

(2008) 10 AHC CK 0028
In the Allahabad High Court

Abhai Nath Tiwari

APPELLANT

Vs

U.P. Power Corporation Limited

RESPONDENT

Date of Decision : 14-10-2008

Acts Referred:

Contempt of Courts Act, 1971 — Section 19
Limitation Act, 1963 — Section 5

Citation : (2008) 6 AWC 6373

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard Sri Faujdar Rai, learned Counsel for the petitioner-applicant and perused the record.

2. By means of the aforesaid Modification Application the applicant has prayed for issuance of appropriate direction on the basis of judgment dated 17.4.2006 passed in Civil Misc. Writ Petition No. 68196 of 2005 and to pass any such other and further interim order which this Hon''ble Court may deem fit and proper under the facts and circumstances of the case.

3. The writ petition was filed for the following relief.

(i) Issue a writ, order or direction in the nature of certiorari for quashing the impugned order dated 20/22.9.2005 (Annexure-7 to the writ petition) passed by respondent No. 1.

(ii) issue a writ of mandamus, order or direction in the nature of mandamus commanding the respondents to consider the petitioner's afresh for appointment in U.P. Power Corporation at Allahabad similar to the appointment of Sri Pramod Kumar Srivastava.

(iii) Any other writ order or direction which this Hon''ble Court may deem fit and proper under the facts and circumstances of the present case.

4. No counter affidavit was filed by the Respondents U.P. Power Corporation. Even after stop order dated 27.10.2005 opportunity was granted by the Court on 16.1.2006 and 14.2.2006 for filing counter affidavit but even then it was not filed and as such the Court after noticing the facts averred in the writ petition decided the writ petition in terms of the judgment rendered in Civil Misc. Writ Petition No. 23139 of 1997, Pramod Kumar Srivastava v. State of U.P. and Ors. The relevant portion of the judgment dated 17.4.2006 is as under:

The case was then listed on 22.3.2006. When the case was taken up in the revised list it was passed over on the engagement slip of Sri R.D. Khare, learned Counsel for the respondents, and was ordered to be put up after lunch recess. The case was taken up after lunch recess and learned Counsel for the parties were heard.

Since no counter affidavit has been filed despite repeated grant of time to file the same, in the circumstances, the averments made in the writ petition are taken to be correct.

In my opinion, there can be no discrimination amongst similarly situated persons, hence the petitioner also could not have been discriminated with other similarly situated employees. In the circumstances, the writ petition is decided in terms of the judgment rendered in Writ Petition No. 23139 of 1997, Pramod Kumar Srivastava v. State of U.P. and Ors. No order as to costs.

5. The contention of learned Counsel for the applicant is that the writ petition was decided on two grounds firstly that the applicant has claimed parity with one Pramod Kumar Srivastava who had worked with the applicant as Daily Wager. According to him, the petitioner has been discriminated in the matter of appointment which is apparent from the list prepared by the department on 21.2.1997. It is established that the petitioner applicant having been placed at Sl. No. 1 while Pramod Kumar Srivastava at Sl. No. 4 had better claim than Sri P.K. Srivastava if not on parity.

6. The second ground is that the representation of Pramod Kumar Srivastava was rejected by order dated 17.1.2004 on merits but by the same order taking into consideration including the humanitarian consideration and he was issued appointment letter it has not been done in the case of the petitioner.

7. It is urged by Sri Faujdar Rai, learned Counsel for the applicant that the applicant claimed appointment on parity with Sri Pramod Kumar Srivastava by application dated 18.5.2006 accompanied by order dated 17.4.2006 passed in the writ petition; that as the order and judgment dated 17.4.2006 passed in the writ petition was not complied with by the respondents U.P. Power Corporation the petitioner applicant filed Civil Misc. Contempt Application No. 4446 of 2006 in which notices were issued to the respondents U.P. Power Corporation. The respondent Corporation in reply to the show cause notice had passed a fresh order dated 12.12.2006 denying the claim of parity of the applicant with Sri Pramod Kumar Srivastava as well as by the impugned order dated 20/22.9.2005.

