram Niwas then asked the Committee to allow him to take charge of the post of Secretary. Some correspondence ensued between the Committee and Ram Niwas and the Committee obtained the advice of its counsel. Upon receiving his advice, Ram Niwas was informed that the order of his suspension still remained in force and that the enquiry would continue because the High Court had only set aside the order of dismissal and not the order of suspension. It was on the basis of this last communication from the Committee and the refusal of the Chairman and the Vice-Chairman of the Market Committee to give charge of the office of the Secretary to Ram Niwas that led the latter to file a petition under section 3 of the Contempt of Courts Act against the Chairman and the Vice-Chairman of the Committee in this Court. Capoor, J., before whom the matter came up, considered the facts of the case and took the view that wrong advice of a counsel in a case of this type could not exculpate the offenders and that the appellants had deliberately flouted the orders of this

(12) L.P.A. 246 of 1957 decided on 10th February, 1960.

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Court because they did not wish to reinstate Ram Niwas. He, therefore, found them guilty and sentenced them to two months' simple imprisonment each. The appellants filed an appeal under clause 10 of the Letters Patent and the plea taken on their behalf was that they had acted *bona fide* on the advice of their counsel and, therefore, did not commit any contempt of Court. With regard to that plea, the learned Judges of the Division Bench observed as under:—

“In view of the advice tendered by Sardar Tirath Singh it cannot be said that the appellants were deliberately flouting the order of this Court or even trying to circumvent it. * * * * *

* * * * *

It cannot be said that the present appellants are guilty of any such offence. The most that can be said against them is that they did not wish to reinstate Ram Niwas immediately and sought the advice of the counsel how best they could proceed with the enquiry and then dispense with his services. This cannot be said to be deliberate disobedience of the orders of this Court or even an evasion of the orders made by this Court. I am of the view that the appellants have not committed any contempt and that they acted *bona fide*.

This judgment clearly supports the answer that I have given above to this question.

(12) With these answers to the questions referred the case shall now be placed for final disposal before the appropriate Bench.

February 18, 1974.

NARULA, J.—I entirely agree and am unable to add anything useful.

GURNAM SINGH, J.—I entirely agree and have to add nothing.

K.S.K.