IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

Con.Case(C).No. 343 of 2015 (S) IN WP(C).33914/2014

JUDGMENT IN WP(C) 33914/2014

....

PETITIONER/PETITIONER IN THE WPC:

V.HAREENDRAN, AGED 58 YEARS, S/O VELAYUDHAN, EMPANELLED DRIVER (RETIRED ON 31.8.2012), KSRTC, NEYYATTINKARA DEPOT, NEYYATTINKARA, THIRUVANANTHAPURAM.

BY ADV. SRI.K.P.RAJEEVAN

RESPONDENT/IST RESPONDENT IN THE WPC:

SRI.ANTONY CHACKO (AGE & FATHER'S NAME NOT KNOWN TO THE PETITIOENR), MANAGING DIRECTOR, KERALA STATE ROAD TRANSPORT CORPORATION, TRANSPORT BHAVAN, FORT, THIRUVANANTHAPURAM PIN:695 023.

BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING COME UP FOR ADMISSION ON 17-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN COC 343/2015

PETITIONER'S EXHIBITS:

ANNEXURE A1 JUDGMENT IN WPC 33914/2014 DATED 16.12.2014

ANNEXURE A2 ORIGINAL COPY OF SPEED POST RECEIPT NO.EL-492575551 IN DATED 26.12.2014

ANNEXURE A3 A TRUE COPY OF GOVERNMENT ORDER DATED 2.12.2011

ANNEXURE A4 A TRUE COPY OF PAGE 3 OF THE SECONDARY SCHOOL LEAVING CERTIFICATE OF THE PETITIONER

ANNEXURE A5 A TRUE COPY OF ORDER DATED 29.3.2012 ISSUED BY THE CHAIRMAN AND MANAGING DIRECTOR

ANNEXURE A6 A TRUE COPY OF CERTIFICATE DATED 15.11.2014 ISSUED BY THE ASSISTANT TRANSPORT OFFICER, NEYYATTINKARA OF KSRTC

ANNEXURE A7 A TRUE COPY OF MEMORANDUM DATED 16.4.2012 ISSUED BY THE ASSISTANT TRANSPORT OFFICER, NEYYATTINKARA OF KSRTC

ANNEXURE A8 A TRUE COPY OF MEMORANDUM DATED 7.8.2012 ISSUED BY THE ASSISTANT TRANSPORT OFFICER, NEYYATTINKARA OF KSRTC

ANNEXURE A9 TRUE COPY OF ORDER DATED 29.4.2009 ISSUED BY THE CHAIRMAN AND MANAGING DIRECTOR OF KSRTC

ANNEXURE A10 TRUE COPY OF WPC 33914/2014

RESPONDENT'S EXHIBITS:

ANNEXURE R1(a) TRUE COPY OF THE ORDER ISSUED BY THE KSRTC DATED 2.3.2015 TO THE EPTITIONER

ANNEXURE R1(d) TRUE COPY OF THE ORDER DATED 26.8.2015 RECALLING ORDER OF REGULARISATION IN KSRTC AS DRIVERS - CANCELLATION OF THE ORDER TO SRI.PAPPACHAN K.O. AND OTHERS

ANNEXURE R1(e) TRUE COPY OF THE ORDER DATED 26.8.2015 RECALLING ORDER OF REGULARISATION IN KSRTC AS CONDUCTORS - CANCELLATION OF THE ORDER TO SRI.NANDAKUMARAN THAMPI AND OTHERS

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

Con. Case (C) No.343 of 2015 S

Dated this the 17th day of September, 2015

JUDGMENT

The Context of Contempt:

This contempt case has generated much heat and friction, to the discomfort of even the Court, not to speak of the learned counsel on either side. I wish the learned counsel, especially those appearing for the petitioners, would bear in mind that adjudication in a contempt case is not adversarial; nor could they allow themselves to be identified with the parties.

