

(2010) 07 AHC CK 0085
In the Allahabad High Court

Sri Hari Shankar

APPELLANT

Vs

State of U.P. and Others
Santosh Singh Vs Sri B.K. Singh, Conservator of Forest, Jhansi Division and Others
Ram Swaroop Tewari and Others and Ram Singh and Another Vs Sri Surjeet Kaur Sandhoo, Forest Secretary of Government of U.P. and Others
Narayan Vs Ikbai Singh, Chief Conservator of Forest, Jhansi Division and Others

RESPONDENT

Date of Decision : 01-07-2010

Acts Referred:

Constitution of India, 1950 — Article 215
Contempt of Courts Act, 1971 — Section 12, 20

Citation : (2010) 07 AHC CK 0085

Hon'ble Judges : Vikram Nath, J

Bench : Single Bench

Judgement

Vikram Nath, J.—These contempt applications have been filed u/s 12 of the Contempt of Courts Act, 1971 (hereinafter referred to as the Act), alleging non compliance of the judgment of the Division Bench of this Court dated 10.12.1997, passed in a bunch of special appeals filed by the State of U.P. and writ petitions filed by the employees of the Forest Department, leading case being Special Appeal No. 653 of 1995, State of U.P. and Others Vs. Putti Lal, and also the judgment of the Apex Court dated 21.2.2002 in the case of State of U.P. and Others Vs. Putti Lal,

2. In the Forest Department of the State of U.P. large number of employees had been engaged as daily wagers/muster roll employees and were continued for years without there being any provision for providing them regular status. Sometimes in the year 1990, the Forest Department all over the State started disengaging these workmen apparently on the ground that their services were no longer required and also that their services could not be regularized as they had not worked continuously and there were large breaks in their service. These

workmen approached the High Court. Initially in some cases interim orders were granted and these casual daily wagers were continued to be engaged on need basis. In 1995 learned Single Judge of this Court allowed the writ petition of some of the workmen with a direction to regularise the services of the petitioners therein. The State of U.P. filed intra court appeal against the judgment of the learned Single Judge. Following the judgment of the learned Single Judge large number of writ petitions were allowed resulting into filing of similar number of appeals by the State of U.P. One of the special appeals arose from the judgment in the Writ Petition No. 15302 of 1993, Putti Lal v. State of U.P. This special appeal was numbered as Special Appeal No. 653 of 1995 and became the leading case. The other pending writ petitions were clubbed together with the said special appeal.

3. The Division Bench of this Court after considering various arguments advanced, issued certain directions. Firstly it directed that the Government is bound to pay all the daily wage employees, whether or not they were petitioners before this Court, the wages at the rates equivalent to minimum pay in the pay scales of the regularly employed workers in the corresponding cadres. Secondly it directed that a high level committee be constituted, comprising representatives of the Finance Department, Forest Department and the Department of Legal Remembrancer to consider framing of a scheme for regularization/absorption of the petitioners and other similarly placed employees and thereafter under the said scheme the claim of the daily wagers would be considered. Paragraph Nos. 13 to 16 of the report, which are relevant and contains necessary directions, are quoted herein under:

13. In pursuance of the directions issued by this Court pending these cases the Government of U.P. has submitted more than one Scheme for regularisation of the petitioners, but those Schemes hardly contain any hope for their regularisation. It has been stated therein that the petitioners can be considered for regularisation against available vacancies after amending service rules. Available vacancies being few no substantial help can be expected from them. That apart, the Government while framing those Schemes has not applied its mind to the questions dealt with herein above. These are aspects which are to be considered by the Government before framing Schemes for absorption of the petitioners. In the present case the appropriate pleadings are also not there so as to declare the employment of the petitioners as daily wager for considerable long period as "unfair labour practice". We, are, therefore, not expressing and final opinion on this question also. The questions dealt with herein above are to be considered and decided by the Government before framing the Scheme for regularisation/absorption of the petitioners and other similarly placed employees.

