

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

I.A. Nos.326-328, 338-340 in I.A. Nos.326-328/2006 in
C.A. Nos.7555-7556 and 7607/2001

STATE OF U.P. Appellant (s)

VERSUS

MUKESH KUMAR & ORS. ETC. ETC. Respondent(s)

[For clarification/modification of judgment dated 16.12.2005 and for impleadment]

(In C.A. No.7545-7646/2001)

With

I.A. No.329 in C.A. No.7569/2001

[For clarification/modification of judgment dated 16.12.2005]

I.A. No.330 in C.A.No.7558/2001 in

I.A. Nos.326-328 in C.A.Nos.7555-7556 & 7607/2001

[For intervention]

I.A. Nos.322-424 in C.A.Nos.7647-7748/2001

[For clarification/modification of the judgment dated 16.12.2005]

I.A. Nos.3-5 in C.A.No.4092/2001 & I.A.No.8 in

I.A.Nos.3-4 in C.A. No.4092/2001

[For clarification/modification of judgment dated 16.12.2005 and for
impleadment and for c/delay in filing rejoinder affidavit and with office report]
(for final disposal)

I.A. Nos.341-342 in C.A.Nos.7601-7623/2001

[For clarification/modification of judgment dated 16.12.2005]

And

I.A. No.345 & 347 in C.A. No.7598/2001

[for clarification/modification of judgment dated
16.12.2005 and impleadment]

And

I.A. No.348 in I.A. No.330 in C.A.No.7558/2001 in I.A. Nos.326-328
in C.A.No.7555-7556 & 7607/2001

[For permission for bringing on record copy of W.P. No.1570/99]

With

I.A. Nos.349-351 in C.A. Nos.7626-7627 & 7601/2001

[For clarification/modification of judgment dated 16.12.2005]

I.A. No.3 in C.A. No.4095/2001

[For clarification/modification of judgment dated 16.12.2005]

And

I.A. Nos.10-11 in C.A. Nos.4099 and 4100/2001

[For clarification/modification of judgment dated 16.12.2005]

And

I.A. Nos.14-15 in C.A. Nos.4099 and 4101/2001
[for clarification/modification of judgment dated 16.12.2005]

And

I.A. Nos.4-5 in C.A. No.3873/2001
[for clarification/modification of judgment dated 16.12.2005
and exemption from filing O.T.]

And

I.A. Nos.528-629 and 630-731 in C.A. Nos.7647-7748/2001
[for extension of time in complying the directions given
by this Hon'ble Court & for exemption from filing O.T.]

Date: 19/09/2006 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA
HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Appellant(s)/ Mr. M.L. Verma, Sr. Adv.
Applicants Mr. Aarohi Bhalla, Adv.
Mr. Sunil Singh, Adv.
Ms. Sujata Kurdukar, Adv.
Mr. Satya Mitra, Adv.

For applicant(s) in Mr. A.K. Ganguli, Sr. Adv.
I.A. Nos.326-329/06 Mr. Kaushal Yadav, Adv.
338-340/2006, Mr. Anil Hooda, Adv.
349-351/2006 & Mr. Harinder Mohan Singh, Adv.
3/2006 Ms. Shabana Saifi, Adv.

for applicants in Mr. K.B. Sinha, Sr. Adv.
I.A. Nos.330 Mr. Kumar Parimal, Adv.
Mr. Aniruddha P. Mayee, Adv.

For applicant(s)/ Mr. Anup G. Chaudhary, Sr. Adv.
Mr. M.P. Shorawala, Adv.
in I.A. Nos. Ms. Shashi Kiran, Adv.
322-424 in CA
Nos.7647-7748/2001

For applicants in Mr. Kumar Parimal, Adv.
I.A. Nos.341-342, Mr. Aniruddha P. Mayee, Adv.
345 & 347

For applicants in Mr. R. Venkataramani, Sr. Adv.
I.A. Nos.14-15 Mr. Kumar Parimal, Adv.
Mr. Aniruddha P. Mayee, Adv.

For Applicants in Mr. K.V. Viswanathan, Adv.
I.A.Nos.3-4 Mr. Atul Kumar Sinha, Adv.
Mr. Devendra Singh, Adv.

For applicants in Mr. Shail Kumar Dwivedi, Adv.
IA 5 & 6 in CA Mr. Sandeep Dixit, Adv.
No.4092/2001 Mr. G.V. Rao, Adv.
& IA 4&5 in CA
No.3873/2001

Mr. Aniruddha P. Mayee, Adv.

Mr. Shakil Ahmed Syed, Adv.

Mr. D. Mahesh Babu, Adv.

Mr. Raj Singh Raman, Adv.

Mr. C.L. Sahu, Adv.

Ms. Rachana Srivastava, Adv.

