

Court No. - 4

Case :- CONTEMPT APPLICATION (CIVIL) No. - 1218 of 2023

Applicant :- Mohar Mani Singh

Opposite Party :- Sri Vivek Singh, Director, Agriculture Deptt. U.P. Krishi Bhawan, Lko. And Others

Counsel for Applicant :- Birendra Kumar Yadav, Amit Kumar, Manoj Kumar Yadav

Hon'ble Rajesh Singh Chauhan, J.

1. Heard.

2. This Court has passed the order dated 18.10.2023 which reads as under:

"1. Heard.

2. This Court has passed the order dated 04.10.2023 which reads as under:

"1. Heard.

2. This Court has passed order dated 14.9.2023 which reads as under :

"1. On account of call of boycott by the Advocates Association the learned counsel for the petitioner is not present, however, Sri Ram Swaroop, learned Standing Counsel is present for the opposite parties.

2. This Court has passed order dated 24.8.2023 which reads as under :

"1. Heard.

2. This Court has passed order dated 02.08.2023, which reads as under:-

"Heard.

This Court has passed the order dated 16.05.2023, which reads as under:-

"Heard and perused the supplementary affidavit dated 01.05.2023 filed by the applicant in pursuance to earlier order of this Court.

In paragraph 4 of the supplementary affidavit it has been indicted that the respondents have failed to revise the pension and gratuity of the applicant despite the order dated 03.03.2022 passed in Contempt Application (Civil) No. 2026 of 2019 in re: Mohar Mani Singh vs Sri Saroj Singh Director Agriculture Lucknow & Anr.

Accordingly, issue notice to respondents no. 1 and 2 to show cause as to why the proceedings for contempt of the Court be not initiated against them for non-compliance of the judgment and order dated 03.03.2022 passed in Contempt Application (Civil) No. 2026 of 2019. List on the date indicated in the notice as fresh.

The authorities while serving notice on the respondents-contemnor shall strictly adhere to the directions issued by this Court vide order dated 07.06.2021 in Contempt No. 670 of 2021."

Sri Mayankar Singh, learned Standing Counsel has appeared on behalf of opposite parties and has stated that the order of writ Court has been complied with in its letter and spirit and affidavit of compliance is under preparation and the same may likely be filed within three weeks. He has also stated that the consequential order pursuant to the compliance of order of writ Court may likely be passed within the aforesaid period of three weeks.

List this case on 24.08.2023.

On or before 24.08.2023, the affidavit of compliance making compliance of order of writ Court in its letter and spirit shall be filed, failing which, all the opposite parties, namely, Sri Vivek Singh, Director, Agriculture Department, U.P. Krishi Bhawan, Lucknow, Sri S.K. Singh, Deputy Director Agriculture, Sitapur and Sri Arvind Mohan Mishra, the then Deputy Director Agriculture, Sitapur presently posted as Deputy Director Agriculture, Lakhimpur Kheri shall appear in person and if compliance of order of the writ Court is not done in its letter and spirit, the charges may be framed against all the opposite parties."

3. Sri Mayankar Singh, learned Standing Counsel has filed affidavit of compliance, the same is taken on record.

4. Learned counsel for the petitioner has stated that the order of the writ court has not been complied with in its letter and spirit, therefore, he may be given two weeks' time to file reply to the aforesaid affidavit of compliance.

5. Let reply to the affidavit of compliance be filed within a period of two weeks.

6. List on 14.09.2023, if possible, within top ten cases.

7. It is made clear that if it is found that the order of the writ court has not been complied with in its letter and spirit and affidavit of compliance has not been filed properly, the order for personal appearance of the concerning authority may be passed on the next date. "

3. In compliance of the aforesaid order the learned counsel for the petitioner has also filed reply against the affidavit of compliance filed by the opposite party no. 2 on 4.9.2023 which is available on record. In the aforesaid reply the learned counsel for the petitioner has stated that the order of the writ court has not been filed in its letter and spirit till date.

4. However, learned Standing Counsel has stated, on the basis of written instructions dated 12.9.2023 that now the order of the writ court has been complied in its letter and spirit.

5. List this case on 4.10.2023 to enable the learned Standing Counsel to file a fresh affidavit of compliance in terms of the written instruction dated 12.9.2023 making compliance of the order of the writ court in its letter and spirit failing which the opposite party no. 2 i.e. Sri S.K. Singh, Deputy Director, Agriculture, Sitapur shall appear in person."

3. In compliance of the aforesaid order Sri Ram Swaroop, learned Standing Counsel has filed application for discharge of contempt notice as well as dismissal of contempt petition supported with an affidavit of Sri Srawan Kumar Singh, Deputy Director of Agriculture, Sitapur, same is taken on record.

