
(2012) 05 AHC CK 0151
In the Allahabad High Court
Case No : Writ Petition No.698 (S/B) of 2012

Ram Bux Singh and Others	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 29-05-2012

Acts Referred:

Administrative Tribunals Act, 1985 — Section 17
Contempt of Courts Act, 1971 — Section 20

Citation : (2012) 05 AHC CK 0151

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

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner and Sri Ram Phal for the respondents. With the consent of parties counsel, we proceed to decide the writ petition at the admission stage.

2. The petitioners have filed Original Application before the Central Administrative Tribunal, Lucknow, seeking their appointment on the basis of screening list along with others during appointment.

3. Before the tribunal, it was pleaded by the petitioners that they were working as provisional labour on daily basis at the time of construction of Railway work with effect from 1979. A screening was done by the committee comprising of three officers and result of screening committee of casual labourers was Published in 1993 but the petitioner could not get appointment.

Hence they approached the tribunal. The Tribunal after considering the rival submissions and pleadings on record, arrived at the conclusion that the petitioners are entitled for appointment against future vacancies. The operative portion of the judgment and order dated 14.9.1998 passed by the " Tribunal in O.A. No.577 of 1992, is reproduced as under:

"8.In view of the discussions made above, it is directed that all the applicants would be engaged in the future vacancy in order of their seniority and would

continue to work till the work is available and junior to any of the applicants is working. It is however, made clear that as per result of the Vigilance Enquiry, the department would be free to take action.

The O.A. is allowed as per directions above. Costs easy."

4. Against the order, the Union of India preferred Writ Petition No.317 (S/B) of 1999 in which a Division Bench of this Court, has passed the interim order dated 7.4.2005 which is reproduced as under:

"Hon"ble U.K. Dhaon. J.

Hon"ble J.M. Paliwal. J.

Heard Sri Abid Ali, learned counsel for the petitioners and Sri T.N. Gupta, appearing on behalf of the opposite parties.

Sri Abid Ali learned counsel for the petitioner submits that the O.A. which was filed before the Central Administrative Tribunal was time barred. He has relied upon a decision of the Apex Court reported in 2000 SCC (L&S) page 53, Ramesh Chand Sharma v. Udham Singh Kamal and others. He further submits that opposite parties No.2 to 8 are not entitled for any job.

Sri T.N. Gupta, learned counsel for opposite parties No.2 to 8 submits that juniors to the petitioners are still working and in spite of specific direction issued by the Tribunal the petitioners have not given any appointment to the opposite parties No.2 to 8.

We have considered the arguments of the learned counsel for the parties.

The Central Administrative Tribunal has held that the O.A. was not time barred by limitation and the person juniors to the petitioners were appointed in various years and the juniors to the petitioners are still working.

A direction was issued by the Central Administrative Tribunal on 14.9.1998, that all the opposite parties No.2 to 8 would be engaged in future vacancy in order to their seniority as juniors are still working. More than six years have elapsed but till date the employment has not been given to the opposite parties No.2 to 8.

We, therefore, direct the petitioners to provide job to the opposite parties No.2 to 8 within six weeks from the date a certified copy of this order is produced.

List this petition in the 3rd week of May, 2005."

5. However, it appears that later on, the writ petition was dismissed for nonprosecution on 29.3.2012. A Division Bench of this Court while dismissing the writ petition, had passed the following order:

"Hon"ble Rajiv Sharma. J. Hon"ble Devendra Kumar Arora, J. Case called out.

Neither learned counsel for the petitioner is present nor there is any request for pass over or adjournment of the case.

Accordingly, the writ petition is dismissed for want of prosecution. Interim order, if any, stands vacated.

Order Dated: 29.3.2012."

6. On account of noncompliance of the order passed by the Tribunal as well as this Court, the petitioners have filed Civil Contempt Petition No.17/2012 in Original Application No.577/1992, and the Tribunal rejected the application on the ground that Tribunal lacks jurisdiction to pass any order on the basis of the interim order passed by this Court that too, when the writ petition was dismissed for nonprosecution. So far as the finding recorded by the Tribunal that Tribunal lacks jurisdiction to execute the order of High Court, seems to be correct approach and is in accordance with law. Moreover on account of dismissal of writ petition filed by the Union of India, the order dated 7.4.2005 does not survive and under the doctrine of merger, it merged into the final order. Hence, the order dated 7.4.2005 is not enforceable being nonexistent on account of dismissal of writ petition. The question cropped up whether on account of dismissal of writ petition, the petitioners are remedyless?