UPON hearing counsel the Court made the following

O R D E R

I.A.Nos.322-424 in C.A.Nos.7647-7748 of 2001
I.A.Nos.326-328 in C.A.Nos.7555-7556 & 7607/2001;
I.A.Nos.338-340 in I.A.Nos.326-328 in
C.A.Nos.7555-7556 & 7607/2001; and in
respect of applicants, viz., Kiranpal Singh
and Prem Shankar Mishra in I.A.Nos.349-351 in
C.A.No.7626-7627 & 7601/2001

I.As are disposed of in terms of the signed order.

I.A.Nos.341-342 in C.A.Nos.7601-7623/2001;
I.A.Nos.345 & 347 in C.A.Nos.7598/2001;
I.A.Nos.10-11 in C.A.Nos.4099 & 4100/2001;
I.A.Nos.14-15 in C.A.Nos.4099 & 4101/2001;
in respect of applicants, viz., Lakshmi Prasad Thapliyal,
Anil Kumar and Karamveer Singh in I.A.Nos.349-351
in C.A.Nos.7626-7627 & 7601/2001; I.A.Nos.3-4 in
C.A.No.4092 of 2001; and I.A.No.8 in I.A.Nos.3-4
in C.A.No.4092 of 2001

Delay condoned. Impleadment allowed.

I.As are disposed of in terms of the signed order.

I.A.No.330 in C.A.No.7558/2001 in
I.A.Nos.326-328 in C.A.Nos.7555-7556/2001 & 7607/2001
Learned counsel seeks permission to withdraw this I.A.
The application is permitted to be withdrawn with liberty to file
appropriate application for clarification.
I.A.No.348 in I.A. No.330 in C.A.No.7558/2001
I.A.Nos.326-328 in C.A.No.7556-7556 & 7607/2001
This I.A. is dismissed.
I.A.No.5 in C.A.No.4092/2001 and
I.A.No.4 & 5 in C.A.No.3873/2001

I.As are dismissed in terms of the signed order.

I.A.No.329 in C.A.No.7569/2001 and
I.A.No.3 in C.A.No.4095/2001

I.As are disposed of in terms of the signed order.
I.A.No.528-629 and 630-731 in
C.A.Nos.7647-7748/2001

Learned senior counsel for the applicants seeks permission to
withdraw these applications. The applications are accordingly dismissed as withdrawn.

(Subhash Chander) Court Master(Pushap Lata Bhardwaj) Court Master

[Signed Order is placed on the file]

N.B.: Part I of the Record of Proceedings has already been issued on 16.10.2006.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A.NOS.326-328, 338-340 IN I.A.NO.326-328/2006
IN
CIVIL APPEAL NOS.7555-7556 AND 7607 OF 2001

State of U.P.Appellant

Versus

Mukesh Kumar & Ors. etc. etc.Respondents

W I T H

I.A. No.329 in C.A. No.7569/2001; I.A. No.330 in C.A.No.7558/2001
in I.A. Nos.326-328 in C.A.Nos.7555-7556 & 7607/2001; I.A. Nos.322-424
in C.A.Nos.7647-7748/2001; I.A. Nos.3-5 in C.A.No.4092/2001;
I.A. Nos.341-342 in C.A.Nos.7601-7623/2001; I.A. No.345 & 347
in C.A. No.7598/2001; I.A. No.348 in I.A. No.330 in C.A.No.7558/2001
in I.A. Nos.326-328 in C.A.Nos.7555-7556 & 7607/2001; I.A. Nos.349-351
in C.A. Nos.7626-7627 & 7601/2001; I.A. No.3 in C.A. No.4095/2001 ;
I.A. Nos.10-11 in C.A. Nos.4099 and 4100/2001; I.A. Nos.14-15
in C.A. Nos.4099 and 4101/2001; I.A. Nos.4-5 in C.A. No.3873/2001;
and I.A. Nos.528-629 and 630-731 in C.A. Nos.7647-7748/2001.

O R D E R

I.A.Nos.322-424 in C.A.Nos.7647-7748 of 2001.

It is accepted that some of the applicants herein were not parties before the High Court. Their contention that they are not governed by the Government Order issued by the State of Uttar Pradesh on 12.2.1999 as it was urged that the Board of Directors in its 76th Meeting issued certain directions which are beneficial to the categories of employees, in which they fall, viz. that the Board could spend 2% of the contingency fund towards payment of salary to the employees employed in a project. Although the contentions of the applicants are denied and disputed, keeping in view the fact that the applicants were neither parties before the High Court nor were they parties in the Special Leave Petitions which were the subject-matter of our decision in the case of State of U.P. v. Neeraj Awasthi & Ors. reported in 2006 (1) SCC 667, we are of the opinion that these clarification applications are not maintainable as wrong application of the ratio of the judgment of this Court by the Board/State Government cannot be a subject-matter of an application for clarification. According to the learned counsel, their services have not been terminated in terms of the G.O. dated 12.2.1999 but by an order dated 27.1.2006, purported to be pursuant to or in furtherance of this Court's judgment.

