

CASE NO.:
Contempt Petition (civil) 110-111 of 2003

PETITIONER:
Chander Pal Singh & Ors.

RESPONDENT:
Ajay Kumar Joshi & Anr.

DATE OF JUDGMENT: 05/10/2005

BENCH:
B.N.AGRAWAL & A.K. MATHUR

JUDGMENT:
J U D G M E N T

CONTEMPT PETITION) NOS.110-111 OF 2003

IN

CIVIL APPEAL NOS.8467-8468 OF 1995
W I T H :

Contempt Petition) Nos.490-491 of 2004 in
Civil Appeal Nos.8467-8468 of 1995

A.K. MATHUR, J.

These Contempt Petitions have been filed by the petitioners under Sections 2 & 12 of the Contempt of Courts Act, 1971 read with Article 129 of the Constitution of India.

The grievance of the petitioners was that the respondents have willfully disobeyed the judgment and orders passed by this Court on 20.3.2001 in Civil Appeal Nos.8467-8468 of 1995. Therefore, contempt proceedings should be initiated against the respondents.

In order to decide these contempt petitions it would be necessary to recapitulate some facts. Civil Appeal Nos.8467-8468 of 1995 along with Civil Appeal No.2167 of 2001 @ S.L.P.(c) No.15849 of 1993, Civil Appeal No.36 of 1994, Civil Appeal No.6075 of 1997 were disposed of by this Court by a common order dated 20.3.2001. By that order this Court affirmed the order passed by the Division Bench of Allahabad High Court that Kurk Amins appointed on commission basis for recovery of outstanding dues of the co-operative societies hold civil post and are government servants.

The grievance of the petitioners was that despite the order passed by this Court the petitioners are not treated as Government servants nor are they being treated at par with the Amins of the Revenue Department and they are not paid the salary in the scale prescribed for the Amins of the Revenue Department and they are still working on commission basis.

Initially, a writ petition was filed by one Chandra Prakash Pandey and others before the Allahabad High Court, Bench at Lucknow. The grievance in that writ petition was that the writ petitioners were appointed as Amins on commission basis and they are discharging the same duties as are being discharged by the Amins in the Revenue Department, therefore, they should be treated as holding civil posts & Government servants and they should be paid same salary as are being paid to the Amins regularly appointed in the Revenue Department. The writ petitioners were appointed in the Co-operative Department by the Collectors for collection of dues of the

Co-operative Societies & Banks. This Writ Petition No.199 of 1991 was allowed by the learned Single Judge of the High Court. Aggrieved against that order, an appeal was filed by the State of Uttar Pradesh challenging the said order of the learned Single Judge. The said appeal was registered as Special Appeal No.15 of 1994. The writ petitioners i.e. Chandra Prakash Pandey and others also filed Special Appeal No.39 of 1994 alleging that learned Single Judge has not directed to fix them in the pay scale of Amins appointed in the Revenue Department & arrear of salary. Both these appeals were heard together and disposed of by the Division Bench, by a common order. The Division Bench (Brijesh Kumar & D.K. Seth, JJ) of the High Court in paragraph 21 of its order recorded as follows:

" It therefore, seems to us clear that the Kurk Amins meant for realization of the dues of the cooperative societies as appearing in the present case, reveals some ingredients which bring the post of Kurk Amins and the Sahayogis viz. the petitioners maintained for realization of the dues of the co-operative societies as Government servant. Therefore, we do not find any reason to differ from the view taken by the learned trial court that the petitioners have been holding civil posts. We therefore decline to interfere with the judgment and order appealed against."

While disposing of Special Appeal No.39(SB) of 1994, filed by Chandra Prakash Pandey & Ors. it was observed as follows:

" Now turning to Special Appeal No.39(SB) of 1994 we find that since the post held by the petitioners are civil post and that they are government servants, therefore, their pay is to be regulated by the existing pay scale according to the rules applicable to the petitioners at par with their counterparts in the Department. It is not for the court to decide as to what scale of pay they are entitled to. No such materials have also been placed before us. In that view of the matter, we feel it appropriate that so far as the pay scale and arrears and other things relating to the petitioners claim should be decided by the appropriate authority in accordance with law. "

Aggrieved against this order, Special Leave Petition was filed by the State of U.P. which came to be registered as aforesaid. Another Special Leave Petition was filed against the order passed by the Division Bench of the High Court of Allahabad in the case of Uttar Pradesh Sahakari Sangharsh Karmachari Sangh. The said Sangh filed writ petition before the High Court espousing the cause of all the persons who were similarly situated. They also filed a writ petition before learned Single Judge of the High Court and the same was disposed of by the learned Single Judge on the same lines as in the aforesaid case. Aggrieved against the order of the learned Single Judge one Special Appeal was filed by the State of U.P. which came to be registered as Special Appeal No.129 of 1996. This appeal was disposed of by the Division Bench of the High Court on 4.4.1996 (Brijesh Kumar, J & A.S.Gill, J). In this Special Appeal the Division Bench considered the matter and after dealing with all relevant aspect of the matter observed as follows:

" The Kurk Amins appointed on commission basis, who are appointed by the District Collector on account of their appointment as such and the performance of duties are of Government Servants irrespective of the fact of manner of payment of their remuneration. Even

otherwise on the principle of equal pay for equal work as enshrined under Article 39-D of the Constitution of India, they are entitled to same pay and perks admissible to regularly appointed Kurk Amins. The payment of remuneration to the Kurk Amins on commission basis was in fact an incentive for quick and more realization of outstanding State dues. If the Kurk Amins on regular basis are holder of civil post, there is no reason to deny such status to Kurk Amins on commission basis. We are of the considered view that the Kurk Amins appointed on commission basis are equally entitled to be regularized and absorbed as Kurk Amins and paid salary and allowance admissible to the post but subject to availability of post. The petitioners, who cannot be absorbed on account of non-availability of posts shall be kept in the waiting list and should be allowed to continue as such on commission basis till they are absorbed in the regular cadre to Kurk Amins and till they all are absorbed, fresh recruitment be not made. "

Thereby, the Division Bench affirmed the judgment of the learned Single Judge. Aggrieved against this order the State of U.P. filed Special Leave Petition. All these appeals were clubbed together and heard by this Court which ultimately affirmed both the decisions of the Division Bench of the High Court by order dated 20.3.2001. Relevant portions of the order read as under :

" From a bare perusal of the aforementioned decisions of the two different benches of the High Court it would be clear that after taking into consideration all relevant factors as laid down by this Court in its judgment referred to above, the High Court has come to the conclusion and recorded a finding of fact that Kurk Amins appointed on commission basis for recovery of outstanding dues of the cooperative societies were members of service and government servants."

In this light now, we have to examine the matter whether there is any violation of order by the respondents or not. The respondent \026 State of U.P. has filed a counter and submitted that no violation of the order of this Court or that of the Division Bench of the High Court was committed by the respondents. It was pointed out that they have faithfully complied with the orders of this Court. It was further pointed out that in compliance with this Court's order the State Government has notified the Rules known as " The Uttar Pradesh Co-operative Collection Fund and the Amins and other Staff Service Rules, 2002"(hereinafter to be referred as the Rules). Rule 2) of the said Rules says that the 'appointing authority' is the District Magistrate/ Collector. The said Rule reads as under :

") 'Appointing Authority' means the District Magistrate/ Collector in the case of Amin and Amin on commission basis and the Deputy Registrar in the case of Sahyogi."

Rule 2(d) of the Rules which defines cadre of service reads as under:

" (d) 'Cadre of service' means Amins and Sahyogies substantively appointed or deemed to have been substantively appointed under these rules or orders in force prior to the commencement of these rules and shall not include Amin on

commission basis."

Chapter-III deals with recruitment and conditions of service of Amins and other staff. Part-I deals with status. Rule 4 says that the service of Amins and Amins on Commission basis under these rules shall comprise Group-"C" and that of Sahyogi Group "D" services. Part-II defines cadre. Rule 5 reads as under ;

" P A R T \026II

Cadre.

5(1) The strength of the service and of each category of posts therein shall be such as may be determined by the Registrar with the prior approval of the State Government.

(2) The strength of the service and of each category of posts therein shall until orders varying the same are passed under sub-rule (1) be as given in the Schedule.

SCHEDULE

Sl.No.	Name of the post	No. of post	R e m a r k
1.	Amin	206	Three posts in each district however in district having less than three tehsils, two post in each district.
2.	Sahyogi's of Amin	90	The post falling vacant due to retirement or otherwise shall cease to exist.
3.	Amin on Commission Basis	2689	The post falling vacant due to retirement or Otherwise shall Cease to exist.

(3) The Appointing Authority may leave unfilled or the Government may hold in abeyance vacant post without thereby entitling any person to compensation or the Government may create such additional permanent or temporary posts as it may consider proper. "

Part III lays down the procedure for recruitment. Rule 6 of the Rules reads as under :

"Part \026III
Recruitment.

6. Recruitment to the various categories of posts shall be made from the following sources:-

(1) Amin: The vacancies of Amin shall be filled by already serving Amins on salary basis and remaining vacancies shall be filled from amongst such Amins on commission basis who have made satisfactory recovery during last five years on the basis of seniority subject to the rejection of the unfit and subject to their willing - ness.

(2) Sahyogi: All the vacancies shall be filled by

already serving Sahyogies on salary basis.