7 While deciding the Original Application no.577 of 1992, by the judgment and order dated 14.9.1998, the Tribunal had directed the respondents to engage the petitioners against the future vacancy and they shall be permitted to continue in service. On account of pendency of writ petition and the interim order passed by this Court, it appears that the judgment and order dated 14.9.1998 passed by the Tribunal, could not be implemented. Now, after dismissal of Writ Petition No.317 (S/B) of 1999 on 29.3.2012, the interim order stands discharged and the judgment and order of the Tribunal dated 14.9.1998 restored to its original form. Option is open to the petitioners to approach the Tribunal.

8. Section 17 of the Central Administrative Act, 1975 empowers the Tribunal to proceed under contempt law in the event of noncompliance of its judgment and order. For convenience, Section 17 is reproduced as under:

"17. Power to punish for contemptA Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Court Act, 1971 (70 of 1971), shall have effect subject to the modifications that

(a) the references therein to a High Court shall be construed as including a reference to such Tribunal;

(b) the references to the AdvocateGeneral in Section 15 of the said Act shall be construed

(i) in relation to the Central Administrative Tribunal, as a reference to the AttorneyGeneral or the SolicitorGeneral or the Additional SolicitorGeneral; and

(ii) in relation to an Administrative Tribunal for a State or a Joint Administrative Tribunal for two or more States, as a reference to the AdvocateGeneral of the

State or any of the States for which such Tribunal has been established."

9. It has been submitted by the petitioners' counsel that instead of dismissing the application, the Tribunal should have proceeded under Section 17 of the Act.

10. On the other hand, learned counsel for the respondents counsel submits that the contempt petition was time barred. Since in view of the provisions contained in Section 20 of the Contempt of Courts Act, 1971, application should have been filed only within a period of one year.

11. Learned counsel for the petitioner has invited attention to a case reported in [2001 (19) LCD 1396]: *Pallav Sheth v. Custodian and others*, in which their lordships have interpreted the Section 20 of Contempt of Courts Act, 1971 and held that limitation may apply from the date the cause of action arises. Relevant portion from the judgment of *Pallav Sheth (supra)* is reproduced as under:

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"40. In other words, the beginning of the action prescribed for taking cognizance of criminal contempt under Section 15 would be initiating the proceedings for contempt and the subsequent action taken thereon of refusal or issuance of a notice or punishment thereafter are only steps following or succeeding to such initiation. Similarly, in the case of a civil contempt filing of an application drawing the attention of the Court is necessary for further steps to be taken under the Contempt of Courts Act, 1971.

41. One of the principles underlying the law of limitation is that a litigant must act diligently and not sleep over its rights. In this background such an interpretation should be placed on Section 20 of the Act which does not lead to an anomalous result causing hardship to the party who may have acted with utmost diligence and because of the inaction on the part of the Court a contemner cannot be made to suffer. Interpreting the section in the manner canvassed by Mr. Venugopal would mean that the Court would be rendered powerless to punish even though it may be fully convinced of the blatant nature of a contempt having been committed and the same having been brought to the notice of the Court soon after the committal of the contempt and within the period of one year of the same. Section 20, therefore, has to be construed in a manner which would avoid such an anomaly and hardship both as regards the litigant as also by placing a pointless fetter on the part of the Court to punish for its contempt. An interpretation of Section 20, like the one canvassed by the Appellant, which would render the constitutional power of the Courts nugatory in taking action for contempt even in cases of gross contempt, successfully hidden for a period of one year by practising fraud by the contemner would render Section 20 as liable to be regarded as being in conflict with Article 129 and/or Article 215. Such a rigid interpretation must therefore be avoided."

12. In view of the above, looking to the facts and circumstances of the present case, there appears to be no room of doubt that only after 29.3.2012 i.e., after

dismissal of writ petition for nonprosecution, the cause of action arose to petitioners to approach the Tribunal and initiate contempt proceeding. In case the petitioners prefer application for enforcement of judgment and order dated 14.9.1998 within the period of one year from 29.3.2012, it shall be well within time on account of pendency of litigation in this Court where, an interim order was passed.

13. Undoubtedly, since the writ petition was dismissed for nonprosecution, the interim order passed by this Court, merges into it. Hence the only option open to the petitioners is to approach the Tribunal itself for enforcement of the judgment and order dated 14.9.1998 or initiate contempt proceedings.

14. In view of the above, the writ petition is allowed. The impugned judgment and order dated 10.5.2012 is quashed. The matter is remitted back to Tribunal to provide a fresh hearing to parties keeping in view the observations made hereinabove and decide the application on merit afresh.