

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION (C) No. 91 OF 2006
IN
CIVIL APPEAL NO.1124 OF 2000

Anil Kumar Shahi & Ors. Petitioners

Versus

Prof. Ram Sevak Yadav & Ors. Respondents

WITH

CONTEMPT PETITION (C) No. 162 OF 2007
IN CONTEMPT PETITION (C) No. 91 OF 2006
IN
CIVIL APPEAL NO.1124 OF 2000

J U D G M E N T

Lokeshwar Singh Panta, J.

Contempt Petition (C) 91 of 2006

This is a petition under Article 129 of the Constitution of India read with Section 2(b) of the Contempt of Courts Act, 1971 preferred by Anil Kumar Shahi, Ghanshyam Singh, Davendra

Singh and Raj Narain Lal, petitioners herein, *inter alia* praying for the following reliefs:-

- “(a) initiate contempt proceedings against the contemnors for their willful disobedience and uphold the majesty of this Hon’ble Court; and/or
- (b) direct the respondents to disclose the marks obtained by the petitioner as well as cut-off marks beyond which the candidates were called for interview; and/or
- (c) quash order dated 7.4.2006 passed by the respondent no. 2 which is in contravention of the order dated 7.3.2006 passed by this Hon’ble Court; and/or
- (d) direct the respondents that if the candidates are found to have obtained equal to or more than cut-off marks, then to call the candidates for interview and recommend the candidates; and/or
- (e) direct the respondents/U.P. Government that thereafter to appoint the candidates in order of their post of preference as was submitted by the candidates during the mains examination; and/or
- (f) pass such other or further orders as this Hon’ble Court may deem fit and proper in the circumstances of the present case.”

Briefly stated, the facts giving rise to the filing of the present petition are as under:-

The petitioners and other candidates had appeared in the preliminary and main examinations for the year 1997 conducted by the Uttar Pradesh Public Service Commission [‘the UPPSC’] for the posts of Principal, Government Inter College (Boys and Girls) and Senior Lecturer in District Education and Training Institutes along with other posts in the State of U.P. and a combined State/Upper Subordinate Services. A group of candidates appearing for various posts for the years 1996 and 1997 filed writ petitions before the High Court of Judicature at Allahabad. The High Court in the case of ***Tulsi Ram and Ors. v. State of U. P. & Ors.*** [Writ Petition NO.40849 of 1977] while dealing with the case of 1996 batch was pleased to decide the issue with regard to the eligibility criteria. Aggrieved thereby, a number of special leave petitions were preferred by the candidates before this Court.

The writ petition filed by the petitioners for the posts of Principals and Senior Lecturers was dismissed by the High Court with a short order which reads as under:-

“The facts of the case are covered by the judgment of this Court in *Tulsi Ram and others vs. State of U.P. & Others* in Writ Petition No. 40849 of 1997 decided on 13.5.98.

The writ petition is disposed of on same condition and direction as in aforesaid judgment.”

The judgment in ***Tulsi Ram’s case*** (supra) was challenged before this Court in a group of matters. By an order made on 10.01.2001 in Civil Appeal Nos. 961-962/1999, Civil Appeal No. 1124 of 2000 filed by the present petitioners, was delinked from the said group of matters.

In Civil Appeal Nos. 961-962/1999, titled ***Mohd. Altaf & Ors. v. Public Service Commission & Anr.*** this Court decided the question of law that was raised in the aforesaid case of ***Tulsi Ram***. The controversy in ***Tulsi Ram’s*** case centered round the interpretation of the eligibility criteria for holding the posts. The eligibility criteria as advertised/notified read as under:

“(3) For the Post of Principal, Government Inter College (Boys/Girls) and Senior Lecturer in District Education and Training Institute – (1) Post Graduate degree from a recognised university or any degree equivalent thereto recognised by the

Government. (2) L.T. Diploma from Education Department of U.P. or B.T. or B.Ed. or any other degree of University equivalent thereto. (3) At least three years' of teaching experience as head of any Senior Secondary or normal School or three years experience of or normal School or three years experience of teaching Intermediate or higher classes or in C.T. or L.T. Training Post Graduate College as lecturer."

It was the case of the petitioners before the High Court that experience contemplated by the above-said eligibility criteria No. 3 was not restricted to teaching in Government schools, while the UP Public Service Commission was of the view that the teaching experience could be counted only if it was in a Government School. This controversy was resolved and settled finally by this Court in ***Mohd. Altaf's case*** (supra) by holding that the Lecturers having three years teaching experience in CT/LT colleges in Training Colleges were also eligible, since the Rules nowhere prescribed that teaching experience should be that of a teacher in Government College or aided or unaided Government College or institution. Further, it was observed that teaching experience may be from any Higher Secondary School or High School or from an institute having Intermediate or

Higher Classes. Having laid down the law, the UPPSC was directed to implement and carry out the directions of the High Court and prepare a list of eligible teachers for being appointed to the post advertised within a stipulated period. After the list was prepared in accordance with the directions given by this Court on March 14, 2001, the appeals came up for hearing and disposed of by a final order made on 20th February, 2002 and in the concluding paragraph of the order, it is said:-

“Lastly, it is clarified that the directions issued by this Court on 10.1.2001 as well as today would be implemented in favour of all the eligible candidates.”