(3) Amins on Commission basis : All the vacancies shall be filled by already serving Amins on Commission basis."

Therefore, it was pointed out that by framing the Rules the Government has recognized the Amins on Commission basis as holding the civil posts and their method of recruitment has also been prescribed as per Rule 6 of the Rules. The vacancies in the cadre of Amins shall be first filled up from the Amins on salary basis & Amins on commission basis who have made satisfactory recovery during the last five years on the basis of seniority subject to the rejection of the unfit and subject to their willingness. Therefore, it was submitted by Mr. Ashok Desai, learned senior counsel appearing for the State of U.P. that the State of U.P. has faithfully complied with the orders of this Court and has made it very clear that the Amins will hold civil posts and they will be Government servants & their services will be regularized subject to availability of post in the service as per the Rules of 2002.

Mr. P. S. Mishra, learned senior counsel appearing for the petitioners strenuously urged that Amins on commission basis have not been given a status of holder of civil post nor the salary of Amins as is admissible to Admins in Revenue Deptt. Of Govt. of U.P. Therefore, respondents are guilty of committing contempt of this Court's order.

Mr. Desai, learned senior counsel drew our attention to the above para reproduced from Division Bench judgment in Special Appeal No. 129/1996 of the Allahabad High Court which was affirmed by this Court and submitted that the Division Bench has categorically mentioned that the Amins shall be absorbed subject to the availability of the posts and till they are absorbed they will be kept in the wait list and allowed to continue as such on commission basis till they are absorbed in the regular cadre of Kurk Amins. Learned senior counsel specifically invited our attention to the direction of the Division Bench of the High Court at page 134 of the paper book which reads as under:

" The petitioners, who cannot be absorbed on account of non-availability of posts shall be kept in the waiting list and should be allowed to continue as such on commission basis till they are absorbed in the regular cadre to Kurk Amins and till they are absorbed, fresh recruitment be not made."

Learned senior counsel for the respondents further submitted that this direction given by the Division Bench in the Special Appeal No. 129(SB) of 1996 has been affirmed by this Court. As already mentioned above, this Court has affirmed the view taken by the Allahabad High Court that Amins on commission basis are holding the civil posts and they are Government servants. This Court did not change the direction given by the Division Bench of the High Court in Special Appeal No. 129 of 1996 and affirmed that direction. This Court did not say that the Amins should be given same salary or that they should be immediately absorbed. This Court affirmed the ratio laid down by the Division Bench of the Allahabad High Court and at the same time affirmed the order as already quoted above. That means the Amins will continue to be treated as Amins on commission basis till they are regularly absorbed in the cadre of Amins. The Division Bench further mandated that till all these Amins are absorbed, fresh recruitment shall not be made. As per Rule 6 of the Rules, 2002 clearly mandated that the vacancies of Amins shall be filled by already serving Amins on commission basis who have made

satisfactory recovery during the last five years on the basis of seniority subject to the rejection of the unfit and subject to their willingness and likewise Sahyogies shall be absorbed subject to availability of vacancies. No fresh recruitment shall take place on the post of Amins till all these Amins on commission basis are absorbed. Therefore, in this view of the matter we are of opinion that the respondents have not committed any violation of the order of this Court or that of the Division Bench of the Allahabad High Court.

Mr.P.S.Mishra, learned senior counsel for the petitioners has also submitted that there is difference of pay between the Amins in the Co-operative Department and that of the Amins of the Revenue Department. Mr.Ashok Desai, learned senior counsel appearing for the respondent State of U.P. submits that this anomaly will be rectified and that the Amins in the Co-operative Department and the Amins in the Revenue Department would be bracketed in the same pay scale. Mr.Desai has assured that the same will be notified and a notification to this effect shall be issued by the State of U.P. shortly. Therefore, the apprehension of Mr.Mishra was allayed by the submission of Mr.Desai. We hope and trust that the statement of Mr.Desai shall be faithfully complied with by the State of U.P. by suitably amending the pay scale of the Amins in the Co-operative Department by providing the same pay scale as is being paid to the Amins of the Revenue Department.

Before we part with the case, we may point out one bonafide mistake which appears in definition to Rule 2(d) Cadre of Service. "Cadre of service" says that it shall not include "Amins on commission basis". To this, Mr.Desai submitted that this is a bonafide error because looking to the scheme of the Rules and the cadre strength clearly contemplates that the cadre strength consists of the Amins as well as the Amins on commission basis. Therefore, a suitable amendment will be brought out in the definition of the cadre of service. We hope and trust that this amendment shall be brought forth so as to bring these Rules in proper scheme.

In view of the discussions held above, we do not find any merit in the Contempt Petitions and the same are accordingly dismissed. No order as to costs.