4. Sri Ram Swaroop, learned Standing Counsel has drawn attention of this Court towards para 7 of the aforesaid affidavit whereby the detail has been indicated in respect of making compliance of the order of the writ court. In the aforesaid paragraph the authority has indicated that making compliance of the order of the writ court the petitioner has been paid the remaining salary, remaining Earned Leave, remaining House Rent Allowance and interest on delayed payment.

5. Learned counsel for the petitioner has drawn attention of this Court towards the reply filed by the petitioner against the compliance affidavit filed by the opposite party no. 2. The aforesaid reply is dated 4.9.2023. Learned counsel for the petitioner has stated that earlier one contempt application bearing Contempt Application (Civil) No. 2026 of 2019 was pending consideration before this Court which was dismissed for the reason that the concerning authority has informed the Court that the order of the writ court has been complied with in its letter and spirit. For the convenience the order dated 3.3.2022 passed in the aforesaid contempt petition reads as under :

"1. Heard Sri Birendra Kumar Yadav, learned counsel for the applicant as well as Sri H.A.B. Sinha, learned counsel for the opposite parties.

2. It is submitted by learned counsel for the opposite parties that order of writ Court dated 08.04.2019, passed in Writ Petition No. 1380 (S/S) of 2012, has been complied with and opposite parties have substantially complied with the directions of writ Court and necessary orders in this regard have been passed with regard to arrears of salary, interest of delayed payment, leave encashment and HRA have been paid to the applicant, while revised pension and gratuity are under consideration but assures the Court that that same shall be credited to the account of the applicant within four weeks from today. The compliance affidavit filed on behalf of opposite parties is taken on record.

3. Considering the fact that the opposite parties have substantially complied with the order of writ Court, it cannot be said that they now run in contempt of the order passed by the writ Court.

4. Accordingly, the contempt petition is dismissed. Notices issued to opposite parties stand discharged.

5. However, the opposite parties are directed that the remaining amount as due to the applicant shall be credited to the account of the applicant within four weeks from today."

6. Learned counsel for the petitioner has shown Annexure no. 1 of the aforesaid reply which is an order dated 10.1.2022 passed by one Mr. Arvind Mohan Mishra, Deputy Director Agriculture, Sitapur which was placed before the contempt court earlier apprising that the order of the writ court has been complied with. In the aforesaid order dated 10.1.2022 the last pay drawn of the petitioner as on 1.1.2023 was indicated as Rs. 8550/-. After the dismissal of the contempt petition on 3.3.2022 (supra) the same authority i.e. Sri Arvind Mohan Mishra passed another order dated 29.3.2022 re-fixing the salary of the petitioner as Rs. 7850/- as on 1.1.2003. Learned counsel for the petitioner has stated that when the earlier order dated 10.1.2022 which was shown to the contempt court indicating therein that the last pay drawn of the petitioner is Rs. 8550/- as on 1.1.2003, such authority may not re-fix such last pay drawn reducing the same to Rs. 7850/- after dismissal of the contempt petition. He has further submitted that the relevant fact was pointed out before the contempt court that the complete compliance was not done but the authority has assured the Court that the appropriate order shall be passed very soon, therefore, the contempt court has directed vide order dated 3.3.2022 that the remaining amount due to the petitioner shall be credited to the account of the petitioner within four weeks but instead of crediting the appropriate dues to the account of the petitioner the last pay drawn of the petitioner has been reduced immediately after dismissal of the contempt petition. On account of re-fixation of the salary of the petitioner all other consequential service benefits of the petitioner have been affected.

7. Learned counsel for the petitioner has drawn attention of this Court towards the specific recital to this effect which has been given in para 5 of his reply, relevant part of para no. 5 reads as under :

".....That after disposal of the contempt petition, in place of revise the pension and gratuity of the petitioner, the opposite party no.3, has reduced the pay fixation of the petitioner, whereby the last pay drawn of the petitioner has been reduced as 7850/-, contrary to order passed by the Hon'ble Court, which is contemptuous in nature. The copy of order dated 29.03.2022, whereby pay fixation of petitioner was reduced, is being filed herewith as Annexure no. 3 to the presents affidavit....."

8. The petitioner has categorically indicated that the aforesaid conduct on the part of the authority is contemptuous in nature.

9. On being confronted Sri Ram Swaroop, learned Standing Counsel, as to where the specific reply of the aforesaid fact has been given in the application which has been filed today, he could not show any explanation to this effect. On being further confronted the learned Standing Counsel as to why those amounts

which have been indicated in this application which have already been paid to the petitioner and have been considered by the contempt court in its order dated 3.3.2022 (supra), he could not explain the same.