According to the applicants, the said judgment has no application to their case. The applicants contend and rightly so that they must have a remedy, the cause of action being subsequent to the passing of the judgment of this Court, they are entitled to take recourse to such remedies which are available to them. We would, therefore, permit the applicants to withdraw these applications with liberty to them to take recourse to such remedies which are otherwise available for redressal of their grievance.

Some of the applicants were parties before the High Court and consequently before us. However, it is accepted at the Bar that the High Court had not dealt with their contentions in the judgment impugned before us which was the subject-matter of judgment dated 16.12.2005. This Court has also not dealt with the contentions raised by the said parties specifically. We would, therefore, in modification of our judgment dated 16.12.2005, direct the High Court to consider the matter afresh but subject to the observations made therein.

I.As are disposed of accordingly.

I.A.Nos.326-328 in C.A.Nos.7555-7556 & 7607/2001;
I.A.Nos.338-340 in I.A.Nos.326-328 in
C.A.Nos.7555-7556 & 7607/2001; and in
respect of applicants, viz., Kiranpal Singh
and Prem Shankar Mishra in I.A.Nos.349-351 in
C.A.No.7626-7627 & 7601/2001.

The applicants herein allegedly were appointed prior to
1.4.1996. They are said to be not covered by the circular
letter dated 12.2.1999 issued by the Board which deals with
the employees appointed during the period 1.4.1996 to 31.10.1997.
Indisputedly, the High Court principally considered the legality
and/or validity of the said Government Order dated 12.2.1999.
The applicants, however, approached the High Court aggrieved by
and dissatisfied with the order dated 31.5.1999 which is in
the following terms :

This is to inform you that you were appointed at the Gate
Pass Collection Centers of Krishi Utpadan Mandi Samiti, Ghaziabad.
However, the said Center has since been closed. Therefore, your
services are no longer required and therefore your services are being
terminated with immediate effect. However, if any regular vacancies
arise in future, you will be allowed to participate as per rules.
You are herewith being paid following compensation and one month
salary in lieu of one month's notice-

Cheque no.575986 dated 31.5.1999 for Rs.13,662

1. One month salary in lieu of noticeRs.3,223.00
2. Compensation for 15 days in a year
from 1.1.1996 to 31.12.1998 Rs.4,836.00
3. Arrears of earned/working period
salary Rs.5,603.00

TOTAL: Rs.13,662.00

The said order was purported to have been issued pursuant
to and/or in furtherance of an order dated 20.4.1999 (There
appears to be some confusion in regard to actual date thereof
as it appears from another document that the said letter was
dated 4.11.1998) whereby and whereunder certain conditions were
laid down for effecting retrenchment of the category of employees
mentioned therein. Even in the writ petition the applicants,
inter alia, prayed for issuance of a writ, order or direction
in the nature of certiorari quashing the impugned orders/notices
of termination dated 31.05.1999 as contained in Annexure No.1 to
the writ petition.

Before us, it is not disputed that the High Court did not go into
the question as regards validity or otherwise of the said order
dated 31.5.1999 presumably on the premise that it had set aside
the Government Order dated 12.2.1999 and directed regularisation
of services of all the employees.

It has not been disputed before us that the applicants stricto
sensu did not come within the purview of the said G.O. dated
12.2.1999. It is also not disputed that this Court in Neeraj
Awasthi (supra) did not consider their cases specifically stating that,
We are not oblivious of the fact that there may be some employees
whose services have been terminated without any rhyme or reason.
Mr. Verma appearing on behalf of the Board has assured us that the

Board shall look into the cases of such employees whose termination
has been effected beyond the policy decision taken by the State although
we do not intend to express any opinion as regards such employees.
It is furthermore not in dispute that the services of these employees
have been terminated by an order dated 26.12.2005, i.e., after the

passing of the judgment of this Court.

In view of the admitted fact that the applicants did not come within the purview of the aforementioned G.O. dated 12.2.1999 and furthermore the period of their recruitment does not fall within the period 1.4.1996 to 31.10.1997; we are of the opinion that interest of justice would be subserved if the High Court is requested to consider their cases afresh. The applicants herein would be entitled to file applications for amendment of their writ petition(s) impugning the order of termination dated 26.12.2005. The respondents undoubtedly would furthermore be entitled to file additional counter affidavit if and when such applications for amendment are filed and allowed. We would make it clear that we have not entered into merit of the matter and all the contentions of the parties shall remain open before the High Court. We would request the High Court, having regard to long pendency of the matters before the High Court as also before us, to consider the desirability of disposing of the matters as expeditiously as possible and preferably within a period of three months from the date of communication of this order.