It was observed in the order dated 10.01.2001:-

“The aforesaid direction is to be considered in the light of the discussion in the judgment, which specifically provides that if the teachers who have been substantively appointed in accordance with the provisions of the Act and the Regulations framed thereunder are not paid the salary from the public treasury as those institutions were not given maintenance grant/grant-in-aid it cannot be blamed for the lapse on the part of the State Government and such teacher cannot be excluded for being considered to be appointed. The learned counsel for the parties have pointed that most of the matters filed by the teachers are with regard to this

clause. It is their contention that if this direction as explained in the body of this judgment stands implemented most of the matters may not survive.”

The petitioners thereafter made an application, IA No. 4 of 2003 before this Court placing on record the various orders passed in **Mohd. Altaf's** case with a prayer that their appeals be also allowed in terms of the orders of this Court dated 10.01.2001 and 20.02.2002 made in C.A. Nos. 961-962/1999 and for consequential directions as prayed for by them. While opposing the prayer made in IA No. 4, the UPPSC filed a counter affidavit in which they have raised a fresh issue that the petitioners were not included in the list of successful candidates because they had failed to qualify the written examination and, therefore, there was no occasion at all to call the unqualified candidates for interview. This stand, however, has been denied by the petitioners in the rejoinder affidavit, wherein it is pointed out that the UPPSC had wrongly included the names of the candidates in the select list, who were originally not even notified

in the Official Gazette Notification. Having heard the learned counsel for the parties, this Court on March 07, 2006 held:-

“In our view, it is not open to the respondents to raise a fresh controversy on facts before this Court for the first time. We are informed, and it is not disputed before us, that the respondents did not file a counter affidavit before the High Court opposing the averments made in the writ petition, nor have they done so before us. The new case sought to be set out, about the appellants not having been qualified in the main examination, appears for the first time in reply to IA 4. Since there has been no investigation of facts in this case, we decline to entertain this controversy.

In the result, the appeal is allowed to the extent of directing the respondents to implement the orders in **Mohd Altaf** dated 10.01.2001 and 20.2.2002 (C.A. Nos. 961-962/1999) and apply the same eligibility criteria as decided by this Court in the aforesaid orders to the case of the appellants. If it is the case of the respondents that the appellants did not qualify in the main examination and, therefore, they were not called for the interview, it is open to the respondents to pass appropriate orders giving the reason as to why the case of the appellants has not been considered and disclose the marks obtained by them as well as cut-off marks beyond which the candidates were called for interview. It will be equally open to the appellants to challenge such an order, if passed by the UPPSC.

The learned counsel appearing for the UPPSC states that they have already filed a list of candidates whose cases had been considered pursuant to the direction of this Court. As indicated earlier, this controversy being raised for the first time before this Court, we decline to go into it and leave it open.

Since the matter has been considerably delayed, the respondents are directed to pass appropriate orders and communicate them to the appellants within a period of four weeks from today.

The appeal is accordingly allowed with no order as to costs.”

It appears from the record that in compliance with the above-extracted order of this Court, the contesting respondents took some decision, which according to the petitioners, is manifestly in violation of the tenor and spirit of the order of this Court. In this petition, it is stated that the respondents for the first time in their Office Order dated 7.4 2006 took a different stand, which reads as under:-

“Because during the relevant time according to experience contemplated by the eligibility criterion No. 3 as set by the Commission, the petitioners were found ineligible, therefore they were not called for interview and in view

of the observations made by Hon'ble Supreme Court in order dated 20.2.2002, the order dated 10.1.2000 and 20.2.2002 are applicable to those candidates who had appeared in the interview. Therefore in the expressed situation, it has been decided by the Hon'ble Commission that in view of the order dated 20.2.2002 passed by the Hon'ble Supreme Court it is impossible to call the candidates for interview."

It is further stated that in view of the above stand of the respondents, it is clear that the respondents are guilty of wilful and deliberate contempt of this Court as they are time and again changing stands, so as to misguide this Court and are not disclosing the marks obtained by the petitioners, as well as cut-off marks beyond which the candidates were called for interview despite unambiguous directions passed by this Court. It is also stated that this is not the first time when the respondents are deliberately flouting and circumventing the orders passed by this Court. This Court in its earlier judgment dated 28.11.2001 passed in the case of **Mohd. Altaf** (supra) while dealing with similar situation was pleased to record and observe as under:-

"....It appears that the UPPSC is interested in suppressing some facts from the court as

well as from the candidates who appeared in the examinations for some ulterior purpose. From a constitutional functionary like Public Service Commissions much higher standards are expected not only by the Courts but also by the Public at large. If there is a mal-administrations at the level of Public Service Commissions there would be rampant favoritism in making appointments to the service of the state. Despite our various orders making abundantly clear, today also the affidavit which is filed on behalf of the UPPSC is not complete and contains half truth. In our view, this is an absurd stand because it is the duty of the Public Service Commissions to declare on the Notice Board result indicating marks with all other relevant details. In such examinations transparency is expected and results cannot be kept secret.... Here also the UPPSC wants to play with the court. The Chairman and the Secretary of the UPPSC are directed to deposits with the registry cost of 10,000/- each for wasting the court time. Such costs shall be paid by the concerned personally and not by the Commission.”

