

Court No. - 9

Case :- CONTEMPT APPLICATION (CIVIL) No. - 4408 of 2022

Applicant :- Dinesh Prasad

Opposite Party :- Sh. Sudhir Garg.Principal Secretary And 4 Others

Counsel for Applicant :- Shree Prakash Giri

Hon'ble Rohit Ranjan Agarwal,J.

1. Heard Sri S.P. Giri, learned counsel for the applicant and Sri Santosh Kumar Srivastava, learned ACSC for the State.
2. This contempt application under Section 12 of the Contempt of Courts Act has been filed for punishing the opposite party for flouting and not complying the order dated 16.05.2017 passed in Writ-A No. 39028 of 2011.
3. Facts, in brief, are that the applicant was an employee in the fisheries department and he attained the age of superannuation on 30.09.2011. The applicant filed a writ petition being Writ-A No. 39028 of 2011 with a prayer to continue till the age of 60 years and also challenged the notice/order dated 08.06.2011 asking him to retire on 30.09.2011. Initially, when the case was heard on 25.07.2011 the writ Court did not grant any interim order and following order was passed;

"Heard learned counsel for the petitioner and learned Standing Counsel.

The contention of the petitioner is that in view of the Government Order dated 28.11.2001, the age of retirement has been fixed at 60 years to the State Government employees. The said notification is annexed as Annexure-4 to the writ petition. He submitted that considering the aforesaid Government Order dated 28.11.2001, the learned Single Judge of the Lucknow Bench in the case of Kalika Prasad vs. State of U.P. and others in Writ Petition No. 45 (SS) of 2005, in Writ Petition No. 59036 of 2006, Surya Bali vs. State of U.P. and others, in Writ Petition No. 62132 of 2007, Ram Prakash vs. State of U.P. and others and the learned Single Judge of this Court in Writ Petition No. 39043 of 2006, Jai Indra Dutta Sharma vs. State of U.P. and others and other connected writ petitions, has held that the petitioners shall be allowed to continue in service till the

age of 60 years.

Learned Standing Counsel states that the decision of the learned Single Judge of this Court has been reversed in Special Appeal (State of U.P. vs. Pitamber).

Learned counsel for the petitioner submitted that the review petition has been filed in the Special Appeal, which is pending for consideration.

Learned Standing Counsel may file counter affidavit within a period of four weeks. Rejoinder affidavit may be filed within two weeks thereafter.

List in the week commencing 29.8.2011. Connect with the record of Writ Petition No.40434 of 2011."

4. The writ petition filed by the applicant was finally decided by the order dated 16.05.2017 relying upon the judgment rendered in **Writ-A No. 50351 of 2013 (Jagmohan and another vs. State of U.P. and 3 others)** reported in **2017 (5) ADJ 188**. Further, the notice/order dated 08.06.2011 was quashed. Against the order passed by the writ Court, the State preferred special appeal being Special Appeal Defective No. 486 of 2017 which was dismissed on 17.09.2018 and following order was passed;

"This appeal is barred by limitation from 25 days. An application is preferred under Section 5 of the Limitation Act seeking condonation of the same. Ignoring the delay in filing the appeal, we have looked into the merits of the case.

Learned counsel are in agreement that the issue involved in this appeal is no more res integra in the light of the order dated 29.08.2018 passed in bunch of appeals lead by Special Appeal Defective No.474 of 2018, State of U.P. and others vs. Prahlad Singh.

In the appeal aforesaid this Court held that Government is having a broad discretion to fix a cut of date to apply any of its administrative decision but such decision is always required to be reasonable, uniform and justifiable in eye of law and learned Single Bench, in quite specific terms, noticed unreasonability and discrimination in fixing the cut of date to apply administrative decision of the Government for raising the age of superannuation for the persons similarly situated.

The instant special appeal is also dismissed in terms of the order referred above."

5. Against the said order, State preferred Special Leave to Appeal (C) No. 5527 of 2019. The appeal filed by the State was dismissed on 18.04.2022. Thereafter, a review application was

filed in the case of the applicant by the State which was also dismissed on 11.07.2023 by the Apex Court.

