

(1996) 08 AHC CK 0124

In the Allahabad High Court

Case No : C.M. Contempt Application No. 426 of 1995

Prem Shanker Upadhyia

APPELLANT

Vs

Akhand Pratap Singh, Secretary, P.W.D. Department and
Others

RESPONDENT

Date of Decision : 19-08-1996

Acts Referred:

Citation : (1996) 3 UPLBEC 1932

Hon'ble Judges : G.S.N. Tripathi, J

Bench : Single Bench

**Advocate : N.K. Sharma, for the Appellant; Chief Standing Counsel, for the
Respondent**

Judgement

G.S.N. Tripathi, J.—Civil Misc. Writ Petition No. Nil of 91 was filed by the Petitioner Prem Shanker Upadhyia for the following reliefs:

(i) a writ, order or direction in the nature of mandamus commanding and directing the Respondents to include the name of the Petitioner in the list of 1990 for regularisation of services and/or regularise the services of the Petitioner as Meth.

(ii) a writ, order or direction in the nature of mandamus commanding and directing the Respondent not to remove him from services after 10.1.1991 and pay him the salary regularly.

(iii) any other writ, order or direction which this Hon"ble Court may deem fit and proper under the circumstances of the case.

2. He has alleged that he is a Shastri Degree holder from Sampurnanand Sanskrit University, U.P., Varanasi. He has been working as a Meth since April, 87 in Public Works Deptt., U.P., Allahabad. He worked for more than 240 days in the year 1987 and more than 240 days in the year 1988 and for the whole of the years 1989-90. He is still working. However, the present work is likely to

continue till 18.1.1990, after which the Petitioner shall be removed from service. Service record of the Petitioner has been quite good and appreciated by the superior officers. The Petitioner is a temporary employee having been employed from time to time as and when there is a work in the department. Apart from Petitioner, Sarvashri Dilpher Yadav and Durga Saran Singh were also employed on a temporary basis from time to time. However, they are juniors to the Petitioner.

3. A list was prepared by the Respondents No. 1 and 2 to confirm the services of the temporary employees, in which the names of Dilpher Yadav and Durga Saran Singh had been included but, not of the Petitioner, although those two persons were Junior to him. The name of the Petitioner was not included in the list. Its copies were not provided to him either. On 1.12.90, the Petitioner made a representation to the Respondents. But that has not been considered so far, whereas his juniors Sri Shyam Bihari and Somnath have been confirmed on the post of Meth.

4. Another list has been prepared for regularisation the services of the persons like the Petitioner. But his name is not included again. Thus the Respondents have been adopting pick and choose policy, which is contrary illegal. There has been no complaint against the working of the Petitioner. Hence he wants that his name should be included in the list of temporary persons working like him in the list of the year 1990 for regularising his services alongwith those employees like him.

5. Notice was issued. But after giving repeated opportunities to the Respondents to counter the allegations made by the Petitioner, they did not do anything and did not file any counter-affidavit till today. On 21.5.1993. the Court passed the following order:

In view of the detailed averments made in the writ petition and the supplementary affidavit, the Petitioner's name was liable to be included in the list of 1990 for regularisation of service. The action of the Respondents in not including the name of the Petitioner is absolutely arbitrary and illegal. Writ petition is allowed with cost. Respondents are directed to include the name of the Petitioner in the list of 1990 prepared for regularisation of the services of the temporary employees and give the same treatment which has been given to other employees who were appointed alongwith him or thereafter. The action in pursuance of this order shall be taken by the Respondents within 2 months" from the date of presentation of a certified copy of this order before them.

6. After passing of the said judgment, the Petitioner served a copy of the aforesaid judgment upon the Respondents. But as yet, they have not complied with the direction of the Court dated 21.5.1993. Hence the Petitioner has prayed that Respondents be punished for violating the order of the Court wilfully.

7. As observed earlier, the Respondents did not file any counter-affidavit.

8. They instead filed a Special Appeal before the Division Bench of this Court.

9. After hearing the parties, the Division Bench rejected the appeal on 19.10.94 with the following observations:

The extraordinary feature of the Special Appeal is that it has been filed again without controverting the averments made in the writ petition. This cannot but be construed as a clear indication of the interest and intention that unfortunately litigation on behalf of the State appears to receive from those concerned. This must indeed be adversely commented upon.

