

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **Cont. Cas. No. 545/2008**

% **Date of Decision: 19.02.2010**

Virendera Jain Petitioner
Through R.L. Dhawan, Advocate

Versus

Naresh Dayal & Ors. Respondent
Through Nemo

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE MOOL CHAND GARG

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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 |

ANIL KUMAR, J.

C.M. 8354/2009 in Cont. Cas (C) No.545/2008

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This is an application by the petitioner/applicant seeking setting aside of the order dated 05.05.2009 dismissing the petition in default of appearance of petitioner and his counsel and on the premise that the petitioner has received a payment and, therefore, he is not interested in pursuing the contempt petition.

The notice of the application was issued to the respondents and the time was sought by the respondent to file the reply to the contempt petition as well as the application for restoration.

Neither the reply to the contempt petition has been filed nor the reply to the restoration application filed on behalf of the respondents. Despite matter having been passed over once, no one is even present on behalf of the respondents.

In the circumstances, the prayer made by the applicant in the application remains un-rebutted seeking restoration of contempt application and needs to be accepted. The averments made in the application makes out sufficient cause for setting aside the order dated 05.05.2009 dismissing the petition in default of appearance of petitioner and his counsel.

In the circumstances, the application is allowed and the order dated 05.05.2009 dismissing the contempt petition on account of default in appearance of the petitioner and his counsel is set aside and the Cont.Cas.(C) No.545/2008 is restored to its original number.

Cont. Cas. (C) 545/2008

The petitioner has invoked the jurisdiction of this Court under Contempt of Court Act, 1971 and a direction to respondents, Secretary, Ministry of Health & Family Welfare and Director General, Government Health Scheme on the ground that the order dated 21st September, 2007, has not been complied with and the petitioner has not been paid the amounts due to him.

According to the petitioner, he was involved in a false criminal case, on account of which he was harassed and victimized and his full pay and allowance during the period of suspension were denied to him nor he was given time bound promotion at par with his junior as senior Medical Officer and Chief Medical Officer, though, he was acquitted from the criminal case in 1992.

The petitioner had filed a writ petition being WP (C) No. 9827/2003. During the pendency of the petition he had submitted his resignation from service, which was accepted. Consequent thereto an application was filed being CM 13940/2005 for early hearing, which was disposed of by order dated 31st August, 2006 directing the respondents to remit the amount which according to the respondents were due to the petitioner on account of acceptance of his resignation. The Court by order dated 31st August, 2006, however, declined the prayer for early disposal of his writ petition.

According to the petitioner, the order dated 31st August, 2006, was not complied with and therefore, he filed another misc. application being CM No. 13241/2007 and prayed for early hearing.

The prayer of the petitioner for early hearing was again declined by the order dated 21st September, 2007. However, the respondents were directed to make payments of amount due to the petitioner.

The grievance of the petitioner is that the said order regarding payment of the amounts due to the petitioner has been deliberately disobeyed as no payment whatsoever including PF dues etc. has been made. A representation dated 30th March, 2008 was also filed by the petitioner for immediate payment of his rightful dues like PF dues, invalid pension, Gratuity, Group Insurance Amount etc. In the representation dated 30th March, 2008, the petitioner claimed salary from the month of July, 2003, pension for over 15 years of qualifying service, gratuity, group insurance allowance, arrears of conveyance allowance, post-graduate allowance and contingency allowance, leave salary, GPF and other payments.

This is not disputed by the petitioner that his representation dated 30th March, 2008 was forwarded to the Additional Director, Central Government Health Scheme by communication dated 15th May, 2008. Since the petitioner had not disclosed in the contempt petition about any action taken on his representation, the petitioner was directed to file an additional affidavit disclosing receipt of any communication pursuant to forwarding his representation dated 30th March, 2008 on 15th May, 2008 to Additional Director, Central Government Health Scheme.