14. As regards the second submission advanced by the learned Counsel for the petitioners it may be noted that the writ petition No. 15627 of 1988 was filed by an Association known as Kumaun Van Shramik Sangh Centre and a daily wager seeking writ of mandamus directing the respondents therein namely, State of

U.P., Secretary, Forest, Lucknow and Additional Chief Conservator of Forest, Kumaun at Nainital to frame the Scheme and to pay the petitioner No. 2 and other similarly placed employees the wages at the rates equivalent to minimum pay in the pay scales of the regularly employed workers in the corresponding cadres. The learned Judge while allowing the writ petition did not confine his judgment to the petitioners members only but issued general directions to the respondents therein for payment of wages/salary and for framing the Scheme for regularisation. Relevant extract of the judgment of learned Judge, is reproduced below:

...but the petitioners have certainly made out a case for issuance of a direction to the respondents to pay to the petitioner No. 2 and other similarly circumstance Daily Rated Labourers/Workers under the control of the respondent, the wages at the rates equivalent to the minimum pay in the pay scales of the regularly employed workers in the corresponding cadres but without any increments with effect from 19.8.1988 on which date the writ petition was filed in this Court together with corresponding dearness allowances and additional dearness allowances, if any payable therein, with a further direction to the respondents to frame a scheme within a period of six months from the date of presentation of a certified copy of this order before the Secretary Forest Department, Government of Uttar Pradesh and the Chief Conservator of Forest Department, U.P, Lucknow.

The submission of the learned Additional Advocate General to the effect that the directions given by this Court in the case of Kumaun Van Shramik Sangh Centre v. State of U.P. (supra), should be confined to the members of that Association, cannot be accepted for another reason, viz. it is not open to the Government to pay different pay scale and give different treatment to the similarly placed employees working in the State unless there is plausible justification for such a treatment. In the instant case no such justification has been demonstrated by the respondents. Therefore, benefits of the said judgment of the learned Judge have to go to all the Daily Wagers/Muster Roll employees. It is admitted by the respondents that the pay at the rate as directed by the learned Judge in the said case, is being paid to those Daily Wagers who are members of Kumaun Van Shramik Sangh Centre and such payment is not being made to any other daily wager working anywhere in the State including in Kumaun hills. It is also admitted that the Scheme as directed by the learned Judge has not been framed by the Government so far. The judgment of the learned Judge is binding on the Government and its functionaries. They are, therefore, bound to pay in terms of the said judgment to every daily rated labourers/muster roll employees and the Government is also bound to frame Scheme for regularisation of their services.

15. As we are sending back these cases to the Government for consideration of all the questions it is not necessary to deal with the third point raised by the learned Counsel for the petitioners.

16. For the reasons given above, these writ petitions and the Appeals are partly allowed. The judgments impugned in the Appeals are set-aside. The Government

of U.P. is directed to appoint a Committee consisting of Secretaries of Finance and Forest Departments and the Legal Remembrancer or their nominees within a month of production of certified copy of this judgment before the Secretary Forest Department, Uttar Pradesh. The Committee so appointed will consider the question of framing Scheme for regularisation/absorption of the petitioners and other similarly placed employees working in the Forest Department and the Schemes undertaken by the said Department. The Committee will pass speaking order and will submit its report within a period of three months of the date of its constitution by the Government. It will be open to the Association Union of the petitioners to make representation containing all these grievances in this regard before the Committee and if such a representation is made the same shall also be decided by speaking order by the said Committee within the same time specified above. The Government will thereafter pass appropriate order taking into consideration the report of the Committee and material available on the record, within one month of the receipt of the report of the Committee. The whole exercise by the Committee as well as by the Government should be completed within six months from the date of production of certified copy of this judgment before the government. Till then the parties shall maintain status quo.

