

CASE NO.:
Appeal (civil) 3553-3554 of 2008

PETITIONER:
State of Uttaranchal Thru. Secretary

RESPONDENT:
Sehnaz Mirza & Ors.

DATE OF JUDGMENT: 12/05/2008

BENCH:
S.B. Sinha & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T
[Arising out of SLP (Civil) Nos. 21238-21239 of 2005]
REPORTABLE

S.B. SINHA, J :

1. Leave granted.

2. Application of the provisions of the Uttar Pradesh Reorganisation Act, 2000 (for short "the 2000 Act") falls for consideration in these appeals which arise out of a judgment and order dated 20.07.2005 passed by the High Court of Uttaranchal at Nainital in Civil Contempt No. 14 of 2004.

3. Respondents herein have filed a writ petition before the Allahabad High Court for regularization of their services in the Nagar Palika Balika Intermediate College situated at Haldwani, Kathgodam, District Nainital.

The said writ petition was allowed by a judgment and order dated 29.05.1997 in part, directing:

(1) The posts against which the petitioners are working on part time basis for more than five years should be considered for sanction/creation by the appropriate authority and the management of the institution shall, if the necessity of employment still exists, notify to the proper authority the requirement of sanction such posts and the authority shall, as expeditiously as possible, consider the question of creation of such posts in accordance with law.

(2) The services of the petitioners shall not be terminated after the expiry of 58 days or any such limited period and shall continue till the exigency of employment exists and if the posts are permanently sanctioned till a duly selected candidate joins against each respective post. When such a post is created sanctioned and advertised, the petitioners shall have the right to apply against the respective post notwithstanding the age bar.

(3) Till the petitioners remain in service in terms of the foregoing directions, they will be paid their salary and other benefits at par with the regularly appointed teachers in case they are performing equal work.

4. The said order is said to have not been complied with. An application under Section 12/14 of the Contempt of Courts Act, 1970 was filed by the respondents.

5. On or about 25.08.2000, the Parliament enacted the 2000 Act. By reason of the said Act, the new State of Uttaranchal (now known as Uttarakhand) came into being with effect from the appointed day, specified therein, i.e., 9.11.2000.

6. By an order dated 29.10.2003, a learned Single Judge of the Allahabad High Court directed as under:
\023During the pendency of this contempt petition, the State of Uttaranchal was created and Haldwani and Nainital are now included in that State as such presently the U.P. Educational Authorities cannot execute the orders passed by the writ court. The proper remedy for the applicant at this stage is to approach the Uttaranchal High Court.\024

7. Respondents thereafter filed a contempt petition before the Uttaranchal High Court which was marked as Contempt Petition No. 15 of 2004, which was entertained.

Before the said High Court, time was sought for, for complying with the said direction. The matter was adjourned. It came before another learned Judge of the said High Court on 20.07.2005. It was directed to be listed after one month. Although no final order has yet been passed by the High Court, the State of Uttarakhand has filed this appeal inter alia on the premise that the High Court had no jurisdiction to entertain the second contempt application in view of Section 35 of the 2000 Act.

8. Section 26 of the 2000 Act provides for constitution of a separate High Court on and from the appointed day.

Section 35 of the 2000 Act reads as under:

\02335 - Transfer of proceedings from Allahabad High Court to Uttaranchal High Court

(1) Except as hereinafter provided, the High Court at Allahabad shall, as from the appointed day, have no jurisdiction in respect of the transferred territory.

(2) Such proceedings pending in the High Court at Allahabad immediately before the appointed day as are certified, whether before or after that day, by the Chief Justice of that High Court, having regard to the place of accrual of the cause of action and other circumstances, to be proceedings which ought to be heard and decided by the High Court of Uttaranchal shall, as soon as may be after such certification, be transferred to the High Court of Uttaranchal.

(3) Notwithstanding anything contained in sub-sections (1) and (2) of this section or in section 28, but save as hereinafter provided, the High Court at Allahabad shall have, and the High Court of Uttaranchal shall not have, jurisdiction to entertain, hear or dispose of appeals, applications for leave to the Supreme Court, applications for review and other proceedings where any such proceedings seek any relief in respect of any order passed by the High Court at Allahabad before the appointed day:

Provided that if after any such proceedings have been entertained by the High Court at Allahabad, it appears to the Chief Justice of that High Court that they ought to be

transferred to the High Court of Uttaranchal, he shall order that they shall be so transferred, and such proceedings shall thereupon be transferred accordingly.

