

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CONTEMPT PETITION NO. 608 OF 2016
IN
WRIT PETITION NO.1677 OF 2014

ANJALI ANIL TARE
VERSUS
SUBHASHCHANDRA SADASHIV SADAMATE AND ANOTHER

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Advocate for Petitioner : Shri Mukul S Kulkarni and Shri D.A.Madke.
Advocate for Respondents 1 and 2 : Shri Godsay Satish M..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 19th December, 2016

Per Court:

1 I have heard the learned Advocates at length on 13.12.2016
and today.

2 There is no dispute that insofar as the office order No.3400
dated 29.05.2009 in respect of the revised pay fixation of the Petitioner is
concerned, the judgment delivered by the Industrial Court dated
19.11.2013, which has been sustained by the judgment of this Court dated
01.10.2014, simply makes mention of the contention of the Petitioner in
one sentence as under:-

“The Complainant has also prayed for the declaration that the

Order No.3400 dated 29.05.2009 fixing her revised pay is illegal.”

3 This was followed by the declaration of the Industrial Court in clause (3) of it's order dated 19.11.2013 which reads as under:-

"(3) It is hereby declared that the Order No.3400 dated 29.05.2009 in respect of revised pay fixation of the Complainant is illegal and the same is quashed and set aside."

4 The grievance of the Petitioner before this Court is that the Respondents have committed contempt of the order of this Court in revising the pay scale of the Petitioner in the same manner as was done vide order No.3400 dated 29.05.2009. The same pay scale has, therefore, been fixed by the Respondent by its communication dated 05.12.2015.

5 Shri Kulkarni, learned Advocate for the Petitioner, has placed on record the compilation of papers (six pages) which is marked as Exhibit "X" for identification. The contention is that by the office order dated 29.10.1990, the Superintending Engineer had granted the deemed date of promotion to the Petitioner as an Upper Division Clerk (UDC) from 30.09.1980. Further communication dated 03.12.1991 indicates that the Petitioner has not been granted the deemed date of promotion, though it is stated below paragraph 3 that the date of joining on promotion as UDC is 13.11.1990.

6 The Petitioner was working as UDC initially at Jalgaon and then transferred to Parbhani. She sought transfer to Jalgaon and as there was no post of UDC available, she agreed for reversion as a Lower Division Clerk (LDC). In my view, she would, therefore, be the senior-most LDC as she had given up her promotion to UDC.

7 It is then pointed out by the office order dated 30.07.2004 that the Petitioner, who was working earlier as UDC, was deemed to have been promoted as UDC w.e.f. 11.07.1984. Based on these documents, the Petitioner contends that the re-fixation of her scale by the communication dated 05.12.2015 is again erroneous and unsustainable and this would amount to disobeying the order of this Court.

8 Shri Godse, learned Advocate for the Respondents, has placed on record the compilation of four documents which are collectively marked as Exhibit "Y" for identification. It is submitted that the benefits of UDC as were extended to the Petitioner are mentioned in the service book which are the first three pages of Exhibit Y. He submits that page 4 is the portion of the relevant Rules applicable to the case of the Petitioner whereby, Rule 12(a) and Rule 12(b) would come into play and the Petitioner would be barred from being considered for promotion on a

higher post for a period of two years considering the voluntary reversion sought by her. He, therefore, contends that it was on the basis of the documents that re-fixation was done and that has been done by circumspection.

9 Shri Godse further submits that the element of recovery as per the statement annexed to the office order dated 05.12.2015 is an aberration and is unintended and the Respondent would not press it into service.

10 I find that the jurisdiction of this Court under the Contempt of Courts Act is not required to be invoked in this case for the reason that this Court has merely dismissed Writ Petition No.1677/2014 filed by the Respondents challenging the judgment of the Industrial Court dated 19.11.2013. No directions have been issued by this Court except that the judgment of the Industrial Court has been upheld. Secondly, if the judgment of the Industrial Court has not been complied with, the remedy of Section 48(1) of the MRTU & PULP Act, 1971 may be available to the Petitioner. Nevertheless, I find that considering the disputed issues and as to whether, the re-fixation of scale of the Petitioner has been properly done or not, cannot be a subject matter of the Contempt of Court proceedings.

11 Reliance is placed by Shri Kulkarni on the judgment of the Honourable Supreme Court in the matter of *Union of India vs. Ashok Kumar Aggarwal*, **(2013) 16 SCC 147**, to contend that repetition of the order amounts to contempt. There can be no dispute about the ratio laid down in the said judgment. However, in this case, I find that firstly, the element of willful, intentional and deliberate disobedience of the Industrial Court's order is not visible and secondly, re-fixation of the scale of the Petitioner done by the Respondent involves various factors as noted above which are disputed by the Petitioner. These disputed factors cannot be adjudicated upon while deciding the petition under the Contempt of Courts Act since the said proceedings cannot be pressed into service as like execution proceedings.

12 In the light of the above, this Contempt Petition is, therefore, dismissed.

13 Nevertheless, in order to ensure that ends of justice are met, I deem it proper to observe that the fate of this Contempt Petition shall not come in the way of the Petitioner either for making a proper representation for reconsideration of her grievance or for assailing the order dated 05.12.2015 before the Industrial Court for a proper

adjudication, if so desired by the Petitioner.

14 At this stage, Shri Godse submits that whatever was the difference of the amounts to be paid to the Petitioner, she has been paid through two cheques for a total amount of Rs.1,88,562/-, which the Petitioner has accepted before this Court under protest and without prejudice to her rights.

15 As such, this payment shall not be an impediment to the Petitioner if her grievance as recorded above persists and in the event, she takes out the proceedings as against the office order dated 05.12.2015, the amount paid may be taken into account by the Court adjudicating upon the said cause of action.

kps

(RAVINDRA V. GHUGE, J.)