It is further the case of the petitioners that the conduct of the contending respondents speaks of bias and mala fides on their part and they on one pretext or the other have tried to exclude the petitioners from their lawful claim of appointment.

The contempt petition was listed before this Court on 8.5.2006 when this Court passed the following order:-

“Issue notice returnable in the month of July, 2006.

Mr. Shail Kumar Dwivedi, the learned counsel, appears and accepts notice for U.P. Public Service Commission.

Personal presence of respondent Nos. 1 and 2 is dispensed with for the time being.”

The matter came up before this Court on number of dates and for one reason or the other at the request of the learned counsel for the U.P. Public Service Commission and the State of U.P., the matter continued to be adjourned from time to time. On 9.3.2007, this Court directed the respondent-U.P. Public Service Commission to bring on record the documents showing recommendations by it. Thereafter, it was on November 14, 2007 that this Court passed the following order:-

“Put up this matter on 16.11.2007 for further hearing at 1.30 p.m.

On that day the Secretary of the Education Department, State of U.P. as also the Secretary of the U.P. Public Service Commission shall personally remain present in the Court with all requisite files.

In the first half, the said documents would be given to the learned counsel for the petitioners for inspection.

A chart showing the vacancy position as obtaining in the years 1996, 1997, 1999 shall be separately prepared. A Chart shall also be prepared showing the filling up of the vacancies in respect of those years separately including the fact as to whether any of those posts have been filled up from amongst the reserved category candidates.

It will further be shown as to how and in what manner the State in spite of order of this Court, directed the vacancies to be carried forward despite the fact that recommendations were made for filling up the vacancies by the Commission.

The list of 443 candidates in whose favour the recommendations have been made shall be produced before this Court.”

Contempt Petition No. 162 of 2007:

In this petition, the petitioners *inter alia* pray for the following reliefs:-

“(a) initiate contempt proceedings against the contemnors for their willful disobedience and uphold the majesty of this Hon’ble Court; and/or

(b) direct the respondents to recommend the names of the petitioners in terms of the order dated 9.3.2007; and/or

(c) direct the respondents/U.P. Government that thereafter to appoint the candidates in order of their post of preference as was submitted by the candidates during the mains examination; and/or

(d) pass such other or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the present case."

On 16.11.2007, an application for exemption from personal appearance of Dr. (Prof.) Ram Sewak Yadav, Chairman of U.P. Public Service Commission and Dr. J.B. Sinha, Secretary U.P. Public Service Commission, was allowed. The matter was ordered to be listed on 10th December, 2007 at 1:30 p.m. and in the meantime the State of UP was asked to allow the learned counsel for the petitioners as also the petitioners to inspect the record which was produced before this Court on that day. When the matter was called for hearing on 8.2.2008, this Court made the following order:-

"Mr. Colin Gonsalves, learned senior counsel handed over chart to us showing the discrepancies as obtaining in the records maintained by the State of Uttar Pradesh and UPPSC.

Mr. H.N. Salve, learned counsel prays for some time to respond to the said Chart. Mr. Shrish Kumar Misra, learned counsel also joins Mr. Salve, learned counsel in making the said prayer.

List of 443 candidates for the 1997 batch, as directed, be furnished to Mr. Colin Gonsalves.

Issue notice on the application for intervention/direction.

Personal appearance of the alleged contemnors is dispensed with till further orders.

Put up after two weeks.”

During the pendency of the contempt petitions, I.A. No. 12 was filed by Mani Ram Singh praying for intervention and making oral submissions in regard to his claim for appointment against the above said post. Notice on this application was issued on 8.2.2008. One application for impleadment in the contempt petitions was filed by Jamna Prasad Gangwar with a prayer to issue direction to the State of U.P. to appoint him and other eligible candidates belonging to the reserved categories of 1996 batch to the posts of Principal of Inter College (Boys/Girls) in the State of U.P. within 15 days and submit its compliance.

In reply to the Contempt Petition © No. 91 of 2006 and I.A. No.12 of 2008, three sets of separate affidavits were filed by the respondents. Prof. Ram Sevak Yadav - respondent No.1 herein, Chairman U.P. Public Service Commission, Allahabad, in his

affidavit at the outset, submitted that he has the highest regards for the orders passed by this Court and he has taken necessary action in compliance of the order dated 07.03.2006 passed by this Court in C. A. No. 1124 of 2000. However, in compliance thereto, if there be any kind of discrepancy, bona fide omission or inadvertence in paying due regard to the order of this Court, he submitted his unconditional and unqualified apology for the same. Further, he submitted that he shall do everything in due compliance of the orders of this Court as may be directed and the Commission being a constitutional body is duty bound to comply with the orders of this Court. He also submitted that he being the Chairman of the Commission has never intended to disobey or to disrespect the orders of this Court or to do anything, which may amount to contempt of the orders of this Court. He submitted that in compliance of the orders of this Court, the petitioners made representation to the Commission and the Commission passed an Office Order on 07.04.2006 on its interpretation of the order dated 20.02.2002 passed by this Court in Civil Appeal Nos. 961-962 of 1999 titled ***Mohd. Altaf & Ors. v. Public Service Commission & Anr.***, in which it was

