

[2023 LiveLaw \(SC\) 656](#)

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

DR. DHANANJAYA Y. CHANDRACHUD; CJI., J.B. PARDIWALA; J., MANOJ MISRA; J.
Civil Appeal No 5014 of 2023; August 14, 2023

Admiral D.K. Joshi, the Hon'ble Lieutenant Governor, Andaman and Nicobar Islands and Another
versus
Andaman Sarvajanik Nirman Vibhag Mazdoor Sangh and Another

Contempt of Court - Contempt proceedings were initiated *inter alia* against the Lieutenant Governor and the Chief Secretary of the Andaman and Nicobar Administration - The High Court found fault with the Administration for (i) seeking an undertaking from the Daily Rated Mazdoors (DRMs) for forgoing the claim of regularization as a pre-condition for the release of payment; and (ii) failing to frame a scheme as directed. Held, that the directions issued by the High Court for the suspension of the Chief Secretary were grossly disproportionate. Moreover, such a direction is extraneous to the exercise of the contempt jurisdiction. The direction to the Lieutenant Governor to deposit Rupees five lakhs even though the contempt proceeding was still to be heard finally is plainly unsustainable. The Administration has during the pendency of these proceedings taken steps to withdraw the offending clauses of its Order dated 9 May 2023. Order 2276 states that the enhanced wages shall be implemented with effect from 1 September 2017. Moreover, Order 2276 stipulates that arrears shall be payable from 1 September 2017 to 8 May 2023 to 4010 DRMs. The Administration has requisitioned funds to the tune of Rupees three hundred crores under the 'wages head' which is under consideration before the Union Ministry of Home Affairs. Moreover, it has been stated that the regularization scheme would be framed in terms of the statement which was made before the Division Bench of the High Court. In this view of the matter, the exercise of contempt jurisdiction would not be warranted. (Para 11)

For Appellant(s) Mr. R Venkataramani, AG Mr. Vikramjeet Banerjee, ASG Mr. Mukesh Kr.verma, Adv. Mr. Neeraj Kr.sharma, Adv. Mr. Siddharth Sinha, Adv. Mr. Prashant Rawat, Adv. Mr. Arun Kumar Yadav, Adv. Mr. Shreekant Neelappa Terdal, AOR

For Respondent(s) Mr. Gopala Binnu Kumar, Adv. Mr. Samant Singh, Adv. Mr. Rajeev Singh, AOR

ORDER

1 On 13 December 2019, a learned Single Judge of the High Court of Calcutta while exercising jurisdiction in a petition under Article 226 of the Constitution, WP No 268 of 2018, issued the following directions:

“In such circumstances, the impugned Office Memorandum dated September 22, 2017 is read to mean that it will apply to all Daily Rated Casual Workers engaged by the Administration irrespective of the Department and irrespective of the fact that, the post against which they are discharging duties are sanctioned or not. The impugned Office Memorandum dated September 22, 2017 is also read to mean that, a Daily Rated Casual Worker engaged by the Andaman and Nicobar Administration in any department, will be entitled to 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of eight hours a day on every day of their engagement on and from June 7, 1988.”

2 The above directions were modified by the Division Bench in MA No 9 of 2020. The relevant discussion and directions contained in the judgement of the Division Bench are extracted below:

“In fact, it is submitted by the Administration and affirmed by learned counsel for the writ petitioner that the Administration has already commenced implementation of the memorandum dated 7th June, 1988. It is therefore ordered that the circular and process of framing of Scheme for regularisation and every other benefit under the aforesaid 1988 circular, duly addressed, would mandatorily and positively be brought into fore within the next three months.

...

In so far as the impugned judgment is concerned, this Court is of the view that one time measure and/or policy decision of the UT as contained in the Memorandum dated 22nd September, 2017 must be implemented. This Court is also of the view that the Single Judge may have to some extent gone by the averments made by Administration in its affidavit-in-opposition and has interlinked memorandum dated 7th June, 1988 with the memorandum dated 22nd September, 2017.

