

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Contempt Case No.677 of 2015

ORDER:

This contempt case, under Sections 10 to 12 of the Contempt of Courts Act, 1971, is filed by the petitioner requesting to punish the respondents for wilfully not implementing the order of this Court, dated 29.01.2014, made in WP.no.18157 of 2006.

2. I have heard the submissions of Sri V. Narasimha Goud, learned counsel for the petitioner, and of Sri G. Vidya Sagar, learned senior counsel representing Sri A. Ravi Babu, learned Standing Counsel for APSRTC. I have perused the material record.

3. Before proceeding further, it is necessary to refer to the operative portion of the order, the disobedience of which is complained of. The said order dated 29.01.2014 made in WP.no.18157 of 2006, reads as under:

'53. In that view of the matter, in the present instance too, now there is no question of reinstatement of the petitioner though he may be entitled for consequential benefits including arrears of pay. Having regard to the facts and findings given above, this Court has no other option than setting aside the order of compulsory retirement of the petitioner, dated 17.12.2004, and the impugned proceedings, dated 12.06.2006. Consequently, the respondent Corporation is directed to treat the petitioner to have continued in the service till the date of his superannuation. The petitioner shall be paid full salary minus the monetary benefits he has already been paid treating as if he had been in service till the date his attaining the age of superannuation. The benefits shall be paid to the petitioner within three months, else the respondent Corporation shall be liable to pay interest at the rate of 6% per annum on completion of three months' time, till the actual payment.'

4. The case of the petitioner is that pursuant to the afore-stated orders, he is entitled to get all the benefits, which he would have earned during the period from 17.12.2004 to 31.05.2008, had he not been made to retire from

service, on 17.12.2004; and, that in view of the orders of this Court, he made a representation, dated 03.09.2014, to the 2nd respondent to extend the benefits; and, that there was no response; and hence, he got issued a legal notice, dated 31.01.2015, to the respondents informing them to implement the afore-stated orders of this Court; and, that the respondents having received the said notice did not either issue a reply or arrange to pay the benefits; and, hence, the said action of the respondents would tantamount to wilful disobedience of the orders of this Court.

5. The case of the 2nd respondent as stated in the counter affidavit, in brief, is this:

On 21.07.2015, the petitioner has been paid a sum of Rs.5,63,318/- *vide* cheque no.635183, dated 21.07.2015, in compliance of the order, dated 29.01.2014, of this Court in W.P.No.18157 of 2006; and, the same has been acknowledged by the petitioner *vide* receipt-cum-acknowledgment, dated 21.07.2015. The respondents are having high regard for the orders of the Court. There is no intention to disobey the orders of the Court.

6. The petitioner filed a reply affidavit, *inter alia*, stating as follows:

The petitioner is entitled to receive all the benefits which he would have received had he not been retired from service prematurely. The respondents are liable to pay salary equivalent to 105 days earned leave and other amounts towards HRA and other allowances. Hence, the respondents are still liable to pay a sum of Rs.1,85,819/- as per the calculations shown in the reply affidavit of the petitioner.

7. Respondents filed an additional counter reiterating their earlier stand and further stating as follows:

The petitioner was already paid an amount of Rs.50,471/-, on 21.04.2005, towards Employer contribution of Provident Fund for the period

from 17.12.2004 to 31.05.2008. The petitioner claimed an amount of Rs.58,758/- towards Earned leave salary for 105 days. The petitioner was paid full wages for the entire period from 17.12.2004 to 31.05.2008 treating as if he was in service. Had the petitioner really performed duties, he would have availed leaves and he would have suffered loss of salary for not performing duties. He was paid full salary for the said period as if he had performed duties during the entire period. He worked for 28 years in the Corporation; and, he had no leaves to his credit at the time of retirement in the year 2004 on medical grounds. He availed all leaves, which he had earned by performing duty for 28 years. Had he really performed duties during the subject period, he would have availed all leaves. He was further paid full salary for the period though he has not actually worked during the period. Since he was paid full wages for the entire period for which he was out of service, if he is to be paid leave salary for the same period of work, it would amount to double payment. The earned leave is intended for rest and recuperation. The workman has to render active service to earn earned leave. Since the petitioner did not earn the leave to his credit by actively working, he cannot claim leave salary. The Corporation has paid entire amount. The petitioner is not entitled to leave salary. The respondents never intended to disobey the orders and never disobeyed the others either wilfully or otherwise. Hence, the contempt case may be dismissed.

