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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **CONT.CAS(C) 851/2012****NARESH KUMAR AND ORS Petitioners**Through **Mr. Manoj V. George with Ms. Siju
Thomas, Advocates**

versus

UNION OF INDIA AND ORS RespondentsThrough **Mr. Rajesh Gogna, CGSC with
Ms. Bhavna Bajaj, Advocate for R-1
to 4.**

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Date of Decision : 3rd September, 2015**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****J U D G M E N T****MANMOHAN, J: (Oral)**

1. On the oral prayer of learned counsel for petitioners, cost imposed by this Court on the last date of hearing, is waived.
2. It is pertinent to mention that present contempt petition has been filed alleging wilful disobedience of the order dated 10th October, 2011 passed in W.P.(C) 7393/2011, whereby the writ petition filed by the petitioners was disposed of in accordance with the order dated 9th October, 2009 passed in W.P.(C) 12258/2009.
3. W.P.(C) 12258/2009 had been filed challenging the unilateral withdrawal of the Assured Career Progression (for short "ACP") Scheme by the Union of India with regard to ITBP personnel. The Division Bench held

that the ACP Scheme could not have been unilaterally withdrawn without giving an opportunity of hearing to the persons affected. Consequently, the Division Bench laid down an elaborate procedure by virtue of which a memorandum had to be served upon the petitioners intimating the reasons for withdrawal of ACP benefits and after receipt of their responses, Union of India was required to decide each case by way of a reasoned order. The relevant portion of the judgment and order dated 9th October, 2009 passed in W.P.(C) 12258/2009, as made applicable to the present petitioners, is reproduced hereinbelow:-

“2. As late back as on 9.8.2005, alleges the petitioner, benefit of the Assured Career Promotional Scheme granted to the petitioner was withdrawn. The result was salary being released to the petitioner in the lower pay-scale.

3. This, alleged the petitioner, was resorted to by the respondents against a large number of officers, who if not all, many of them, were constrained to file a writ petition in this Court registered as WP(C) No.7280/2007, in which directions were issued that since the respondents have resorted to a unilateral action without granting an opportunity of hearing to the persons affected needful would be done by the respondents i.e. the grounds on which the ACP scheme being withdrawn would be notified to the persons affected who would have a right to respond thereto and thereafter fresh orders would be passed.

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5. Learned counsel for the respondent concedes that the petition requires to be disposed of issuing directions to the respondents to:-

(a) issue a memorandum and serve the same upon the petitioner intimating the reasons on which the respondent has withdrawn the ACP scheme benefit to the petitioner.

(b) the said memorandum would be issued and served upon

the petitioner within six weeks from today.

- (c) the petitioner would submit a response to the memorandum within four weeks of receipt thereof.
- (d) the respondent would deal with the contentions urged by the petitioner in response to the memorandum to be issued by the respondent and a reasoned and speaking order dealing with the response of the petitioner would be passed and communicated to the petitioner within four weeks of receipt of response by him.

6. Needless to state, if the respondent agrees with the stand of the respondent and restores ACP scheme benefit to the petitioner that would be the end of the matter, save and except consequential steps to be taken by the respondent to release the arrears. If the order passed is to the prejudice of the petitioner, the petitioner would have remedies available as per law to challenge the same.”

(emphasis supplied)

4. Mr. George submits that if a general view of law affecting a large number of persons is decided by a Court, then the department should consider extending the principle of law declared across the board to all, so that others are not forced into litigation.

5. Mr. George emphasises that the petitioners are primarily aggrieved by the grant of lower scale of Rs. 4000-6000 instead of Rs. 5500-9000 which had been granted to other similarly situated personnel of ITBP.

