IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Civil Contempt Petition No. 125 of 2011

Narendra Singh Negi .....Petitioner

Versus

Sri Ram Bodh Maurya

.....Respondent.

Present : Mr. Tarun Lakhera, Advocate for the petitioner.
Mr. P.C. Bisht, Brief Holder for the respondent.

Hon'ble Sudhanshu Dhulia, J. (Oral)

1. Heard Mr. Tarun Lakhera, Advocate for the petitioner as well as Mr. P.C. Bisht, Brief Holder present for the State of Uttarakhand/respondent.

2. The petitioner was an erstwhile employee of U.P. Cooperative Federation Limited. After the creation of new State of Uttarakhand in the year 2000, an independent cooperative federation came into existence in the State of Uttarakhand known as Uttaranchal State Cooperative Marketing Federation Ltd. The services of the petitioner were transferred from U.P. Cooperative Federation Ltd. to the newly created Uttaranchal State Cooperative Marketing Federation Ltd. There was also a Memorandum of Understanding entered between U.P. Cooperative Federation Ltd. and Uttaranchal State Cooperative Marketing Federation Ltd. as to the service conditions and the liabilities of the U.P. Cooperative Federation Ltd. against such employees who have been transferred to Uttaranchal State Cooperative Marketing Federation Ltd. All the same, the U.P. Cooperative Federation refused to comply with their own

Memorandum of Understanding and did not comply with the provisions of the memorandum and declined to give the benefit to such employees such as gratuity, pension and other post retirement benefits. Aggrieved, the petitioners filed a writ petition before this Court and a learned Single Judge in a bunch of writ petitions fixed the liability to pay the dues against the U.P. Cooperative Federation Ltd. A special appeal was filed against the said order passed by the learned Single Judge, which was dismissed and consequently U.P. Cooperative Federation Ltd. approached the Hon'ble Apex Court by filing a Special Leave to Appeal, which was also dismissed.

3. After the matter had reached finality yet certain dues were not paid to the petitioner on one technicality or another. Aggrieved, the similarly situated persons as the petitioner moved a writ petition again being writ petition (S/S) No. 354 of 2009, which was allowed vide order dated 12.11.2009. Against the order of the learned Single Judge dated 12.11.2009, a special appeal was filed by the U.P. Cooperative Federation Ltd. This appeal was dismissed on 14.5.2010 with certain stringent remarks against the U.P. Cooperative Federation Ltd. and the appeal was dismissed with the following directions :-

> "16. For the reasons recorded hereinabove, the instant appeal is dismissed. The appellants shall calculate all the retiral benefits under the due payable to respondent No. 3 within one week from today and disburse the entire amount due to respondent no. 3 within a further period of one week. Respondent No. 3 besides being paid the dues, shall be paid interest @ 8 % from the date the amount become due till the same is paid.
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> 17. Although we have noticed hereinabove, that exemplary costs deserve to be imposed on the appellants in raising frivolous pleas before this Court, on a second though, after sentimental pleas were raised by the learned counsel for the

> appellants, that he will henceforth be careful, and shall never repeat this performance, we refrain ourselves from imposing any costs."

4. Subsequently the petitioner had filed a writ petition being writ petition (S/S) No. 444 of 2009 which was allowed by this Court on 8.7.2010.

5. Now the petitioner has filed the present contempt petition alleging that there has been a violation of order of this Court dated 8.7.2010 inasmuch as the gratuity which was liable to be paid by the U.P. Cooperative Federation Ltd. till 31.12.2004 has been wrongly calculated. There is no allegation against Uttaranchal State Cooperative Marketing Federation Ltd. which has fixed its share of dues. The U.P. Cooperative Federation though has filed its compliance affidavit stating that the order has been complied with.

6. What has emerged from the discussion of both the parties is that whereas the petitioner retired after becoming the member of Uttaranchal State Cooperative Marketing Federation Ltd. and the gratuity has been calculated by Uttaranchal State Cooperative Marketing Federation Ltd. on the basis of the salary being given to him on the last date of his service, the part of the gratuity payable to the petitioner by U.P. Cooperative Federation has been calculated by the U.P. Cooperative Federation on the basis of last salary drawn by the petitioner as on 31.12.2004 i.e. till he was their employee! Apart from the discrepancy in gratuity there are some other discrepancies as well such as leave encashment, etc.

7. The counsel for the petitioner states that this calculation has wrongly been made by U.P. Cooperative Federation inasmuch as the calculation of gratuity was to be made on the basis of last salary drawn by the petitioner in Uttaranchal State Cooperative Marketing Federation Ltd.

8. All the same, this Court refrains from stating anything on this aspect as that is not a subject matter before this Court. This Court feels that even though the petitioner may have a cause of action before another court for redressal of his grievance, a contempt is not made out.

9. Contempt petition is accordingly dismissed. The dismissal of the contempt petition though will not prejudice the right of the petitioner before any other forum.

10. Notices issued against the respondent are discharged.

(Sudhanshu Dhulia, J.)
30.3.2012

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