4. Against the aforesaid judgment of the Division Bench, the State of U.P. preferred an appeal before the Apex Court. The Apex Court vide judgment dated 21.2.2002 in the case of State of U.P. v. Putti Lal (supra) disposed of the special leave petitions and the civil appeals filed by the State of U.P. with the directions as contained in Paragraph No. 5 thereof, which in clear terms provided that the daily wagers would be entitled to draw salary at the minimum pay scale being received by their counterpart in the Government, however, they would not be entitled to any other allowances or increments so long they continue on daily wage basis. It further directed that the question of their absorption would be dealt with in accordance to the statutory rules that may be framed by the Government. Paragraph No. 6 of the report dealt with certain directions issued with regard to the State of Uttranchal as such is not relevant for the present context. However, for the sake of accuracy Paragraph No. 5 of the judgment of the Apex Court is quoted herein under:

5. In several cause this Court applying the principle of equal pay for equal work has held that a daily wager, if he is discharging the similar duties as these in the regular employment of the Government, should at least be entitled to receive the minimum of the pay scale though he might not be entitled to any increment or any other allowances that is permissible to his counter part, in the Government. In our opinion that would be the correct position and was therefore, direct that these daily-wagers would be entitled to draw at the minimum of the pay scale being received by their counter part in the Government and would not be entitled to any other allowances or increment so long as they continue on daily wager. The question of their regular absorption would obviously be dealt with in accordance with the statutory rule already referred to.

5. According to the averments contained in the affidavits filed in support of the contempt applications, the applicants have claimed regularisation as also the payment of minimum of pay scale as per the directions contained in the aforementioned judgments of this Court and the Apex Court. They have filed evidence in support of their claim of having worked on the relevant dates. In the affidavit filed on behalf of the O.P. No. 6 in October, 2007 it has been specifically stated that the claim of the applicants for regularisation was considered by the Committee constituted for the Division in June, 2003 and in that meeting applicants were not found eligible for regularisation as per the rules. It is further stated in Paragraph No. 8 of the affidavit that the said decision had been communicated to the applicants and in case the applicants were aggrieved by the same, they ought to have assailed such decision of the Committee before the appropriate forum. It was thus alleged in Paragraph No. 10 that there was no wilful or deliberate disobedience of the orders of this Court and the contempt applications being misconceived were liable to be dismissed. In October, 2009 two more affidavits were filed by the O.P. Nos. 7 and 9 which reiterated the same stand as taken in the affidavit of the O.P. No. 6 in 2007. Rejoinder affidavits have been filed by the applicants.

6. I have heard Sri S.K. Vidyarthi, learned Counsel for the applicants and Sri K.R. Singh, learned Standing Counsel appearing for the opposite parties and have also perused the material on record.

7. At the outset Sri S.K. Vidyarthi, learned Counsel for the applicants has submitted that the applicants being aware of the decision of the Committee that had rejected their claim for regularisation, they are not raising any claim or disobedience or non-compliance on behalf of the opposite parties regarding regularisation but under the judgments of this Court and the Apex Court they are claiming payment of minimum of the pay scale, which has been denied to them in gross violation of the directions of the Division Bench as affirmed by the Apex Court. Thus, this Court has to examine as to whether there is any wilful or deliberate disobedience/non-compliance on the part of the opposite parties in not paying the minimum of pay scale to the applicants as per the directions of the Division Bench and the Apex Court in the case of Putti Lal (supra).

8. The learned Counsel for the parties were given liberty to submit their written briefs on various aspects. Both the counsels have submitted their written briefs.