The directions of the Single Judge to that extent are modified.

The benefits to the DRMs under the circular dated 22nd September, 2017 will accrue only with effect from the date of circular and not before that.

In so far as the order directions of learned Single Judge are concerned that no distinction should be made between the DRMs working against the sanctioned posts and DRMs casually engaged by the State, this Court upholds the same. This Court orders that all DRMs under the Administration shall be paid and granted the benefit of the circular dated 22nd September, 2017.

Let the benefits as indicated and modified hereinabove, be paid to the petitioners and other all eligible DRMs under the Administration be released within a period of two months from date.”

3 Contempt proceedings were initiated *inter alia* against the Lieutenant Governor and the Chief Secretary of the Andaman and Nicobar Administration.

4 The Division Bench of the High Court held that its order dated 19 December 2022 remained unchallenged. The High Court found fault with the Administration for (i) seeking an undertaking from the Daily Rated Mazdoors (DRMs) for forgoing the claim of regularization as a pre-conditions for the release of payment; and (ii) failing to frame a scheme as directed. The High Court was of the view that the affidavit of compliance filed by the Administration sought to reopen the issues which were decided by the Single Judge and confirmed by the Division Bench. The Lieutenant Governor and Chief Secretary were found guilty of contumacious conduct. The Lieutenant Governor was directed to deposit a sum of Rs 5 lakhs from his own funds. The Chief Secretary was directed to be suspended forthwith. The next seniormost officer in the Administration was directed to take over and discharge the functions of the Chief Secretary. The Lieutenant Governor was directed to appear in virtual mode. The Chief Secretary was directed to appear in person. Both were directed to show cause as to why they should not be committed to prison for contempt of court.

5 While issuing notice in these proceedings on 4 August 2023, this Court stayed the directions contained in paragraphs 9 and 10 of the impugned order dated 3 August 2023 of the High Court.

6 We have heard Mr R Venkataramani, learned Attorney General appearing on behalf of the appellants with Mr Vikramajit Banerjee, Additional Solicitor General. Mr Gopala Binu Kumar, counsel appears on behalf of the respondents.

7 A counter affidavit has been filed on behalf of the respondents.

8 An additional affidavit has been filed on behalf of the appellants stating that in supersession of Order No 1283 dated 9 May 2023 (which was produced before the High

Court), the Administration has issued Order 2276 on 10 August 2023. The Administration has stated in its affidavit that it has withdrawn:

a) Clause "g" which stated that "the applicant has to submit an Undertaking to the effect that the enhanced wages to be granted by the department shall not bestow any right upon him for regularization of service against any vacant post in future or any additional wages for any previous period before the date of issue of this Administration's Order." w.e.f. 09.05.2023

b) Clause "h" which provided that "The enhanced wages shall be implemented from the date of issue of this order." This is in furtherance of giving effect to the OM No.289 dated 22.09.2017 as observed by the Hon'ble High Court in its order Dated 19.12.2022.

9 Paragraphs 8 to 10 of the additional affidavit further state as follows:

"8 That in addition to the withdrawal of the aforementioned clauses, Order 2276 also stipulates the date for enhanced wages from 01.09.2017 - for release of the arrears w.e.f. 01.09.2017 to 08.05.2023 in respect of 4,010 (Four thousand ten) DRMs. Clause (b) of Order 2276 states that "The enhanced wage shall be implemented with effect from 01.09.2017". Copy of the Order 2276 is appended hereto as Annexure A1.

9. The Administration has requisitioned funds to the tune of approximately Rs.300 crores under the wages head in the RE 2023-24, which is under consideration before the Ministry of Home Affairs. A copy of the requisition issued by the Administration is appended hereto as Annexure A2.