We, accordingly, dismiss this Special Appeal with the direction that a copy of this order be sent to the Chief Secretary to the Government of Uttar Pradesh for information and such action as he deems proper with regard to the conduct of litigation in the High Court on behalf of the State.

10. This way, the judgment of this Court dated 21.5.1993, which has been confirmed by the Division Bench by the order dated 19.10.1994 is absolute.

11. It is not disputed that the Respondents have not complied with the order of this Court and they have been continuously violating the same in letter as well as in spirit. The order dated 4.4.1989, Annexure I to the main petition provides that those employees (Daily wagers), who have been working since 1.4.1989 and have completed about 3 years of service shall not be removed from service. They shall be adjusted in other works. If due to some misunderstanding, services of some of the employees have been dispensed with, they may be recalled. This way, it is not disputed that the Petitioner has worked for more than 3 years and his case is fully covered by the aforesaid G.O. For the first time, in the Special Appeal, an affidavit of Sri Sanjay Kumar Tewari, the then Asstt. Engineer was filed. In his counter-affidavit, he has admitted that the copy of the judgment dated 21.5.1993 was received in the office on 26.6.1993. Thereafter a copy was obtained and the Second Appeal was filed. The application for staying the operation of the order of the learned Single Judge was moved and as observed earlier, the Division Bench decided the matter as noted above by dismissing the special appeal.

12. In the counter-affidavit filed by Sri Ashok Kumar Verma (Respondent No. 3) in this Court on 25.7.1995, the factual ground taken by the Petitioner has been challenged and it has been attempted to show that those persons whose names have been included in the list, were senior to the Petitioner and, therefore, he has been continuing in the muster-roll and being paid accordingly.

13. But unfortunately, these questions of fact cannot be decided by the Court hearing the contempt petition. Suffice to say that the Respondents No. 1 and 2 have not only not complied with the order of this Court, they have the guts to say that the orders passed by the two courts are not correct. This sort of attitude cannot be countenanced.

14. It is not disputed now that till today, the Respondents No. 2 and 3, who were

duty-bound to implement the order dated 21.5.1993, have not done so, so far. Therefore, it is established that they have wilfully flouted the orders of this Court in a very reckless and mala fide manner. Therefore, a strict view is taken.

15. I find that the allegations of wilful default and defiance alleged against the Respondents No. 2 and 3 are fully proved. They are senior officers of the Government. They must have put in not less than 5 to 10 years" of service. They are expected to know that the defiance of this Court's order amounts to playing with fire. Yet they have intentionally tried to do the same, which they were not expected to do and they have not done that which was expected of them. Hence, the charge of wilful non-compliance and flouting this Court's order is fully proved against the Respondents No. 2 and 3.

16. Not only this, they have flouted the Government Order, dated 4.4.1989, Annexure I, to the main petition referred to above and have tried to violate the same in letter as well as in spirit. This attitude shows that they are not faithful to their own employers, i.e., State of Uttar Pradesh. Hence they should be dealt with seriously.

17. Sarvashri P. K. Singhal, Chief Executive Engineer (NH), P.W.D., U.P. Lucknow, Respondent No. 2 and Ashok Kumar Barman, Executive Engineer, National Highway Division I, P.W.D., are being held guilty of committing contempt of this Court by not following the directions given to them.

18. Each one of them is sentenced to undergo 3 months" Simple Imprisonment and to pay a fine of Rs. 500 each. On failure to pay the fine, another one month"s Simple Imprisonment shall have to be undergone by them.

19. Contemner No. 3 is present in the Court. He shall be taken into custody at once. Contemner No. 2 Sri P. K. Singhal is not present as he has retired.

A non-bailable warrant shall be Issued against him, i.e., Sri P. K. Singhal and he shall be got arrested and sent to Jail.

The Chief Judicial Magistrate, Allahabad/Lucknow is directed to comply with this order without any delay and Inform this Court within a month from today. Office shall send necessary papers to C.J.M. within seven days. The petition is finally disposed of.