

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN.**

Through Audio Conferencing

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CONTEMPT PETITION NO. C-01/DB/2020

Arun Kumar Goel aged about 57 years. s/o Shri Pooran Mal Goel, R/o Mahadev Vihar General Mahadev Singh Road, Dehradun, employed as Superintending Engineer A.D.B. Circle, Public Works Department, New Tehri.

.....Petitioner

vs.

1. Shri Rajendra Prasad, Deputy Secretary, Public Works Department, Government of Uttar Pradesh, Secretariat, Lucknow.
2. Shri Nitin Ramesh Gokaran, Principal Secretary, Public Works Department, Government of Uttar Pradesh, Secretariat, Lucknow.

..... Respondents/O.Ps.

Present: Sri L.K.Maithani, Advocate, for the Contempt petitioner.

JUDGMENT

DATED: DECEMBER 08, 2020

Justice U.C.Dhyani (Oral)

Present contempt petition has been moved by the contempt petitioner, Sri Arun Kumar Goel, Superintending Engineer, ADB Circle, against Shri Rajendra Prasad, Deputy Secretary, Public Works Department, Government of Uttar Pradesh, Secretariat, Lucknow and Shri Nitin Ramesh Gokaran, Principal Secretary, Public Works Department, Government of Uttar Pradesh, Secretariat, Lucknow, with the prayer to punish the respondents-opposite parties with "suitable punishment for committing the willful & deliberate contempt of the judgment dated 06.09.2018 of the Hon'ble Tribunal or to pass any such other order or direction which this Hon'ble Tribunal may deem fit for effective

compliance of the judgment dated 06.09.2018 passed in Claim Petition No. 33/DB/2015 and judgment dated 16.07.2003 passed in Claim Petition No. 01/2001 of this Tribunal.”

2. The contempt petitioner has filed a copy of judgment rendered by this Tribunal on 06.09.2018 in Claim Petition No. 33/DB/2015, Deepak Kumar Yadav and Khagendra Prasad Upreti vs. State of Uttarakhand; Secretary to the Government of Uttarakhand in P.W.D.; State of U.P., through Principal Secretary, P.W.D.; Sri Arun Kumar Goel and Sri Charu Chandra Joshi. Present contempt petitioner was respondent no.4 in the aforesaid claim petition. Operative portion of the order dated 06.09.2018 reads as under:

“12. In view of analysis in paragraphs 8 to 11 above, we hold that the State of Uttarakhand could not promote respondent No. 4 as AE w.e.f. 01.07.1990 as it did not have jurisdiction and, therefore, it was not competent to do the same. We also hold that the State of Uttarakhand had no jurisdiction to modify/determine the seniority and, therefore, it was not competent to do the same. We also hold that only the State of Uttar Pradesh had jurisdiction and, therefore, only the State of Uttar Pradesh was competent to act on these issues.

13. For the reasons stated above, the seniority list dated 24.06.2015 is illegal and void and, therefore, it is liable to be set aside.

ORDER

The petition is hereby allowed and the impugned order dated 24.06.2015 (Annexure: A2) is hereby set aside. No order as to costs.”

[Emphasis supplied]

3. Although, a prayer has also been made for effective compliance of the judgment dated 16.07.2003, passed in Claim Petition No. 01/2001, but the same has not been brought on record [contempt petition has been filed on 03.05.2020, enforcement has been sought in respect of an order, passed on 16.07.2003, after a lapse of 17 years. The limitation under Contempt of Courts Act is one year.]

4. In his contempt petition, the contempt petitioner has traced the genesis of dispute in paragraphs no. 1 to 12. In paragraph no. 12, it has been mentioned that the State of Uttar Pradesh (through Principal Secretary, PWD) was party in Claim Petition No. 33/DB/2015. No office

can override the judgment of the Tribunal. The action taken by the State of Uttar Pradesh is in direct confrontation with the judgment of the Tribunal. They have willfully, deliberately and knowingly overreached the judgment of the Tribunal. They are liable to be punished suitably under the Contempt of Courts Act.

5. Petitioner has filed a Claim Petition No. 22/DB/2020, Arun Kumar Goel vs. State, before this Tribunal, for the following reliefs:-

“(i) That this Hon'ble Tribunal may graciously be pleased to declare that the petitioner is eligible and entitled for consideration for promotion on the post of Chief Engineer Level-2 and accordingly issue an order or direction to the respondents to convene a review D.P.C. and consider the petitioner on the post of Chief Engineer Level-2 considering his annual character rolls and service records in accordance to the Uttaranchal Government Servant (Disposal of Representation against Adverse Annual Confidential Reports and Allied Matters) Rules 2002 and Uttarakhand Government Servant (Disposal of Representation against Adverse, Bad, satisfactory, good, very good and outstanding Annual Confidential Reports and Allied Matters) Rules 2015 with all consequential benefits on the post of Chief Engineer Level-2 w.e.f. 25.04.2020.