The petitioner, thereafter, on affidavit disclosed that he received a communication dated 8th September, 2008 stipulating that his leave

from the period 1.2.1992 to 5.6.1995; 19.6.95 to 7.8.96; 20.11.1999 to 10.7.2003 and 22.7.2003 to 27.6.2006 was ordered to be treated as Dies-non. The petitioner also disclosed that by communication dated 16th October, 2008, his pay was fixed from 1.1.96 in the pay scale of 8000-13500. The petitioner was also sent blank forms for CGEIS and GPF for submitting after duly signing up for release of final payment in respect of CGEIS and GPF.

Learned counsel for the petitioner has emphatically contended that the period as indicated in the letter dated 5th September, 2008 could not be treated as Dies-non and therefore, the petitioner is entitled for his pay for the said period. The learned counsel for the petitioner has also challenged fixation of his pay from 1.1.96 in the pay scale of Rs. 8000-13400. The learned counsel for the petitioner is, however, unable to give any satisfactory explanation about not disclosing about this communications treating his leave period as dies-non along with the contempt petition.

The order dated 21st September, 2007, directed payment of amount due to the petitioner. In case, the amount has not been found payable to the petitioner and the period has been treated as Dies-non, the petitioner cannot contend that there is willful and deliberate violation of the order passed by this Court.

The power within the meaning of the Contempt of Courts Act, 1971, is to be used sparingly and in the larger interest of society and for proper administration of justice and not for mere dis-obedience of an order as the element of willingness and intention is indispensable requirement to take action. It is also cannot be doubted that if two views or interpretations are possible and the action of alleged contemnor pertains to one of such interpretation which will raise doubts about willful nature of conduct, if raised, contempt will not be made out.

The Court by order dated 21st September, 2007, directed the respondents to make payments of the amount due to the petitioner without adjudicating as to what amounts are due or what is the entitlement of the petitioner. The respondents have passed the appropriate orders holding that the long period of leave is to be treated as Dies-non. If the long period of leave is to be treated as Dies-non, the petitioner shall not be entitled for any amount for the said period unless, it can be held that the said period cannot be treated as Dies-non. However, this is not to be adjudicated in a petition filed by the petitioner for initiating contempt against the respondents in the present facts and circumstances.

Similarly, the other disputes for non-payment of certain amounts cannot be termed to be in violation of the order passed on 21st

September, 2007. The scope of adjudication in the contempt proceedings is narrow and shall not include adjudication of entitlement of the petitioner.

The Supreme Court of India in the case of Perspective Publications Pvt. Limited Vs. State of Maharashtra, (AIR) 1971 SCC 221 had observed at page 230 as under:-

“The summary jurisdiction by way of contempt must be exercised with great care and caution and only when its exercise is necessary for the proper administration of law and justice.” (Per Grover, J.) Contempt of Court is essentially a matter which concerns the administration of justice and the dignity and authority of judicial Tribunals. It is not a right of a party to be invoked for the redress of his grievances. It is not also a mode by which the rights of a party, adjudicated upon by a Tribunal can be enforced against another party. Moreover, if the matter, as in the present case, requires a detailed inquiry, it must be left to the Court which passed the order and which presumably is fully acquainted with the subject-matter of its own order. When the matter relates to mere infringement of an order, as between parties, it is clearly inexpedient to invoke and exercise contempt jurisdiction as a mode of executing the order, merely because other remedies may take time or are more circumlocutory in character. Contempt jurisdiction should be reserved for what essentially brings the administration of justice into contempt or unduly weakens it (vide (1964) 68 Cal WN 148, AIR 1951 Pat 231, AIR 1966 Mad 21 and AIR 1971 ALL 231).”

Having carefully considered the allegations made in the contempt petition, this Court therefore, is of the view that action of the respondents do not fall within the ambit of committing willful and intentional contempt of Court and the order dated 21st September, 2007 has been violated by the respondents. If the petitioner is aggrieved by

the orders passed by the respondent for the period of leave as Dies-non and fixing the pay from 1.1.96 at 8000-13500, it will be open to the petitioner to take his appropriate remedy in accordance with law.

Consequently, there are no grounds to initiate the contempt proceedings against the respondents and contempt petition is therefore, dismissed.

ANIL KUMAR, J.

FEBRUARY 19, 2010
Anb/'rs'

MOOL CHAND GARG, J.