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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

COCP No.262 of 2015
Date of decision:20.11.2015

Mrs. Annamma Jose ...Petitioner

Versus

Mr. Kenichi Ayukawa and another ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Shekhar Verma, Advocate,
for the petitioner.

Mr. M.L.Sarin, Senior Advocate, with
Mr. Nitin Sarin, Advocate, for the respondents.

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Rakesh Kumar Jain, J.

The husband of the petitioner late C.V. Jose was an employee of the Maruti Suzuki India Limited (hereinafter referred to as the "company"). He was put under suspension on 12.12.1997 and dismissed from service on 26.04.2000. The statutory appeal filed by him before the Joint Managing Director of the company was dismissed on 30.09.2000. C.V. Jose raised an industrial dispute by serving a demand notice under Section 2-A of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act") and sought reference to the Industrial Tribunal-cum-Labour Court-I, Gurgaon. On failure of the conciliation proceedings, the Appropriate Government made Reference No.540 of 2002 regarding validity of the order of his dismissal from service. The Labour Court answered the reference against him vide award dated 23.07.2009, which was challenged by the petitioner by way of CWP No.17254 of 2009 because in the meantime, C.V. Jose had expired in November, 2007. The said writ petition, filed against the award of the Labour Court, was allowed by the Single Bench vide order dated 09.07.2012. The relevant portion of the order dated 09.07.2012 reads as under:-

> "The award of the Labour Court (Annexure P-21), order of termination (Annexure P-17) and the order dismissing the appeal (Annexure P-19) are hereby quashed. CV Jose would be deemed to have been in service till his death. The petitioners are held entitled to all consequential benefits flowing therefrom, as a result of the quashing of the dismissal order. MUL is directed to calculate and hand over the monetary benefits accruing to the petitioners under the present orders within two months from the date of receipt of a certified copy of this order, failing which interest would run on aforesaid monetary claims and consequential benefits at the rate of 18% per annum from the date of death till actual payment is made. If MUL has any extant policy for compassionate appointment, it may consider the case, if any request is made by the family of the deceased, in accordance with law as expeditiously as possible."

The petitioner filed COCP No.245 of 2013 for the non-compliance of the order dated 09.07.2012 in which notice was initially issued on 30.01.2013 but ultimately the said petition was dismissed on 04.03.2013 because the order dated 09.07.2012 was stayed on 07.01.2013 in LPA No.2175 of 2012. Thereafter, the LPA No.2175 of 2012 filed by the company against the order dated 09.07.2012 was dismissed by the Division Bench on 21.01.2014 and the SLP (C) No.12134 of 2014 filed by the company before the Apex Court was also dismissed on 25.07.2014. Consequently, the directions issued by the learned Single Judge on 09.07.2012 in CWP No.17254 of 2009 became applicable. Thereafter, the petitioner served a legal notice dated 21.10.2014 upon the respondents for payment of ₹1,44,69,747/- along with other benefits viz. provident fund, family pension, medi-claim policy etc. and since the demand raised by the petitioner was not met by the respondents, the present petition has been filed under Section 12 of the Contempt of Court Act, 1971 (hereinafter referred to as the "Contempt Act") read with Article 215 of the Constitution of India, 1950 for initiating action against the respondents for the alleged willful disobedience of the order passed by this Court on 09.07.2012.

The respondents have filed reply on behalf of respondent No.2 contesting the petition on the ground of limitation alleging that the order dated 09.07.2012 was stayed in appeal, which was ultimately dismissed on 21.01.2014 and if the limitation of one year is to be counted from that date, as per Section 20 of the Contempt Act, the present petition is barred by limitation as it has been filed by the petitioner on 28.01.2015. It is further alleged that the petitioner has an alternate remedy under Section 33C(2) of the Act as it is a matter of calculation of the amount payable. It is also submitted that the petitioner has already deposited a sum of ₹9,82,651/- on 29.01.2013 in terms of the order dated 07.01.2013 which was passed at the time of issuance of notice of motion in the appeal bearing LPA No.2175 of 2012, which reads as under:-

> "Notice of motion returnable on 18.02.2013.
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> Notice re: condonation of delay as well.
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> Subject to deposit of the amount in question in the Court within 15 days, there shall be a stay of the impugned order. The appellant shall also pay a sum of Rs.15,000/- as litigation expenses to the respondents."

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Before issuance of notice of motion in this petition, the Court had recorded the following order on 05.02.2015:-

> "Counsel relies upon a tabulation which appears at page 38 of the paper book and would contend that an amount of Rs.1,44,69,747/- is due towards arrears/financial benefits and towards compliance of the judgment dated 9.7.2012 rendered by the Writ Court and which has since attained finality up to the Hon'ble Supreme Court.
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> Counsel is directed to substantiate and justify the individual claims as set forth in the tabulation at page 38.
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> List on 10.3.2015."