(ii) That this Hon'ble Tribunal may further graciously be pleased to take the action against the respondents and other persons who have made exploitation and gross injustice against the petitioner.

(iii) That this Hon'ble Tribunal may further graciously be pleased to pass any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case in favour of the petitioner.

(iv) That this Hon'ble Tribunal may further graciously be pleased to allow this petition with cost as quantified Rs 51,000=00.”

6. Obliquely, seniority of the petitioner, *vis-à-vis* others, is in the teeth of claim petition no. 22/DB/2020, which is under adjudication before this Tribunal. Contempt Petition No. C-05/DB/2020 was also filed by the present contempt petitioner, against Sri Om Prakash, the then Additional Chief Secretary, for (alleged) defiance of the order dated 06.09.2018, which contempt petition has been dismissed by this Tribunal *vide* order dated 31.07.2020.

7. In claim petition no. 33/DB/2015, no direction was given to the State of Uttar Pradesh. It was only held that the State of Uttarakhand could not promote respondent no.4 as Assistant Engineer *w.e.f.* 01.07.1990, as it did not have jurisdiction and, therefore, it was not competent to do the same. It was also held that only State of U.P. had jurisdiction. Seniority list dated 24.06.2015 was held illegal and void and was, accordingly, set aside.

8. This Tribunal, therefore, in its order dated 06.09.2018, at the most, made a 'declaration' regarding competence of the State of U.P., in respect of Seniority list of 2015. It was in the nature of an 'observation'. The Tribunal did not direct State of Uttarakhand or State of U.P. to do something or not to do something. Neither it was in the nature of *mandamus*, nor in the nature of *prohibition*. No defiance, as such, appears to have been committed either by the State of Uttarakhand or State of U.P., much less respondents-opposite parties.

9. The stand of the contempt petitioner, while contesting claim petition no. 33/DB/2015 has been mentioned in Para 4 of the judgment dated 06.09.2018, as below:

"4. Private respondent no. 4 has also opposed the claim petition and filed a detailed written statement. In nutshell, the contention of private respondent no.4 is that the seniority list dated 24.06.2015 is consequential to the order of the Tribunal dated 16.07.2003 and the U.P. Govt. G.O. dated 10.06.2009 and these have attained the finality and, therefore, the seniority list been rightly prepared as per the judicial order."

Seniority list dated 24.06.2015 was set aside by the Tribunal. The question of respondents-opposite parties committing willful disobedience of the order of the Tribunal, therefore, in the peculiar facts of the case, does not arise.

10. The contempt action may be initiated only when there appears to be willful or deliberate disobedience on the part of the respondents-opposite parties. The same is not reflected from the documents filed by the contempt petitioner in this contempt petition. Contempt petitioner was respondent in claim petition No. 33/DB/2015. Petitioners were

some other persons. Contempt is a matter between Tribunal/Court and alleged contemnor. Contempt action cannot be permitted to be initiated to wreak vengeance against the Government officials. There is no expediency or propriety of taking action under the Contempt Act, in the above noted peculiar facts of the case.

11. The observations of the Hon'ble High Court of Uttarkhand in Writ Petition No. (S/B) No. 102 of 2017, Dr. Kamaljeet Singh and another *versus* State of Uttarakhand and others, decided on 08.03.2018 assume significance in the context of present contempt petition. Paragraphs No. 11, 12, 18, 19 & 20 of the said judgment are quoted herein below for convenience:-

"11. From the aforesaid statements of law contained in paragraph nos. 11 and 12 of the judgment of the Hon'ble Apex Court (Umakant Joshi case), we can deduce two principles, as laid down by the Hon'ble Apex Court. Firstly, in respect to any rights that the persons, who are allocated or working after the creation of the State of Uttarakhand is concerned, which relates to the period anterior to the date of the creation of the State of Uttarakhand, the proper and competent authority would be the State of Uttar Pradesh. The State of Uttarakhand could not have the authority to deal with such a matter. Secondly, in relation to any such complaint, the proper forum to ventilate the grievance would be the High Court of Allahabad or the Tribunal created under the law passed by the State of Uttar Pradesh.

12. Noticing this as the state of the law and applying it to the facts of this case, without going into any other aspect, which is projected by Mr. Rajendra Dobhal, learned senior counsel for the petitioners, we would think that the impugned order cannot be sustained. By the impugned order, the State of Uttarakhand has purported to give the benefit of absorption to the third respondent with reference to a date, which is clearly anterior to the date of the creation of the State of Uttarakhand. If at all this could have been done, it could have been done only by the State of Uttar Pradesh. On this short ground, the writ petition is only to be allowed.