The Facts:

2. The facts briefly stated are that in 1992 the petitioner joined as an empanelled driver in the Kerala State Road Transport Corporation ('the Corporation' for brevity), of which the eo nominee respondent is the

Managing Director. While he was continuing in service, the Government issued Annexure-A3 order directing regularisation of the services of the 'provisional engagees'. Ventilating his grievance that his services had not been regularised in terms of Annexure-A3, the petitioner filed W.P.(C) No. 33914/2014.

3. As can be seen from the record, many similarly placed employees have also filed writ petitions. In tune with the judgments rendered earlier, this Court disposed of the writ petition on 16.12.2014 with the following direction:

The Directive:

> "5. Having regard to the rival submissions of the learned counsel for the petitioner and the learned Standing Counsel, this Court is of the opinion that the issue has already been decided by this Court on more than one occasion by conclusively holding that the stipulation of 1230 duties a year has prospective effect from 2013.
>
> 6. Recently, this Court, through its judgment dated 28.11.2014 in W.P.(C)No.30691/2014, made it clear that the objection of the respondent Corporation that the regularisation of those who represented after 21.11.2013, when the so-called clarificatory Government Order was

issued, cannot be sustained. Accordingly, in my considered view, the said objection cannot be sustained and there shall be a direction to the first respondent to regularise the services of the petitioner forthwith in terms of Exhibit P2. It is made clear that the first respondent shall complete the entire exercise of regularising the services of the petitioner as expeditiously as possible, at any rate, within a period of eight weeks from the date of receipt of a copy of this judgment."

The Rival Submissions:

The Petitioner's:

4. On 05.03.2015 the petitioner filed the contempt case. The learned counsel for the petitioner has submitted that this Court has, in Annexure-A1 judgment, issued a peremptory judicial directive that the services of the petitioner be regularised forthwith. According to him, the qualifying expression of the Court that the regularisation should be done in terms of Exhibit P2 (i.e., Annexure-A3) does not in any way dilute the mandatory nature of the direction, for Exhibit P2 Government Order is in petitioner's favour.

5. Having drawn my attention to clause 5 of Annexure-A3, the learned counsel would contend that regularisation must take effect before the employee could be retired on his attaining the age of superannuation. In that context, the learned counsel has submitted that as the petitioner was born on 25.08.1956, he could have been retired by 31.08.2011. In the meanwhile, however, the Corporation issued Annexure-A9 proceedings dated 29.04.2009 synchronising the date of retirement with the last day of the financial year. In other words, whichever be the actual date of birth of an employee in a particular year, he or she should be retiring on the last day of that financial year; that is, 31st March of the year in question.

6. In that context, the learned counsel would contend that on the strength of Annexure-A9, the petitioner, deemed to have had his service extended, did continue till 31.03.2012, the last date of the financial year. In the

ordinary course of events, the petiitoner was to have retired by 31.03.2012. The learned counsel has further brought to my notice Annexure-A5 dated 29.03.2012 issued by the Corporation. On examination, Annexure-A5 reveals that before the petitioner could actually retire, the Corporation once again on 29.03.2012 adopted the Government policy on the issue of superannuation.

7. In elaboration, the learned counsel has submitted that the Corporation enhanced the age of superannuation from 55 to 56. As a corollary, the employee is required to retire on the last day of the month in which he was born, as soon as he completes 56. It has, thereby, dispensed with the process of retiring an employee on the last of day of the financial year. On the strength of Annexure-A5, contends the learned counsel for the petitioner, the petitioner continued in service until 31st August, 2012. The requirement under Annexure-A3 is that the employee must

have been in service as on 22.12.2011, when the said Government Order was issued, emphatically asserted the learned counsel.

8. In the end, the learned counsel has submitted that having singled out the petitioner for an adverse treatment, the respondent Corporation has regularised the services of scores of other employees who are similarly situated and who could have retired before Annexure-A3 order was issued, if the Corporation had adopted the same yardstick as had been applied in the petitioner's case.

