

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

Judgment Reserved on: April 01, 2014

Judgment Delivered on: April 04, 2014

+ **LPA 468/2011**

UNION OF INDIA & ORS. Appellants
Represented by: Mr.Anil Gautam, Advocate

versus

EX.LT.R.L.YADAV Respondent
Represented by: Mr.Sukhjinder Singh, Advocate

LPA 630/2011

UNION OF INDIA & ORS. Appellants
Represented by: Mr.Anil Gautam, Advocate

versus

EX.LT.R.P.YADAV Respondent
Represented by: Mr.Sukhjinder Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE JAYANT NATH

PRADEEP NANDRAJOG, J.

1. Respondent Lt.R.L.Yadav joined the Indian Navy as a Sailor (Sea-I) on October 19, 1963. He competed at an open selection for being granted a Short Service Commission and was successful. On March 09, 1970 he was granted Short Service Commission. The post was that of an Officer-Sub-Lieutenant.

2. Concededly the ranks which can be held as a 'Sailor' are : - (i) Sea-I, (ii) Seaman, (iii) Petty Officer, (iv) Chief Petty Officer, and (v) Master Chief

Petty Officer.

3. Holding a rank of Sub-Lieutenant R.L.Yadav was discharged from service on December 15, 1978. Counting the service rendered as Seaman-I and Sub-Lieutenant, R.L.Yadav had completed 15 years, 1 month and 26 days service.

4. R.P.Yadav joined the Indian Navy in the rank of a Sailor as a Sea-I on January 14, 1985 and like R.L.Yadav he also competed at the open selection for being appointed as an officer in the Short Service Commission and being successful was appointed as a Sub-Lieutenant on April 01, 1997. He was discharged from service on June 04, 2003. Counting service rendered as Seaman-I and Sub-Lieutenant, R.P.Yadav had completed 18 years and 4 months service.

5. As per Navy (Pension Regulations), 1964 Officers who had rendered 20 years' service were entitled to receive pension and those who had rendered 15 years' service as a Sailor were entitled to pension.

6. Issue cropped up whether R.L.Yadav and R.P.Yadav would be entitled to pension. Another issue cropped up concerning a few other Navy Men with respect to service rendered as Artificer Apprentice Sailor on the entitlement of pension. 5 writ petitions No.1749/2006, 11028/2006, 1441/2007, 19677/2004 and 2314/2005 were filed by Lt.Cdr.Anoop Kumar Mehrotra, Lt.Cdr.Azad Singh, R.L.Yadav, R.P.Yadav and Lt.Cdr.G.S.Beniwal respectively.

7. The writ petitions were allowed vide order dated April 03, 2008 passed by a Division Bench of this Court holding that service rendered as Artificer Apprentice Trainee, Sailor and an Officer had to be clubbed for purposes of computing pensionary benefits.

8. But with reference to what rank would the pension be paid? Whereas the Indian Navy contended before the Division Bench that the 5 petitioners had been discharged from service when they were holding the post of an officer and since none had rendered 20 or more years combined service they would not be entitled to any pension, the 5 petitioners argued that since they had rendered more than 15 years' service when they were discharged and before they were appointed as officers they held the post of Sailor they would be entitled to pension.

9. The Division Bench answered the question in favour of the petitioners holding that since before they were appointed as officers they were holding the post of a Sailor they would be entitled to pension as a Sailor.

10. R.L.Yadav and R.P.Yadav were sanctioned pension but with reference to treating them as Seaman-I, the post held by them before they were appointed as Sub-Lieutenants as Short Service Commission Officers.

11. The two challenged the decision by filing Cont.Cas.C.No.440/2008 (filed by R.L.Yadav) and Cont.Cas.C.No.896/2009 (filed by R.P.Yadav). They pleaded in the contempt petitions that if they had continued to be employed as Sailors they would have earned promotions to the highest rank of a Sailor i.e. Master Chief Petty Officer and thus prayed pension to be sanctioned by treating them as Master Chief Petty Officers i.e. to fix their pay notionally as Master Chief Petty Officers and then determine the pension payable. Additionally they pleaded that having been appointed as Officers it was apparent that they had crossed all ranks in the category of Sailor and this would require pension to be sanctioned to them with reference to the pay scale in the highest rank of a Sailor i.e. Master Chief Petty Officer.

