

Court No. - 17

Case :- CONTEMPT APPLICATION (CIVIL) No. - 2142 of 2024

Applicant :- Jitendra Kumar Singh

Opposite Party :- Smt. Manisha Trighatia, Commissioner And Secy. Board Of Revenue, Lko.

Counsel for Applicant :- Gaurav Mehrotra, Akber Ahmad, Ambuj Singh

Hon'ble Rajeev Singh, J.

1. On 29.08.2024 following order was passed:-

"1. Heard Sri Gaurav Mehrotra, learned counsel for the applicant and Sri Kuldeep Pati Tripathi, learned Additional Advocate General assisted by Sri Tushar Verma, Advocate appearing for the respondent.

2. The instant contempt application has been filed by the applicant alleging disobedience of the order dated 09.02.2024 (corrected on 13.02.2024) passed in Writ-A No. 2987 of 2023.

3. Learned counsel for the applicant submits that the applicant was initially appointed on the post of Revenue Inspector. However, on the basis of certain allegations, departmental proceeding was initiated against him, but when after conclusion of the said departmental proceeding, no adverse material was found against him, only warning was given to the applicant by the appointing authority/Collector, Lucknow.

Submission of learned counsel for the applicant is that only with the intention to deprive the applicant from promotion, the Collector himself has suo-motu revised the order under the provisions of Rule 13 of Punishment and Appeals Rules, 1999 on 30.05.2022 and passed reversion order on 17.01.2023. Against the said order dated 17.01.2023, the applicant preferred a writ petition i.e. Writ-A No. 2987 of 2023 (Jitendra Kumar Singh vs. State of U.P. and others) on the ground that the Collector has no power to revise his earlier decision under the provisions of Punishment and Appeal Rules, 1999. As counter affidavit was invited, the same was filed by Mr. Surya Pal Gangwar, District Magistrate/Collector, Lucknow on 27.07.2023.

4. After considering the contents of the writ petition, counter affidavit, rejoinder affidavit and the legal ground that the same authority has no power to revise his decision under the provisions of Rule 13 of the Punishment and Appeal Rules, 1999, on 09.02.2024, following order was passed by the writ Court:-

"1. Heard Sri Akber Ahmad, learned counsel for the petitioner as well as learned Standing Counsel for the respondents.

2. By means of present writ petition that petitioner has challenged the

punishment order dated 17.01.2023, issued by the District Magistrate, Lucknow -respondent no. 3 imposing major penalty against the petitioner of reduction to lower stage in the time scale.

3. It has been submitted by learned counsel for the petitioner that on previous occasion charge sheet was issued to the petitioner on 19.02.2022 containing five charges by the Additional District Magistrate, Lucknow who was appointed as Enquiry Officer. The petitioner had submitted his response and after conclusion of the inquiry, out of five only three charges were proved and two charges were partially proved and the petitioner was given warning and proceedings were dropped.

4. It has been next submitted by learned counsel for the petitioner that once disciplinary proceedings have concluded by order dated 25.04.2022 passed by the District Magistrate, again by means of order dated 30.05.2022, fresh charge sheet has been given to the petitioner. In the said charge sheet, it is stated that five of the charges are same as were levelled in previously against the petitioner on 19.02.2022. It is submitted that fresh charge sheet has resulted in major penalty inflicted on the petitioner on 17.01.2023, which has been impugned in the present writ petition. It is submitted that the petitioner cannot be punished twice for the same charge and therefore the impugned order suffers from the vice of double jeopardy.

5. It is further submitted by learned counsel for the petitioner that now the petitioner is working on the post of Revenue Inspector, and is under consideration for promotion to the post of Naib Tehsildar. He has stated that punishment has been awarded in the most illegal and arbitrary manner, merely to see that the petitioner is not promoted to the higher post. The matter of promotion was duly considered and petitioner's candidature has already been put in a sealed cover. It is submitted that considering the fact that the impugned order is on the face of it illegal and arbitrary and a person cannot be punished twice for the same charges, hence the impugned order deserves to be set aside.

6. In the aforesaid circumstances, this Court is of the view that case is made out for interference in favour of the petitioner considering the fact that from perusal of both the charge sheets it is evident that most of the charges are same for which the petitioner has already been subjected to enquiry and punished by means of order dated 25.04.2022 and same charges are subject matter of fresh enquiry which has resulted in the punishment order dated 17.01.2023. Accordingly, as an interim measure operation of punishment order dated 17.01.2023 is stayed.

7. This Court has also noticed that the sealed cover procedure was adopted on 13.06.2022, and more than a year has lapsed, and according to Rule 10 of Government Order No. 13/21/89-ka-1-1997, dated 28.05.1997, a case is made out for interim/adhoc promotion.

