

Serial No. 161

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CCP(S) No. 313/2020

CM No. 553/2023

CM No. 6928/2020

CM No. 2100/2023

Vandana Gupta

.....Appellant(s)/Petitioner(s)

Through: Mr. Vivek Sharma, Advocate.

Vs

Sheetal Nanda Secy. Rural Dev. Deptt. and
Ors.

..... Respondent(s)

Through: Mr. Raman Sharma, AAG.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
12.07.2023

01. In terms of a judgment dated 15.12.2016 passed in SWP no. 2459/2010 titled "*Vandana Gupta vs State of Jammu and Kashmir & Ors.*", the writ court came to *dismiss* the plea of the writ-respondents against the regularization claim of the petitioner, who having more than 7 years of engagement, was seeking regularization and, thus, the writ court in terms of its judgment came to direct the writ-respondents to pass appropriate orders with regard to regularization of the petitioner which was to take effect upon from the date of completion of 7 years of engagement of the petitioner reckoning from 01.10.1994.

02. This judgment of the writ court came to be challenged in a time barred Letters Patent Appeal LPASW no. 36/2018 which came to be

dismissed by the Hon'ble Division Bench with an observation that there is no question of any interference given the fact that the case of the petitioner was covered by a Full Bench decision.

03. The judgment of the learned Single Bench read with LPA judgment of the Hon'ble Division Bench came to be questioned in Special Leave Petition (Civil) no. 16932/2019 before the Hon'ble Supreme Court of India which too came to be *dismissed* in terms of an order dated 21.05.2020, thus, leaving no scope for any escape for the respondents and that meant the then State of Jammu and Kashmir, with its successor being the UT of Jammu and Kashmir, to carry out the implementation of the judgment in its letter and spirit by an order of regularization of the petitioner in the service with consequential effects as directed in the writ court judgment.

04. After having failed to earn the compliance of the said judgment in her favour from the writ-respondents' end, the petitioner was constrained to come up with the present contempt petition which came to be filed in December 2020 and now more than two and half years have gone by that the compliance of the judgment is not in the sight going by the tone and tenor of the repeated statement of facts filed in the case with the latest being 24.05.2023 filed by Ms. Mandeep Kour (IAS),

Commissioner/Secretary to Govt., Rural Development Department & Panchayati Raj.

05. A perusal of the said statement of facts bears out in bold letters the stand of the Commissioner/Secretary to Govt. that the officer is not competent authority to regularize the service of the petitioner at his/her own level under rules.

06. It seems that the Commissioner/Secretary to Govt., Rural Development Department and Panchayati Raj, Govt. of UT of Jammu and Kashmir has misconception about the status of the Commissioner/Secretary to Government. The Government of UT of Jammu and Kashmir in terms of its Business Rules acts through its respective Administrative Departments which are headed by the Commissioner/Secretary and by that reference, the statement of Ms. Mandeep Kour (IAS), Commissioner/Secretary to Govt., Rural Development Department & Panchayati Raj. UT of J&K read between the lines is that the Govt. of UT of Jammu and Kashmir is telling this Court that Govt. of UT of Jammu and Kashmir is not competent to regularize the service of the petitioner.

07. This Court has not to go door to door seeking each and every Department of the Govt. of UT of Jammu and Kashmir for the purpose of fetching compliance of its directions/writs.

08. Mockery at the end of the respondents is further exhibited by an Annexure-R1 & Annexure-R2 accompanying the current latest statement of facts which is an internal communication dated 28.04.2023 of a Deputy Secretary to the Govt., General Administration Department addressed to Commissioner/Secretary to the Govt., Department of Rural Development & Panchayati Raj, the tone and tenor of which is that the Department of Rural Development & Panchayati Raj shall express its inability to implement the directions of the Court by citing the direction of the Hon'ble Supreme Court of India in "State of Karnataka vs Uma Devi" case and other similar binding precedents.

09. This Court *suo moto* impleads Mr. Jaffar Hussain (JKAS), Deputy Secretary to the Govt. as a contemnor in this contempt petition for his said note addressed to Commissioner/Secretary to the Govt., Department of Rural Development & Panchayati Raj.

10. *Prima facie* case for deliberate and willful continuing contempt of court direction is made out at the end of Ms. Mandeep Kour (IAS), Commissioner/Secretary to the Govt., Department of Rural Development & Panchayati Raj and also on the part Mr. Jaffar Hussain (JKAS), Deputy Secretary to the Govt., as such, rule is framed against both of them to show cause as to why they should not be punished for the willful and deliberate non-compliance of the court directions.

11. The Registrar Judicial, Jammu to issue notice to Ms. Mandeep Kour (IAS), Commissioner/Secretary to Govt., Department of Rural Development & Panchayati Raj and Mr. Jaffar Hussain (JKAS), Deputy Secretary to the Govt.
12. On the next date of hearing both the above named officials to remain present in person.
13. List on 11.09.2023.
14. In the meantime, it is for the Commissioner/Secretary to the Govt. to come up with the compliance of the writ court directions, in which eventuality the motion to drop the contempt proceedings may be maintained before the next date of hearing.
15. A copy of this order be provided to Mr. Raman Sharma, learned AAG for notice and compliance.

(Rahul Bharti)
Judge

Jammu
12.07.2023
Bunty