9. When confronted with Annexure-R1(a), which is said to be the order passed in compliance with Annexure-A1 judgment, the learned counsel would contend that it is grossly in violation of Annexure-A1 judgment. According to him, once it is not disputed that the petitioner had been in service by the time Annexure-A3 came into operation, the question of the petitioner's getting disqualified to have the

benefit of it does not arise. On this count, the learned counsel would underscore the fact that the Corporation had actually regularised many other similarly placed employees.

The Respondent's:

10. Per contra, the learned Standing Counsel for the respondent Corporation has submitted that Annexure-A1 judgment was rendered on 16.12.2014, whereas the Corporation issued Annexure-R1(a) order in compliance thereof on 02.03.2015, i.e., within the stipulated time. According to her, by no stretch can it be said that there is any violation, much less any contempt of court on the count of willful disobedience to a judicial directive.

11. Expatiating on her submissions, the learned Standing Counsel would further contend that the direction in Annexure-A1 judgment was to consider the issue of the petitioner's regularisation in terms of Annexure-A3 order. According to her, Annexure-A3 has clearly mandated in

clause 5 thereof that only the persons who remained in service by the date of the said order could alone have the benefit of regularisation. The petitioner, asserts the learned Standing Counsel, stood retired on 31.08.2011.

12. Concerning the benefit of Annexure-A9, the learned Standing Counsel has contended that it will apply to the Officers and employees of the Corporation; the petitioner could not be termed an employee because he was, at best, a provisional engagee. The learned Standing Counsel has also submitted that there is a difference between the date of retirement and the age of retirement.

13. As to the allegation that other similarly placed persons had been regularised, the learned Standing Counsel has submitted that all those employees who had been regularised by oversight have been removed from service with retrospective effect.

14. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent Corporation, apart from perusing the record.

Issue:

Whether the respondent willfully disobeyed any binding judicial directive to be guilty of contempt of court?

Discussion:

15. Indeed, this Court in Annexure-A1 judgment issued a direction that the first respondent should regularise the services of the petitioner forthwith; nevertheless, the directive, mandatory as it may see, has been qualified by a modifier to the effect that it should be in terms of Exhibit P2, i.e., Annexure-A3. To that extent, I fully concur with the contention of the learned Standing Counsel that regularisation, if any, should be in accordance with Annexure-A3 order. In other words, once the petitioner is qualified to be regularised in terms of the conditions

stipulated in Annexure-A3, the regularisation ought to be forthwith.

16. The respondent Corporation did pass Annexure-R1(a) order in compliance with the Annexure-A1 judgment. Placing reliance on clause 5 of Annexure-A3 the Corporation has found that the petitioner stood superannuated at the time when Annexure-A3 was issued. So long as the Corporation has not acted mala fide we cannot find fault with its Annexure-R1(a) order. For, the Corporation has every right to read and understand the judicial directive in Annexure-A1 the way deemed it appropriate. In other words, a mere error in interpreting the order or an error of judgment in arriving at a conclusion on the strength of a judicial order per se does not amount to any contumacious conduct on the part of the Corporation.

17. With the above conclusion, this Court could have put an end to the issue by closing the contempt case. But

that is not to be.

March of Events:

18. The petitioner has brought on record Annexures-A3 and A7, which establish that the Corporation has regularized the services of scores of other employees who are in the same age group. Ironically, the same Annexure-A3 was the basis for the Corporation to regularise their services. Having found prima facie substance in the allegations of the petitioner, this Court ordered the respondent to file an additional affidavit regarding the regularization of other employees. Hence, the issue required further examination.