10. The requisition sought by the Administration has been acknowledged in the affirmative vide communication dated by the Ministry. A copy of the acknowledgement dated 07.08.2023 is appended hereto as Annexure A3."

10 With regard to the regularization scheme, it has been stated as follows:

"11. It is submitted that the Administration is in the process of formulating a scheme for regularization of the DRMs in accordance with a DOPT OM dated 7th October, 2020 regarding regularization of casual labour and as such scheme is required to be in compliance with the directions/stipulations laid down by the Hon'ble Supreme Court and Hon'ble High Court, the contours of the Scheme are presently being worked out.

12. It is stated that the underlying principles adopted in DOPT OM dated 7th October 2020 are threefold:-

a. That such casual labour should have put in 10 years of continuous service as on 10.04.2006.

b. That the initial appointment of such casual labour should have been against a sanctioned post.

c. That such casual labour should fulfil the necessary minimum qualifications prescribed in the recruitment rules prevalent at the time of initial appointment. A copy of the DOPT OM dated 07.10.2020 is appended hereto as Annexure A4.

13. It is stated, that in the present scenario the total number of daily rated mazdoors who fulfil the first condition of having completed 10 years of services as on 10.4.2006 is only **10 out of a total 7520 DRMs**, presently under consideration.

14. It is thus submitted, that the adoption of this cut-off date will render the entire regularization exercise futile, and a more relevant cut-off date needs to be adopted. An exercise carried out by the Administration has revealed that 4440 DRMs have completed at least 10 years of continuous service as on 01st August 2023.

15. It is stated the if the cut-off date of 01st August, 2023 is adopted, then 59% of the total DRMs will become eligible for the regularisation.
16. It is stated the regarding the second criteria, the Hon'ble High Court has categorically removed the distinction between DRMs working against sanctioned post or otherwise. Hence in the present scenario the criteria of taking eligibility of DRMs working only against sanctioned post is rendered academic. Accordingly, in the present scheme, the entire pool of 7520 DRMs would be considered for regularisation.
17. It is stated that the third criteria regarding fulfilment of the necessary minimum qualifications prescribed in the recruitment rules prevalent at the time of initial appointment, will continue as part of the present scheme of regularisation.
18. It is stated that the remaining DRMs who do not get regularised under this proposed scheme would get the benefit of age relaxation up to the number of years served in any future recruitment exam of the Administration.
19. That if the total number of DRMs being regularized under this scheme is more than the available vacant posts, then equal number of supernumerary posts would be created to accommodate all the regularized DRMs. This supernumerary posts will be coterminous with the remaining service of the regularized DRMs and shall cease to exist thereafter.
20. It is submitted that all the above steps to regularize are subject to concurrence and ratification by the DOPT.”

11 The directions issued by the High Court for the suspension of the Chief Secretary were grossly disproportionate. Moreover, such a direction is extraneous to the exercise of the contempt jurisdiction. The direction to the Lieutenant Governor to deposit Rupees five lakhs even though the contempt proceeding was still to be heard finally is plainly unsustainable. The Administration has during the pendency of these proceedings taken steps to withdraw the offending clauses of its Order dated 9 May 2023. Order 2276 states that the enhanced wages shall be implemented with effect from 1 September 2017. Moreover, Order 2276 stipulates that arrears shall be payable from 1 September 2017 to 8 May 2023 to 4010 DRMs. The Administration has requisitioned funds to the tune of Rupees three hundred crores under the ‘wages head’ which is under consideration before the Union Ministry of Home Affairs. Moreover, it has been stated that the regularization scheme would be framed in terms of the statement which was made before the Division Bench of the High Court. This has been clarified in the additional affidavit.

12 In this view of the matter, we are of the view that the exercise of contempt jurisdiction would not be warranted. All action in compliance shall be completed positively by 30 November 2023. The contempt proceedings before the High Court shall stand closed.

13 The appeal is accordingly disposed of.

14 Pending applications, if any, stand disposed of.