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

% ***Judgment Dated: 5th August, 2016***

+ **W.P.(C) 6834/2016**

SANTOSH KUMAR VERMA

..... Petitioner

Through : Mr. M.K. Bhardwaj with
Mr. Shriambhra Kashyap, Advocates

versus

KENDRIYA VIDYALAYA SANGATHAN

..... Respondent

Through : Mr. S. Rajappa with Dr. Puran Chand,
Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

1. The petitioner is aggrieved by the order dated 11.07.2016 passed by the Central Administrative Tribunal(hereinafter referred to for short as 'the Tribunal') in MA.745/2016 which was filed by the respondent in a Contempt Petition No.666/2015 in OA.1027/2014 filed by the petitioner herein after the OA filed by the petitioner was allowed.
2. The grievance of the petitioner was that he was not granted benefit of GPF Pension Scheme in spite of his entitlement. Petitioner filed an OA registered as 1027/2014. This OA was disposed of along with OA.1039/2014 filed by one Usha Rani Singh by an order dated 25.03.2014. The concluding part of the order dated 25.03.2014 reads as under:

“5. In our view, considering the submissions made by the learned counsel for the applicant and the documents available on

record, these cases can be disposed of at the admission stage itself. Accordingly, we direct the respondents to consider the cases of the applicants in these OAs in the light of the aforesaid order of Ernakulam Bench of the Tribunal as upheld by the Hon'ble High Court of Kerala at Ernakulam. They shall also convey the decision taken in the matter to the applicants within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs."

3. Since the directions contained in the order dated 25.03.2014 were not complied with, a Contempt Petition was filed by Usha Rani Singh. Upon filing of the Contempt Petition, the order dated 25.03.2014 passed by the Tribunal was complied by the respondent. On 12.3.2015, the respondent passed a common order, which reads as under:

"F.No.110125/KVS/PF/2014/CC/URS

Speed post
Dated: 12.3.2015

ORDER

WHEREAS Smt. Usha Rani Singh, Retired Vice-Principal, KV. No.1, Delhi Cantt., New Delhi and Shri S.K. Verma, Dy. Commissioner, KVS, RO, Delhi(now RO, Lucknow) has filed OA. No.1039/2014 and NO.1027/2014 respectively before the Hon'ble CAT, Principal Bench, New Delhi for extending the benefit of GPF-cum-pension scheme.

WHEREAS The Hon'ble CAT, Principal Bench, New Delhi vide order dated 25.3.2014 has passed the following order:

"In our view, considering the submissions made by the learned counsel for the applicant and the documents available on record, these cases can be disposed of at the admission stage itself. Accordingly, we direct the respondents to consider the cases of the applicants in these OAs in the light of the aforesaid order of Ernakulam Bench of the Tribunal as upheld by the Hon'ble High

Court of Kerala at Ernakulam. They shall also convey the decision taken in the matter to the applicants within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.”

WHEREAS due to non-compliance of the Hon’ble CAT order dated 25.3.2014, Smt. Usha Rani Singh, Retd. Vice-Principal, KV No.1, Delhi Cantt has filed Contempt Petition bearing No.CP No.646/2014 in OA No.1039/2014.

NOW THEREFORE it has been decided to comply with the order dated 25.3.2014 of the Hon’ble CAT, Principal Bench, New Delhi subject to furnishing an undertaking to the effect that he will return all the benefits extended to him if the need arises.

Conversion of CPF to GPF in case of Shri S.K. Verma, Dy. Commissioner, KVS, RO, Delhi(Now RO, Lucknow) is hereby allowed subject to the conditions mentioned above and outcome of pending SLP in the case of Shri Johnson P. John.

Accordingly the order/judgment dated 25.3.2014 of the Hon’ble CAT, Principal, Bench, New Delhi has been complied with.

Sd/-
(AVINASH DIKSHIT)
Commissioner

Shri S.K. Verma,
Dy. Commissioner,
KVS, RO, Lucknow”

4. Since the order of the Tribunal was complied with, the Contempt Petition was withdrawn on 26.10.2015.
5. After the order of the Tribunal dated 25.03.2014 was complied with, the petitioner received a show cause notice dated 06.10.2015 calling upon the petitioner to show cause as to why the benefit of conversion from CPF to GPF-Cum-Pension Scheme allowed to him vide office order dated 12.03.2015 be not withdrawn. Aggrieved by the said show cause notice, the petitioner filed a Contempt Petition bearing no.666/2015.

This Contempt Petition was disposed by an order dated 26.10.2015, wherein the following order was passed:

“Having argued for some time, counsel for the applicant seeks permission to withdraw the instant Contempt Petition being premature with liberty to file fresh Contempt Petition, if need be, and with prayer that the applicant may be permitted to file reply to the show cause notice dated 6.10.2015(Annexure P-12) within one week from today.
Ordered accordingly.”

6. In the M.A. 745/2016 filed by the respondent, the following prayer was made:

“(i) Grant permission to the respondent to pass an order on the reply dated 27-10-2015 given by the petitioner to the show cause notice dated 06-10-2015; and
(ii) pass such further or other orders as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case and render justice.”

7. The Tribunal allowed the MA. Operative part of the order reads as under:

“6.....In a similar case of Ms. Usha Rani Singh(OA-1039/2014) our view was that if the respondents wanted to review their order dated 12.03.2015, they should take leave of this Court before doing so in order to avoid contempt action. The respondents have accordingly sought permission of this Court to pass order on the reply received from the applicant to the show cause notice.