ordered that the orders would be applicable to all concerned who appeared in interview on the relevant date. As the petitioners in the present case had not been called for interview till the passing of the order dated 20.02.2002, their case could not be considered. However, after rejection of the representation of the petitioners, the Commission realised that the order dated 20.02.2002 should be made applicable to the petitioners due to their higher marks than the cut-off marks. Accordingly, the Commission took necessary steps by deliberating upon the whole matter in accordance with the orders dated 10.01.2001, 20.02.2002, 28.11.2002, 28.08.2003 and 07.03.2006 passed by this Court. He submitted that in Contempt Petition No.372 of 2002 in Civil Appeal No.962 of 1999, ***Shamim Khanam v. K. B. Pandey*** and other connected matters, this Court was pleased to consider the cases of all the candidates who had appeared in the years 1996, 1997 and 1999 Examinations for appointment to the post of Principals in the Government Colleges. The relevant extract of the directions contained in the order dated 05.08.2003 reads as under:-

“It is ordered that the candidates who had appeared in the year 1996, 1997 and 1999 would be considered for vacancies existing as on 30.06.2003 in accordance with the merit list prepared of all the eligible candidates for the various years.”

It is stated that in the said Contempt Petition a clarificatory order dated 28.08.2003 was passed by this Court, which reads as under:-

“It is further made clear that appointment to these 97 posts would be after earmarking the reserved categories and thereafter on the basis of merit list prepared by the U. P. Public Service Commission for the year 1996 examination. If other vacancies still remain, appointments would be after taking into consideration merit list of 1997 examination and thereafter 1999 examination result.”

The first respondent further submitted that having regard to the various orders passed by this Court, the Commission had disclosed the marks to the petitioners and subsequently called them for interview scheduled to be held on 14.07.2006 in the Office of the Commission at Allahabad. All the petitioners appeared before the Interview Board of the Commission. The Commission accordingly revised the Combined Merit List of PCS

Examination-1997 for the category of Principals on 14.07.2006 itself. The placement of the petitioners in the aforesaid Combined Merit List has been stated at Sl. Nos. 54, 156, 118 and 104 respectively. The petitioners have been included in the Eligibility List of 1997 along with other candidates. It is submitted that the Commission is not in a position to recommend the candidature of the petitioners to the State Government for the following reasons:-

- (i) The order dated 28.08.2003 passed by this Hon'ble Court requiring the recommendation against the existing vacancies for the candidates of the 1996 examination first and thereafter for the candidates of 1997 examination.
- (ii) The petitioners belong to 1997 examination and in absence of vacancies, their candidature cannot be recommended as directed by this Hon'ble Court vide order dated 28.08.2003.
- (iii) The State Govt. vide its letter dated 11.05.2006 addressed to the Commission had already communicated that the State Govt. had decided not to fill up the remaining 45 vacancies on ad-hoc basis. Even if the State Govt. had permitted to fill up the 45 vacancies on ad-hoc basis it would have gone to 70 candidates of 1996 examination in terms of the order passed by this Hon'ble Court on 28.08.2003. Therefore, in any case, it would not be possible to make a recommendation in respect of the petitioners who are eligible candidates of 1997 examination."

Dr. J. B. Sinha, Secretary, UPPSC, filed a separate affidavit in which he pleaded identical statement as stated by the Chairman of the Commission. In rejoinder, the petitioners reiterated the averments made in the Contempt Petition. Dr. J. B. Sinha, Secretary, UPPSC, in his additional affidavit stated that in compliance with the judgment dated 07.03.2006 passed by this Court the petitioners were also placed in the list of eligible Teachers for appointments in the revised list drawn on 14.07.2006. A meeting in this regard was held in the Office of the State Government on 07.03.2007. The State Government has not appointed all the eligible candidates for the examination held in the year 1996. He submitted that no appointment has been made from merit list of eligible candidates for 1997 and 1999 examinations, which had been prepared pursuant to the orders dated 10.01.2001 and 20.02.2002 passed by this Court. He also stated that the Commission vide its letter dated 23.03.2007 addressed to the Secretary, Government of U. P., sent the revised merit list dated 14.07.2006 as well as Notification of the Commission dated 25.07.2006 for taking necessary action at State Government level. He also submitted

that there is no willful disobedience to the judgment/orders of this Court and he bow down before the majesty of this Court. He tendered his unconditional apology for any inaction on the part of the Commission or on his part in-person in understanding the true meaning of the judgment of this Court. Copies of the revised combined merit list of the PCS Examination, 1997 (Main) issued on 14.07.2006 for the posts of Principals along with combined merit list of PCS Examination, 1996 (Main) eligible candidates in terms of order of this Court dated 14.08.2003 are placed on record.

