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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 13.07.2023

+ **CONT.CAS(C) 110/2022 & CM APPL. Nos. 39610-39612/2022**

SYED AHMAR ALI HASHMI

..... Petitioner

Through: Mr Setu Niket and Ms Esha
Mazumdar, Advs.

versus

VASUDHA MISHRA & ORS.

..... Respondents

Through: Mr Hrishikesh Baruah, Mr Kumar
Kshitij, Mr Anurag Mishra and Mr
Saumitra Shrivastava, Advs. for R-1.
Mrs Avnish Ahlawat, Standing
Counsel GNCTD with Ms Tania
Ahlawat, Mr Nitesh Kumar Singh, Ms
Palak Rohmetra, Ms Laavanya
Kaushik and Ms Aliza Alam, Advs.
for R-2 & R-3.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

CM APPL. Nos. 39610/2022

1. This is an application seeking revival of contempt petition being CONT.CAS(C) 110/2022. On 26.05.2022, the contempt petition was disposed of as the order dated 11.08.2021 had been complied with. The operative portion of the order dated 11.08.2021 reads as under:

*“21. In view of the above, the order dated 07.08.2020 passed in
OA No. 975/2020 is hereby set aside. Respondent no.1 is directed*



to extend the benefit of relaxation in age limit upto 5 years to the petitioner while considering his application for the post of Senior Scientific Officer (Documents) vide advertisement no. 07/2020, issued through UPSC, and he be allowed to participate in the selection process, subject to fulfillment of other conditions laid down qua the subject post.

22. The writ petition is disposed of with these directions. Consequently, pending application shall also stand closed.”

2. The operative portion of the order dated 26.05.2022 reads as under:

“1. Learned counsel for the Petitioner states that order dated 11.08.2021 passed by this Court in W.P.(C) 5231/2020, non-compliance of which is the subject matter of the instant contempt petition has been complied with.

2. In view of the above, nothing survives in the instant contempt petition.

3. The petition is disposed of, along with pending application(s), if any.”

3. The present application states that the respondents have withdrawn the vacancies despite the order of this Hon’ble Court. Hence, the present application for revival of the contempt petition.

4. Respondent has filed a reply and has relied upon three letters. The NCT of Delhi on 28.04.2022 addressed a letter to UPSC as under:

“Government of National Capital Territory of Delhi

Home-III Department

5th Level ‘C’ Wing, Delhi Secretariat, I.P. Estate, New Delhi

No.F.19/5(1)/2015/Home III Deptt./2320

dated 28/4/22



To

*The Under Secretary (R-2).
Union Public Service Commission
Dholpur House, Shahjahan Road
New Delhi-110069*

Subject: To hold the recruitment process of 03 (02 UR and 01 OBC) posts of "Solar Scientific Officer (Documents)" of Forensic Science Laboratory, Govt. Of NCT of Delhi which have already been advertised by UPSC in employment news on 25.07.2020 & 27.02.2021 vide advt. no. 7/20 & 04/21 respectively.

Sir,

In continuation of this office letter of even number dated 14.12.2020 and 20.10.2020 vide which proposals for filling up of 06 (03 UR, 01 SC & 02 OBC) vacant posts of Senior Scientific Officer (Documents) (including the 03 posts of Cyber Forensic Unit) were forwarded to UPSC for filling up under direct recruitment. Subsequently, UPSC advertised these vacancies in the employment news on 25.07.2020 & 27.02.2021 vide advt no. 7/201 & 04/21 respectively (copy enclosed)

But, now an independent "Cyber Forensic Division" has been established and started functioning in FSL Delhi, for which additional 108 posts have also been sanctioned/created vide letter dated 21 10.2020 (copy enclosed). Therefore, it has been decided to shift/transfer already sanctioned/created posts of Cyber Forensic Unit from Documents Division to Cyber Forensic Division.

It is, therefore, requested to kindly hold the recruitment process of 03 (02 UR and 01 OBC) posts of "Senior Scientific Officer (Documents)" of



Forensic Science Laboratory, Govt. of NCT of Delhi, which were advertised by UPSC in employment news on 25.07.2021 & 27.02.2021 vide advt. no 7/20 & 04/21 respectively, due to administrative reasons, till further communication by this office/

These issues with the approval of Additional Chief Secretary (Home)

Yours faithfully,

Encls: As above.

Sd/-

**DEPUTY SECRETARY (HOME)
GOVT. OF NCT OF DELHI**

5. The UPSC on 27.05.2022 replied clearly showing its intention to comply with the Order dated 11.08.2021.

“No. F.1/29(8)/2020-R.II

**UNION PUBLIC SERVICE COMMISSION
DHOLPUR HOUSE, SHAHJAHAN ROAD
New Delhi - 110 069**

To,

*Deputy Secretary (Home),
Home-III Department,
Government of NCT of Delhi,
5th Level, ‘C’ Wing,
Delhi Secretariat, 1.P Estate,
New Delhi*

Subject: *Direct recruitment to recruitment to (i) 04 (Four) posts (UR-03 and SC-01) of Senior Scientific Officer (Documents) in Forensic Science Laboratory, Department of Home, Govt. Of NCT of Delhi, advertised vide Commission’s Adv. No. 07/20*



and (ii) 02 (Two) posts (OBC 02) of Senior Scientific Officer (Documents) in Forensic Science Laboratory, Department of Home, Govt. of NCT of Delhi, advertised vide Commission's Adv. No 04/21-Reg.

Sir.

I am directed to refer to your letter No. F.19/5(1)//2015/Home-III Deptt./2320 dated 28.04.2022 in the subject recruitment cases wherein it has been requested to put on hold the recruitment process for 03 (02-UR and 01-OBC) vacancies out of total 06 (03- UR, 01-SC and 02-OBC) vacancies for the post of Senior Scientific Officer (Documents) which were advertised by UPSC vide Adv. Nos. 07/20 and 04/21.