8. It is further noticed that according to Rule 10 of Government Order dated 28.05.1997, there is provision for adhoc promotion during pendency of proceedings. In the light of above, liberty is granted to the petitioner to move appropriate application for grant of interim promotion according to the Rule 10 of Government Order dated 28.05.1997, to the District Magistrate, Lucknow for grant of adhoc promotion.

9. The District Magistrate, Lucknow shall proceed to consider and pass

appropriate orders for adhoc promotion of the petitioner, without being influenced by the punishment order dated 17.01.2023, which has already been stayed by this Court, and pass a reasoned and speaking order in this regard expeditiously, say within next three weeks from the date of representation is given by the petitioner.

10. List this case on 13.03.2024."

5. Further submission of learned counsel for the applicant is that the aforesaid order was passed in presence of the Standing Counsel appearing for the respondent. It is also submitted that the aforesaid order was corrected on 13.02.2024 which was communicated to the respondent-authority on 15.02.2024, and admittedly, it was received in the office of respondent on 19.02.2024.

It is next submitted that regular proceeding for promotion was going on from the post of Revenue Inspector to the post of Naib Tehsildar and the case of the applicant was also considered by Departmental Promotion Committee headed by one person nominated by U.P. Public Service Commission and two members nominated by Board of Revenue, U.P. The said Departmental Promotion Committee on 12.03.2024 recommended that the regular promotion of the applicant be given subject to decision of the writ petition. Learned counsel for the applicant submitted that as the direction was given by the writ Court for giving ad-hoc promotion to the applicant by opening the sealed cover envelope, but the Departmental Promotion Committee recommended for regular promotion of the applicant.

It is also submitted that in para 7 of the aforesaid order passed by the writ Court, there is clear direction for giving ad-hoc promotion to the applicant.

Learned counsel for the applicant next submits that regular D.P.C. was conducted for the promotion on the post of Naib Tehsildar on 12.03.2024, in which, the name of the applicant was also considered and the Departmental Promotion Committee recommended the applicant for his promotion on the post of Naib Tehsildar subject to decision of the writ petition. However, the respondent authority failed to issue necessary order in pursuance of the D.P.C. conducted by U.P. Public Service Commission on 12.03.2024.

Learned counsel for the applicant draws the attention of the Court at page no. 219 which is a letter dated 07.03.2024 written by Mr. S.B.S. Ranga Rao, Commissioner/Secretary, by which, request was made to the Commission for opening the sealed cover envelope for giving ad-hoc promotion to the applicant on the post of Naib Tehsildar, but in place of giving promotion, either ad-hoc or regular, the claim of the applicant has been denied. Learned counsel for the applicant vehemently submitted that as the respondent deliberately flouted the order of the writ Court, she must be summoned and punished accordingly.

6. Sri Kuldeep Pati Tripathi, learned Additional Advocate General assisted by Sri Tushar Verma, learned Additional Chief Standing Counsel appearing for the respondent submits that request was also made to the Commission to review earlier decision of the D.P.C. dated 12.03.2024 vide a letter 06.06.2024, but the same was denied by Mr. D.P. Pal, Deputy

Secretary, U.P. Public Service Commission vide its letter dated 15.07.2024 on behalf of the Commission. Again vide letters dated 09.08.2024 and 14.08.2024, requests were made by the Commissioner/Secretary, Board of Revenue for reviewing the decision of the D.P.C. dated 12.03.2024 on the ground that the applicant was involved in realizing crores of rupees in the acquisition of land for defense corridor in Village- Bhatgao, Tehsil- Sarojini Nagar, Lucknow, and F.I.R.s were also lodged against the applicant and other persons. It is further submitted that despite the recommendation of the Departmental Promotion Committee dated 12.03.2024, the appointing authority has again requested for reviewing the said decision of the D.P.C., therefore, no promotion is being given to the applicant. He also submits that the Commission is not reviewing its aforesaid decision.

Relying on the decision of Hon'ble Apex Court passed in the case of Jhareswar Prasad Paul and another vs. Tarak Nath Ganguly and others reported in (2002) 5 SCC 352, para no.11, Sri Kuldeep vehemently submits that, in case, there is no specific direction issued by the writ Court, then under the garb of contempt jurisdiction, parties cannot insist for passing specific order.

7. Replying to the submissions of Sri Kuldeep Pati Tripathi, learned Additional Advocate General, Sri Gaurav Mehrotra, learned counsel for the applicant submits that detailed inquiry has already been conducted and no evidence is found against the applicant. It is vehemently submitted that only with the intention to deprive the applicant from promotion, three F.I.R.s were lodged naming the applicant also.