18. Therefore, we find no merit in the contentions of Mr. B.N. Molakhi, learned counsel for the third respondent or of Mr. Pradeep Joshi, learned Standing Counsel for the State/respondent nos. 1 and 2. Accordingly, the conclusion is

inevitable that sans authority, the impugned order has been passed by the State of Uttarakhand. On this short ground only, we interfere with the impugned order.

19. *Accordingly, the writ petition is allowed. The impugned order dated 20.01.2017 giving benefit of absorption to the third respondent and that too with financial benefits cannot be sustained and the same will stand quashed. There will be no order as to cost.*

20. *We, however, make it clear that we have not gone into various other contentions, which have been raised by the parties.”*

[Emphasis supplied]

12. In its order dated 06.09.2018, this Tribunal had also observed as below:-

“Now, we would like to take up a judgment of the Hon’ble High Court at Nainital which is directly related to the present claim petition. Sri Arun Kumar Goyal (the respondent No. 4 in this claim petition) filed a Writ Petition (S/B) of 2011, Arun Kumar Goyal versus State of Uttarakhand & another which was decided by the Hon’ble High Court on 21st June, 2018. The petitioner (Sri Arun Kumar Goyal) had approached the Hon’ble High Court at Nainital seeking the following reliefs:-

“i) Issue a writ, order or direction in the nature of mandamus commanding/ directing the respondents to give all service benefits including salary etc. to the petitioner from the date of promotion w.e.f. 1.7.1990 on the post of Assistant Engineer and the salary to be paid to the petitioner alongwith penal interest.

ii) Issue a writ, order or direction in the nature of mandamus commanding / directing the respondent no. 1 to fix the seniority of the petitioner as Assistant Engineer with effect his promotion as Assistant Engineer on 1.7.1990.

iii) Issue a writ, order of direction in the nature of mandamus commanding / directing the respondents to prepone the promotion of the petitioner on the post of Executive Engineer w.e.f. 6.9.1997, when his promotion was due on the post of Executive Engineer.

iv) *Issue a writ, order or direction in the nature of certiorari quashing the impugned judgment and order dated 3.3.2010 passed by the Learned Tribunal to the extent denying the service benefits. (Annexure No. 20 to this writ petition)."*

"It is clear from the above reliefs that the Sri Arun Kumar Goyal (who is respondent No. 4 in the claim petition before the Tribunal) in the writ petition before the Hon'ble High Court in relief (ii) had prayed to fix his seniority as AE w.e.f. 01.07.1990 by the Govt. of Uttarakhand"

"The Hon'ble High Court at Nainital in paragraphs 8 & 9 of its judgment dated 21.06.2018 held as under:-

*"8.....We have already noticed the absence of parties, who might be affected by granting such relief. We further bear in mind a judgment passed by the Apex Court in the case of **State of Uttarakhand & another vs. Umakant Joshi, reported in 2012 (1) UD 583.***

"9. In such circumstances, we do not think that we should grant relief as sought for by the petitioner. Without prejudice to any other remedy, which the petitioner has in any forum, we decline jurisdiction and dismiss the writ petition. No order as to costs."

13. In its order dated 06.09.2018, relying upon Dr. Kamaljeet Singh's decision (*supra*), this Tribunal had only held that only the State of Uttar Pradesh had jurisdiction and, therefore, only the State of Uttar Pradesh was competent to act on these issues. No direction was given to the State of Uttar Pradesh (sans authority) [Under Secretary to the U.P. Govt. in P.W.D. *vide* letter dated 14.01.2020 simply informed the petitioner that those J.Es. who were posted in Uttarakhand and were promoted as A.Es. were not included in final seniority list dated 24.10.2005.]

14. It will also be pertinent to mention the definition of Civil Contempt, as provided under Section 2(b) of the Contempt of Courts Act, 1971 herein below:

"2 (a).....

(b) "civil contempt" means willful disobedience to any judgment, decree, direction, order, writ or other process of

a court or willful breach of an undertaking given to a court;

(c).....

(d).....”

15. While exercising contempt power, the court must not be hypersensitive or swing by emotions, but must act judiciously. Contempt proceedings are intended to ensure compliance of the orders of the Court and adherence to the rule of law. Once the essentials for initiation of contempt proceedings are satisfied, only then the court would initiate an action. If an order capable of more than one interpretation giving rise to variety of consequences, non-compliance of the same cannot be held to be willful disobedience of the order so as to make out a case of contempt enabling the serious consequence including imposition of punishment.

16. Further, ‘willful disobedience’ only is liable for contempt action. It can safely be presumed, in the instant case, that no direction was given by the Tribunal at Uttarakhand, to the State of Uttar Pradesh because the Tribunal could not have done so in view of the observations of Hon’ble High Court of Uttarakhand rendered in Dr. Kamaljeet Singh’s case (*supra*).

17. Contempt petition, therefore, fails and is dismissed at the admission stage.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: DECEMBER 08, 2020
DEHRADUN

KNP