

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on :18.03.2024

Pronounced on:19.04.2024

**CCP(D) No.32/2022 in LPASW
370/2002,CM No.4205/2022**

1. Jagmohan, Age 62 years
Son of Sh. Babu Ram,
R/o Village Jinder Mehlu, P.O.
Dabhlehar, Tehsil R.S. Pura, District
Jammu.
2. Mohinder Singh, Age 61 years
Son of Sh. Mian Singh,
R/o Palli Hill Estates, Channi Rama,
P.O. Sainik Colony, Jammu.
3. Sohan Lal, Age 64 years,
Son of Sh. Kartar Nath,
R/o Krishna Nagar, Kartholi, Tehsil
Bari Brahmana, District Samba.
4. Nasib Singh, Age 64 years,
Son of Sh. Ram Chand, R/o Kamani
Near Punjab National Bank, Kandoli,
Nagrota, District Jammu.
5. Satish Kumar, Age 65 years,
Son of Sh. Jagdish Raj,
R/o Krishna Nagar, Kartholi, Tehsil
Bari Brahmana, District Samba.

...Petitioners

Through: Mr. K.S. Johal, Sr. Advocate, with Mr.
Karman Singh Johal, Advocate.
Mr. Rajesh Bhushan, Advocate

versus

1. Sh. R. K. Goyal, IAS,
Commissioner/Secretary to Govt,
Home Department, Govt. of J&K,
Civil Secretariat, Jammu - 180001.
2. Sh. Dilbag Singh, IPS, Director
General of Police, J&K.
Police Headquarter, Jammu - 180004.
3. Sh. Garib Dass, IPS,
Inspector General of Police,
J&K (Tech), Police Headquarter,
Jammu – 180004

4. Sh. Sameer Rekhi, KPS,
Senior Superintendent of Police,
Police Transport Workshop,
Police Complex, Channi Himmat,
Jammu – 180011.

.....**Respondent(s)**

Through: Ms Monika Kohli, Sr. AAG

Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

Tashi Rabstan – J

1. Petitioners herein were appointed as semi-skilled workers, i.e., Carpenter, Mechanic, Electrician, Masson etc. in the Police Department. As per SRO 149 of 1973 all those who were skilled/semi-skilled were held entitled to higher/special grades. However, those sekilled/semi-skilled workers were given lower grades even though they had passed ITI Diploma. The petitioners filed OWP No.60/1990 and vide judgment dated 18.04.1996 the writ petition was allowed holding that the petitioners are entitled to the pay scales as payable to the skilled workers of category-B or semi-skilled workers as defined in Schedule-C. LPA filed against the said judgment also came to be dismissed on 04.12.1997. SLP filed by the State also came to be dismissed by the Apex Court on 20.04.1998. When the order was not implemented, the petitioners filed a contempt petition and vide order dated 17.12.1997 the respondents were directed to pay the benefits with interest @ 18% per annum from the date of their entitlement. Thereafter, second contempt petition also came to be filed. Ultimately, the respondents complied with the order of writ court.

2. Thereafter, the Police Department placed the petitioners and other similarly situated persons in a separate hierarchical set up and directed them to

be governed by the J&K Civil Service Rules and not in the cadre of constabulary. The petitioners challenged the said action in SWP No.443/2000. Another SWP No.2542/1999 also came to be filed on the same issue. However, the learned Single Judge vide judgment dated 17.07.2002 held that the benefit of SRO 149 of 1973 cannot be given to the petitioners because they were not treated as members of the police force. However, it was directed that the benefits already given to the petitioners and other similarly situated persons shall not be recovered as they were not responsible for getting higher pay. Against the said judgment, the petitioners herein filed LPASW No.370/2002. Some other appeals also came to be filed on the same issue. The State also went in appeal.

3. The Division Bench vide judgment dated 09.12.2015, while allowing the appeals of petitioners and other similarly situated persons, held that the petitioners are entitled to get the benefit under SRO 149 of 1973 which are being given to similarly placed Carpenters/Electricians/Masons, who are working in the Police Department, without any discrimination. Consequently, the writ petitions of petitioners and other similarly situated persons came to be allowed and the appeals filed by the State came to be dismissed.

4. However, when the respondents did not implement the said judgment, the petitioners have filed the present contempt petition.