The Temporal Flux - The Age of Superannuation:

19. We shall, before adverting to the other issues, examine the validity of the contention on the part of the Corporation concerning the issue of the petitioner's retirement. Having been born on 25.08.1956, the petitioner

was to have attained the age of superannuation and retired from service on 31.08.2011, in the usual course. Before the petitioner could attain the age of superannuation, however, the Government issued Annexure-A3 order providing regularisation to the provisional employees of the Corporation subject to the conditions stipulated therein. Clause 5, which holds the key to the issue, reads as follows:

> “Those employees who are continuing in Kerala Road Transport Corporation as on the date of this order and those who have not attained the age of superannuation alone will be considered for regularisation as per this order.“

20. Now, if we examine the issue chronologically, Annexure-A3 was issued on 22.12.2011. Indisputable is the fact that on 29.04.2009 the Corporation issued Annexure-A9 proceedings: all the employees who attained the age of 55 years during any financial year should continue in service till the end of that financial year, i.e., 31st March of the next calendar year, notwithstanding their actual date of birth. In fact, Annexure-A9 was issued on 29.04.2009. Thus, long

prior to the petitioner's actual date of retirement, the period of retirement stood extended, i.e., from 31.08.2011 to 31.03.2012. As per Annexure-A9, the petitioner was to have retired by 31.03.2012. There was however further development.

21. On 29.03.2012, i.e., one day prior to the petitioner's date of retirement, the Corporation again, in tune with the Government Policy, through Annexure-A5 raised the age of superannuation to 56. Nevertheless, with the enhancement of the age of superannuation, the Corporation has dispensed with the method of retiring the employee on the last date of the financial year. Instead, it restored the system of retiring the employee on the last day of the month in which the employee's date of birth falls. Thus, the petitioner did continue in service till 31.08.2012.

22. The learned Standing Counsel has submitted that Annexure-A9 could not inure to the benefit of the

provisional engagees, the petitioner being one. According to her, the benefit is extended to the Officers and the 'employees' of the Corporation.

23. It is not in dispute, at least, to the extent that Annexure-A3 is for the benefit of the so-called provisional engagees. As can be seen from the nomenclature employed in Annexure-A3, the provisional engagees have been referred to as the 'employees'. In that context, I do reckon the petitioner as an employee, for the Corporation cannot contradict itself.

24. All along the learned counsel for the petitioner has contended that the Corporation has singled out the petitioner for a discriminatory treatment. According to him, when scores of similarly placed employees have been regularized, the Corporation has obstinately persisted with its vindictive attitude of denying the benefit to the petitioner.

Additional Affidavit:

25. During the earlier rounds of hearing, I directed the respondent to file an additional affidavit spelling out whether any other similarly placed employees have been extended the benefit of Annexure-A3. The Corporation did file its additional affidavit in the Court.

26. The Corporation had gone on record stating that it had initially issued letters of regularisation to a large number of provisional engagees who claimed the benefit under the Government Order and various judgments of this Court. However, as and when errors and irregularities were pointed out, the Corporation, it is averred, tried to rectify them by recalling such orders.

27. In this regard, it is pertinent to examine Annexure-A7 produced by the petitioner. In Annexure-A7, there are three employees who were born in 1956. According to the learned counsel for the petitioner, even

they have been regularised and later allowed to retire in terms of the policy of superannuation in force in the Corporation.

28. Along with the additional counter affidavit, the respondent Corporation has produced Annexures-R1(d) and R1(e). A perusal of those annexures reveals that eighty-one employees have been regularised in violation of what could be said to be the Corporation's own interpretation of Annexure-A3. Those employees were allowed to retire in the due course. As they had been drawing their pensions, now in the wake of the controversy that has been generated in this contempt case, the Corporation is said to have terminated their services retroactively.

Egregious Errors:

29. The Corporation has committed a medley of mistakes. It wanted to defend its position in this contempt case but realized its folly; still, its bloated ego, perhaps,

came in its way—the result is that it took recourse to a knee-jerk reaction. It caught the hapless retired employees unawares by cancelling their regularization retrospectively. What is the fallout? Another round of litigation involving scores of retired employees. At whose cost? At the cost of the exchequer, the public money, for the Corporation will take pride in defending itself up to the highest Court of the land. Who foots the bill for the retired employees who have been drawn into a vortex of litigation, willy nilly? None. Not even can they hope for pension now. So much so for the adventures of the Corporation officialdom.