In the contempt application vide order and judgment dated 16.4.2007 the Court directed the applicant to approach appropriate forum for assailing the orders dated 12.12.2006 and 30.3.2007, consigning the contempt petition to records.

8. Aggrieved by the aforesaid order and judgment dated 16.4.2007 the applicant filed Contempt Appeal No. 12 of 2007, u/s 19(1) of the Contempt of Courts Act which was also rejected by the Division Bench vide order and judgment dated 17.5.2007 holding that there is no violation of the order dated 17.4.2006 as the same was disposed of in terms of the order passed in the writ petition filed by Sri Pramod Kumar Srivastava. It was also observed by the Division Bench in the Contempt Appeal that the Court in the writ petition had only directed the respondents to decide the representation without deciding the claim on merit and as such it can not be said that the respondents have violated the order. While deciding the Contempt Appeal the Division Bench has also considered as the aspects of the matter as urged by the learned Counsel for the petitioner in the writ petition as well as before the Contempt Court in the contempt petition. The relevant portion of the judgment and order in Contempt Appeal No. 12 of 2007 is as under:

Appellant filed Writ Petition No. 20203 of 2001 claiming his appointment as Junior Engineer in pursuance of advertisement issued by the Corporation in the year 1999. It appears that the appellant had also filed Writ Petition No. 30063 of 1999, which was pending claiming his regularization. One Sri Pramod Kumar Srivastava, who was working as daily wage employee like the appellant on the post of Draftsman with the Executive Engineer, U.P. Power Corporation Limited, Allahabad (hereinafter referred to as the Corporation) filed Writ Petition No. 23139 of 1999. The aforesaid writ petition was disposed of by this Court vide order dated 8.10.2002 with the direction to the Corporation to decide his representation within three months. It appears that the Corporation has allowed the representation of Sri Pramod Kumar Srivastava by appointing him in a minimum pay scale payable to daily wage employee under the Minimum Wages Act. Having come to know about the order of the Corporation in the case of Sri Pramod Kumar Srivastava, appellant filed application dated 6.5.2004 in Writ Petition No. 20203 of 2001. It may be mentioned here that the writ petition No. 20203 of 2001 filed by the appellant was disposed of by this Court vide order dated 15.2.2005 directing the Corporation to decide the representation by a reasoned and speaking order within two months from the date of the representation. Petitioner filed representation on 9.3.2005, which was rejected. Appellant thereafter filed Writ Petition No. 68196 of 2005, which was disposed of by this Court vide order dated 17.4.2006. Writ Petition was disposed of in terms of decision in Writ Petition No. 23139 of 1997, Pramod Kumar Srivastava v. State of U.P. and Ors.

Contempt Petition No. 4446 of 2006 has been filed by the appellant on the allegation that the order of this Court dated 17.4.2006 has not been complied with and the appellant has not been given appointment in a minimum pay scale

as was provided to Sri Pramod Kumar Srivastava.

During the pendency of the said contempt petition the respondent Corporation by an order dated 12.12.2006 rejected the claim of the appellant. During the pendency of the contempt petition, the Court on 20.2.2007 while hearing the said petition expressed the opinion that his representation has not been decided correctly and thus directed the respondent No. 1 to consider it a fresh. The respondent No. 1 considered the matter again and rejected it vide order dated 20.3.2007. The contempt petition has been dismissed vide judgment and order dated 16.4.2007 accepting the reasoned order dated 20.3.2007. Hence this appeal.

Learned Single Judge while rejecting the contempt petition has considered all the aspects and recorded a finding of fact that the respondent No. 1 while passing the order dated 20.3.2007 had applied his mind and examined the matter taking into consideration all required documents and all issues and held that there was no similarity between the appellant and the said Sri Pramod Kumar Srivastava. A finding has also been recorded by respondent No. 1 that the appellant had worked for 51 days as a muster roll employee, therefore, there was no wilful defiance of the judgment and order of this Court.

