

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.01.2017

PRONOUNCED ON : 28.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE B.RAJENDRAN
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

CONTEMPT PETITION No.1346 OF 2016

1. The Postal Pensioners' Association,
Sattur, rep by its Secretary,
Shri. D. Chellappa,
4/251, E.Bharathi Nagar,
NGO Colony, Sattur 626 203
Virudhunagar District.
2. K.Irulandi ... Petitioners
- vs.
1. Charlas Lova
Chief Postmaster General
Tamil Nadu Circle,
Anna Salai,
Chennai 600 002.
2. V.Ramasamy
Senior Superintendent of Post Offices,
Virudhunagar District,
Virudhunagar - 626 001. ... Respondents

Contempt Petition filed under Section 11 of the Contempt of Courts Act, praying to punish the respondent for Contempt of Court for willfully disobeying the order dated 02.03.2016 passed in W.P.No.19793 of 2015.

For Petitioners : Mrs.Hema Sampath,
Senior Counsel
for Ms.R.Rathna Thara

For Respondents : Mr.Su.Srinivasan,
Additional Solicitor
General

O R D E R

Petitioners are before this Court seeking to punish the respondents for wilfully disobeying the order dated 02.03.2016 passed by this Court in W.P.No.19793 of 2015.

2. The petitioners are members of Postal Pensioners Association and they all retired from service prior to 01.01.2006. On 01.09.2008, the Government of India issued an Official Memorandum (OM) with regard to revision of pension of Pre-2006 family pensioners and on 03.10.2008, the Director PP, Ministry of Personnel, Public Grievance of Pension, Government of India issued certain clarifications by giving a complete go bye to the resolution dated 29.08.2008 based on which, the Official Memorandum dated 01.09.2008 was issued. The said OM dated 03.10.2008 was challenged by various employees Unions in different Benches of CAT and finally the OM dated 03.10.2008 was quashed by the full Bench of CAT, New Delhi by a common order dated 01.11.2011 in O.A.No.655 of 2010 with a direction to revise the pension of all Pre-2006 retirees with effect from 01.01.2006 and pay them arrears within a period of three months on receipt of the order.

3. Despite their representation dated 24.01.2012,

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since their pension was not revised, the petitioners

approached the CAT, Madras Bench in O.A.No.1315 of 2012 and the Tribunal, by an order dated 10.06.2012, allowed the said application, directing the respondents therein to re-fix the pension of Pre-2006 retirees with effect from 01.01.2006 based on the Resolution dated 29.08.2008 and to pay the arrears consequent upon such re-fixation of pension, within a period of ninety days from the date of receipt of the order.

4. Challenging the said order of the Tribunal, the respondents herein filed a Writ Petition in W.P.No.19793 of 2015 along with a petition in M.P.No.1 of 2016 seeking interim stay and this Court had also granted interim stay of the order of the Tribunal. On 02.03.2016, this Court disposed of the said Writ Petition. Relevant portion of the said order reads as under:

"4. Today, when the matter is taken up for hearing, the learned Assistant Solicitor General appearing for the petitioner/Postal Department by drawing the attention of this Court to paragraph 11 of the affidavit filed in support of the writ petition, which reads as follows:

"11. It is respectfully submitted that however, the 2nd respondent approached the 1st respondent seeking pension on the basis of the decision rendered by the Full Bench of the Central Administrative Tribunal in O.A.No.655 of 2010 (Batch) dated

01.11.2011. The 1st respondent relying on the aforesaid decision had allowed the application and directed the petitioners to refix the pension of the members of the 2nd respondent with effect from 01.01.2006 based on the resolution dated 29.08.2008 and pay them the arrears consequent upon such refixation of pension within a period of 90 days from the receipt of the order. Since the aforesaid order is against the policy decision of the authorities, the instant Writ Petition."

would submit that the decision of the Full Bench of the Tribunal in O.A.No.655 of 2010 (Batch) dated 01.11.2011 has been accepted by the authorities in O.M.No.38/37/08 P & PW (A), Government of India, Ministry of Personnel, PG & Pensions, Department of Pension & Pensioners' Welfare dated 30.07.2015. The attention of this Court has also been drawn to the Office Memorandum in CPAO/IT & Tech/Revision Pre-2006/2015-16/1733, dated 21.01.2016, wherein an advise was given to all the Heads of CPPCs & Government Account Departments of all the Banks to clear the pendency of arrear payments pertaining to revision authorities issued by CPAO upto 31.12.2015.

5. In view of the above, nothing survives for consideration in this Writ Petition and hence, the same is closed, however with a direction to the authorities concerned to comply with the O.Ms. referred

to above. No costs. Consequently, connected miscellaneous petitions are closed."

5. Since the said order of this Court has not been complied with by the respondents, the petitioners are before this Court with this Contempt Petition.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. The main grievance of the petitioners is that though they are entitled to higher pension in terms of the Official Memorandum and that the said benefits have been extended by an order of the Tribunal and also the same being confirmed by an order of this Court dated 02.03.2016 in W.P.No.19793 of 2015, they are yet to reap the benefits of the Official Memorandum.

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8. Learned Senior Counsel for the petitioner drew the attention of this Court to various charts pertaining to the Pension Calculation Statements. Referring to the case of D.Chellappa, who is one of the petitioners herein, learned Senior Counsel stated that there is discrepancy in his case. But, a cursory glance of the material records shows that there is no discrepancy in his case. In the case on hand, the respondents have paid higher pension, which is more than the pay fixed in the Official Memorandum. Out of 21 persons concerned, six persons have been paid more than the pay and the same has not been reduced. With regard to others, calculations have been made and amount has been paid, which according to the petitioners, is not correct.

9. According to the respondents, they have complied with the order of this Court, in its letter and spirit. If no amount is paid, certainly, it would amount to contempt. Admittedly, amount has been paid, which according to the respondents, is correct and according to the petitioners, it is not as per the Official Memorandum. As the calculation aspect is in dispute between the petitioners and the respondents, this Court cannot go into the disputed question of fact. Since the concerned persons in the Original Application are workmen within the definition of Section 2(s) of the Industrial Disputes Act, 1947 and the

respondent/Postal Department is an Industry within the meaning of Section 2(j) of the Industrial Disputes Act, whether the petitioners are entitled to higher amount or not, needs to be adjudicated either by resorting to an Industrial Dispute under Section 2(k) of the Industrial Disputes Act, 1947 or by filing a petition under Section 33c(2), as the case may be, depending upon the factual situation.

10. As we feel that no wilful disobedience is said to have been committed by the respondents, this Court opines that no contempt is made out by the respondents and hence, they are discharged from the contempt proceedings. In fine, this Contempt Petition is closed. However this Court makes it very clear that the rights of the petitioners, if any, in any other enactment including the one under the Industrial Disputes Act is not curtailed by this order.

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Dated at Madras this the day of 2017.

COURT OFFICER(O.S.)

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Ss/CO/09/03/2017

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One CC to the M/s.R.Rathna Thara, Advocate, Sr.No.3240