30. There is no hiding the fact that the Corporation is not in the pink of its health. It has already been in doldrums being unable to pay the pension to thousands of retired employees. In numerous cases involving the retired employees this Court ordered payment of pension; Corporation has yet to comply with the judgments, inter

alia, owing to what could be said to be the policy tangles between the Corporation and the Government. Adding fuel to the fire is the callous and even malefic administration of the Corporation. The Corporation, unfortunately, has the temerity of placing on record its defence, if it could be called one. It explains itself better if extracted and reproduced:

> "4. [I]t is specifically submitted that no person similarly situated as that of the petitioner is given the benefit of Exhibit P2 at this point of time. Thus Annexures A7 & A7 are irrelevant and cannot be relied upon.
>
> 5. This respondent humbly submits that illegal, irregular or erroneous decisions cannot form the basis for a subsequent illegality, irregularity and error and it is with utmost respect to the principle of law, as laid down through a catena of decisions, that efforts were taken to recall orders of regularisation issued to those under Annexures A7 & A8."
>
> (emphasis supplied)

31. If we examine the above defence of the respondent, the following points, as I understand, emerge:

(i) That at this point of time no other similarly placed person is given the benefit. The Corporation seems to be, to my mind, admitting that earlier the benefit was given, but not now, i.e., in presenti. 'At this point of time', otherwise remains, semantically speaking, indeterminate as it is without any antecedent.

(ii) The respondent restates the oft-quoted judicial dictum that an illegality cannot be perpetuated. Again, an admission that it did commit an illegality.

(iii) The Respondent further admits that efforts were taken to recall the orders of regularisation issued to those under Annexures-A7 and A8. Again an admission that the Corporation acted illegally. It is, perhaps, on a corrective course. That said, I do not see how the respondent could assert that Exhibits P7 and P8 are irrelevant. Intemperance in the name of interpretation.

Fall Out:

32. The learned counsel for the petitioner has submitted that most of those retired employees found in Annexures-A7 and A8 have already approached this Court and had the orders of cancellation issued by the Corporation suspended. The respondent does not dispute it.

33. In retrospective, it can be said that the Corporation regularised 81 employees. Later, after about three years, it found, only because of these contempt proceedings, their regularisation illegal and now cancelled their regularisation retrospectivley—much time after the retirement of those employees. No wonder that cancellation could have been without notice. Having done all this, now the respondent cries foul. Regrettably, the Corporation has failed to inspire the confidence of this Court with its administrative prowess, and fairness, too.

34. Be that as it may, the fact nevertheless remains that the respondent did comply with Annexure-A1 judgment, for it has passed Annexure-R1(a) order. Its validity is a different matter altogether. This Court, unless it has issued a mandatory direction without anything qualifying, cannot insist on the officials to pass orders on the dotted lines. The actual execution of even the judicial

directives is in the realm of the executive. They do enjoy sufficient leverage in that regard. To err they are entitled, so long as they do not do it mala fide.

35. Conscious that contempt jurisdiction is quasi-criminal and calls for strict interpretation of any issue involved in the adjudication, I am of the considered opinion that Annexure-A1 judgment has been complied with in letter, if not in spirit—but what matters is compliance.

36. I am told that the writ petitions filed by some of the persons in Annexures-A7 and A8 are pending before this Court, having been filed just a day or two before. It is undesirable to stymie the defence of the Corporation in those proceedings by rendering any adverse findings in the present proceedings.

The Result - The Judicial Restraint:

37. I, therefore, make it abundantly clear that the observations made above are in the context of and confined

to the present issue, and they cannot be taken as the judicial verdict of this Court on the issue of the Corporation cancelling the regularisation of the employees whose names are found in Annexures-A7 and A8.

In the facts and circumstances, the Contempt Case is closed. No order as to costs.

Dama Seshadri Naidu, Judge

tkv

'C.R.'