8. From the pleadings and the submissions made at the hearing in line with the pleadings of the parties, it emerges that the only issue that was raised by the petitioner is only in regard to non payment of leave salary in a sum of Rs.58,758/- towards earned leave salary for 105 days. It is to be reiterated that the only issue raised at the hearing is in regard to leave salary and, therefore, the said issue alone falls for determination.

9. During the period from 17.12.2004 to 31.05.2008, the petitioner was out of service, is not in dispute. Nonetheless, the respondent Corporation is directed to treat the petitioner to have continued in the service till the date of his superannuation. This Court also held that the petitioner would be entitled for consequential benefits including arrears of pay. Further, it was also held that the petitioner shall be paid full salary, minus the monetary benefits he has already been paid, treating as if he had been in service till the date his attaining the age of superannuation. Finally, the Corporation was directed to pay the benefits within three months or else it shall be liable to pay interest at the rate of 6%per annum on completion of three months till the date of actual payment. Thus, during the subject period, the petitioner did not actually render active service. However, in view of the orders of this Court, the said period was counted as service till the date of his superannuation. Since the petitioner did not actively work during that period, the only question is as to whether or not he is entitled to claim leave salary.

10. The petitioner bases his claim on the order of this court. The operative portion of the order of this Court is already extracted supra. Learned counsel for the petitioner contends that leave salary is one of the consequential benefits to which the petitioner is entitled to as per the orders of this Court.

11. Whereas, learned senior counsel, appearing for the respondents, would contend that all the amounts due and payable were paid; during 28 years of long service, the petitioner was having no leaves to his credit; he did not admittedly actively work during the subject period; but, in view of the orders in the writ petition, the said period was treated as service; had the petitioner actively worked during the subject period, he would have availed all the leaves; and, he would not have had any leaves to his credit; had he actually worked and availed the leaves, the question of claiming leave salary would not have arisen for consideration; if only the petitioner had actively worked he

would have earned the leave to his credit; since he did not actively work, no earned leave has accrued to his credit entitling him to encash the said leave and receive leave salary in lieu of the earned leave. Learned senior counsel would point out that admittedly the petitioner was not paid conveyance allowance, which is reimbursable by the Corporation, as he had not rendered active service and would submit that on the same analogy, the petitioner is not entitled to claim leave salary since he did not actively work during the subject period. He would also submit that a plain reading of the operative portion of the order in the writ petition would suggest that benefit of leave salary is not granted to the petitioner and that, therefore, by invoking contempt jurisdiction, the petitioner cannot claim a benefit, which is not granted in the writ petition and that if he wants to claim the said benefit he must initiate appropriate proceedings, but, cannot invoke the contempt jurisdiction.

12. In reply learned counsel for the petitioner while reading the operative portion of the order laid emphasis on the portion of the order wherein and whereby the respondent Corporation is directed to treat the petitioner to have continued in the service till the date of his superannuation and it was also held that the petitioner would be entitled for consequential benefits including arrears of pay. His submission is that earned leave is one of the consequential benefits of service.

13. I have bestowed my attention to the facts, which are not in dispute, and the submissions. The question that falls for consideration is – whether or not the petitioner who has not admittedly actively worked and who has only been treated to have continued in service from 17.12.2004 to 31.05.2008, the date of his superannuation, would earn leave to his credit and would be entitled to claim the leave salary in lieu of the earned leave.

