

PIL

HIGH COURT OF SIKKIM GANGTOK

Contempt Case (C) No. 1 of 2006

Smt. Hari Maya Chettri
Wife of Shri Ganga Bahadur Thapa
Working as Muster Roll Messenger
Under AH & VS Deptt.
Government of Sikkim
Krishi Bhawan
Tadong, East Sikkim.

...

Petitioner

-VERSUS-

1. The Chief Secretary,
Government of Sikkim,
Tashiling,
Gangtok.
2. The Secretary,
Department of Personal,
Administrative Reforms and
Training, Government of Sikkim
Gangtok, Sikkim.
3. The Secretary,
Animal Husbandry and Veterinary
Service Department, Government
of Sikkim, Krishi Bhawan,
Tadong,
Gangtok, Sikkim.

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Respondents.

Counsel for the Applicant/
Petitioner

: Mr. N. Rai and Ms. Jyoti Kharga,
Advocates.



Counsel for the
Respondents

: Mr. J.B. Pradhan and Mr. Karma
Thinlay, Government Advocates.

PRESENT : HON'BLE MR. JUSTICE A. P. SUBBA, JUDGE.

DATE OF DECISION : NOVEMBER 21, 2006.

J U D G M E N T

A.P. Subba, J.

This application has been filed by Smt. Hari Maya Chettri, a muster roll employee under Animal Husbandry & Veterinary Services Department, Government of Sikkim, under Sections 2(b), 11 and 12 of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India against the Respondents for alleged violation of Order dated **23.8.2005** passed by the Division Bench of this Court in **Writ Petition (C) No. 34 of 2005**.

2. It has been alleged that the Respondents were directed vide, Order dated **23.8.2005** passed by a Division Bench of this Court in **Writ Petition (C) No. 34 of 2005** to consider the case of the Petitioner for regularization of her service preferably within a period of six months from the date of the Order and to communicate the result of the same to

the Writ Petitioner. It is alleged that despite this Order the Respondents have not considered the case of the Petitioner for regularization so far. The only communication received by the Petitioner, is the letter bearing No. 543/AH. LF & VS dated 30.1.2006 (Annexure 2), by which the Respondents have only informed the Petitioner that any regularization of muster roll Peons and LDCs., are considered on the basis of seniority in the Department and on fulfillment of the required educational and other qualifications in regular vacancies. Except this letter, it is further stated that no other communication has been received by the Petitioner as on date.

3. Since a prima facie case for initiation of contempt proceedings against the Respondents was found to have been made out on perusal of the documents on record, and on hearing the Petitioner, show cause notices were issued to the Respondents for filing show cause. All the Respondents filed a joint show cause denying the allegations that they have not considered the case of the Petitioner in terms of the Division Bench Order in question. It was contended that on receipt of the Order, the case of regularization of the




Petitioner was processed for consideration of the Government. Since the Petitioner's seniority position was found at Sl. No. 53, the file was forwarded to the Department of Personnel Administrative Reforms & Training for consideration and advice. The file was received back from the Department of Personnel, Administrative Reforms & Training with the remark that regularization of muster roll workers are to be considered on the basis of seniority in the Department and on fulfillment of required educational and other qualification in regular vacancies. It was pursuant to such remarks of the Department of Personnel, Administrative Reforms & Training, that the Petitioner was informed of the said position vide letter bearing No.543/AH.LF&VS dated 30.1.2006.

4. Further, it was brought to the notice of this Court that the matter regarding regularization of service of the Petitioner was once again put up to the Government for regularization after the receipt of the show cause notice in the present contempt case. This proposal, according to the Respondents was mooted on the basis of the fact that the Petitioner was senior most in the category of



Peon/Chowkidar against which she could be regularized. Thus considering her position and seniority in the grade of Peon/Chowkidar and in view of the direction of this Court passed in the Writ Petition (C) No. 34 of 2005, the proposal for regularization was got approved by the Respondents on 23.5.2006. However, before the Office Order could be issued in the matter, the Judgment passed by the Hon'ble Supreme Court on 10.4.2006 in the matter of **Secretary, State of Karnataka & Ors -vs- Uma Devi & Others reported in (2006) 4 SCC 1** was received by the Department, and in view of the law laid down by the Constitution Bench touching upon the case of the Petitioner, the issuance of appointment order in respect of the Petitioner had to be kept in abeyance. It is stated that the Department is presently seeking legal opinion on whether the order of appointment in respect of the Petitioner can be issued in the face of the aforesaid judgment of the Constitution Bench. Accordingly, it was contended that the Department had duly carried out the directions of this Court contained in Order dated 23.8.2005 passed in Writ Petition (C) No. 34 of 2005.