9. Sri K.R. Singh, learned Standing Counsel in the brief submitted has mainly raised the following objections. Firstly that the contempt applications are not maintainable on behalf of the applicants as they have not obtained any direction from this Court either for giving them the minimum of pay scale or even any direction to consider their claim. According to him the only allegation made by the applicants is with regard to the judgment in the case of Putti Lal (supra) and the connected matters in which admittedly the applicants were not parties in any of the connected matters or even in the case of Putti Lal (supra). The second objection raised is that the applications have been filed beyond the limitation as

provided u/s 20 of the Act and as such this Court may not entertain the applications on this ground. The next objection is that in case the applicants are alleging contempt of the order of the Apex Court then also this Court neither under Article 215 of the Constitution of India nor u/s 12 of the Act can entertain these contempt applications and the only remedy upon to the applicants would be to approach the Apex Court. Further the argument raised is that as the claim of the applicants for regularisation had been rejected, they were not eligible for minimum of pay scale, which was admissible only to such daily wagers who had been found suitable for regularisation and had been recommended as such but could not be regularised on account of nonavailability of vacancies. The next objection raised is on merits, according to which the regularisation programme was a one time programme under the 2001 Rules subject to fulfilment of the conditions against the vacancies existing on the date when the Rules were framed. Further that the payment of the minimum of pay scale was only till such time the regularisation in accordance with the Rules is carried out, and therefore, there would be no question of payment of minimum of pay scale. It was further submitted that the concept of daily wager has not been abolished by either the Division Bench of this Court or the Apex Court. Lastly Sri K.R. Singh has relied upon the judgments in the cases of Rakesh Chandra Srivastava v. State of U.P. reported in 2008 (1) ADJ 371 and Gulab Chandra v. State of U.P. reported in 2010 (1) ESC 294 in support of his submissions regarding scope of regularisation.

10. On the other hand in reply to the objections raised by the learned Standing Counsel, Sri S.K. Vidyarthi, learned Counsel for the applicants has submitted that the applications are within time as they were filed in the years 2003-2006 itself within the limitation from the date of the judgment of the Apex Court in the case of Putti Lal and in any case within one year from the date on which the claim of the applicants for regularisation had been rejected in June, 2003. It was further submitted that the claim for minimum of pay scale being recurring in nature the objection regarding limitation and bar imposed by Section 20 of the Act would not be attracted. Next it was submitted that the contempt alleged is of the judgments of this Court of the learned Single Judge as also the Division Bench in the case of Putti Lal and the Apex Court which had affirmed the said judgments. The directions issued by this Court had not been upset by the Apex Court. Next it was submitted that the judgments of the learned Single Judge and Division Bench of this Court clearly mention that the directions issued were not confined to the workmen therein but would apply to all such similarly situate daily wagers which clearly covered the applicants also and in such circumstances the applicants were within their rights to allege non-compliance/disobedience of the judgment of the Division Bench in the case of Putti Lal and can get the directions enforced in their case also. With regards to merits of the matter it has been submitted that in the subsequent decision of this Court in Special Appeal No. 974 of 2004, Ram Surat Yadav and Ors. v. State of U.P., the direction issued was that the appellants who were working as daily wagers till 28.5.2004 would be allowed to continue as daily wagers and would be paid the minimum of pay scale

applicable to their regular counterparts, however, without any benefit to the allowances. It was next submitted that in another matter a learned Single Judge vide judgment dated 17.10.2005 passed in the Writ Petition No. 48322 of 2000, Sanjay Kumar Srivastava v. Principal Chief Conservator of Forest, U.P., Lucknow and Ors., and connected matters had held that the process of regularisation would apply not only to the existing vacancies on the date of the commencement of the Rules but would also apply to future vacancies falling in the Department and as such the claim for regularisation could not be denied.