In pursuance of the aforesaid order, the petitioner filed an affidavit dated 10.03.2015 to justify the amount claimed as per the table given in Annexure P-9. It is averred in para 3 of the said affidavit that an employee of the company is entitled to be considered for promotion after 2 years of service and an outstanding employee is given promotion after 3 years of service and an average employee is given promotion after 4 years of service. It is further averred that the claim made at Sr. No.13 is pertaining to Death Relief Fund Scheme which is a benevolent scheme for families of deceased employees, claim made at Sr. No.14 is for statutory benefit of gratuity and the claims at Sr. Nos.15, 16 and 17 are for privileged/earned leaves, casual leaves and medical leaves. In order to support her claim, the petitioner has also placed on record a copy of the Full & Final Settlement of the Account and the payment made to one late Madhav Bisht as Annexure P-10. At Sr. No.18 in the said tabulation, interest has been claimed in terms of the order passed by this Court and at Sr. No.20, the claim is made for reimbursement of medical expenses but without any documentary proof. She had also claimed a sum of ₹1,08,172/- towards bonus/Additional

Variable Reward, as has been given to the similarly situated person(s).

The respondents have filed counter-affidavit to the affidavit filed by the petitioner on 10.03.2015, in which the claims made under various heads by the petitioner have been discussed and declined.

According to the petitioner, the various components of pay and allowances have been calculated by notionally presuming the promotion of the petitioner's husband after every 3/4 years of service, which has been stoutly denied by the respondents by making a reference to the promotion policy, which is attached as Annexure AR-1. It is averred that the promotion to the higher grade is not a matter of right of an employee as working of an employee is appraised once at the end of the year and awarded grades, from Grade-A to Grade-C on the basis of their performance. An employee is required to obtain certain number of points to become eligible for consideration of promotion and if an employee does not perform in any particular number of years, then he would not secure any grade for the purpose of his being considered for promotion. It is averred that since the petitioner's husband did not work in the employment of the company since 1997 till his death in the year 2007, therefore, he was not eligible for consideration for promotion as there was no question of any appraisal of his performance. The relevant portion of the promotion policy of the company is as under:-

POLICY:

1. All employees in the organization are appraised once in a year. The appraisal period is April to March.
2. Performance Appraisal System forms the basis for determining an individual's eligibility for promotion from time to time.

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3. Promotions will be from 1st April each year."

A table is also provided in the promotion policy for grading and award of points at various levels in the context of eligibility for promotion after accumulation of the number of points required at those levels. The respondents have, thus, averred that though the Court has ordered that the husband of the petitioner shall be deemed to be in service till his death, which took place in November, 2007, but since he did not work from 1997 till his death in 2007, therefore, there was no appraisal of his work and conduct from time to time and on that account, the petitioner cannot ask for notional promotion. It is further averred that the petitioner has been paid the basic salary from the year 2000 till his death along with fixed FDA, House Rent Allowance, Conveyance Charges, CEA but he has been declined production incentive, leave travel allowance and medical reimbursement because the production incentive would have been given if he had actually worked, LTA would have been given had he availed leave travel allowance and medical reimbursement, on the basis of actual expenses incurred but admittedly, no medical proof has been appended by the petitioner herself. As regards PF, it is submitted that the same has already been paid as per the claim and the gratuity amount is still pending as the same is required to be obtained by filling certain requisite forms.

The petitioner has laid great emphasis on the Death Relief Fund of ₹19,61,500/- about which the respondents have averred that it is not a part of the Rules and is not payable by the company. In this regard, learned counsel for the respondents has produced the Death Relief Fund scheme, which was designed to give monetary assistance to the families of the member employees who die while in service of the company. Though the scheme covers all the employees borne on the rolls of the company including company trainees but it was made voluntary which could have been acquired by filling in the prescribed form in duplicate at the time of joining or thereafter.

However, the petitioner has submitted that as per the procedure provided in the scheme, on the death of a member employee, intimation is given by the Personnel Division (Establishment Section) after obtaining the necessary documents/complying with usual formalities to the Finance/ISD Departments and on receipt of communication from the Personnel Department, ISD would recover the individual's contribution from the employees salary during the month or following the month in which death occurs and the said amount is paid by a crossed cheque/bank draft to the beneficiary.

In this regard, counsel for the respondents has submitted that at the time of his death, C.V.Jose was a dismissed employee and did not die in harness like Madhav Bisht whose example has been given by appending the document Annexure P-10 with the petition, therefore, the Death Relief Fund was not deducted and it is only vide order dated 09.07.2012 passed by this Court, he has been considered to have been in service till his death, which too has come out of the eclipse when the LPA was dismissed on 21.01.2014, otherwise the judgment of the Single Bench dated 09.07.2012 was stayed. It is, thus, submitted that the said amount under the head of Death Relief Fund scheme cannot be now deducted because many employees have retired after 03.11.2007 when the husband of the petitioner had expired.