Ms. Gayatri Adult, Deputy Director (Services-I), Directorate of Education, Allahabad, in compliance to the order of this Court dated 29.08.2007, filed affidavit on behalf of the State of U. P. and Directorate of Education, Allahabad, (Respondent Nos. 3 & 4) stating therein that 50 posts of Principals, Government of Inter College (Boys and Girls) and 47 posts of Senior Lecturers in District Institutes of Education Training were lying vacant as on 28.08.2003. This Court vide order dated 28.08.2003 was pleased to direct the State of U. P. to fill 52 posts of Principals strictly on the merit list submitted to this Court and regarding

remaining 45 posts, it was ordered to leave the same to the State Government to fill them on ad-hoc basis. The State Government made appointments of 50 candidates strictly on the basis of merit list. Two posts of reserved category could not be filled as no eligible SC candidates were found. However, the State Government did not make appointments against the 45 remaining posts as there is no provision for making appointment on ad-hoc basis in U. P. Educational (General Educational Cadre) Service Rules, 1992. She submitted that after 27.08.2007, 41 vacancies arose against the posts of Principals on account of promotion of 41 Principals to the post of District Inspector of Schools and out of 41 posts, 35 posts are to be filled against the reserved category candidates selected in the year 1996 and the remaining six to clear the backlog posts, are lying vacant. She submitted that out of 47 newly upgraded posts of Principals in the Colleges, 50% posts of Principals were to be filled by promotion and the remaining 50% by direct recruitment on the basis of the examination conducted by the UPPSC. She submitted that as on 28.10.2007 when this affidavit was filed, there were 29 vacancies of Principals, which are to be filled by

direct recruitment and in addition thereto, 3 posts of Senior Lecturers D.I.E.T. are also lying vacant. Further, it is submitted that in the year 1997 the State Government sent requisition for selection of 443 posts of Principals/Senior Lecturers/D.I.E.Ts. and the UPPSC after selecting the candidates, recommended their names for appointment against the required 443 posts. She also submitted that the National Council for Teachers Education has prescribed new educational qualification for appointment to the post of Senior Lecturers for D.I.E.T. and the minimum qualification is M.Ed. which earlier was B.Ed.

In reply to I.A. No. 12 of 2008, Prof. Ram Sevak Yadav, Chairman, UPPSC, Allahabad, submitted that the applicant-Mani Ram Singh is placed at Serial No.75 of the Combined Merit List of PCS Examination, 1996 (Main) eligible candidates. The Commission vide its letter 132/9/E-2/97-98 dated 01.10.2003 had sent recommendation of 52 candidates. Further 2 posts of Scheduled Tribe candidates could not be filled as suitable candidates were not available in any of the recruitment years 1996, 1997 and 1999. Later on, the State Government informed the Commission vide its letter No.315/15-1-08-8(3)/03 dated

05.02.2008 that out of 52 candidates only 46 candidates could get appointment against the posts in question. Four candidates could not join their place of posting, so the State Government decided to fill those four vacancies [2 General + 2 OBC] from the eligibility list of 1996 Examination, which is under consideration of the Commission. He stated that as far as 45 unfilled vacancies are concerned, State Government decided vide its letter No.15/24/97-ka-4-06 dated 11.05.2006 not to fill those vacancies. On similar line, counter affidavit has been filed by Shri Santosh Kumar Srivastava, Secretary, UPPSC, Allahabad. Along with their affidavits, copy of confidential letter dated 01.10.2003 written by Shri Pawan Kumar, Secretary, UPPSC, Lucknow, to the Secretary, Personnel Section-4, Government of U.P., Lucknow, sending recommendations according to the result of 52 vacancies of the post of Principals/Senior Lecturers on the basis of merit list of 120 new eligible candidates of Principal Examination, 1996, in compliance with the orders of this Court dated 28.08.2003 giving details of the division of the vacancies occurred year-wise upto 30.06.2003 and the number of candidates selected in General and Reserved categories.

Mr. Colin Gonsalves, learned Senior Advocate for the petitioners, contended that the Chairman of UPPSC, the Secretary of UPPSC and the Department of Education of the U.P. Government have willfully and deliberately disobeyed the orders dated 07.03.2006 and 09.03.2007 passed by this Court. He submitted that despite the order in **Mohd. Altaf's** case laying down the eligibility criteria, the respondents intentionally refused to apply the same criteria as decided by this Court in the case of the petitioners herein. This Court vide order dated 07.03.2006 directed that the law laid down in **Mohd. Altaf's** case would apply in the case of the petitioners as well, but the respondents firstly took the stand that the petitioners have not qualified the written examination and later on, they have admitted that the petitioners had qualified in the written examination, but they had not appeared in the interview. He submitted that at least the respondents have entirely taken a new stand that there existed no vacancies against which the petitioners could be appointed. He has brought to our notice the order dated 28.11.2001 passed by this Court in Civil Appeal Nos.961-962 of 1999 titled **Mohd. Altaf & Ors. v. Public Service Commission**

& Anr. whereunder strictures were passed against UPPSC for acting arbitrarily, for showing “rampant favouritism” for taking an “absurd stand” and for “playing with the court by taking the stand that there are no vacancies.” The learned senior counsel has relied upon the statement of the then Education Minister made in the U. P. Legislative Council stating that there were 113 vacancies for the year 1996, 164 vacancies for the year 1997 and 90 vacancies for the year 1999 as on 03.03.2005 as per Annexure R-3 attached with the rejoinder to contend that the stand of the respondents that there are no vacancies available against which the petitioners can be appointed, is absolutely incorrect and in violation of the order of this Court.