7. We therefore, find ample justification in allowing this M.A. The OA application shall, however, be at liberty to avail of his legal remedies under law if he is aggrieved by the order passed by the respondents. MA stands disposed of accordingly.”

8. The learned counsel for the petitioner is aggrieved by the order passed by the Tribunal dated 11.07.2016 in M.A.745/2016. Counsel for the

petitioner submits that by granting a blanket leave to the respondent to pass an order would render the decision of the Tribunal dated 25.03.2014 a nullity. He further submits that by passing the aforesaid order, the Tribunal has also rendered the order passed in Contempt Petition 666/2015 a nullity as the Contempt Petition was withdrawn by the petitioner with liberty to file a fresh Contempt Petition. It is, thus, prayed that in case the order of the Tribunal is not modified or clarified, the petitioner will be deprived of a remedy of filing of a Contempt Petition against the respondent which was neither the intent of the Tribunal nor would serve the ends of justice. It is also contended by the counsel for the petitioner that no liberty was required by the respondent to pass a fresh order. However, by liberty having been granted, valuable rights of the petitioner have been affected.

9. Mr. Rajappa, learned counsel for the respondent who has entered appearance on an advance copy submits that the apprehensions of the petitioner are unfounded. He submits that the respondent filed M.A. having regard to the view of the Tribunal as expressed in the order of 10.02.2016 in the case of Usha Rani Singh in which the order of 03.11.2015 was quoted and fearing that the Tribunal would hold the respondent guilty of contempt, such leave was obtained by the respondent. In the order of 10.02.2016 in which the order of 03.11.2015 has been quoted, reads as under:

“5. It is difficult to appreciate the change in the stand of the KVS owing to the change in the incumbent of the post of its Commissioner, especially when the earlier contempt proceedings were closed keeping in view of the position then taken by the KVS. If the new Commissioner felt that the earlier decision of the KVS was erroneous and the mistake was needed to be corrected, he should have approached this Tribunal through an

appropriate application seeking, inter alia, the Tribunal's permission before issuing the aforesaid show cause notice. The respondent, not having thought it proper to do so, prima facie, appears to have scant regard for court's orders."

10. Mr. Rajappa, also submits that after the O.A. filed by the petitioner and Usha Rani were decided on 25.03.2014, a communication dated 12.03.2015 was addressed to the petitioner. However, the respondent learnt that the order of 12.03.2015 was incorrect and illegal and could not have been passed and with a view to rectify the mistake and the illegality committed by the Commissioner of the respondent, the respondent was forced to issue a show cause notice to which a reply has been received and after seeking leave, the respondent has passed an order withdrawing the order of 12.03.2015.
11. We have heard learned counsel for the parties. The petitioner fears that by leave having been granted by the Tribunal, his right to file a fresh Contempt Petition would be curtailed while the stand of the respondent is that in case the leave was not granted to the respondent by the Tribunal, the respondent would be guilty of contempt as the Tribunal had observed in the order of 10.02.2016 the connected order dated 03.11.2015, which we have extracted hereinabove.
12. To resolve the matter and issue, we dispose of this writ petition with the following directions:
 - (i) The grant of leave to the respondent by itself would not be a ground against the petitioner from initiating contempt proceeding if the petitioner is so advised and is maintainable;
 - (ii) Granting leave would not be considered as a deemed approval of the action of the respondent. In case a Contempt Petition is filed, the Tribunal would consider the same unaffected by the order

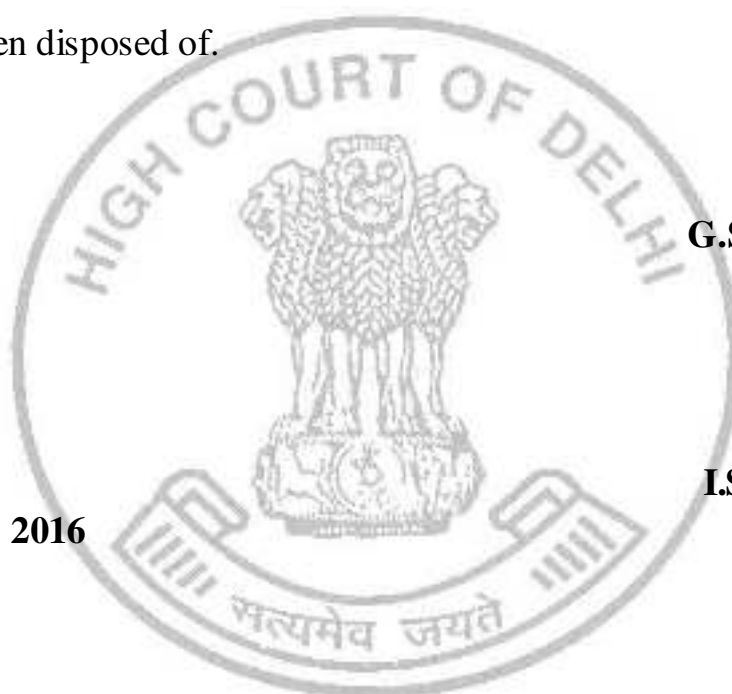
dated 11.07.2016, but will permit the respondent to raise all grounds available in accordance with law justifying reasons and thereafter pass a final order; and

- (iii) Legal rights of both the parties are kept open to be agitated in the appropriate forum and in proceedings, as and when filed.

13. With these directions, the writ petition stands disposed of.

CM.APPL 28182/2016(stay)

14. The application also stands disposed of in view of the writ petition having been disposed of.



G.S.SISTANI, J

I.S. MEHTA, J

AUGUST 05, 2016

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