We have heard Sri Chandra Kumar Rai, learned Counsel for the appellant and Sri R.D. Khare for the respondent Corporation.

Sri Rai could not place any material before us to know that the appellant was similar to that of Sri Pramod Kumar Srivastava. Moreover, the judgment and order dated 17.4.2006 of this Court reveals that the writ petition filed by the appellant was disposed of in terms of the judgment and order in case of Pramod Kumar Srivastava. While deciding the case of Sri Pramod Kumar Srivastava in Writ Petition No. 23139 of 1997 this Court only directed the respondents to decide the representation without determining his claim on merit. It appears that while deciding the representation of Sri Pramod Kumar Srivastava, necessary relief had been granted to him and he has been appointed, by not appointing the appellant in pursuance of the judgment and order dated 17.4.2006, it cannot be stated that the respondents have violated the order. Further, the impugned order also reveals that the appellant's representation has been rejected after examining all the issues and it was found that the case of the appellant was not similar to that of Sri Pramod Kumar Srivastava and thus, there was no discrimination.

In view of the above, we do not see any cogent reason to interfere with well reasoned judgment and order of the learned Single Judge. The Contempt Appeal is accordingly dismissed.

9. It appears from Annexure-5 to the Modification Application that as directed by the Contempt Court the representation of the petitioner applicant had been decided taking into consideration the ground of parity etc. with Sri Pramod Kumar Srivastava vide order dated 20th March, 2007. The relevant portion of the order dated 20th March, 2007 is as under:

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bygkckn fo|qr izns"k midze esa fnukad 12-11-84 ls 10-11-85 rd izf"k{kq ? vizSfUVI? ds :i esa Jh vt; ukFk frokjh }kjk izf"k{k.k fd;k x;k gS ,oa mDr izf"k{k.k ds vk/kkj ij voj vfHk;Urk in ij fu;qfDr gsrq Jh frokjh }kjk ekuuh; mPp U;k;ky; bygkckn eas ;kfpdk la[;k 2003@2001 fuosf"kr dh x;h Fkh ftlesa ekuuh; mPp U;k;ky; ds vkns"k fnukad 15-2-06 ds ifjis{; ess Jh vHk; ukFk frokjh }kjk izLrqr izR;kosnu fnukad 9-3-2005 dk fuLrkj.k dkjiksjs"ku ds vkns"k la[;k ,&1812& vjk0&09c@ikdkfy@2005 fnukad 20 @ 22-9-2005 }kjk fd;k tk pqdk gSA

2- Jh vHk; ukFk frokjh us izf"k{k.k ds ckn bygkckn fo|qr izns"k midze ds v/khu ek?kesyk v)ZdqEHk rFkk gM+rky dh vof/k esa dk;Z fd;k gS ftls badkj ugh fd;k tk ldrk gSA

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izkIr lwpukuqlkj Jh vHk; ukFk frokjh dks o"kZ 1994 esa 20 fnu ?fnukad 12-12-94 ls 31-12-94 rd? ,oa o"kZ 1995 esa 31 fnu ?1-1-05 ls 31-12-2005 rd? ekLVj jksy j[kk x;k A Jh frokjh }kjk fdlh Hkh gM+rky esa dk;Z fd;s tkus dk dksbZ izekf.kd vfHkys[k [k.Mh; dk;kZy; esa miyC/k ugh gS A

3- nSfud osru Hkksxh deZpkjh;ksa ds fu;fepdj.k gsrq fo|qr lsok vk;ksx ls i=kpkj dk dksbZ izek.k ugh gS vkSj u gh i=kpkj fd;k x;k gS A

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;g iw.kZr% Li"V gS fd Jh vHk; ukFk frokjh fnukad 12-11-84 ls 10-11-85 rd dh vof/k esa izf"k{kq ?vizSfUVI? ds :i esa izf"k{k.k izkIr fd;k gS tcfd Jh izeksn dqekj JhokLro }kjk Vadd@dk;Zjr lgk;d ds in ij nSfud osru Hkksxh ds :i esa dk;Z fd;k x;k A

