

**Court No. - 8**

**Case :-** CONTEMPT No. - 786 of 2018

**Applicant :-** Dr. Kishore Tandon & 8 Ors.

**Opposite Party :-** Rajiv Kumar Chief Secy. Govt. Of U.P. & Anr.

**Counsel for Applicant :-** Apoorva Tewari, Paavan Awasthi

**Counsel for Opposite Party :-** Dr. L.P. Misra

**Hon'ble Vivek Chaudhary, J.**

1. Present contempt petition was heard at length by this Court on 10.07.2018 and an order was passed, finding respondent no.2 Sri Mahesh Kumar Gupta, Principal Secretary (now Additional Chief Secretary), Secretariat Administration Department, Government of U.P. Lucknow guilty of willful and deliberate violation of order of this Court dated 21.09.2017. The said order dated 10.07.2018, itself clarifies the entire dispute and is quoted below:-

*1. A Division Bench of this Court by its judgment dated 08.05.2015 in Special Appeal (Defective) No.31 of 2005, set aside the seniority list of Assistant Review Officers (AROs, who were earlier known as Lower Division Assistants) and directed the State Government to prepare a fresh seniority list as per the directions contained in its judgment.*

*2. In compliance of the aforesaid judgment of the Division Bench, the State Government by order dated 08.09.2015 issued a fresh seniority list of AROs. The said order dated 08.09.2015 was challenged before this Court by the petitioners by way of Writ Petition No.5828(S/S) of 2015. After hearing the parties, the writ petition was allowed by judgment and order dated 21.09.2017 and the seniority list dated 08.09.2015 was set aside by this Court, the same being not in compliance of orders of the Division Bench. The Court further gave detailed directions as to the manner in which the seniority list was to be prepared afresh within the period of six months.*

*3. The said judgment dated 21.09.2017 passed in aforesaid writ petition was challenged by the State Government by Special Appeal No.552 of 2017. The special appeal was admitted but no interim order was granted.*

*4. The State Government did not complete the said exercise within the period of six months, as provided by judgment dated 21.09.2017 in the writ petition. Therefore, present contempt petition was filed on 27.03.2018. Notices were issued in the contempt petition. Respondent No.1 Sri Rajiv Kumar, Chief Secretary, Government of U.P., Lucknow filed an affidavit and submitted that he has no concern with the dispute, as the matter relates to Secretariat, Administration Department. Respondent No.2 Sri Mahesh Kumar Gupta, Principal Secretary, Secretariat Administration Department, Government of U.P., Lucknow filed a detailed counter affidavit, accepting in paragraph-2 thereof that he is the responsible officer. The aforesaid counter affidavit was filed by respondent no.2 on 09.05.2018. Along with the said affidavit he also placed on record an order dated 08.05.2018 purported to be compliance of the judgment dated 21.09.2017,*

*declaring the fresh seniority list. Meanwhile, petitioners brought on record three orders dated 05.03.2018, 04.04.2018 and 17.05.2018, whereby ten persons were promoted from the post of Review Officers (ROs) to the post of Section Officers (SOs). Petitioners submit that the said ten persons were promoted as ROs from the post of AROs on the basis of seniority list dated 08.09.2015, which was already set aside by this Court. Therefore, the said action of respondent no.2 amounts to knowingly and willful disobedience of the order of this Court.*

*5. I have heard counsel for the parties at length. Sri Apoorva Tewari, learned counsel for petitioners submits that since old seniority list was set aside by this Court, therefore, making further promotions on the basis of the said seniority list, while not complying order of this Court for issuing a fresh seniority list, amounts to committing contempt of the Court.*

*6. In reply, learned Chief Standing Counsel, Sri Ramesh Pandey submits that ROs were promoted to the post of Sections Officers on the basis of seniority list of ROs and not on the basis of seniority list of AROs. He further submits that there are no specific directions in the judgment dated 21.09.2017 of this Court restraining the State Government from making any promotions to the post of Section Officers. He further submits that whatever benefits have accrued to the said ten persons would also be given to the petitioners and other similarly situated persons. Learned Chief Standing Counsel further argues that the State Government had two options. Firstly, to revert the persons who were already promoted and thereafter make fresh promotions on the basis of the seniority list dated 08.05.2018, which is prepared as per the directions given in the judgment of this Court dated 21.09.2017 or to make promotions, as are made by the State Government, and to give benefits as are given to the said ten persons to other persons also. The State Government has acted as per the second option and has already forwarded the file to the learned Advocate General for his opinion. He further submits that further action may be taken as per the opinion of the learned Advocate General.*