(4) Any order made by the High Court at Allahabad--

(a) before the appointed day, in any proceedings transferred to the High Court of Uttaranchal by virtue of sub-section (2), or
(b) in any proceedings with respect to which the High Court at Allahabad retains jurisdiction by virtue of sub-section (3), shall for all purposes have effect, not only as an order of the High Court at Allahabad, but also as an order made by the High Court of Uttaranchal.\024

9. The said provisions are clear and explicit. Whereas on and from the appointed day, the Allahabad High Court ceased to have any jurisdiction, the proviso appended to Sub-section (3) of Section 35 of the 2000 Act carves out an exception thereto.

The learned Single Judge of the Allahabad High Court, therefore, having regard to the aforementioned proviso, committed a serious error in discharging the contemptor.

The second contempt application was filed before the Uttaranchal High Court pursuant to the leave granted by the Allahabad High Court. Technically, such leave could not have been granted. It was for the Chief Justice of the High Court to transfer the records to the Uttaranchal High Court but the learned Single Judge also could have continued to hear the matter.

10. Dr. J.N. Dubey, learned senior counsel appearing on behalf of the respondents, however, would submit that in a case of this nature, the cause of action would be a continuing one and the bar of limitation as provided for under Section 20 of the Contempt of Courts Act would not apply in the facts and circumstances of the case. It was furthermore submitted that the State of Uttarakhand has no locus standi to maintain the special leave petition.

11. We, in this proceeding, at this stage, do not intend to determine the effect of the judgment of the Allahabad High Court, the same having attained finality. We also do not intend to enter into the question as to whether Section 20 of the Contempt of Courts Act, 1971 would apply to the facts of this case or not. We may, however, notice that a Division Bench of this Court held so in *Pallav Sheth v. Custodian* [1989 Supp 2 SCC 418] stating:

\0237. Another point was taken about limitation of this application under Section 20 of the Act. Section 20 states that no court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. In this case, the present application was filed on or about 3-11-1988 as appears from the affidavit in support of the application. The contempt consisted, inter alia, of the act of not giving the possession by force of the order of the learned Senior Sub-Judge, Narnaul dated 12-2-1988. Therefore, the application was well within the period of one year. Failure to give possession, if it amounts to a contempt in a situation of this nature is a continuing wrong. There was no scope for

application of Section 20 of the Act.\024

12. The correctness of the said decision came up for consideration before another Bench of this Court in Pallav Sheth v. Custodian [(2001) 7 SCC 549] wherein this Court refused to pronounce its judgment thereupon opining:

\02348. The provisions of Section 17 of the Limitation Act are applicable in the present case. The fraud perpetrated by the appellant was unearthed only on the Custodian receiving information from the Income Tax Department, vide their letter of 5-5-1998. On becoming aware of the fraud, application for initiating contempt proceedings was filed on 18-6-1998, well within the period of limitation prescribed by Section 20. It is on this application that the Special Court by its order of 9-4-1999 directed the application to be treated as a show-cause notice to the appellant to punish him for contempt. In view of the abovestated facts and in the light of the discussion regarding the correct interpretation of Section 20 of the Contempt of Courts Act, it follows that the action taken by the Special Court to punish the appellant for contempt was valid. The Special Court has only faulted in being unduly lenient in awarding the sentence. We do not think it is necessary, under the circumstances, to examine the finding of the Special Court that this was a continuing wrong or contempt and, therefore, action for contempt was not barred by Section 20.\024

13. We, as at present advised, leave the matter at that.

14. We, however, do not agree with the submission of Dr. Dubey that the State of Uttarakhand has no locus standi to maintain the application. It may be that the contempt petition has been filed against individuals. They, however, could not have maintained this appeal in terms of Section 19 of the Contempt of Courts Act as neither any order of punishment has been passed nor any final order has yet been passed.

The State of Uttarakhand is required to comply with the order. The financial burden would be on it. We, therefore, are of the opinion that it could maintain the special leave petition keeping in view the question of law arising herein, as it is otherwise a person aggrieved.

15. The order of the learned Single Judge of the Allahabad High Court dated 29.10.2003 being not in conformity with Sub-section (3) of Section 35 of the 2000 Act, evidently, the Uttaranchal High Court could not have entertained the second contempt petition. But, setting aside the said order, by itself, would not subserve the ends of justice. Justice would be subserved if one High Court or the other goes into the merit of the contempt application. We, therefore, in exercise of our jurisdiction under Article 142 of the Constitution of India, while setting aside the impugned orders as set aside the order dated 29.10.2003 passed by the learned Single Judge of the Allahabad High Court and direct that the proceedings before the Allahabad High Court, shall stand revived. The Allahabad High Court either may continue to proceed in the matter or the Chief Justice of the said High Court may transfer the proceedings before the Uttaranchal High Court.

16. The appeals are allowed to the aforementioned extent. No costs.

JUDIS