

(2012) 01 AHC CK 0482

In the Allahabad High Court

Case No : Contempt Application (Civil) No. 579 of 2010

Smt. Sudha Tripathi

APPELLANT

Vs

Arvind Singh Dev, Principal Secretary, Medical Education

RESPONDENT

Date of Decision : 17-01-2012

Acts Referred:

Citation : (2012) 01 AHC CK 0482

Hon'ble Judges : Vikram Nath, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Vikram Nath, J.—This contempt matter has been engaging attention of this Court since February, 2010. Detailed orders have been passed on different dates calling upon the opposite party to ensure compliance of the judgment of the Writ Court. The matter was also taken to the Apex Court by the State against the Division Bench's judgment of the Writ Court in which the Apex Court disposed of the SLP filed by the State directing the High Court to consider the case of the respondent for regularization from 1990 in the contempt proceedings without going into the question that the contempt has been committed by the petitioner therein. The order of the Apex Court is dated 11.8.2010. Thereafter the learned counsel for the applicant has filed supplementary affidavit and reply to the same has also been filed by the opposite party. Thereafter this Court passed an order on 3.9.2011 which reads as follows :

It appears that against the order dated 24.8.2009 passed in Civil Misc. Writ Petition No. 20739 of 2007 (Dr. Sudha Tripathi Vs State of U.P.) the State of U.P. preferred a Special Leave to Appeal Civil No. 11971 of 2010 (State of U.P. and others Vs Sudha Tripathi) which was disposed of by the Supreme Court order dated 11.8.2010. The said order is quoted hereunder:-

On behalf of the State of Uttar Pradesh, the petitioner herein, it has been submitted by Mr. Dwivedi, learned counsel, that the impugned order has already

been given effect to, but despite the same, contempt proceedings have been initiated by the respondent before the High Court. From the order dated 24th August, 2009, being challenged in the Special Leave Petition, it appears that a direction was given to the respondent to consider the case of the respondent for regularisation as and when regular posts are available. It has been submitted that the petitioner's services have already been regularised and, accordingly, there can be no question of any contempt having been committed by the petitioner.

On behalf of the respondent, it has been submitted that though the services of the respondent have been regularised, he has not been regularised from the date from which he was entitled to such regularisation.

In our view, the submissions made on behalf of the respondent do not make out a case for contempt, though prima facie makes out a case for consideration by the High Court as to whether the respondent was entitled to be regularised on an earlier date within the date on which he has been regularised.

Accordingly, we dispose of the SLP by directing the High Court to consider the case of the respondent for regularisation from 1990, in the contempt proceedings itself, without going into the question of contempt having been committed by the petitioner herein.

We make it clear that the parties will be entitled to make submissions on this point before the High Court before the question is decided.

Learned counsel for the applicant submits that on earlier occasions the claim of the applicant was rejected but the writ court vide order dated 24.08.2009 held that the applicant had worked since 1990. It is stated that prior to the amendment of 2001 in the U.P. Regularisation of Adhoc Appointments (on posts within the purview of Public Service Commission) Rules 1979 the cut of date was not 30.06.1998 and therefore her regularisation is to be considered under the unamended Rules of 1979. According to learned counsel by giving regularisation w.e.f. 22.7.2010 the State respondents have discriminated the applicant since they have given regularisation to juniors w.e.f. 1990.

In view of the submissions of learned counsel for the applicant it appears that the applicant is working since 1990 and has raised her claim for regularisation prior to the amendment of 2001 in the Rules of 1979 hence the cut of date therein would be prior to 30.06.1998 and when juniors were regularised.

Learned Standing Counsel has rightly pointed out that the State be given an opportunity to consider the case of regularisation of Dr. Sudha Tripathi w.e.f. 1990 without insisting on the amendment of 2001 in the U.P. Regularisation of Adhoc Appointments (On posts within the purview of Public Service Commission) Rules 1979 since the alleged claim of the petitioner for regularisation is prior to the cut of date fixed by the 2001 amendment which requires fresh consideration in accordance with law.

In view of the aforesaid submission it would be appropriate to give the State respondents an opportunity to pass order on the claim of the petitioner for regularisation from 1990 and bring such order on record of this contempt petition so that it may be decided on merits as directed by the Supreme Court.

As prayed by learned Standing Counsel let the matter be listed on 17.10.2011 before the appropriate Bench.

It is made clear that this case may not be treated as tied up or part heard to this Bench any further.

List on 17.10.2011.

Let a certified copy of this order be provided to learned Standing Counsel within three days free of charge.

2. Under the said order dated 3.9.2011 the opposite party was required to pass an order on the claim of the applicant for regularization from 1990 and place such order on record. More than 4 months have passed since the order dated 3.9.2011 was passed. Till today the State-opposite party has not placed any order on record as required. Today Sri K.R. Singh, learned standing counsel appearing for the opposite party has only referred to some instructions received from the Director, Ayurvedic Services. However, no affidavit has been filed. Even today there is resistance from the opposite party with regard to the decision to be taken by the State-Authorities. In that view of the matter it has become necessary to ensure the presence of the Principal Secretary, Medical Education as also the Director, Ayurvedic Services to remain present before this Court along with the decision that may be taken by them pursuant to order of the Apex Court as also the order dated 3.9.2011. It would be open to the State-Authorities to take a stand that they do not wish to take any decision and leave it to the Court to take a decision as directed by the Apex Court. In that event it would not be necessary for them to appear before this Court but only communicate such stand by way of an affidavit whereupon this Court will proceed to take a decision.

3. List this case on 6.2.2012.

4. A copy of the order may be provided to Sri K.R. Singh, learned standing counsel free of cost within 24 hours for necessary compliance.