4- vf/k"kkHh vfHk;Urk fo|qr uxjh; forj.k [k.M] jkeckx] bykgkckn ds i=ad 243@ fo0 u0 fo0 [ak0 @ fnukad 21-2-97 }kjk v/kh{k.k vfHk;Urk fo|qr uxjh; e.My bykgkckn dks Hksth x;h 21 vH;FkhZ;ks dh lwph ds dze la[;k&1 ij Jh vejukFk frokjh iq= Jh ukxsUnz ukFk frokjh dk uke mfYyf[kr gS rFkk Jh frokjh us ek?k 1994 esa pkSdhnkj ,oa v)Z dqEHk 1995 esa fctyh feL=h ds :i es dk;Z fd;k A

5- Jh frokjh dks i=ad 243@ fo0 u0 fo0 [ka0@ jkeckx fnukad 21-2-97 esa vH;FkhZ;ks dh lwph esa budk uke dze la0 1 ij e.My dk;kZy; Hkstk x;k gS] fdUrq bUgs dc vkSj D;ks nSfud osru Hkksxh ds :i es fu"dkflr fd;k x;k bldk dksbZ izek.k miyC/k ugh gS A

6- Jh frokjh us VsDuhf"k;u izf"k{kq ds :i esa fnukad 12-11-94 ls 11-10-85 rd izf"k{k.k izkIr fd;k Fkk tcfd Jh izeksn dqekj JhokLro Vadd@dk;kZy; lgk;d ds in nSfud osru Hkksxh dh :i es dk;Z fd;k gS A

5- ekuuh; mPp U;k;ky; bykgkckn ds mi;qZDr vkns"kks fnukad 20-02-2007 ds vuqikyu es {ks=h; vf/kdkjh;ks ls izkIr vk[;k dk ijh{k.k fd;s tkus ij ;g ik;k x;k fd Jh vHk; ukFk frokjh }kjk fnukad 12-11-84 ls 10-11-85 dh vof/k esa izf"k{kq vizsfUVI ds :i esa bykgkckn fo|qr izns"k midze ds vUrZxr izf"k{k.k izkIr fd;k x;k ,oa 12-12-94 ls 31-1-95 rd ?dqy bD;kou fnol? ekLVj jksy ij dk;Z fd;k x;k gSA mDr ds vk/kkj ij Jh frokjh fu;kstu ikus ds gdnkj ugh gS A

6- mijksDr rF;ks ls n`f"Vxr ;g iw.kZr;k Li"V gS fd Jh frokjh dk izdj.k Jh izeksn dqekj JhokLro ls loZFkk fHkUUk gS A Jh vHk; ukFk frokjh dk ;g dFku fd mudk izdj.k Jh izeksn dqekj JhokLro ds vuq:i gS dnkfpr Lohdk;Z ugh gS] D;ksfd Jh vHk; ukFk frokjh }kjk vius izR;kosnu fnukad 18-5-2006 esa ,sls dksbZ rF; ,oa vfHkys[kh; lk{; izLrqr ugh fd;s x;ss gS ftlls ;g fl) gks lds fd mudk izdj.k izeksn dqekj JhokLro ds leku gh gS A Jh izeksn dqekj JhokLro ds izdj.k ds rF; loZFkk fHkUUk tSlk fd Jh vHk; ukFk frokjh ds izR;kosnu fnukad 18-05-2006 ds lkFk layXu dkjksjs"ku ds dk;kZy; Kki fnukad 17-01-2004 ls Li"V gS A

vr% Jh vHk; ukFk frokjh dk fu;kstu Jh izeksn dqekj JhokLro fd;k tkuk u rks fu;ekuqdwy gS vkSj u gh QyLo:i IE;d~ ijh{k.kksijkUr Jh vHk; ukFk frokjh }kjk fn;k x;k izR;kosnu fnukad 18-05-2006 ,rn~}kjk iqu% fujLr fd;k tkrk gS A^^

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10. The learned Counsel for the applicant has also relied upon the judgment rendered in Union of India and Ors. v. Subedar Devassy PV (2006) 1 745 ULBEC 745.