14. Before proceeding further, it is necessary to refer to the decisions relied upon.

14. 1 In Andhra Bank rep., by its Chairman v. P. Balakrishna (Died) per LRs¹, a Full Bench of this Court while dealing with encashment of privilege leave of an employee of a Bank having considered various documents inter parties including Bipartite settlement between banking companies and workman held thus:

‘After going through various settlements of memoranda between the workmen and the employer, we are in no doubt to conclude that the privilege leave is intended for rest and recuperation and the workman has to render active service and thereby earn privilege leave to his credit. A workman out of service for any reason whatsoever is not entitled to privilege leave.’

In this cited case the subject matter of leave is privilege leave, which is specifically intended for rest and recuperation, and the decision turned on the facts of the case particularly the memoranda of settlement between the parties therein.

14.2 Further, in the decision rendered by a learned Division Bench of this Court in W.P.N.1125 of 002, (Between: The Management of APSRTC and others v. T. Govinda Reddy), one of the issues that fell for consideration was entitlement of the employee therein to gratuity and encashment of earned leave. The facts of the cited case disclose that the respondent-conductor therein was reinstated into service and his pay was fixed by duly granting notional increments for the period he was out of employment from 05.11.1971 to 22.08.1983, that is to say, from the date of removal to the date of reinstatement into service and the appellant Corporation treated as if the respondent-conductor was in service even during the said period and accordingly fixed his pay when he was reinstated into service by duly giving even notional increments for the said period, that is to say, from the period of

¹ 2005 (3) ALT 771 (FB)

removal till the date of reinstatement. Having regard to the said facts, this Court held as follows: -

‘In such view of the matter, there is absolutely no justification whatsoever on the part of appellant Corporation not to treat the period of absence as qualified service for the purpose of payment of gratuity and encashment of earned leave. The Corporation itself for all purposes treated the period from 05-11-1971 to 22-08-1983 as if the respondent was in active service.’

In this cited case the Corporation placed reliance on a decision of the Supreme Court in APSRTC v. S. Narsagoud [2003 (1) SCALE 336] and contended before the Division Bench that there is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and an order where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or an order accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earned during the period of absence. However, the learned judges of the Division bench distinguished, on facts, the cited decision of the Supreme Court, as in the case before the Division Bench, the Corporation and the employee understood the Award passed in the same manner and the Corporation fixed the pay scale of the respondent on his reinstatement into service by duly granting notional increments also for the period during which he was not in service.

14.3 Be it noted that the decision in the cited case was rendered in a case between the Management of APSRTC and T. Govinda Reddy, a workman, and is, therefore, squarely applicable to the facts of the case more particularly in the light of the fact that the issue with regard to encashment of earned leave during the period the workman was not actively in service, which is the subject matter of the present case, was also the subject matter of the cited case. In

the case on hand also the Corporation extended all benefits except conveyance allowance by treating as if the petitioner was in service during the subject period from 17.12.2004 to 31.05.2008. Had the petitioner continued in active service he would have automatically earned the leave. For no fault of the petitioner, he was kept out of active service. Therefore, the petitioner cannot be found fault for not doing active service. On a plain reading of the operative portion of the order of this Court, this Court is of the opinion that the petitioner is entitled to claim leave salary.

15. Viewed thus, this court finds that the petitioner is entitled to leave encashment and, he need not be directed to initiate independent action for recovery of the said amount.

16. On the above analysis, the Contempt Case is disposed of directing the respondents to pay to the petitioner earned leave salary for 105 days; however without any interest, as this Court finds that the payment was not made on a *bona fide* belief and as there is no wilful disobedience of the orders of this Court in regard to non payment of the said amount. However, the respondents shall pay the said amount within one month from the date of receipt of a copy of this order.

JUSTICE M. SEETHARAMA MURTI

27.02.2017

Vjl