In compliance with the order dated 14.11.2007, Mr. Harish N. Salve, learned senior counsel appearing on behalf of the Chairman and the Secretary, UPPSC, has placed before us Chart showing vacancy position as obtaining in the year 1996, 1997 and 1999. The details of 1996, 1997 and 1999 selection for the post of Principals in Government Inter Colleges (Boys and Girls) and for the post of Senior Lecturer in District Education & Training Institutes before 28.08.2003 are given as under:-

“Break-up for the year 1996, 1997 and 1999 vacancies

YEAR	VACANCY POSTS	SELECTED POSTS	CARRY FORWARD POSTS
1996	216	105(104+1)	216-105=111
1997	443 (332 +111)	279(19+124+124+12)	443-279=164
1999	64(General Recruitment	54	64-54=10
1999	164(Special Recruitment) 164-51* = 113 51* = Vide High Court order in Writ Petition No. 26986/1998 – selection for 51 posts stayed. Hence, selection for 113 was made.	75	113-75=38

AFTER 28.08.2003:

97 – Vacancies were informed by the Government vide letter dated 19.09.2003 out of which 50 names were recommended as per directions of Hon’ble Court in the order dated 28.08.2003

FRESH ELIGIBILITY LIST AFTER HON’BLE SUPREME COURT ORDER DATED 28.08.2003.

YEAR 1996

List of 120 candidates (pg. 193-197) all categories

i) Break-up of 120 candidates

S.No.	Requisition received from the Government	Total No. of candidates	General	Scheduled Castes	Scheduled Tribes	Other Backward classes	Remarks
1		120	52	22	Nil	46	

YEAR 1997

List of 154 candidates (pg. 206-212) all categories

i) Break-up of 154 candidates

S.No.	Requisition received from the Government	Total No. of candidates	General	Scheduled Castes	Scheduled Tribes	Other Backward classes	Remarks
1		154	121	07	Nil	26	
2	Merit List revised on 14.07.2006	158	125	07	Nil	26	

YEAR 1999

List of 98 candidates all categories

i) Break-up of 98 candidates

S.No.	Requisition received from the Government	Total No. of candidates	General	Scheduled Castes	Scheduled Tribes	Other Backward classes	Remarks
1		98	53	14	Nil	31	

Note: In compliance of Hon'ble Supreme Court order dated 28.08.2003 only 50 candidates recommended from the eligible candidates of the year 1996 as per vacancy informed by State Government on 19.09.2002.

Break-up for year 1996 vacancies for the post of Principals in Government Inter Colleges (Boys & Girls)

S.No .	Requisition received from the Government	Total No . of Posts	General	Scheduled Caste	Scheduled Tribes	Other Backward classes	Remarks
1		216	108	46	04	58	
2	Selected	104 + 1*	101	03	Nil	Nil	* 1 (one) General General vacancy reserved as per orders of Hon'ble High Court in Subhash Babu Vs. U.P.P.S.C. & Ors.
3	Carry forward vacancies	111	06	43	04	58	

Details of vacancies filled-up by 1997 Examination

Government sends requisition for 548 posts of Principals in Government Inter Colleges (Boys & Girls) and for the post of Sr. Lecturer in District Education & Training Institutes. Thereafter, Government vide letter no. 1978/15-1-97-8(2)/95 T.C., dated 05th September, 1997. Informed U.P.P.S.C. that 548 posts includes 216 posts for which requisition has already been sent to the U.P.P.S.C. in 1996 as a result of which only 332 vacancies are available for 1997 Examination and 111 carry forward vacancies of 1996 Examination are available. Details break-up of these posts were sent by

Government Letter No. 2561/15-1-96-8(2)/95, dated 19th August 1996.

Total no. of posts 332 are bifurcated as below:-

Principals – 146 (19 for Plain Cadre + 127 for Hill Cadre)

Sr. Lecturers – 186 (162 for Plain Cadre + 24 for Hill Cadre)

Carry forward vacancies of 1996 Exam. For (Principals) Hill Cadre – 111 Posts

Total No. of Vacancies (146+186+111)=443 for which selection was made.