6. Mr. George relies upon the judgment of Supreme Court in ***Prithawi Nath Ram Vs. State of Jharkhand and Others, (2004) 7 SCC 261*** wherein it has been held as under:-

“5. While dealing with an application for contempt, the court is really concerned with the question whether the earlier decision

which has received its finality had been complied with or not. It would not be permissible for a court to examine the correctness of the earlier decision which had not been assailed and to take a view different than what was taken in the earlier decision. A similar view was taken in K.G. Derasari v. Union of India [(2001) 10 SCC 496 : 2002 SCC (L&S) 756]. The court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order. If there was no ambiguity or indefiniteness in the order, it is for the party concerned to approach the higher court if according to him the same is not legally tenable. Such a question has necessarily to be agitated before the higher court. The court exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the court passing the judgment or order. Though strong reliance was placed by learned counsel for the State of Bihar on a three-Judge Bench decision in Niaz Mohd. v. State of Haryana [(1994) 6 SCC 332] we find that the same has no application to the facts of the present case. In that case the question arose about the impossibility to obey the order. If that was the stand of the State, the least it could have done was to assail correctness of the judgment before the higher court. The State took diametrically opposite stands before this Court. One was that there was no specific direction to do anything in particular and, second was what was required to be done has been done. If what was to be done has been done, it cannot certainly be said that there was impossibility to carry out the orders. In any event, the High Court has not recorded a finding that the direction given earlier was impossible to be carried out or that the direction given has been complied with.

6. On the question of impossibility to carry out the direction, the views expressed in T.R. Dhananjaya v. J. Vasudevan [(1995) 5 SCC 619 : 1995 SCC (L&S) 1265 : (1995) 31 ATC 177] need to be noted. It was held that when the claim inter se had been adjudicated and had attained finality, it is not open to the respondent to go behind the orders and truncate the effect

thereof by hovering over the rules to get around the result, to legitimise legal alibi to circumvent the order passed by a court.

7. In Mohd. Iqbal Khanday v. Abdul Majid Rather [(1994) 4 SCC 34 : 1994 SCC (L&S) 849 : (1994) 27 ATC 511 : AIR 1994 SC 2252] it was held that if a party is aggrieved by the order, he should take prompt steps to invoke appellate proceedings and cannot ignore the order and plead about the difficulties of implementation at the time contempt proceedings are initiated.”

7. On the other hand, Mr. Rajesh Gogna, learned standing counsel for respondents states that the petitioners cannot claim parity with the writ petitioners in W.P.(C) 12258/2009 as firstly, none of the petitioners have finished twelve years of service required for grant of ACP to the post of Sub-Inspector prior to 23rd January, 2007 on which date the rank of ASI was introduced and secondly, they fall into the category of personnel whose ACP benefits were never withdrawn which was not intimated to this Court. He has extensively referred to the reply-affidavit filed by the respondents. The relevant portion of the reply-affidavit is reproduced hereinbelow:-

“6. That Respondents respectfully submit that *the some petitioners in the matter of W.P.(C) No. 7393/2011 titled Naresh Kumar & Ors. Vs. Union of India & Ors. Are not similarly placed personnel. Post of ASI has been introduced in cadre on 23.01.2007. Copy of MHA letter No. 27012/47/2006-PF-V dated 23.01.2007 is annexed as Annexure R-4. For claiming ACP benefits in the scale of Sub Inspector (Rs. 5500-9000/-) one has to complete 12 years of service as Head Constable and also to fulfil all eligibility criteria for next promotion on or before 22.01.2007 i.e. before the induction of rank of ASI in cadre. It is submitted that some of petitioners in W.P.(C) No. 7393/2011 titled Naresh Kumar & Ors. Vs. Union of India & Ors. fulfil the said condition precedent mandatory for financial up-gradation in the pay scale of Sub Inspector (Rs. 5500-9000). In other words the petitioners in the instant*

contempt petition are not similarly placed personnel and therefore draw no benefit from the mandamus issued vide judgment dated 09.10.2009 in W.P.(C) 12258/2009 titled Prem Singh & Ors. Vs. Union of India & Ors. It is submitted that none of the Petitioners before this Hon'ble Court in the instant contempt petition have finished 12 (Twelve) years of service required for grant of ACP to the post Sub Inspector prior to 23.01.2007 on which date the rank of ASI was introduced. Further submitted that no benefit has been withdrawn from the instant petitioners and therefore the question of restoring any benefits does not arise. A chart depicting the completion of 12 years by the instant petitioner is annexed as Annexure R-5.