5. In support of the contention that the case of the Petitioner was taken up for consideration immediately on receipt of the Order in question, the Respondents produced the Department file for perusal of the Court. A perusal the said file shows that the matter regarding regularization of the Petitioner in terms of the Order passed by the Division Bench of this Court was initiated by the Under Secretary (Administration), Animal Husbandry & Veterinary Service Department (Contemnor/Respondent No.3) vide noting dated 29.11.2005. In this note it has been indicated that as per the seniority list maintained in the Department, the Petitioner who had joined the Department on 1.6.1984 on Muster Roll basis stands at Sl. No. 53. In view of this position and since the subject matter was in relation to service conditions, personal file of the petitioner was forwarded to the Department of Personnel, Administrative Reforms & Training seeking advice. The Department of Personnel, Administrative Reforms & Training on the basis of Office Memorandum No. 319/GEN/DOP dated 17.3.1998 opined that regularization of muster roll Peons and LDCs., are to be considered on the basis of seniority in the Department and



on fulfillment of required educational and other qualifications in regular vacancies. It was on the basis of this opinion that the above letter bearing NO.543/AH LF&VS dated 30.1.2006 was addressed to the Petitioner.

6. That the Respondents processed the file regarding regularization of the Petitioner within the time frame of six months is thus borne out by the above notings on the file. Even the letter dated 30.1.2006, the receipt of which is not denied by the Petitioner, was issued to the Petitioner before the expiry of six months. The only grievance made by the Petitioner is that this letter dated 30.1.2006 is not the result of any consideration of the Petitioner's case for regularization of her service. In order to ascertain whether this contention of the Petitioner is well founded, it would be necessary to glance through the contents of the letter dated 30.1.2006. Relevant extract of the said letter is as follows: -

"Subject: WRIT PETITION (C) No. 34 of 2005

As per directives conveyed by the Department of personnel, Administrative Reforms, Training, Public grievances, Career Options and Employment Skill Development and Chief Minister's Self Employment Scheme vide Office Memorandum No. 10020/GEN/DOP dated 3.3.1997, any regularization of Muster Roll Peons



and L.D.Cs are considered on the basis of Seniority in the Department and on fulfillment of the required Educational and other qualification in regular vacancies."

7. A bare reading of the above letter makes it clear that what was conveyed to the Petitioner was that, any regularization of Muster Roll Peons and L.D.Cs are considered on the basis of seniority in the Department and on fulfillment of the required educational and other qualification prescribed for regular vacancies. The letter is thus indisputably silent on whether the matter was taken up for consideration. Therefore, even though the letter mentions about the conditions to be fulfilled for regularization of Muster Roll Peons and LDCs., it does not spell out in any specific terms whether the case of the Petitioner was taken up for consideration in terms of the orders passed by this Court. It may, therefore, be conceded that on a mere reading of the letter addressed to the Petitioner by the Respondents, it would be difficult to come to get any idea that the Department had considered the case of the Petitioner for regularization and letter in question was the result of such consideration. To this extent, the contention raised by the Petitioner seems to be well founded. It is also very fairly




conceded on behalf of the Respondents that the letter was not happily worded so as to convey the factual position.

However, the factual position has now been clarified by contending in the show cause that the case of the Petitioner was considered and by producing relevant file in support thereof. Therefore, when the letter dated 30.1.2006 is read along with the noting referred to above, it would be clear that the Department took up the case of the Petitioner for regularization within time fixed by the Division Bench of this Court.

8. The question that arises for consideration of this Court is whether the Respondents are guilty of any contempt of this Court in the circumstances of the case. In this regard, it may be noted that the facts of the case already narrated above indisputably go to show that the Petitioner was duly considered for regularization in terms of the order dated 23.8.2005 passed by the Division Bench of this Court in the aforementioned case, and since she was not found to have fulfilled the requisite qualification prescribed for the post, she was not regularized. Note in this regard must also be taken of the nature of the order the violation of which is alleged. It is



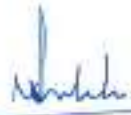
not disputed that there was no mandate to offer regular appointment to the Petitioner. The order which is alleged to have been violated is only a direction to the Respondents to consider the case of the Petitioner for regularization within a specific time frame and, as already noted above, the action taken by the Respondents pursuant to the order in question amounts to substantial compliance with the direction in question. In a similar case, namely, **Chotu Ram vs. Urvashi Gulati & Another** reported in **(2001) 7 SCC 530**, where the Respondents were directed to consider the case of the Petitioner for promotion by treating him to be qualified on a cut off date, but where the Respondents could not offer promotion since the Petitioner was not found to have qualified for the said post on the cut off date, the Apex Court held that denial of promotion by the Respondents would not amount to contempt of Court in such cases. While making the observation, note was particularly taken of the fact that the order in question was only for consideration and not a mandate issued to offer promotion to the Petitioner. In addition to the above, the Apex Court in **Director of Edn. Uttaranchal vs. Ved Prakash Joshi (2005) 6 SCC 98**, which is a



later decision, has laid down the parameters of a Court exercising contempt jurisdiction. It has been observed that while dealing with an application for contempt, the Court cannot traverse beyond the order non-compliance with which is alleged.

9. The facts in the present case being identical, the above observation of the Apex Court squarely apply to it. Thus, when the matter is considered in the light of the above principle of law and the parameters laid down by the Apex Court, conclusion is irresistible that the Respondents in the present case have not rendered themselves liable for contempt of this Court in the case. Accordingly, I am of the view that the contempt petition is devoid of merit.

In the result, the petition stands dismissed.


(**A. P. Subba**)
Judge
21.11.2006