A. Details of 19 posts for Principals (Plain Cadre)

S.No.	Requisition received from the Government	Total No. of Posts	General	Scheduled Castes	Scheduled Tribes	Other Backward classes	Remarks
1		19	09	04	Nil	06	
2	Selected	19	09	04	Nil	06	

B. Details of 127 Posts for Principals (Hill Cadre)

S.No .	Requisition received from the Government	Total No. of Posts	General	Scheduled Caste s	Scheduled Tribes	Other Backward classes	Remarks
1		127	63	27	02	35	
2	Carry forward vacancies of 1996 exam.	111	06	43	04	58	
3	Total	238	69	70	06	93	
4	Selected	124	69	26	01	28	
5.	Carry forwarded vacancies	114	Nil	44	05	65	

C. Details of 162 Posts for Sr. Lecturers (Plain Cadre)

S.No .	Requisition received from the Government	Total No. of Posts	General	Scheduled Caste s	Scheduled Tribes	Other Backward classes	Remarks
1		162	81	34	03	44	
2	Selected	124	81	18	Nil	25	
3	Carry forward vacancies	38	Nil	16	03	19	

D. Details of 24 Posts for Sr. Lecturers (Hill Cadre)

S.No.	Requisition received from the Government	Total No. of Posts	General	Scheduled Castes	Scheduled Tribes	Other Backward classes	Remarks
1		24	12	05	Nil	07	
2	Selected	12	12	Nil	Nil	Nil	
3	Carry forward vacancies	12	Nil	05	Nil	07	

Details of Vacancies filled-up by 1999 Examination (Special Recruitment)

A. Details of 164 Posts for Principals (Plain Cadre)

S.No.	Requisition received from the Govt.	Total No. of Posts	General	Scheduled Castes	Scheduled Tribes	Other Backward classes	Remarks

1		16 4	0	65	08	91	Vide High Court order in Writ Petition No. 26986/1998 – selection for 51 posts stayed. Hence, selection for 113 was made.
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B. Selection for 113 posts:-

Principals – 63 (Hill Cadre)

Sr. Lecturers – 50 (38 for Plain Cadre + 12 for Hill Cadre)

i) Break up for post of Principals – 63 Hill Cadre

S.No.	Requisition received from the Government	Total No. of candidates	General	Scheduled Castes	Scheduled Tribes	Other Backward classes	Remarks
1		63	0	24	03	36	
2	Selected	44	0	20	01	23	
3	Carry Forward	19	0	04	02	13	

i) Break up for post of Sr. Lecturers – 38 Plain Cadre

S.No.	Requisition received from the Government	Total No. of candidates	General	Scheduled Castes	Scheduled Tribes	Other Backward classes	Remarks
1		38	0	16	03	19	
2	Selected	31	0	12	Nil	19	

3	Carry Forward	07	0	04	03	Nil	
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i) Break up for post of Principals – 12 Hill Cadre

S.No.	Requisition received from the Government	Total No. of candidates	General	Scheduled Caste	Scheduled Tribes	Other Backward classes	Remarks
1		12	0	05	Nil	07	
2	Selected	Nil	0	Nil	Nil	Nil	
3	Carry Forward	12	0	05	Nil	07	

Details of vacancies filled-up by 1999 Examination (General Recruitment)

Special Selection for 64 posts which are bifurcated as below:-

A. Details of 64 posts for Principals (15 for Plain Cadre + 49 for Hill Cadre)

i) Break up for post of Principals – 15 for Plain Cadre

S.No .	Requisition received from the Government	Total No . of Posts	General	Scheduled Castes	Scheduled Tribes	Other Backward classes	Remarks
1		15	08	03	Nil	04	
2	Selected	15	08	03	Nil	04	

ii) Break up for post of Principals – 49 for Hill Cadre

S.No .	Requisition received from the Government	Total No . of Posts	General	Scheduled Castes	Scheduled Tribes	Other Backward classes	Remarks
1		49	25	11	01	12	
2	Selected	39	24	05	Nil	10	
5.	Carry forwarded vacancies	10	01	06	01	02	

Hon'ble High Court vacated the stay order passed in Writ Petition No. 26986/1998 on 16.03.2001 as a result of 51 posts which were of Hill Cadre after creation of Uttaranchal State U.P.P.S.C. unable to fill up the aforesaid vacancies.

U.P. Government vide its letter No. 2513/15-1-2003-27(40)/02 dated 19th September, 2003 informed that there are 97 vacancies available till 30th June, 2003. Details of abovementioned posts as follows:-

Principals Government Inter College (Boys & Girls)]_
 Total Post – 50] Total 97
Sr. Lecturer in Education & Training Institutes:] vacancies
 Total Post – 47]

Principals Government Inter College (Boys & Girls):
 Total Post – 50

i) Break-up of 50 post for Principals Government Inter College (Boys & Girls)

S.No .	Requisition received from the Government	Total No . of Posts	General	Scheduled Castes	Scheduled Tribes	Other Backward classes	Remarks
1		50	26	13	02	09	
2	Selected	48	26	13	Nil	09	
3	Carry forward vacancies	02	Nil	Nil	02*	Nil	* No ST candidate was available

Sr. Lecturer in Education & Training Institutes

Total Post - 47

i) Break-up of 47 posts for Sr. Lecturer in Education & Training Institutes

S.No .	Requisition received from the Government	Total No . of Posts	General	Scheduled Castes	Scheduled Tribes	Other Backward classes	Remarks
1		47	35	08	03	01	
2	Selected	02	02	Nil	Nil	Nil	
3	Carry forward vacancies	45	33	08	03*	01	* No ST candidate was available

