

(2009) 11 AHC CK 0212
In the Allahabad High Court

Raj Kishore Shukla and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 26-11-2009

Acts Referred:

Contempt of Courts Act, 1971 — Section 12

Citation : (2009) 11 AHC CK 0212

Hon'ble Judges : S.C. Chaurasia, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the parties and perused record.
2. The petitioner who is Seasonal Collection Amin, approached the U.P. Public Services Tribunal by filing Claim Petition No. 386/I/90 for regularisation of his services. The Tribunal, vide judgment and order dated 5.10.1998, allowed the claim petition and directed the respondents to consider the petitioner's case for making appointment on regular basis on the post of Collection Amin in accordance with Rules as amended upto date against the post available and in case any junior to the petitioner, has already been regularised in preference to petitioner in violation of said Rules, the petitioner shall also be treated to have been regularised on the post of Collection Amin from the date, the junior was regularised with consequential benefits.
3. On account of non-compliance of the judgment and order passed by the Tribunal, a Contempt Petition No. C-194/1999 was filed before the Tribunal u/s 5-A of U.P. Public Services Tribunal Act (in short the Act), read with Section 12 of Contempt of Courts Act. The petitioner took specific plea before the Tribunal that person junior to him namely, Ram Tirath Prasad has been regularised. Hence the petitioner is also entitled to be considered for regularisation from the date, Ram Tirath Prasad has been regularised.
4. The Tribunal has relied upon the affidavit filed by the District Magistrate Sri

Shashi Bhushan Lal Sushil and held that services of Ram Tirath Prasad have not been regularised. In para 2 and 3 of the affidavit filed by Sri Shashi Bhushan Lal Sushil, the District Magistrate, Kushi Nagar, contained in Annexure No. 7 to the writ petition, it has been stated that Ram Tirath Prasad has been shown as temporary employee with the finding that no junior person has been regularised. The Tribunal's judgment and order has been sufficiently complied with. In the above circumstance, the Tribunal dismissed the contempt petition, vide judgment and order dated 15.1.2007 contained in Annexure No. 1 to the writ petition.

5. Later on, the petitioner had moved an application to the District Magistrate, Kushi Nagar under the right to Information Act. The District Magistrate, Kushi Nagar, vide letter dated 6.3.2007 contained in Annexure No. 8 to the writ petition, informed that Ram Tirath Prasad was regularised and made permanent from 21.11.2005.

6. A review petition was filed before the Tribunal. The Tribunal dismissed the review petition with the finding that since Ram Tirath Prasad had joined services as retrenched employee of Agriculture Department, he cannot be equated with the petitioner for the purpose of seniority. The Tribunal has also relied upon the clarificatory letter dated 1.3.2006 contained in Annexure No. 6 to the writ petition. It has been stated by the Presenting Officer on behalf of the District Magistrate, Kushi Nagar that Ram Tirath Prasad being retrenched employee, had joined on the post of Collection Amin in the year 1978, and his placement cannot be equated with the petitioner and no seniority dispute can be raised.

7. Learned standing counsel submits that Ram Tirath Prasad's case stands on a different footing being retrenched employee of the Agriculture Department. Hence, his services could have not been regularised.

8. We have heard learned Counsel for the parties and perused record.

9. In the present case, at the face of record, it appears that the District Magistrate, Kushi Nagar Sri Shashi Bhushan Lal Sushil has submitted incorrect fact. He made statement in para 2 of the affidavit that Ram Tirath Prasad has been shown as temporary employee in the service book and tried to evade the correct reply with regard to service status of Ram Tirath Prasad. The District Magistrate, Kushi Nagar should have been fair enough in filing the affidavit before the Tribunal to bring on record the correct fact. Once services of Ram Tirath Prasad had been regularised in 2005, then the District Magistrate, Kushi Nagar should have placed the correct fact before the Tribunal in spite of making vague statement.

10. The Tribunal has not extended the benefit of regularisation of service to the petitioner from the date the junior was regularised with all consequential benefits. In such a scenario, it is neither open for the Tribunal nor the District Magistrate to make statement that the petitioner is not entitled to the benefit of regularisation since Ram Tirath Prasad is a retrenched employee of the Agriculture Department. With regard to the employee whether retrenched or

otherwise, the date of induction in service, is material. In the present case, since the petitioner joined services before joining of Ram Tirath Prasad in the cadre, the case of Ram Tirath Prasad cannot be separated for the purpose of seniority and regularisation than the petitioner. It appears that the respondents have tried to circumvent the judgment and order of the Tribunal by placing incorrect fact before the Tribunal.

11. It has been admitted at bar that the judgment and order of the Tribunal dated 5.10.1998 has attained finality. Hence it shall always be incumbent upon the authority to comply with the judgment and order in its letter and spirit and it is not open for the authorities to move in their own way which may circumvent the meaning and the letter and spirit of the Tribunal's judgment. The power of Contempt Court is only to see whether the judgment of the Tribunal has been implemented or not.

12. The contempt court is concerned with the implementation and enforcement of the judgment and orders of the court. It has got no jurisdiction to interpret the judgment and order in the way which suits the parties. In the event of ambiguity of judgment, it shall be open to parties to move application for clarification or review in accordance with law. However, in the present case, the attention of this Court has not been invited with regard to certain vagueness in the judgment of the Tribunal. The judgment of the Tribunal is clear and in the event of non-compliance of the judgment and order, the Tribunal has got authority to proceed against the authorities who are deliberately violating the judgment.

13. We are of the view that the Tribunal has failed to exercise its jurisdiction vested in it. The writ petition deserves to be allowed.

14. Accordingly, the writ petition is allowed. A writ in the nature of certiorari is issued quashing the impugned judgment and order dated 15.1.2007 and 7.9.2007 passed by the Tribunal in Contempt Petition No. 194/1999 contained in Annexure No. 1 and 2 to the writ petition. The contempt petition before the Tribunal, is restored to its original number. The Tribunal is directed to decide the contempt petition in accordance with law in the light of the observations made hereinabove expeditiously.

15. No costs.