12. Vide impugned decision dated February 11, 2011 directions have been issued by the learned Single Judge holding that there was no justification not to grant pension to R.L.Yadav and R.P.Yadav in the highest rank as Sailor i.e. Master Chief Petty Officer. And the reason given by the learned Single Judge is that the two had cleared the departmental examination held for Short Service Commission in the Officers rank. We quote the reasoning of the learned Single Judge, in paragraph 18 of the impugned order. It reads as under:-

“In both the cases [CONT.CAS(C) 896/2009 & CONT.CAS(C) 440/2008] more than six years service has been rendered by the petitioners as officer (the second promotion) and petitioners also attained promotion as officer. While the respondents are fully justified in not computing pension at the rank of officer for the petitioners. Prima facie I am of the view that there is no justification in not granting pension to the petitioners of the highest rank as sailor, as they cleared the departmental examination held by the department and were promoted as officers. The respondents themselves found the petitioners fit and capable of holding the rank of officer, would show that at the time of discharging the petitioners, they had certainly crossed the rank of Sea-I held by them and clearing the departmental examination cannot be considered as a disadvantage for the petitioners. The order of the Division Bench is to be read harmoniously keeping in view the grounds taken by the petitioners in the writ petition.”

13. From the pleadings of the parties in the contempt proceedings it is apparent that the case of R.L.Yadav and R.P.Yadav pleaded is as prima facie concurred with by the learned Single Judge and the case of the Indian Navy was that it had complied with the mandamus issued by the Division Bench which had directed pension to be sanctioned to the two officers as Sailors for the reason their entitlement to pension was found on the fact that they had

rendered more than 15 years' combined service. The two could obviously not be sanctioned pension as officers because for officers qualifying service was 20 years. It was further pleaded by Indian Navy that the two had to be treated as a Sailor with reference to the rank in the category of Sailor held by them before they were appointed as officers upon clearing the direct recruitment examination for being appointed as a Short Service Commission Officer.

14. In our opinion the competing claims gave birth to a dispute on merits which could not have been decided and cannot be decided in contempt jurisdiction. In the decision reported as 2006 (5) SCC 399 Midnapore Peoples' Co-operative Bank Ltd. & Anr. Vs. Chunnilal Nanda & Ors. it was held that unless the dispute in the contempt proceedings is incidental to or inextricably connected with a dispute already adjudicated, upon resulting in an order passed non-compliance whereof was alleged to be a case of contempt, substantive disputes in contempt proceedings could not be gone into by the contempt court and the appropriate remedy would be to take resort to a substantive action. In the decision reported as 1996 (6) SCC 291 J.S.Parihar Vs. Ganpat Duggar & Ors. it was held that once an order was passed by the Government on the basis of the directions issued by the Court there arises a fresh cause action to seek redressal before an appropriate forum and not in contempt proceedings. In the decision reported as 2002 (5) SCC 352 Jhareswar Prasad Paul & Anr. Vs. Tarak Nath Ganguly & Ors. it was observed that a Court cannot in the guise of exercising contempt jurisdiction grant substantive relief not covered by the order/judgment which is the subject of the contempt proceedings. In the decision reported as 2004 (13) SCC 610 V.M.Manohar Prasad Vs. N.Ratnam Raju & Anr. it was held

that an order cannot be passed in contempt proceedings which would be a supplemental order to the main order.

15. The underlying reasoning is apparent. A contempt proceeding is a summary proceeding to punish the contemnor for a wilful default of a direction/order/judgment passed by a Court mandating something to be done. If in compliance an order has been passed and an issue arises whether the order is legal or not, it cannot be a case of wilful defiance unless the reasoning in the order is a ruse to overcome the direction issued; for then it would be a conscious act to overreach the order passed by the Court. But where while implementing the direction issued by the Court an order is passed which in turn gives bona-fide birth to a substantive issue which is neither incidental nor inextricably connected with the main order, it cannot be said that there is any wilful breach. It is trite that substantive adjudications of a controversy on merits cannot be adjudicated by a court exercising contempt jurisdiction.

16. We allow the appeals and quash the order dated February 11, 2011 and dismiss Cont.Cas.No.440/2008 filed by R.L.Yadav as also Cont.Cas.No.896/2009 filed by R.P.Yadav. The two are advised to file substantive petitions for redressal of their disputes. Needless to state if the two file substantive petitions the same shall be decided uninfluenced by any observations made by the learned Single Judge in the impugned order dated February 11, 2011 and as regards the present order we would simply clarify that we have noted the facts and the competing claims to bring out that a substantive dispute on merits arises after pension has been sanctioned to R.L.Yadav and R.P.Yadav and the dispute has given birth to a fresh cause of action. Nothing stated by us would be construed as reflective of the merits

of the controversy.

17. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(JAYANT NATH)
JUDGE

APRIL 04, 2014
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