5. Learned counsel appearing for respondents raised a preliminary objection as to the maintainability of the contempt petition in view of the embargo of Section 20 of the Contempt of Courts Act. She submits that the Division Bench delivered the judgment on 09.12.2015, whereas the petitioners herein have filed the present contempt petition on 09.06.2022 seeking

implementation of the directions passed by the Division Bench. She submits that the present contempt petition came to be filed after more than six years and seven months after the passing of judgment on 09.12.2015; therefore, cognizance of such a contempt could have been taken only within a period of one year from the date of alleged contempt. The instant contempt petition is, therefore, barred by limitation.

6. Now the question arises for consideration is as to whether the contempt application is liable to be dismissed on the ground of limitation prescribed under Section 20 of the Contempt of Courts Act, 1971?

Section 20 of the Contempt of Courts Act, 1971 is quoted hereunder:-

“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.”

7. The Apex Court in *Pallav Sheth vs Custodian*, 2001 AIR SCW 3025, considered the scope of Section 20, wherein it inter alia held that the wording of section 20 is negative, but it is clear that terminus ad quem is the initiation of proceedings for contempt within a year. The question arises as to how and when the proceedings are initiated. In this connection paragraph 38, 41 and 42 of *Pallav Sheth* (supra) are extracted hereunder:

"38. The Rules so framed by all the Courts in India do show that proceedings are initiated inter alia with the filing of an application or a petition in that behalf. If, however, proceedings are not initiated by filing of an application within a period of one year from the date on which the contempt is alleged to have been committed then the Court shall not have jurisdiction to punish for contempt. If, on the other hand, proceedings are properly initiated by the filing of an application, in the case of civil contempt like the present before the Court within the period of limitation then the provisions of Section 20 will not stand in the way of the Court exercising its jurisdiction.

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.

42. The decision in Om Prakash Jaiswal's case (supra), to the effect that initiation of proceedings under Section 20 can only be said to have occurred when the Court formed the prima facie opinion that contempt has been committed and issued notice to the contemner to show-cause why it should not be punished, is taking too narrow a view of Section 20 which does not seem to be warranted and is not only going to cause hardship but would perpetrate injustice. A provision like Section 20 has to be interpreted having regard to the realities of the situation. For instance, in a case where a contempt of a subordinate court is committed a report is prepared whether on an application to Court or otherwise, and reference made by the subordinate court to the High Court. It is only thereafter that a High Court can take further action under Section 15. In the process, more often than not, a period of one year elapses. If the interpretation of Section 20 put in Om Prakash Jaiswal's case (supra) is correct, it would mean that notwithstanding both the subordinate court and the High Court being prima facie satisfied that contempt has been committed the High Court would become powerless to take any action. On the other hand, if the filing of an application before the subordinate court or the High Court making of a reference by a subordinate court on its own motion or the filing an application before an Advocate-General for permission to initiate contempt proceedings is regarded as initiation by the Court for the purposes of Section 20, then such an interpretation would not impinge on or stultify the power of the High Court to punish for contempt which power, de hors the Contempt of Courts Act, 1971 is enshrined in Article 215 of the Constitution. Such an interpretation of Section 20

would harmonise that section with the powers of the Courts to punish for contempt which is recognised by the Constitution."

8. The fall out of the above discussion is that contempt must be initiated either by filing an application or by the court issuing notice suo moto within one year from the date on which the contempt is alleged. Whether contempt proceedings are initiated within the prescribed period or not is an issue to be decided in each and every case. In the present case the judgment of Division Bench came to be delivered in December, 2015 thereby allowing the appeal of petitioners herein and the judgment was passed in presence of learned counsel for both the parties, whereas the petitioners filed the present contempt petition in June, 2022, i.e., after six years and seven months. Thus, there is enormous and long delay in filing the contempt petition.

9. As regards the contention of petitioners that they were filing representations to the respondents for implementing the judgment of the Division Bench, it is well settled that mere filing of repeated representations cannot extend the period of limitation under Section 20 of the Contempt of Courts Act, 1971.

10. In view of the above, the contempt petition is liable to be dismissed as being barred by Section 20. Ordered accordingly. Rule issued, if any, shall stand discharged.

Jammu
19.04.2024
(Anil Sanhotra)

(Puneet Gupta)
Judge

(Tashi Rabstan)
Judge

Whether the order is reportable ?
Whether the order is speaking ?

Yes/No
Yes/No

I pronounce this judgment today in terms of Rule 138(4) of the J&K High Court Rules, 1999.

Jammu
19.04.2024

(Tashi Rabstan)
Judge