*7. It appears that reference of the matter to learned Advocate General is made only to make a lame excuse for the purpose of the contempt petition. There is no relevance of sending the matter to the learned Advocate General. The State Government did not have two options but had only first option in view of the order passed by this Court, namely to re-fix the seniority of AROs as per the fresh seniority list and thereafter to promote ROs on the basis of fresh seniority list. Only thereafter, out of these ROs, promotions to the post of Section Officers could have been made. The order of this Court dated 21.09.2017 and its consequences are very clear to this extent.*

*8. Learned Chief Standing counsel has places reliance upon the two judgment of Supreme Court. First being, Union Of India and Others Vs. Subedar Devassy PV; (2006) 1 SCC 613, and second being, R.N. Dey and Others Vs. Bhagyabati Pramanik and Others;(2004) 4 SCC 400, for the purposes that in absence of clear cut directions of the Court in the judgment, the Contempt Court cannot take cognizance and punish. The aforesaid two judgments referred by learned Chief Standing Counsel has no applicability, as the facts of the case are clear and the seniority list dated 08.09.2015 was set aside by this Court.*

9. It is admitted to the respondents that the earlier seniority list dated 08.09.2015 was set aside by this Court. It is also not disputed that it is only on the basis of said seniority list, certain AROs were promoted to the post of ROs. Once the seniority list dated 08.09.2015 was set aside, the same was not available to the State Government for any purpose and State Government could not have relied upon the said seniority list for any promotions whatsoever. The ten persons who were promoted by the orders dated 05.03.2018, 04.04.2018 and 17.05.2018 from the post of ROs to the post of Section Officers are all covered by the aforesaid seniority list dated 08.09.2015. Since, the said seniority list was set aside by this Court, therefore, for all purposes, their seniority as AROs was to be redetermined and it is only on the basis of redetermination of the seniority, their claim and seniority for the post of ROs is yet to be decided. Without their seniority being re-fixed as AROs and thereafter as ROs, if they are found entitled of becoming ROs, the State Government could not have taken decision for promoting them to the post of Section Officers. Such an action nullifies the judgment dated 21.09.2017 passed by this Court by which seniority list dated 08.09.2015 was set aside and directions were given for re-fixing the seniority. The action of the State Government is directly in teeth of the order dated 21.09.2017 passed by this Court. Relying upon the seniority list which is already set aside by this Court for making further promotions is a direct violation of the order of the Court by which the said seniority list was set aside.

10. There is yet another aspect of the matter. On 08.05.2018 fresh seniority list is already declared. Despite the same, by an order dated 17.05.2018, three persons out of the aforesaid ten persons have been promoted to the post of Section Officers. The said promotions are made on the basis of earlier seniority list. Order dated 17.05.2018 nowhere says that the said persons are being promoted after re-fixation of their seniority as AROs and ROs and finding them to be senior most among the ROs on the basis of newly fixed seniority by order dated 08.05.2018. Thus, respondent no.2 has acted in utter violation of order dated 21.09.2017 of this Court when he permits promotions of these three persons by order dated 17.05.2018 to the post of Section Officers on the basis of their seniority, as fixed by the old seniority list dated 08.09.2015, which was already set aside by this Court. Respondent No.2 is the departmental head being Principal Secretary and admits that he is the officer responsible in the matter, it cannot be believed that he does not understand the meaning of seniority list being set aside by this Court. Therefore, this Court has no hesitation in holding that the conduct of respondent no.2 Sri Mahesh Kumar Gupta, Principal Secretary, Secretariat Administration Department, Government of U.P. is a willful and deliberate violation order of this court and the same amounts to a willful and deliberate contempt of order dated 21.09.2017 passed in writ petition .