2. The matter has been examined in the Commission. As mentioned in your letter, the 108 posts were sanctioned/created under Cyber Forensic Division vide Department's letter dated 21.10.2020. However, the same is being currently conveyed to the UPSC after more than 1.5 years. The request to hold recruitment process for few vacancies of SSO (Documents) cannot be entertained at this stage as both the cases are under advanced stages of recruitment process: Changing the number of vacancies as advertised earlier at this stage is uncalled for and liable to litigations from candidates. Further, the Commission advertises and conducts the recruitment process only as per the number of vacancies sent by the requisitioning Ministry/Department at the time of submitting requisition. Moreover, shifting of posts from one Division/Unit to another is purely an administrative issue and if the requisitioning Department wish, it can withdraw the requisitions in toto for which a decision is to be taken by the concerned competent authority in the Department and communicated to the



Commission. Meanwhile, Commission will continue with the recruitment process for total 06 (UR-03, OBC-02 and SC-01) vacancies for the post of Senior Scientific Officer (Documents), as requisitioned earlier by the Home Department.

Yours faithfully

Sd/-

(Devendra Kumar)

Under Secretary

Union Public Service Commission

Phone:- 011-23387296

E-mail ID: sort2 upscnic.in”

6. A bare perusal of the letter shows unequivocal and clear intention of the respondent UPSC to comply with the directions of this Court.

7. On 14.06.2022, the Government of NCT of Delhi addressed another letter which reads as under:

“Government of National Capital Territory of Delhi

Home-III Department

5th Level ‘C’ Wing, Delhi Secretariat, I.P. Estate, New Delhi

No.F.19/5(1)/2015/Home III Deptt./2541

dated 14/06/22

To

The Under Secretary (R-2).

Union Public Service Commission

Dholpur House, Shahjahan Road

New Delhi-110069

Subject: Withdrawing the requisitions in toto for 06 (03 UR, 01 SC & 02 OBC) posts of “Senior Scientific Officer (Documents) of Forensic Science Laboratory, Govt. Of NCT of Delhi which



have already been advertised by UPSC in employment news on 25.07.2020 & 27.02.2021 vide advt. no. 7/20 & 04/21 respectively.

Sir.

Please refer to your letter dated 27.05.2022 received in this office on the subject cited above.

In this regard, it is submitted that vide this office letter of even number dated 14.02.2020 and 20.10.2020, requisite proposals for filling up of 06 (03 UR, 01 SC & 02 OBC) vacant posts of Senior Scientific Officer (Documents) (including the 03 posts of Cyber Forensic Unit) were forwarded to UPSC for filling up under direct recruitment. Subsequently, UPSC advertised these vacancies in the employment news on 25 07:2020 & 27.02.2021 vide advt, no. 7/20 & 01/21 respectively.

But, now an independent “Cyber Forensic Division” has been established and started functioning in FSL Delhi, for which additional 108 posts have also been sanctioned/created vide letter dated 21.10.2020 (copy enclosed). Therefore, it has been decided to shift/transfer already sanctioned/created 16 posts of Cyber Forensic Unit from Documents Division to Cyber Forensic Division. Accordingly, Recruitment Rules for the scientific posts of Documents Division and Cyber Forensic Division are under process of framing separately which may be finalized shortly. Therefore, it is not feasible to recruit all requisitioned 06 posts as per the existing RRs of Documents Division as the new proposed RRs for both the division are entirely different and there will be technical problem in their shifting & promotion in future if all 06 posts inclusive of 03 posts of SSO (Cyber Forensic) are filled up in accordance with the existing RRs for the



post of SSO (Documents)

In view of the above, the requisition in toto for 06 (03 UR, 01 SC & 02 OBC) posts of “Senior Scientific Officer (Documents)” of Forensic Science Laboratory, Govt. of NCT of Delhi, advertised by UPSC in employment now on 25.07.2020 & 27.02.2021 vide advt. no. 7/20 & 04/21 respectively, is withdrawn due to some administrative reasons.

These issues with the approval of worthy Principal Secretary (Home)

Yours faithfully,

Encls: As above

Sd/-

(L.K. GAUTAM

DEPUTY SECRETARY (HOME)

GOVT. OF NCT OF DELHI”

8. The Hon’ble Supreme Court in **Ram Kishan vs. Tarun Bajaj & Ors., (2014) 16 SCC 204**, observed as under:

“12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is "wilful". The word "wilful" introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. "Wilful" means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a "bad purpose or without justifiable excuse or stubbornly, obstinately or perversely". Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person



means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. "Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct." (Vide S. Sundaram Pillai v. V.R. Pattabiraman, Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararao, Niaz Mohammad State of Haryana, Chordia V. Automobiles v. S. Moosal, Ashok Paper Kamgar Union v. Dharam Godha, State of Orissa v. Mohd. Illiyasi and Uniworth Textiles Ltd. v. CCE'Z.)"

9. Therefore, it is clear that the intention of the respondent was to comply with the directions of this Court and it is only because a new independent Cyber Forensic Division has been established and the post of Senior Scientific Officer has been merged in 108 posts with Cyber Forensic Division that the directions could not be complied with. There is no intentional or *malafide* non-compliance. In this view of the matter, the contempt petition cannot be revived. However, the petitioner is at liberty to avail any/all legal remedies available to the petitioner. Granting that liberty, the application is disposed of.

10. In view of the order passed today, all other pending applications are also disposed of.

JASMEET SINGH, J

JULY 13, 2023/sr

[Click here to check corrigendum, if any](#)