It is further submitted that even the amount of interest calculated by the petitioner to the tune of ₹80,67,204/- is imaginary because it is based upon the amount calculated by her while taking into account the increase in salary of the deceased employee, presuming his promotion after every 3/4 years, though he had not worked as he was dismissed from service, and by adding FDA, VDA, HRA, Conveyance Charge, CEA, Production Incentive, LTA and Medical Reimbursement etc. etc.

Counsel for the respondents has further relied upon a decision of the Supreme Court in the case of **Ram Kishan vs. Sh. Tarun Bajaj and others,** 2014(3) PLR 765 to contend that the proceedings of contempt are quasi criminal in nature, and therefore, standard of proof required in these proceedings is of beyond all reasonable doubt and it would rather be hazardous to impose sentence for contempt on the authorities in exercise of contempt jurisdiction on mere probabilities. He has further submitted that the word used in Section 2(b) of the Contempt Act is "willful disobedience" which means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom and excludes casual, accidental, *bona fide* or unintentional acts or genuine inability.

He has further referred to the decision of the Supreme Court in the case of **Sudhir Vasudeva, Chairman and MD, ONGC and others vs. M. George Ravishekaran and others,** AIR 2014 Supreme Court 950 to contend that the Court should not go beyond the four corners of order alleged to be flouted or enter in questions not dealt in order or to reopen the decided issues or to pass order supplemental to what has been expressed in order alleged to be flouted.

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On the other hand, counsel for the petitioner has referred to a decision of the Supreme Court in the case of **Rama Narang vs. Ramesh Narang & anr.,** 2006(3) R.C.R. (Criminal) 242 to contend that merely because an order or decree is executable, would not take away the Court's jurisdiction to deal with a matter under the Contempt Act.

I have heard learned counsel for the parties and examined the available record with their able assistance.

It is not disputed that C.V. Jose, husband of the petitioner, was under suspension w.e.f. 12.12.1997 and was dismissed from service on 26.04.2000. It is also not disputed that in the order dated 09.07.2012 passed by the Writ Court, C.V. Jose was ordered to be considered to have been in service till his death, with all consequential benefits flowing therefrom, as a result of the quashing of the dismissal order and the company was directed to calculate and hand over the monetary benefits accruing to the petitioner under the orders passed by this Court within two months from the date of receipt of a certified copy of the order and in case the amount is not paid, then the company was directed to pay interest @ 18% per annum from the date of death till actual payment is made.

The whole dispute in this case is with regard to the calculation of the benefits accrued to the petitioner after the death of her husband. According to the respondents, the benefits accrued have already been deposited in this Court pursuant to the order dated 07.01.2013 passed in LPA No.2175 of 2012. The petitioner, however, has claimed an amount of ₹1,44,69,746/- on the basis of her calculation, which has been denied and explained by the respondents.

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After considering the entire gamut of the controversy, this Court is of the view that the petitioner is not entitled to the amount which has been claimed by her as the petitioner has calculated the benefits on the basis of revision in salary of deceased C.V. Jose by presuming his promotion to a higher grade after every 3/4 years of service, which is contrary to the promotion policy of the company in which it is provided that it is based upon the individual's appraisal, once in a year for the purpose of his eligibility of consideration for promotion from time to time and since C.V. Jose remained under suspension w.e.f. 12.12.1997, dismissed from service on 26.04.2000 till the date he died on 03.11.2007, there is no question of presuming his promotion to the higher scale/level, even by legal fiction.

Similarly, the petitioner cannot claim medical reimbursement without documentary proof and also leave travel allowance without undertaking any travelling. Insofar as the provident fund is concerned, that has already been paid, as alleged, and for the gratuity, the petitioner has to fill up the requisite form which has not been filled up so far. The other claims have been allowed by the company on the basis of basic salary of C.V. Jose which he was drawing at the time when he was put under suspension and dismissed from service.

As regards the Death Relief Fund, the stand taken by the respondents appears to be justified because the deduction of individual contribution from the employees' salary was to be made during that month or the following month in which the death occurs but at that time, no deduction was made because he was not in service and was a dismissed

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employee. The dismissal of petitioner's husband from his service has in fact been over by the order of the Single Judge when the LPA was dismissed on 21.01.2014 and it could also be possible that after 2007, many employees might have retired and, therefore, there is no question of deducting the money of the Death Relief Fund from their salary.

However, in case the petitioner has any grouse regarding the amount which has not been paid on some other head(s) or even under the head of Death Relief Fund, which may be collected/contributed by the employees who are still on the rolls of the company, including the amount of interest on the actual amount payable which may be due to the petitioner, the petitioner may file an appropriate application to the Appropriate Government in terms of Section 33C(2) of the Act but insofar as the present petition is concerned, this Court does not find any deliberate disobedience on the part of the respondents to flout the orders passed by this Court.

Consequently, the present petition is hereby dismissed being denuded of any merit and the rule issued against the respondents is hereby discharged.

November 20, 2015 **(Rakesh Kumar Jain)**
vinod* **Judge**