

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Cont. Cas. (C) No. 377/2005**

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Date of Decision : 18.5.2009

DTC Workers' Union (Regd.) Thr. Its Petitioner
President Shri Rajaram Tyagi

Through Mr.D.K.Agarwal, Sr.Adv. with
Mr.Shanto Mukherjee, Advocate

Versus

DTC & Another Respondents

Through Mr.Parag Tripathi, Sr.Adv. with
Mr.Sumit Pushkarna and
Mr.J.N.Aggarwal, Advocates.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

V. K. SHALI, J.(Oral)

1. On 3rd November, 2004 the learned Single Judge of this Court passed an order in W.P. (C) No.48/2001 which reads as under:

“Mr. Vibhu Shankar, Learned counsel for respondent No.1, on instructions from Mr. Naresh Kumar, Assistant Incharge of Pension, submits that case of the petitioner and other eligible persons for pension in terms of office order Pension Cell/Option/2002/440 dated 28.10.2002 and the subsequent orders on the subject is being processed and respondent no.1 has submitted date and details of Life Insurance Corporation for working out actuarial value. This is likely to take four weeks. Respondents are hopeful of

communicating the entitlement and benefits payable within two months from today.

Petition stands disposed of with liberty to the petitioner to approach the court if they have any grievance which remains unredressed after eight weeks.”

Sd/-

Manmohan Sarin, J.

November 03, 2004”

2. On the strength of this order the petitioner has filed the present contempt petition on 27th April, 2005 against the respondents/DTC and it's the then Chairman, Mr. S. N. Sahai alleging that they have willfully and deliberately disobeyed the order of non-grant the pension to the petitioner, and thus, they prayed that action for contempt of Court may be taken against them.

3. Notice was issued to the respondents/alleged contemnors on 10th May, 2005 and the reply has been filed by the respondents contesting the claim of the petitioner that any contempt has not been made out. The petitioner has thereafter filed rejoinder on 25th January, 2006 reiterating the averments made by them in the petition.

4. I have heard the learned senior counsel for the parties and perused the record.

5. The main contention of the learned senior counsel on behalf of the petitioner is that on 3rd November, 2004 the learned counsel appearing for DTC had made a statement on instruction, that the petitioner and other eligible persons for grant of pension in terms of order dated 28th October, 2002 shall be given the benefit of pension within a period of two months from the date of said order. It is urged

that this statement was in the nature of an undertaking and since the petitioner has not been given the benefit of pension scheme this tantamount to willful disobedience of the orders of the Court. The learned senior counsel has stated that although the word '**undertaking**' is not used in the said order dated 3rd November, 2004, but the statement which was made by the learned counsel for DTC was in the nature of an undertaking and reliance in this regard is sought to be placed on the dictionary meaning of the word undertaking given in '**Black's Law Dictionary**' Sixth Edition which reads as under:

"Undertaking:-- A promise, engagement, or stipulation. An engagement by one of the parties to a contract to the other, as distinguished from the mutual engagement of the parties to each other. It does not necessarily imply a consideration. In a somewhat special sense, a promise given in the course of legal proceedings by a party or his counsel, generally as a condition to obtaining some concession from the court or the opposite party. A promise or security in any form."

6. Similarly, it has been urged that in the 'Osborn's Concise Law Dictionary' Seventh Edition gives the definition of the word 'undertaking', which is as under:-

"Undertaking: A promise, especially a promise in the course of legal proceedings by a party or his counsel, which may be enforced by attachment or otherwise in the same manner as an injunction."

7. The learned senior counsel also placed reliance on case titled **Noorali Babul thanewala Vs. Sh. K.M.M. Shetty & Ors** AIR 1990 SC 464 in support his submissions that if there is a breach of an undertaking furnished to the Court this tantamounts to contempt.

8. The learned senior counsel appearing for the respondents has contended that the order dated 3rd November, 2004 clearly shows that no undertaking was furnished by the counsel for the DTC and in any case even if it is assumed to be an undertaking given by the learned counsel for DTC, even then what was stated in that undertaking was that the case of the petitioner and other eligible persons for grant of pension shall be considered in terms of order dated 28th October, 2002. The learned senior counsel for the respondents have drawn my attention to the said order dated 28th October, 2002 wherein the last paragraph, it was stated that after receiving the list of employees exercising their option in favour of DTC Pension Scheme the matter would be examined and a decision taken. The decision of the management so taken shall be final, meaning thereby that the undertaking sought to be read and attributed to the learned counsel for DTC was not an absolute undertaking that the benefit of pension scheme will be given to the petitioner but the question of grant of pension had to be decided by the respondents after examination and the decision of the management was going to be final. It was in this backdrop when the decision has been taken that the pension cannot be given to the petitioner as the LIC which was dealing with the grant of pension and the group insurance schemes vide their letter dated 23rd November, 2004 had sought initial contribution of Rs.700 crores or so, which in the present times happens to be an amount of approximately Rs.2000 crores apart from the annual contribution of 15.36 % which

the respondents organization being in losses could ill afford to contribute.

9. I have carefully considered the submissions made by the respective sides. I have also gone through the record.

10. There is absolutely no dispute about the contention of the learned senior counsel for the petitioner that in case a party gives an undertaking to the Court and that undertaking is not adhered to, it will constitute a civil contempt within the definition of Section 2 (b) of the Contempt of Courts Act, 1971. But the moot question which arises for consideration is whether the statement of the learned counsel for the respondents/DTC could be read to be as an undertaking.

11. In my considered opinion, since the contempt is having penal consequence, therefore, it has to be strictly construed. If that be so then from the language of the statement and the order passed, an undertaking cannot be read or attributed to a party when no such undertaking is furnished. A perusal of the order dated 3rd November, 2004, in my considered opinion does not show that the learned counsel appearing for DTC had given any undertaking either to the petitioner or to the Court. Therefore, if there is no undertaking furnished by the respondents or its official, it cannot be read to be so by stretching it beyond certain limits. The petitioner also did not understand that the statement made by counsel for the respondents was an undertaking as even in the petition for initiation of contempt proceedings. It is nowhere the case of the petitioner that the respondent had given any undertaking.

12. In my considered opinion, the learned counsel for the respondents had only made a statement and it was on the basis of the said statement that the writ petition was treated to be disposed of and the benefit of pension was directed to be given within a period of two months from the date of the said order i.e. 3rd November, 2004 and it was further observed that in case the petitioners still have any grievance, they could approach the appropriate forum. A perusal of the order clearly shows that there is no undertaking much less is there a direction on which the alleged disobedience has been urged.

13. For the reasons mentioned above, I feel that the petitioner have not been able to make out a prima facie case for initiation of the contempt proceedings against the respondents, accordingly, the contempt notice issued on 10th May, 2005 to the respondents is discharged and the contempt petition is dismissed.

No order as to costs.

May 18th 2009
KP

V.K. SHALI, J.