11. In view of aforesaid, respondent no.2 Sri Mahesh Kumar Gupta, Principal Secretary (now Additional Chief Secretary), Secretariat Administration Department, Government of U.P. Lucknow shall be present in person in Court on 18.07.2018 for hearing on his punishment. He may also file his reply on the question of punishment by the said date.

12. Put up this case on 18.07.2018."

2. The said order was challenged by Special Leave Petition (Civil) Diary No(s). 25522/2018. On 17.07.2018, the Supreme Court after hearing the parties, passed the following order:-

*"We have heard learned counsel for parties for quite some time.*

*Mr. P.S. Patiwalla, learned senior counsel has drawn our attention to the affidavit dated 09.07.2018 which was submitted by the petitioner in the High Court wherein there is a categorical averment that after the issuance of final seniority list, the respondents herein (who had succeeded in the High Court) shall be given their due placement in terms of the said seniority list and appropriate consequential orders of their promotion shall also be passed.*

*It is stated by learned counsel for the petitioner that this exercise shall be completed within a period of two months from the date of filing of the affidavit, i.e. by 09.09.2018. On assurance given to this Court, the matter stands adjourned to 11th September, 2018.*

*Having regard to the above, direction of the High Court for personal appearance of Mr. Mahesh Kumar Gupta, Principal Secretary (now Additional Chief Secretary), is stayed."*

3. Thus, an assurance was given to the Supreme Court that within two months from 09.07.2018, the entire exercise shall be completed and the fresh seniority list and appropriate consequential orders shall be passed. Ultimately, the said special leave petition was disposed of by order dated 13.11.2018 which reads:-

*"Permission to file Special Leave Petition is granted.*

*I.A. No.127965/2018 for impleadment is allowed.*

*The Special Leave Petition is dismissed. However, it is made clear that the hearing before the Division Bench of the High Court in Special Appeal No.448/2018 may go on and the issues which are to be determined in that case shall be determined on their own merits.*

*Pending applications, if any, stands disposed of."*

4. Meanwhile, in belated special appeal bearing Special Appeal Defective No.448 of 2018 and connected matters, filed before the Division Bench, hearing was initiated and the Court on 16.11.2018 passed a detailed order. Dr. L.P. Mishra, learned counsel for respondent-contemnor has emphasized on the following paragraphs of the order dated 16.11.2018:-

*"In addition to addressing the Court on merits of the case, learned counsel for the appellants have submitted that this Court may pass appropriate orders on the pending Stay Applications as there is likelihood that in the pending contempt proceedings, the Contempt Court may proceed to award punishment. It has been submitted that in the meantime, there was some interim protection provided by the*

*Supreme Court in the contempt matter but on 13.11.2018, the Supreme Court has dismissed the Special Leave Petition filed by the State assailing an order passed by the Contempt Court and now the respondents have moved an application before the Contempt Court yesterday for fixing an early date in the contempt petition. It is the apprehension of the appellants that as and when the contempt matter is listed before the Contempt Court, there is every likelihood that the Officers may be punished for not complying with the judgment and direction of the Writ Court.*

*On the other hand, Sri Apoorva Tewari, learned counsel for the private respondents submitted that the State not only gave an assurance before this Court but also before the Supreme Court that they would comply with the judgment of the Writ Court on or before 09.09.2018, which is recorded in the order dated 17.07.2018 passed by the Supreme Court and thereafter again on 11.09.2018 but still they have not complied and therefore this Court may not grant any indulgence to the State and the contempt proceedings may be allowed to take its own course.*

*Having considered the submissions, we do not feel necessary to pass any restrain order to stop the contempt proceedings as it is always open to the State to apply before the Contempt Court for deferment of the proceedings on whatever admissible facts and grounds such application may be filed. Further we may also record that the Contempt Court has still not fixed any date in the contempt matter.*

*As the Bench is not available in the next week, this matter may now be posted on 26th November, 2018 before this Bench to be taken up immediately after fresh and if there is no fresh, it will be taken up at 10:15 a.m. for further arguments."*