I.As are disposed of accordingly.

I.A.Nos.341-342 in C.A.Nos.7601-7623/2001;

I.A.Nos.345 & 347 in C.A.Nos.7598/2001;

I.A.Nos.10-11 in C.A.Nos.4099 & 4100/2001;

I.A.Nos.14-15 in C.A.Nos.4099 & 4101/2001;

in respect of applicants, viz., Lakshmi Prasad Thapliyal, Anil Kumar and Karamveer Singh in I.A.Nos.349-351 in C.A.Nos.7626-7627 & 7601/2001.

Implement allowed.

It is accepted that the applicants herein were not parties before the High Court. Their contention is that they were also not governed by the Government Order issued by the State of Uttar Pradesh on 12.2.1999. According to them, the Board of Directors in its 76th Meeting issued certain directions which are beneficial to the said categories of employees having regard to the fact that the Board could spend 2% of the contingency fund for such project and according to them they fall under the said category of 2%. Although the contentions of the applicants are denied and disputed, keeping in view the fact that the applicants were neither parties before the High Court nor they were parties in the Special Leave Petitions which were the subject-matter of our decision in the case of State of U.P. v. Neeraj Awasthi & Ors. reported in 2006 (1) SCC 667, we are of the opinion that these clarification applications are not maintainable for the reasons stated hereinbefore.

The applicants contend and rightly so that they must have a remedy. Such remedy is, therefore, available to them. We would, therefore, permit the applicants to withdraw these applications with liberty to them to take recourse to such remedies which are otherwise available.

It, however, appears that some applicants were parties before the High Court. The writ petitions of these applicants, however, would be considered afresh in the light of the observations made in I.A.Nos.326-328 in C.A.Nos.7555-7556 & 7607/2001 subject to the condition that they are not covered by G.O. dated 12.2.1999.

According to the learned counsel, their services have not been terminated in terms of the G.O. dated 12.2.1999 but the same has been done by reason of an order dated 27.1.2006, inter alia, purported to be pursuant to or in furtherance of our judgment. According to the applicants, the said judgment has no application to their case.

For the reasons stated in the order passed in I.A.Nos.322-324 in C.A.Nos.7647-7748/2001, the present applicants shall be governed by the operative part thereof.

I.As are disposed of accordingly.

I.A.Nos.3-4 in C.A.No.4092 of 2001

Implement allowed.

It is accepted that the applicants are not covered by the G.O. dated 12.2.1999. It is stated that an error of record has been committed by the learned Single Judge insofar as inadvertently it was recorded that the applicant sought parity with those who were covered by the order dated

11.8.2000. Keeping in view the fact that the other matters are being remitted to the High Court, leaving all the contentions of the parties open we would direct that the matter be considered afresh by the High Court.
I.As are disposed of accordingly.

I.A.No.330 in C.A.No.7558/2001 in
I.A.Nos.326-328 in C.A.Nos.7555-7556/2001 & 7607/2001
Learned counsel seeks permission to withdraw this I.A.
The application is permitted to be withdrawn with liberty to

file appropriate application for clarification.
I.A.No.348 in I.A. No.330 in C.A.No.7558/2001 in
I.A.Nos.326-328 in C.A.No.7556-7556 & 7607/2001
This I.A. is dismissed.
I.A.No.5 in C.A.No.4092/2001 and
I.A.No.4 & 5 in C.A.No.3873/2001.
These applications have been filed by the applicants who were parties to the civil appeals seeking directions to the effect that they be permitted to continue in the service till regular selection is made. We are afraid that these applications for clarifications are in effect and substance applications for review which are not maintainable in view of a decision of this Court in the case of Ram Chandra Singh v. Savitri Devi & Ors. reported in 2004 (12) SCC 713.
The applications are, therefore, dismissed.

I.A.No.329 in C.A.No.7569/2001 and
I.A.No.3 in C.A.No.4095/2001

It is accepted that the applicants are not covered by the G.O. dated 12.2.1999. Keeping in view the fact that the other matters are being remitted to the High Court, leaving all the contentions of the parties open we would direct that the matter be considered afresh by the High Court.
I.As are disposed of accordingly.

I.A.No.528-629 and 630-731 in
C.A.Nos.7647-7748/2001
Learned senior counsel for the applicants seeks permission to withdraw these applications.
The applications are accordingly dismissed as withdrawn.

Sd/-
.....J.
[S.B. SINHA]

Sd/-
.....J.
[P.P. NAOLEKAR]
New Delhi.
September 19, 2006.