11. In the aforesaid backdrop of the case the prayer of the petitioner applicant in

the modification application is to be considered. The prayer is as under:

It is therefore, most respectfully prayed that this Hon''ble Court may graciously be pleased to issue appropriate direction on the basis of judgment dated 17.4.2006 passed by Hon''ble Mr. Justice Rakesh Tiwari, in writ petition No. 68196 of 2005, and/or to pass any such other and further interim order which this Hon''ble Court may deem fit and proper under the facts and circumstances of the case.

12. It is apparent from perusal of the prayer in the modification application that the petitioner has not specifically stated what modification is required in the order and judgment dated 17.4.2006 passed by this Court in the writ petition. He has only prayed for "appropriate direction on the basis of judgment dated 17.4.2006 passed in the writ petition and for passing any such other and further interim order which this Hon''ble Court may deem fit and proper under the facts and circumstances of the case." The order and judgment dated 17.4.2006 was passed only on the basis that in the circumstances, no counter affidavit had been filed and on the statement of the petitioner's Counsel that the case of the petitioner was similar to that of Sri Pramod Kumar Srivastava, hence he was entitled to parity.

13. The question of parity has been considered by the Contempt Court as well as by the Division Bench in Contempt Appeal. It is also apparent from the decision of the representation that the Corporation has decided the question of parity of the petitioner as claimed by him with Sri Pramod Kumar Srivastava and has come to the conclusion that the case of the petitioner was not similar, hence he was not entitled to any benefit.

14. In so far as the prayer for "such under the other and further interim order which this Hon''ble Court may deem fit and proper under the facts and circumstances of the case is concerned", it is noted that the writ petition has already been finally decided vide order and judgment dated 17.4.2006 as is apparent from the operative portion of the aforesaid judgment, hence there is no question of passing any interim order as prayed by the applicant in the modification application.

15. There can not be an interim order passed in the modification application where the writ petition stands finally decided, rather, if any interim order which has been granted in the writ petition it would merge in the final order and the judgment passed in that writ petition. Therefore, the prayer for granting any such other and further interim order which this Hon''ble Court may deem fit and proper under the facts and circumstances of the case also cannot be granted to the petitioner.

16. Admittedly, the petitioner applicant has neither filed review petition nor has challenged the order by which his representation has been decided setting the controversy at rest as directed by the order passed in the Contempt Petition. The Apex Court while dealing with the matter regarding power of the Contempt Court

in the case of Union of India (supra) held that the Tightness or the wrongness of the direction of the Court cannot be gone into contempt applications and that the Court cannot traverse beyond the direction/order under contempt. The Court can not test the correctness or wrongness of the order nor it can add or delete any directions. It has rightly been noted by the Division Bench in the contempt application that there is no violation of order and judgment dated 17.4.2006. There was no positive direction given by this Court to give appointment to the petitioner.

17. The writ petition was decided in terms of order and judgment dated 17.4.2006 passed in the case of Pramod Kumar Srivastava and the claim of the petitioner would have had force if he could have established his parity with him. However, the matter of parity was got decided by the petitioner pursuant to the order passed in the contempt petition. At that time he neither objected to it nor brought to the notice of the Court the judgment in the case of Union of India (supra) on which he now places reliance upon. On merits of the writ petition nothing was observed by this Court.

18. Therefore, technically the petitioner had to establish his case for parity with Sri P.K. Srivastava, since he claims parity with him and for this reason the contempt application as well as contempt appeal filed by the petitioner were dismissed.

19. It is a matter of record that Special Appeal No. 1023 of 2007 along with Section 5 of the Limitation Act has been filed by the respondent U.P. Power Corporation, therefore, the Tightness or the wrongness of the order dated 17.4.2006 passed by this Court deciding the writ petition will be subject matter of the appeal. The application for modification of the order and judgment dated 17.4.2006 is not only misconceived but is also liable to be dismissed.

20. For the reasons stated above, the modification application is rejected.