5. Hearing of the said special appeal is not completed as yet. In the said background, an application bearing CrI. Misc. Application No.141240 of 2018, dated 08.10.2018 was filed by the counsel for contemnor praying that the present contempt petition be deferred till the final decision of the special appeal. On the said application, this Court by order dated 03.01.2019, noting the fact that day to day hearing of the special appeal is going on before the Division Bench, deferred the hearing of the contempt petition for a period of six weeks.
6. Admittedly, now hearing in the special appeal stands deferred for unspecified period as the said Bench is not available.
7. Today Dr. L.P. Mishra, learned counsel for contemnor again requests that the hearing of the present contempt petition be deferred till disposal of special appeal.
8. The said request is strongly opposed by Sri Apoorva Tiwari, learned counsel for petitioner. Learned counsel for petitioner submits that the interim order in the special appeal is refused by the Division Bench. Contemnor has not only refused to comply with the judgment of this Court which is operative as on date but has

further, in further violation of the said order, promoted certain AROs on the post of ROs in a highly arbitrary manner which also runs in the teeth of the judgment of this Court. He submits that the detailed finding with regard to the same is already given by this Court in order dated 10.07.2018.

9. On the other hand, Dr. L.P. Mishra, learned counsel for contemnor submits that even in the given facts and circumstances of the case, the Court ought to defer the hearing of the matter.

10. The State is an arbiter in the matter of seniority of its employees. Its role is to decide seniority between different persons. It cannot play to be partisan. In the present case the State Government, on the face of it, is siding with certain persons on the basis of an order of seniority dated 08.09.2015 which is already set aside by this Court. That order has not been stayed as yet. After the said order dated 08.09.2015 was set aside, the contemnor could not have given benefit of the said order for the purposes of seniority to any employee whomsoever, but, he has proceeded to do so. Despite the said fact being pointed out in order dated 10.07.2018, which also holds him guilty of contempt, till date no action has been taken by the contemnor to correct the same. On the other hand, in the SLP he gave an undertaking before the Supreme Court that appropriate seniority list shall be issued within two months in compliance of the order of the High Court. The said undertaking is also not honoured by the Contemnor. Even otherwise, heavens will not fall in case the order of this Court, which is operative as on date, is complied with by the contemnor and seniority is fixed. In case, any deviation is made to that judgment ultimately in the special appeal, it would always open to issue appropriate amending seniority list and pass consequential order. It defies the logic and no explanation is placed before the Court by the contemnor as to why there is absolute refusal on part of contemnor to comply with the order of this Court.

11. Further, reference is also made to the judgment in case of **Dr. H. Phunindre Singh and Others Vs. K.K. Sethi and Another; (1998) 8 SCC 640** which reads:-

*"1. Leave granted.*

*2. Heard learned counsel for the parties. In our view, in the facts of the case, particularly when the order passed by the learned Single Judge of the High Court was not stayed by the Division Bench, the contempt petition should have been disposed of on merits instead of adjourning the same till disposal of the appeal, so that question of deliberate violation of the subsisting order of the Court is considered and enforceability of the Court's order is not permitted to be diluted. In the facts of the case, we feel that the contempt petition should be disposed of within a period of three months from the date of the communication of this order and we order accordingly. It is further directed that before disposal of the contempt petition, the pending appeal should not be taken up for hearing. The appeal is accordingly disposed of."*

12. The said judgment of Supreme Court is also followed by a Division Bench of this Court in case of Gyan Prakash Singh, DIOS Vs. Dr. Rakesh Mohan Mishra and Another reported in (2015) 112 ALR 251.

13. In view thereof, I find that the contemnor is willfully and deliberately playing partisan with particular employees in the present case and is violating specific directions of this Court. In view thereof, I do not find any sufficient reason to adjourn the hearing of the present contempt petition.

14. Put up this case tomorrow i.e. on **26.03.2019**.

15. Respondent no.2 Sri Mahesh Kumar Gupta, Principal Secretary (now Additional Chief Secretary), Secretariat Administration Department, Government of U.P. Lucknow shall be present in person in Court tomorrow i.e. on 26.03.2019 for hearing on his punishment.

**Order Date :- 25.3.2019**

Arti/-

**(Vivek Chaudhary,J.)**