The said F.I.R.s are:- (i) F.I.R. No. 171 of 2022 under Sections 406, 419, 420, 467, 468, 471 I.P.C., Police Station- Banthra, Lucknow, (ii) F.I.R. No. 267 of 2022 under Sections 406, 420, 467, 468, 471, 504, 506 I.P.C., Police Station- Sarojini Nagar, Lucknow, and (iii) F.I.R. No. 253 of 2022 under Sections 420, 120-B, 467, 468, 471, 201, 34 I.P.C. and 3(1)(f) SC/ST Act, Police Station- Sarojini Nagar, Lucknow.

In F.I.R. No. 171 of 2022 (supra), final report has already been submitted by the Investigating Officer. In F.I.R. Nos. 267 of 2022 and 253 of 2022, the involvement of the applicant was found false.

It is next submitted that all these facts were already disclosed in the rejoinder affidavit filed in the writ petition and this was also available on the record at the time of passing of the order dated 09.02.2024 by the writ Court and therefore, respondent is deliberately violating the order.

8. Considering the submissions of learned counsel for the parties and going through the contents of the order passed by the writ Court as well as relevant record placed today before this Court by Mr. Pramod Kumar Pandey, O.S.D., Board of Revenue (who is present today before this Court), it is evident that the name of the applicant was forwarded for regular D.P.C. for the post of Naib Tehsildar and at the same time, request was also made by the Commissioner, Board of Revenue vide its letter dated 07.03.2024 for opening the sealed cover envelope of the applicant for ad-hoc promotion on the post of Naib Tehsildar. It is further evident that on 12.03.2024, the D.P.C. was conducted, which was headed by one person and two members were nominated by the Board, in which, the case of the applicant was recommended for promotion subject to the decision of

the writ petition, but the same has not been complied with.

It is also evident from the record that after receiving the recommendation of the Commission, some noting has been made in the file that the involvement of the applicant was found for realizing the money in acquisition of land for defense corridor scheme and therefore, the F.I.R.s were lodged, implicating the applicant also. However, it is undisputed that in all three F.I.R.s, the involvement of the applicant was not found as only general allegations are mentioned in the notings. Admittedly, the applicant has not been promoted on the ground that repeated requests are being made by the respondent for review D.P.C. by the Commission. Moreover, earlier request for review D.P.C. has already been declined by the Commission vide letter dated 15.07.2024.

Further, the judgment relied by Sri Kuldeep is not applicable as it is undisputed fact that till today repeated requests are being made by the respondent to U.P. Public Service Commission for reviewing its earlier decision of the D.P.C. dated 12.03.2024, which is not accepted by the Commission till date.

It is further evident from the record that despite clear opinion of the D.P.C. organized in the U.P. Public Service Commission on 12.03.2024 for promoting the applicant subject to decision of the writ petition, the order dated 23.08.2024 is passed by the respondent denying the ad-hoc promotion of the applicant without any rhyme or reason. As on 17.03.2024, request was also made by Commissioner, Board of Revenue to Public Service Commission for opening sealed cover envelope of the applicant for promotion on the post of Naib Tehsildar, but now he is being denied despite recommendation for regular promotion.

This is clear hoodwink of the respondent-official as there is clear direction of the writ Court that the case of the applicant has to be considered without being influenced by the punishment order.

In view of the above facts and discussions, this Court is satisfied that a case is made out under Rule 5 of Chapter XXXV-E of Allahabad High Court Rules, 1952 (Rules framed under Section 23 of Contempt of Courts Act, 1971) requiring to call upon the contemnor - Smt. Manisha Trighatia, Commissioner and Secretary, U.P. Board of Revenue, Lucknow, to submit her reply in person or through her counsel to the following charge:-

"Why the respondent/contemnor, Smt. Manisha Trighatia, Commissioner and Secretary, Board of Revenue, Lucknow, U.P., be not punished for willful and deliberate disobedience of the order dated 09.02.2024 passed in Writ-A No. 2987 of 2023"

9. List this case on 20.09.2024 at 11:30 A.M.

10. The relevant record placed before this Court by Mr. Pandey is returned to him.

11. On the next date, Smt. Manisha Trighatia, Commissioner and Secretary, U.P. Board of Revenue, Lucknow shall appear in person before this Court."

2. Sri Kuldeep Pati Tripathi, learned Additional Advocate

General filed affidavit of compliance duly sworn in by Smt. Manisha Trighatia, Commissioner and Secretary, Board of Revenue, Lucknow, U.P. is taken on record. He informed that order of writ court has been complied with by passing the formal order dated 19.09.2024, a copy of which has been annexed as annexure CA1. Smt. Manisha Trighatia, Commissioner and Secretary, U.P. Board of Revenue, Lucknow is present.

3. Considering the contents of the affidavit of compliance, it is evident that the order of the writ Court has already been complied with., therefore, no contempt is made out against the opposite party

4. Thus, the instant contempt application is dismissed.

Order Date :- 20.9.2024

Renu/-