

(2010) 04 AHC CK 0144

Allahabad High Court

Case No: None

Radhey Shyam Nishad

APPELLANT

Vs

Sri Arun Kumar Sinha and Others

RESPONDENT

Date of Decision: April 2, 2010

Hon'ble Judges: Devendra Pratap Singh, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Devendra Pratap Singh, J.

The facts and the history involved in this petition would be evident from the following order dated 14.12.2009:

Heard counsel for the parties.

By the following the order dated 5.10.2009 charges were framed against the opposite party.

Heard learned Counsel for the parties.

This contempt petition has been filed alleging wilfull and deliberate violation of the order and judgment dated 20.8.2008 rendered in Writ Petition No. 18399 of 2006.

The facts as evident from the judgment are that the applicant was engaged as a Motor Boat Driver/Operator in the Irrigation Department in 1971 on work charge basis and since then he is continuously working without any break. When 19 other junior employees in the Department were regularized, he claimed regularization in 1995. When no action was forthcoming, he preferred Writ Petition No. 41 of 1996 which was disposed off vide order dated 8th January 1996 directing the Superintending Engineer to decide his claim. However, despite expiry of time, the claim was not decided forcing the petitioner to prefer a Contempt Petition whereafter the Executive Engineer vide order dated 19th October 1996 appointed the applicant as a temporary Mate in the pay scale of Rs. 775-1025. Since the

petitioner was working as an Operator and was already drawing a higher pay scale, he again represented his matter in January 1997 that he should be regularized in the scale of Rs. 1200-2040 but again it evoked no response. Thus, he preferred Writ Petition No. 31403 of 1997 which was disposed off vide order dated 27th of August 2004 directing the authorities to reconsider the claim of the petitioner. Again, the direction was not complied forcing him to file another contempt petition and only thereafter vide order dated 16th December 2005 his claim was refused and representation rejected on the ground that there was no sanctioned post of Operator. The petitioner thereafter Writ Petition No. 18399 of 2006. In the counter affidavit it was admitted that the petitioner was working as Motor Boat Driver/Operator since 1971. It was also admitted, and was evident from the service record that he was being given the scale of Operator together with pay revision and increments etc. It was also not denied that juniors were regularized in 1995. A learned Single Judge vide order dated 26th April 2006 directed to consider the regularization of the petitioner on the post of Operator and vide order dated 26.8.2006 the applicant was appointed as Operator in District Sonbhadra which was again challenged by amendment application because he was given a lower scale. After hearing the parties at length, the writ petition was allowed by a detailed and reasoned judgment and orders dated 19.10.1996, 26.8.2006 and 16.12.2005 were quashed and a writ of mandamus was issued in the following words vide order dated 20.8.2008:

In view of the aforesaid, the writ petition is allowed. The impugned orders dated 19.10.1996, appointing the petitioner on the post of Mate, and the order dated 26th August, 2006, appointing the petitioner on the post of Operator, are quashed. The order dated 16.12.2005, rejecting the representation of the petitioner, is also quashed. A writ of mandamus is issued, commanding the respondents to regularize the services of the petitioner on the post of Operator Gr.I w.e.f. one day before the date juniors to the petitioner were regularized in the services of the Department. Consequential benefits that will flow from the regularization will follow and the petitioner's pay would be recalculated accordingly. In the event the pay of the petitioner works out to be less than what he was being paid at the relevant moment of time, the difference will not be recovered from the petitioner, and that, the petitioner would be granted the pay protection. In the event, the petitioner is entitled for a higher pay after recalculation, the arrears, if any, would be paid to the petitioner within six weeks from the date of production of a certified copy of this order.

This contempt petition has been filed with the allegation that despite the aforesaid judgment of this Court, no action is forthcoming though the time fixed by the Court has long expired.

Upon issuance of notice, the respondent Nos. 1,3 and 4 have filed their identical affidavits and the only defense raised therein is that the Government has filed a

belated Special Appeal challenging the aforesaid judgment. Mere filing of a belated and defective special appeal cannot be touted as a defense for not complying with the judgment of the Court. In fact, a belated and defective appeal is no appeal in the eyes of law and admittedly, till date, neither delay has been condoned nor the defect removed. It is also not pleaded as to whether any sincere effort was made to obtain orders on the delay condonation and stay application. In fact the Apex Court in the case of [Dr. H. Phunindre Singh and Others Vs. K.K. Sethi and Another](#), has held that even in a competent intra court appeal if no interim order is passed, the contempt court should proceed on merits.

During arguments it was orally urged that no post of Operator Gr.I exists, though no such pleadings have been taken in the affidavits, but the said case was also taken before the learned Single Judge but yet it rendered the judgment. Assuming that to be so, the respondents were given the option to show their bonafides by paying the salary of Operator from the date specified in the judgment subject to any order which may be passed in the pending defective appeal, but they refused to accept the option.

Thus the Court is left with no option but to frame the following charges as prima facie a triable case is made out against the opposite parties:

You, Sri Arun Kumar Sinha, Principal Secretary (Irrigation), Lucknow, show cause why you should not be tried and punished for wilful and deliberate violation of the judgment and order dated 20.8.2008 passed in Writ Petition No. 18399 of 2006.

You, Sri Saket Kumar, Superintending Engineer, Irrigation Department, Works Circle, Saproo Road, Allahabad,, show cause why you should not be tried and punished for wilful and deliberate violation of the judgment and order dated 20.8.2008 passed in Writ Petition No. 18399 of 2006.

You, Sri Vashu Deo Singh, Adhishasi Abhiyanta, Barh Karya Khan, Allahabad,, show cause why you should not be tried and punished for wilful and deliberate violation of the judgment and order dated 20.8.2008 passed in Writ Petition No. 18399 of 2006.

Your reply should be filed on or before 30th October 2009 after serving a copy on the counsel for the applicant, who may file a reply, if any, on or before 4th of November 2009.

The contemnors shall also disclose in their reply as to how many contempt petitions alleging violation of this Court's order were filed against them and what is their present status.

It is clarified that any observation made hereinabove are only tentative and would be subject to replies received.

List on 6th of November 2009.

Let a copy of this order be given to Sri D.N. Misra, learned Standing counsel within a week.

When the matter was next taken up, the Court was confronted with an interim order passed in the appeal.

Today, the learned Standing Counsel has made an application stating that the special appeal has been finally disposed off on 24.11.2009 with slight modification and time for payment has been extended for two months and therefore, the matter may be placed after expiry of the aforesaid two months.

Photocopy of the certified copy of the appellate judgment has also been produced and the same is taken on record.

List on 26.2.2010 for further orders.

2. In pursuance thereof, the opposite parties No. 3 and 4 filed their alleged compliance affidavits but when the matter was taken up on 19.3.2010 it was found that instead of bonafidely complying with the orders, an issue was raised as to whether the payments are to be made w.e.f. 1977 or 1996.

3. Today, affidavits on behalf of opposite party Nos. 3 and 4 have been filed which shows that in accordance with the judgments of the special appeal, payments have to be made w.e.f. 1977 and it is stated that a clarification application has been moved which is pending. Admittedly, till date neither there is any clarification nor the writ order has been complied.

4. However, the opposite parties are granted one more opportunity.

5. Put up on 9.4.2010.