11. Having considered the submissions advanced at the Bar the Court now proceeds to deal with them.

12. The first objection raised by Sri K.R. Singh that the applications are not maintainable at the instance of the applicants as they had not filed any writ petitions in which any directions may have been issued, cannot be accepted for the simple reason that not only the learned Single Judge but also the Division Bench of this Court had made it clear that the directions were being issued not only to the daily rated workers who had filed the writ petition but also to all similarly placed employees. Further the Apex Court also while modifying the directions by putting the rider that any other allowances or increment would not be admissible did not confine the direction to the petitioners. Paragraph No. 14 of the judgment of the Division Bench refers to the directions given by the learned Single Judge which clearly indicates that the directions were being issued not only with regard to the petitioner No. 2 but also other similarly circumstanced daily rated labourers/workers under the control of the respondents. Further the Division Bench in the same paragraph specifically rejected the arguments of the learned Addl. Advocate General to the effect that the directions given by the High Court in the case of Kumaun Van Shramik Sangh Centre (*supra*) should be confined to the members of that association. The Division Bench further recorded that it is not open to the Government to pay different pay scale and give different treatment to the similarly placed employees working in the State unless there is a plausible justification for such a treatment. It also recorded that in the instant case no such justification had been demonstrated by the respondents. It thus provided that the benefits of the judgment have to go to all the daily wagers/muster roll employees. The last sentence of the Paragraph No. 14 of the judgment of the Division Bench clearly records that the respondents are bound to pay in terms of the said judgment (referring to the judgment of the learned Single Judge) to every daily rated labourer/muster roll employees. The Apex Court had only provided, after considering various arguments, that these daily wagers would be entitled to draw at the minimum of pay scale being received by their counterpart in the Government and would not be entitled to any other allowances or increment so long as they continue on daily wage. From the nature of the directions issued by the learned Single and the Division Bench, as approved by the Apex Court, the applicants were well within their rights to allege non-compliance/disobedience of such directions by filing the present contempt applications. The present applications in view of the nature and extent of the

directions issued by this Court would thus be maintainable.

13. The next argument advanced is with regard to the bar contained in Section 20 of the Act. Section 20 of the Act is quoted herein under:

20. Limitation for actions for contempt.- No Court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.

14. According to the reading of the aforesaid Section the Court may not entertain an application alleging contempt if it is filed beyond a period of one year from the date on which the cause of action is alleged. In the present case the directions of the learned Single Judge is dated 25.8.1995 and the judgment of the Division Bench is dated 10.12.1997. Before the Apex Court there was an interim order and finally the civil appeal was disposed of vide judgment dated 21.2.2002. Further the claim of the applicants for regularisation had admittedly been rejected in June, 2003. However, the admissibility of minimum of pay scale without allowances and other benefits was a monthly benefit accruing every month. In the present case one of the applications alleging contempt was filed in the year 2003 by Santosh Singh, the other three contempt applications were filed in the year 2004 by Sri Hari Shankar, Ram Swaroop Tewari & others and Ram Singh & another, whereas the contempt application by Narayan was filed in the year 2006. Thus, with regard to the four contempt applications filed in the years 2003 and 2004, there can be no question of limitation as they were filed prior to June, 2004, which would be within one year from the date of rejection of their claim for regularisation. However, the case of Narayan also cannot be thrown out on the ground of limitation as claim for grant of minimum of pay scale was a recurring cause of action.

15. The next objection on behalf of the opposite parties with regard to the jurisdiction of this Court to entertain an application u/s 12 of the Act also cannot be sustained as the directions for consideration for regularisation and to pay minimum of pay scale were issued by the learned Single Judge of this Court, duly affirmed by the Division Bench of this Court. The Apex Court had only modified the direction of minimum of pay scale by not permitting payment of any allowances and increment. It is not the case that no directions had been issued by the High Court and it was only a direction of the Apex Court of which non-compliance was being alleged. In such circumstances the applicants cannot be relegated to approach the Apex Court and their applications u/s 12 of the Act would be clearly maintainable.

16. Sri K.R. Singh has very vehemently urged that the applicants would not be eligible for minimum of pay scale as their claim for regularisation had been rejected by the Committee constituted for the purpose. According to him only those daily rated workers whose claim for regularisation had been recommended by the Committee constituted for the purpose but had not been regularised on

account of non-availability of vacancies were alone entitled to the minimum of pay scale. This argument on behalf of the opposite parties cannot hold water in as much as the Division Bench while dealing with those issues has negated the arguments of the learned Addl. Advocate General and had in terms provided that all the daily rated workers so long as they continue to work would be entitled to the minimum of pay scale. It is not the case of the opposite parties that work is not being taken from the applicants.