6. Learned counsel for the applicant has submitted that once the special leave to appeal as well as review application was dismissed by the Apex Court, the opposite party was bound to pay the salary for two years, as has been done in case of other employees. He further contended that the judgment rendered by the writ Court in case of **Jagmohan and another (supra)** was applicable to his case and benefit extended to other employees of the department should be extended to the applicant also. According to the applicant's counsel the benefit of payment of salary for two years has been extended in case of one Dev Shankar Pandey.

7. Learned ACSC while opposing the contempt application submitted that the applicant had already retired on 30.09.2011 and no interim order was operating in the writ petition filed by him. Moreover, the issue raised in the petition filed by Jagmohan and others was as to the extension of benefit of a cabinet decision dated 01.08.2013 pursuant to which a Government Order was issued on 12.08.2013. According to State counsel the government order is prospective in nature and no benefit can be accorded to the applicant, who had already attained the age of superannuation on 30.09.2011.

8. I have heard respective counsel for the parties and perused the material on record.

9. The short point to be considered in this contempt application as to whether the benefit accorded in case of **Jagmohan and another (supra)** can be extended to the applicant or not. It is not in dispute that in bunch of petitions filed by Jagmohan and others had claimed the benefit of extension of age from 58 to 60 years on the strength of cabinet decision of State Government

dated 01.08.2013 pursuant to which a Government Order was issued on 12.08.2013. The writ Court while allowing the bunch of petitions leading one Writ-A No. 50351 of 2013 on 27.02.2017 in paragraph no. 30 held as under;

"30. In such view of the matter, the petitioners are entitled for the benefit of the cabinet decision dated 01.08.2013 in pursuance where of a Government order dated 12.8.2013 was issued and it is provided that they shall be entitled benefits in view of the judgment of Apex Court in the case of Dayanand Chakrawarty (supra) as while disposing of earlier petitions, this Court has already observed that in case decision is taken to extent the age, benefit of such extension shall be granted to the petitioners also. Therefore, the petitioners shall be entitled to benefits as per judgement in Dayanand Chakrawarty (supra). Relevant paragraph nos. 49, 49.1, 49.2 and 49.3 of the aforesaid judgment are quoted as under:-

49. In these cases as we have already held that Regulation 31 shall be applicable and the age of superannuation of employees of the Nigam shall be 60 years; we are of the view that following consequential and pecuniary benefits should be allowed to different sets of employees who were ordered to retire at the age of 58 years:

49.1. The employees including respondents who moved before a court of law irrespective of fact whether interim order was passed in their favour or not, shall be entitled for full salary up to the age of 60 years. The arrears of salary shall be paid to them after adjusting the amount if any paid.

49.2. The employees, who never moved before any court of law and had to retire on attaining the age of superannuation, they shall not be entitled for arrears of salary. However, in view of Regulation 31 they will deem to have continued in service up to the age of 60 years. In their case, the appellants shall treat the age of superannuation at 60 years, fix the pay accordingly and re-fix the retirement benefits like pension, gratuity etc. On such calculation, they shall be entitled for arrears of retirement benefits after adjusting the amount already paid.

49.3. The arrears of salary and arrears of retirement benefits should be paid to such employees within four months from the date of receipt of copy of this judgment."

10. From perusal of the aforesaid, it is clear that the benefit which was accorded to the petitioners of Writ-A No. 50351 of 2013 and the other connected matters was on the strength of the Government Order dated 12.08.2013, which was prospective in nature, while in the present case the applicant had already retired in the year 2011.

11. It is not in dispute that the writ petition filed by the applicant was ultimately decided on 16.05.2017, the matter had travelled up to the Apex Court and the order passed by the writ Court was affirmed, but this Court finds that once the applicant had not worked from 30.09.2011 onward and there was no interim order operating in the writ petition filed by him and writ petition was eventually decided in the year 2017 on the basis of judgment rendered in case of **Jagmohan and another (supra)** which could not be extended in case of applicant as in the said case the benefit of extension of service from 58 to 60 years was given on the basis of Government Order dated 12.08.2013. At the time of when the applicant had attained the age of superannuation the said government order was not in existence, the benefit accorded by the said government order cannot be extended to the applicant.

12. Considering the facts and circumstances of the case, this Court finds that no case for contempt is made out.

13. Contempt application is misconceived and dismissed, accordingly.

14. Contempt notice stands discharged.

15. File consign to record.

Order Date :- 17.11.2023

Shekhar