

**(2009) 11 AHC CK 0051**  
**In the Allahabad High Court**

Mukesh Shukla and Others

APPELLANT

Vs

Fateh Bahadur Singh and Others

RESPONDENT

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**Date of Decision :** 13-11-2009

**Acts Referred:**

**Citation :** (2009) 11 AHC CK 0051

**Hon'ble Judges :** Devendra Pratap Singh, J

**Bench :** Single Bench

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## Judgement

Devendra Pratap Singh, J.—The following order was passed on 24.10.2009:

The applicant along with large number of persons who were dependants of police personnels dying in harness had claimed compassionate appointment on the post of Sub Inspector/Platoon Commander on the basis of their educational and other qualifications. This claim was rejected which was subjected to challenge in several writ petitions including Writ Petition No. 4746 of 2008 connected with other petitions and after exchange of pleadings this Court vide order and judgment dated 27.8.2008 turned down the stand taken by the opposite parties and directed them to consider the applicants ignoring the resolution of the Recruitment Board and the said exercise was directed to be completed within three months from the date of production of a certified copy of this order. Despite service the orders were not complied forcing the applicants to file the present contempt petition.

2. Upon issuance of notice, initially a stand was taken that the judgment is in the process of compliance but that stopped midway forcing this Court to pass the following order on 25.5.2009:

Heard Sri Ashok Khare, learned Senior Advocate, assisted by Sri Siddarth Khare, on behalf of the applicants and Sri K.R. Singh, learned Standing counsel representing opposite party No. 3 to whom alone notice was issued. It has further been stated that it is the opposite party No. 3 who has to comply with the judgment of this Court, non compliance of which is alleged. Learned Single Judge

of this Court vide judgment and order dated 07.08.2008 allowed the Writ Petition Nos. 4746 of 2008 and 63543 of 2008 filed by Mukesh Shukla and others and Amit Chaudhary respectively. The operative portion of the aforesaid judgment reads as follows:

With the aforesaid direction both the writ petitions are allowed. Respondent No. 3 is directed to consider the petitioners for appointment on compassionate basis in accordance with law ignoring the above resolution of Recruitment Board, expeditiously without any further delay, preferably within a period of three months from the date of production of a certified copy of this order before him. There shall be no order as to costs.

3. Following the said decision large number of writ petitions have been filed, which were allowed in the light of the judgment and order dated 07.08.2008.

4. When the order of this Court was not complied with all the petitioners filed present contempt petition seeking non compliance of the judgment of the leading case dated 07.08.2008 and also the subsequent judgments passed in similar writ petitions filed by other parties. It has further been mentioned that the view taken by the learned Single Judge in the case of Mukesh Shukla decided on 07.08.2008, had also been approved and followed by the Division Bench of this Court vide judgment and order dated 17.12.2008 passed in Special Appeal No. 1860 of 2008-Anwar Ahmad Vs, State of U.P. and Ors., copy of which has been annexed as Annexure 10 to the affidavit. It has further been submitted by Sri Khare, learned Senior Advocate that the State Government has already taken a decision dated 17th October, 2008 not to institute any Special Appeal against the judgment of the learned Single Judge, the said letter has been annexed as Annexure 11 to the affidavit. Further the Additional Superintendent of Police (Establishment), U.P. Police Headquarters, Allahabad had issued a letter dated 16.12.2008 referring to the decision of the State Government that the proceedings for considering the eligibility of the dependants of the deceased Government servant for the post of Sub Inspector/Palatoon Commanders have already started. When no compliance was made the contempt application was filed in which notices were issued to opposite party No. 3. On 18th May, 2009, the opposite party No. 3 had filed an affidavit along with an application to dismiss the present contempt application. In the affidavit the ground which has been taken for non compliance of the judgment of this Court is that in a similar matter another Hon''ble Judge of this Court vide judgment and order dated 29th January, 2009 passed in Writ Petition No. 4466 of 2009-Lalit Sirohi v. State of U.P. and Ors. has disagreed with the judgment in the case of Mukesh Shukla and Raj Kumar Pundir and has referred the matter to the larger bench to decide the questions framed therein.

5. Sri K.R. Singh, learned Standing counsel, relying upon the decision of this Court of another Hon''ble Judge referring the matter to the larger bench has submitted that the hearing of the contempt application be deferred till a decision is taken by the larger bench. The submission of Sri K.R. Singh cannot be

accepted for the following reasons.

6. Firstly, that the decision in the writ petition of the applicants against the State Government is final, as on date, no appeal has been filed against the same and in fact the State Government has already expressed its opinion that no appeal need be filed. Further the State Government has already taken a decision to implement judgment of this Court in the case of the applicants. The other reason is that on account of the mere disagreement by another Hon"ble Judge the judgment in the case of the applicants and the State stood annulled. Even the larger bench would be deciding the question of law referred to. This will also not undo the decision already arrived at inter parties and at best for future applicability of the effect of the judgment as precedent could be taken away in case larger bench so decides. Further there is no mention in the affidavit that there are any further directions of the State Government after 17.10.2008. The defence taken is the brainchild of the opposite party No. 3. The opposite party No. 3 is bound by the decision of this Court as also decision taken by the State Government and must necessarily comply with the same. His failure to do so amounts to clear disobedience not only of the judgment of this Court but also of the decision taken by the State Government.

List this case on 20th July, 2009.

7. On the said date the opposite party No. 3 shall remain present before this Court for framing of charges. It is however open to the opposite party No. 3 to make compliance in the meantime and file affidavit of compliance. Even if affidavit of compliance filed, the personal appearance of opposite party No. 3 would not stand exempted.

8. Copy of this order may be provided to Sri K.R. Singh, learned Standing counsel within 72 hours for necessary compliance free of costs."

9. Thereafter the opposite party No. 3 filed a discharge application dated 18.7.2009 supported by an affidavit of compliance stating therein that out of the applicants 28 have been selected and they would be sent for basic training course to the concerned Ranges. Acting upon the promise and undertaking handed out by the opposite party No. 3 his personal presence was dispensed with on 20.7.2009 and even though the case was listed on several occasions, no further affidavit was filed showing complete compliance of the writ directions and the aforesaid undertaking.

10. Today when the matter was taken up it is admitted on behalf of the opposite party No. 3 that till date the selected applicants have not been sent for the training course.

11. It is evident from the record that the judgment of this Court dated 7.8.2008 was to be complied in his letter and spirit within three months. In fact, there is no compliance even after expiry of three months from the date of undertaking given in the application dated 18.7.2009. Prima facie, a case for trial against the

opposite party No. 3 is made out.

12. The opposite party No. 3 should show cause on the next date in person why he should not be tried and punished for wilful and deliberate violation of the writ judgment of this Court. In his reply he will also disclose how many contempt petitions have been filed against him giving the details and their present status.

List on 13.11.2009.

13. In pursuance thereof, the opposite party No. 3 is present in person along with his explanation.

14. Learned Counsel for the applicant may file a reply as to whether in fact the applicants have been sent for training.

List on 8.12.2009.

15. The personal presence of the opposite party No. 3 is dispensed with.