17. There were two aspects of the directions issued by this Court. One was with regard to the claim for regularisation and the other with regard to grant of minimum of pay scale. In the present case there is no issue with regard to claim for regularisation as the applicants have already given U.P. their claim for regularisation. The present matter is only with regard to award of minimum of pay scale. This Court or the Apex Court in its judgments have nowhere drawn any distinction regarding grant of minimum of pay scale although without any benefit of allowances or increment. It was a general direction without any classification that all the daily rated workers were to be given minimum of pay scale without any allowances or increment. The opposite parties having not granted the minimum of pay scale to the applicants by drawing a distinction of it being admissible only to those few who had been recommended for regularisation, amounts to misreading of the judgments of this Court and the Apex Court. They are trying to impose a condition to circumvent the import of the judgment, which is not permissible in law and would amount to clear disobedience.

18. A query was put to Sri K.R. Singh as to whether there was any such condition laid down in any Rules in that regard whereby such a distinction had been provided but the reply is that the Rules nowhere provide for the award of minimum of pay scale. In fact according to him the Rules are silent about the payment of minimum of pay scale to the daily rated workers. Thus the governing factors for grant of minimum of pay scale are the directions contained in the judgments of this Court and the Apex Court. In view of the above discussions, such argument is accordingly rejected.

19. The last argument advanced on behalf of the opposite parties is with regard to the claim for regularisation and its scope. It may be noted that the said issue is not before the Court as it has already been surrendered by the applicants. Even otherwise the learned Single Judge in the case of Sanjay Kumar Srivastava (supra) has dealt with such issue in detail and has held that the regularisation would be applicable not only to the existing vacancies on the date of commencement of the Rules but would also apply to future vacancies falling in the Department. As this issue is not to be dealt with no finding is recorded in that respect as apparently the Contempt Court cannot test the claim of regularisation which has already been adjudicated by the Committee. Even otherwise the applicants are not pressing for the same.

20. The judgments in the cases of Rakesh Chandra Srivastava and Gulab

Chandra (supra) relied upon by Sri K.R. Singh are not relevant for the purpose as they do not deal with the grant of minimum of pay scale but they deal with the claim for regularisation.

21. It is not the case of the opposite parties that the applicants are not working in the Forest Department at different places after the judgments of this Court and the Apex Court. It is admitted that the applicants are working as daily wagers. Thus, once this Court had issued directions to pay all the daily rated workers the minimum of the pay scale but without allowances and other benefits, the applicants would be entitled to minimum of the pay scale so long they continue to work as daily rated workers in the Forest Department. The opposite parties by not paying the minimum of the pay scale to all the daily rated workers working in the Forest Department on the cut off date and thereafter have thus violated/disobeyed the directions of this Court contained in the judgments of the learned Single Judge and the Division Bench in the case of Putti Lal (supra).

22. In view of discussions made above, the Court is prima face satisfied that there has been wilful and deliberate disobedience/non-compliance on the part of the opposite parties of the directions of this Court as contained in the judgments of the learned Single Judge and the Division Bench of this Court in the case of Putti Lal (supra), as modified by the Apex Court.

23. Let this matter be listed on 12.7.2010 for further orders.

24. Since the matter relates to compliance of the directions all over the State of U.P., let whoever is posted as the Principal Secretary, Department of Forest, Government of U.P. and the Principal Chief Conservator of Forest, State of U.P. remain present on the next date i.e. 12.7.2010. On the said date the Court may consider to proceed further in the matter. However, it would be open to the Principal Secretary, Department of Forest, Government of U.P. and the Principal Chief Conservator of Forest, State of U.P. to consider the matter in the light of the observations made in this order and take necessary steps in that regard.