10. Having considered the arguments of learned counsel for the parties and having regard the aforesaid development, I find that the opposite party no. 3, the then Deputy Director, Agriculture, Sitapur who is presently posted as Deputy Director, Agriculture, Lakhimpur Kheri has prima-facie committed contempt subject to his explanation. I also find that while filing the application by the opposite party no. 2, the present Deputy Director, Agriculture, Sitapur has also tried to mislead the Court by not putting forth the correct position. In his affidavit he has not stated as to how any subsequent order could have been passed after dismissal of the earlier contempt petition inasmuch as when the order dated 10.1.2022 (supra) was shown to the contempt court on the basis of aforesaid order, the contempt petition was dismissed. Therefore, it appears that the opposite party no. 2 has also prima facie committed contempt of this Court subject to his explanation.

11. List this case on 18.10.2023.

12. On that date the opposite party no. 2 and 3 namely, Sri Sri Srawan Kumar Singh, Deputy Director of Agriculture, Sitapur, and Arvind Mohan Mishra, Deputy Director of Agriculture, Lakhimpur Kheri shall appear in person to file their explanation as to why the charges may not be framed against them for committing deliberate and intentional Contempt of Court.

12. Learned Standing Counsel shall intimate this order to both the opposite parties within two days for its compliance."

3. In compliance of the aforesaid order, Sri S.K. Singh, Deputy Director Agriculture, Sitapur (opposite party no. 2) and Sri Arvind Mohan Mishra, the then Deputy Director Agriculture, Sitapur (opposite party no. 3) are present in person.

4. Sri Sunil Bajpai, learned Additional Chief Standing Counsel has filed the applications for grant of time on behalf of opposite parties nos. 2 and 3, the same are taken on record, thereby seeking some time for making compliance of the order of Writ Court in its letter and spirit. He has submitted that if two weeks' time is given, the order of Writ Court would be complied with in its letter and spirit.

5. Considering the request of Sri Sunil Bajpai, two weeks' and no more time is given to file afresh affidavits of compliance, making compliance of the order of Writ Court in its letter and spirit, failing which, both the officers, who are present today in person, shall again appear in person on the next date. If the order of the Writ Court is not complied with, the charges may be framed against those officers.

6. List on 20.11.2023. "

3. In compliance of the aforesaid order, Sri S.K. Singh, Deputy Director, Agriculture, Sitapur (opposite party no. 2) and Sri Arvind Mohan Mishra, the then Deputy Director, Agriculture, Sitapur (opposite party no. 3) are present in person. Both the officers have filed the short counter affidavits, the same are taken on record.

4. Sri Sunil Bajpai, learned Additional Chief Standing Counsel is drawing attention of this Court towards the short counter affidavit filed by Sri S.K. Singh referring Annexure no. 4 which is a letter dated 15.03.2022 preferred by the Joint Director, Pension, Lucknow Division, Lucknow addressing to the Deputy

Director of Agriculture, Sitapur indicating therein that the salary of the petitioner has not been fixed in terms of the Government Orders, therefore, he has asked the authority concerned to re-visit on the pay fixation, so done in terms of the law/prevalent Government Orders. Pursuant thereto, the Deputy Director of Agriculture, Sitapur has passed an order dated 29.03.2022 (Annexure No. 5) and corrected order dated 27.07.2023 (Annexure No. 9).

5. Sri Sunil Bajpai, learned Additional Chief Standing Counsel has further stated that the aforesaid orders have been passed pursuant to the order dated 15.03.2022 passed by the Joint Director, Pension, Lucknow Division, Lucknow and also keeping in view the legal position, therefore, if the petitioner is aggrieved from the aforesaid orders, he may challenge the same, inasmuch as those orders may not be corrected in the contempt petition. He has also stated that the Writ Court had directed to make payment of retiral dues with interest and in terms of the Government Orders and the petitioner has been paid his retiral dues and interest thereon. On that submission of Sri Sunil Bajpai, learned counsel for the petitioner has not disputed, however, he has stated that the objections, so raised by the Joint Director, Pension, Lucknow Division, Lucknow, are misconceived and he may assail the order dated 15.03.2022 as well as other consequential orders passed by the department.

6. Having heard learned counsel for the parties and having perused the material available on record, since the petitioner has been paid his all retiral dues and interest on delayed payment, as per the modified order, which has been issued pursuant to the order dated 15.03.2022 passed by Joint Director, Pension, Lucknow Division, Lucknow, therefore nothing remains to be adjudicated in the present contempt petition.

7. Accordingly, the instant contempt petition is ***dismissed***. Notices, if any, are discharged.

8. However, if the petitioner is aggrieved from the order dated 15.03.2022 passed by the Joint Director, Pension, Lucknow Division, Lucknow and consequential orders being passed by the department, he may challenge those orders, taking legal recourse which is permissible under the law.

[Rajesh Singh Chauhan,J.]

Order Date :- 20.11.2023/kkv/