7. That there were two categories of personnel with respect to ACP benefits. Category (1) those personnel who were eligible for ACP benefit in the scale of 5500-9000 and who were granted ACP benefit in the scale of 5500-9000 but later on their ACP benefits were withdrawn and readjusted in the scale of 4000-6000. Category (2) those personnel who were eligible for ACP benefits but ACP benefits were given to them only in scale of 4000-6000 and their ACP benefits were never withdrawn.

8. That the mandamus issued in W.P.(C) 12258/2009 titled Prem Singh and Ors. V/s U.O.I. & Ors. was for first category of personnel and it was not applicable to second category of personnel. That the instant Petitioners were personnel from second category and their ACP benefits were never withdrawn and also such facts were not intimated to the Hon'ble High Court. Rather they have claimed parity with the writ petition of W.P.(Civil) No. 12258 of 2009 and writ petition was accordingly disposed of. That the Respondents have already restored ACP benefits in pay scale of Rs. 5500-9000, in the case of personnel from first category. However one larger issue was still left over that those personnel who were otherwise eligible for ACP benefits in the pay scale of Rs. 5500-9000/-, but were never given benefit in the scale and whose pay were never withdrawn or adjusted, should they also be given ACP benefits in case of 5500-9000 or not.

9. That ITBP had taken up the case in positive spirit with Ministry of Home Affairs/Ministry of Finance regarding extending benefits to those personnel also whose ACP benefits have not been withdrawn. Proposal of I.T.B.P. was agreed vide MHA UO No. 27012/20/2010 PF-V dated 27.08.2012 and MoF (DoE) ID No. 100430/E-III(A)/2012 dated 23.08.2012.

10. That on receiving consent from Ministry of Finance, cases of all those personnel who become eligible for ACP benefits (prior to introduction of ASI rank) were examined and ACP benefits in pay scale of Rs. 5500-9000/- was extended to them. In the instant case of petitioners cut off date for eligibility in ACP scheme for benefit in pay scale of Rs. 5500-9000/- is 23.01.2007 i.e. the date of induction of intermediary rank of ASI.

11. That all those petitioners who have been found eligible before 23.01.2007 (i.e. till 22.01.2007) were given benefits in the pay scale of Rs. 5500-9000. That total 61 petitioners have been given ACP benefits and the remaining 58 personnel are not found to be eligible. That there cannot be and is not any wilful contempt of court by the respondents as all similarly placed personnel have received the benefit of ACP as per their eligibility to the next rank available. The respondents have followed the ACP scheme in its letter & spirit. Para 7 of annexure 2 of the OM dated 09.08.1999 contemplates financial up-gradation to the next higher grade in accordance with existing hierarchy. As per the hierarchy existing on or after 23.01.2007, the next higher grade available qua the instant petitioners is that of ASI and the same already stands granted with effect from dates of their respective eligibility. OM dated 09.08.1999 is annexed herewith as Annexure R-6."

(emphasis supplied)

8. A perusal of the paper book reveals that in the present case ACP Scheme has been made applicable to the petitioners and the only dispute is with regard to re-categorisation of the cadre.

9. Since the Division Bench in the orders referred to and relied upon by the petitioners has prescribed an elaborate procedure of hearing and decision qua only those employees whose ACP benefits had been unilaterally withdrawn, this Court is of the view that the respondents are not guilty of wilful disobedience of any order inasmuch as the benefits of ACP Scheme have admittedly been given to all the petitioners herein.

10. The Division Bench in the order relied upon by the petitioners has not stated as to which rank the petitioners are entitled to by way of benefits under the ACP Scheme. Consequently, this Court is of the view that just because the petitioners have been placed in lower pay band while granting benefits under the ACP Scheme, it cannot be said that the directions of the Division Bench given in W.P.(C) 12258/2009, which was made applicable to the petitioners' case, have been violated. It is pertinent to mention that some of the petitioners have already filed an independent writ petition being W.P.(C) 7023/2013 challenging the grant of lower pay scale. Consequently, present contempt petition is dismissed and notices issued are discharged. However, petitioners are granted liberty to raise their grievances in accordance with law.

MANMOHAN, J

SEPTEMBER 03, 2015

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