Learned senior counsel for the petitioners contended that as per the vacancies indicated in the above-stated Chart, General Category appointments for 1996 batch were over-stated and Reserved Category appointments were under-stated, thus, the seats available to the General Category were not completely reflected in the said Chart. According to the petitioners, transfer of Reserved Category candidates getting age relaxation, lower cut-off marks in Preliminary Examination and also in Main Examination coupled with fees relaxation cannot validly be

transferred to General Category. The petitioners also contended that neither UPPSC nor the Deputy Director of Education in their affidavits have whispered a word about any mistake having occurred while giving 548 vacancies in advertisement issued on 01.01.1997 and the stand now taken in the chart that 548 vacancies for 1997 batch was wrongly published in the advertisement can now be accepted.

Having gone through the details of vacancies for the years 1996, 1997 and 1999 for the post of Principals and Senior Lecturers in District Education & Training Institutes, as shown in the above-extracted Chart, we find that the UPPSC has satisfactorily explained that the advertisement of 548 posts was made as per the requisition of the State Government which numbers were later on found to be wrong, because 216 vacancies which were advertised in 1996 batch, were wrongly included in 548 vacancies. The vacant posts for 1997 batch were only 332 and not 548 and 111 vacancies carried forward from 1996 batch, the total vacancies in 1997 were 443. The petitioners also contended that 14 new District Institutes of Education & Training have come into existence, thus, creating

84 more vacancies for the post of Senior Lecturers and the petitioners' version is that there are, in all, 180 total vacancies for General Category (46 unfilled for 1996 batch, 41 from 1997 batch less (requisitioned) and 93 from 1997 batch (persons not joined). The petitioners have also submitted a chart in which they have given position of additional seats becoming available due to various miscellaneous reasons as on date in addition to the seats which still remained to be filled from the list of successful/recommended candidates of 1997 batch. As per the Chart produced before us, the petitioners have stated that there are as many as 338 total vacancies for general category available with the State of U.P. against which the four petitioners who filed Civil Appeal No.1124 of 2000 can be conveniently adjusted/appointed and the stand of the respondents not appointing the petitioners against the available posts is wholly unwarranted and unjustified. We regret our inability to accede to the contentions raised by the learned counsel for the petitioners.

A cursory glance of the Contempt of Courts Act, 1971 and the provisions thereof makes it abundantly clear that the Act has

been brought in the Statute book to define the limit and powers of certain Courts punishing for contempt of courts and it has laid down the procedure for exercise of such powers. Contempt of Court has been defined under Section 2(a) of the Act, to mean civil contempt or criminal contempt. 'Civil Contempt' has been defined under Section 2(b) of the Act to mean 'wilful disobedience of any judgment, decree, direction, order, writ or other process of court or willful breach of undertaking given to a court.' It is by now well-settled under the Act and under Article 129 of the Constitution of India that if it is alleged before this Court that a person has willfully violated its order it can invoke its jurisdiction under the Act to enquire whether the allegation is true or not and if found to be true it can punish the offenders for having committed 'civil contempt' and if need be, can pass consequential orders for enforcement of execution of the order, as the case may be, for violation of which, the proceeding for contempt was initiated. In other words, while exercising its power under the Act, it is not open to the court to pass an order, which will materially add to or alter the order for alleged disobedience of which contempt jurisdiction was invoked. When

the Court directs the authority to consider a matter in accordance with law, it means that the matter should be considered to the best of understanding by the authority and, therefore, a mere error of judgment with regard to the legal position cannot constitute contempt of court. There is no willful disobedience if best efforts are made to comply with the order.

Having considered the entire factual backdrop of the matter and given our due consideration to the above extracted various orders passed by this Court in this case and having considered the detailed explanations given by the Chairman, UPPSC, Secretary, UPPSC, and Deputy Director [Education] in their respective affidavits as noticed above which in our view are quite satisfactory and further examination of the details of year-wise vacancies position for the posts in question stated in the above-extracted Chart submitted by the UPPSC, it cannot be said that a deliberate circumvention and dubious method was adopted by the contesting respondents to avoid implementation of the judgments/orders of this Court nor the facts and circumstances mentioned above would establish that the contesting respondents have willfully or deliberately disobeyed the

judgments/orders of this Court dated 07.03.2006 and 09.03.2007 as alleged by the petitioners. In terms of the order dated 07.03.2006, the respondents have passed an appropriate order which was communicated to the petitioners. The UPPSC have placed on record all the relevant documents relating to these proceedings as directed by this Court in its order dated 09.03.2007.

In the result, there is no merit in these contempt petitions and they are, accordingly, dismissed. We, however, make it clear that the contesting respondents are not precluded from considering the legitimate claims of the petitioners as well as the applicants who have filed Interlocutory Applications before this Court if they are otherwise eligible in accordance with law. As no substantive relief, as prayed for by the applicants in their applications, can be granted to them in these contempt proceedings these applications shall stand disposed of.

.....**J.**
(S. B. Sinha)

.....J.
(Lokeshwar Singh Panta)

New Delhi,

July 24, 2008.