

HONOURABLE SRI JUSTICE P.NAVEEN RAO

CONTEMPT CASE NO.786 OF 2017

Date: 22.12.2017

Between :

Dasari Seetha Naidu, W/o. D.Suresh Babu,
Aged about 60 years, occu: Retd.Principal,
R/o.H.No.31-8-12, G1, Aishwarya Flat,
Maruthi Nagar, Andhra Bank Street,
Vijayawada, Krishna District.

.... Petitioner/
petitioner

And

Prof.: Pradeep K.Sharma, Registrar,
Post Graduate & Research Institute,
Dakshana Bharatha Hindi Prachara Sabha,
Tinakachalam, Tyagarajanagar, Chennai.

.... Contemnor/
Respondent



This Court made the following :

HON'BLE SRI JUSTICE P.NAVEEN RAO

CONTEMPT CASE NO.786 OF 2017

ORDER:

Heard Sri M.Pitchaiah, learned counsel for petitioner and learned senior Counsel Sri P.Venugopal, representing Sri T.C.D.Sekhar, counsel on record, for respondent.

2. Petitioner filed Writ Petition No.5029 of 2016 praying to grant writ of mandamus by declaring the action of 4th respondent Institute in the writ petition, whose Registrar is sole respondent herein, in not paying the petitioner Pay Scales and retirement benefits as per UGC norms as arbitrary, unconstitutional, violate Articles 14, 16 and 21 of the Constitution of India and to consequently direct respondents to pay the petitioner UGC Pay scales applicable to him for the total period of service rendered by him and retirement benefits as per UGC norms with interest at 12% per annum.

3. Petitioner filed WPMP No.6424 of 2016 praying to direct 4th respondent in the writ petition to pay the petitioner Gratuity and pension as per Andhra Pradesh Revised Pension Rules with interest @ 12% per annum. This Court by order, dated 12.01.2017 directed 4th respondent to determine the pension and gratuity as per A.P. Revised Pension Rules, 1980 and to release retirement benefits within a period of two months from the date of receipt of copy of the order.

4. Alleging that pension and gratuity is not determined and paid as directed by this court and the said action of the Registrar

amounts to deliberate and wilful disobedience of directions of this Court, this contempt case is filed.

5. In the counter-affidavit respondent averred that the Post Graduate & Research Institute is established by the Dakshina Bharat Hindi Prachar Sabha (for brevity hereinafter referred to as the Sabha); that the A.P. Revised Pension Rules are not applicable to employees of the Sabha; that issue of determining his gratuity and pension in accordance with the A.P. Revised Pension Rules does not arise; and as the order passed by the Court is contrary to the service conditions of the employees of respondent – Sabha vacate petition is filed praying to vacate the interim order and the same is pending consideration of this Court.

6. In the above factual background, counsel appearing for parties made the following submissions:

7.1. Learned counsel for petitioner contended that petitioner is governed by the A.P. Revised Pension Rules, as notified by the Government in G.O.Ms.No.14, Higher Education (UE.II) Department, dated 20.02.2010. Having regard to the Government orders and the similar issue considered by the Division Bench of Kerala High Court, the Court gave a clear mandate to grant retirement benefits in accordance with the provisions of A.P. Revised Pension Rules. According to learned counsel, not paying retirement benefits is causing grave hardship.

7.2. He would submit that once an order is passed by the Court, as long as said order is in force, it is mandatory for the respondent to comply. He would further submit that mere pendency of the

vacate petition is not a ground to disobey the orders. According to learned counsel, it is not a case where payment of pension would result in irreversible/ irretrievable consequence to the respondent.

7.3. He would further submit, as long as interim order is subsisting, even assuming there is merit in the stand of respondent that this court has no jurisdiction to entertain the writ petition, until that issue is decided, the order passed by the court has to be complied.

7.4. In support of this submission, learned counsel placed reliance on the decision of Supreme Court in **Tayabhai M.Bagarwalla and another v. Hind Rubber Industries Pvt.Ltd., and others**¹.

8.1. Learned senior counsel representing respondent contended that as preliminary objection on maintainability of writ petition is raised, without first deciding that issue, court cannot compel the respondent to comply its order. According to the learned senior counsel, grievances on service conditions of the employees working in the Sabha have to be agitated only in the Courts within the territorial jurisdiction of State of Tamil Nadu and, therefore, present writ petition is not maintainable.

8.2. He would further submit that what is sought to be complied is *ex parte* interim order. As petitioner claim is not valid, praying to vacate the interim order, respondent filed WVMP No.2634 of 2017 and same is pending consideration of this court. Even before vacate petition is considered, the respondent cannot be compelled

¹ (1997) 3 SCC 443

to pay retirement benefits. He would submit that A.P. Revised Pension Rules have no application to the employees working in the Sabha.

8.3. Having regard to these objections, which go to the root of the issue, without deciding the maintainability of writ petition and the claim, respondent cannot be compelled to obey *ex parte* interim order. Once amount is paid, it cannot be recovered from the retired employee and compliance would result in irretrievable situation to the respondent. He would urge the court to dismiss the contempt case.

8.4. In support of his submissions, learned senior counsel placed reliance on following decisions:

- i) **State of J & K vs. Mohd.Yaqoob Khan and others²**; and
- ii) **Judgment in CC No.150 of 2017 dated 1.9.2017 of this Court.**

9. Two points fall for consideration:

- i) Whether objection on maintainability of writ petition is a ground for not complying with interim order of the Court?
- ii) Once vacate petition is filed, whether court has to differ the hearing of contempt case?

POINT NO.1:

10. Once, writ petition is entertained and order is passed, a party to the writ petition cannot refuse to implement order passed by the Court merely because he takes objection to maintainability of writ petition. The said objection of learned senior counsel is

² (1992) 4 SCC 167

stated to be rejected. I am fortified in my view by the following decisions of Supreme Court.

11.1. In **Hind Rubber Industries** (supra) this very issue was answered by the Hon'ble Supreme Court. Question considered by the Supreme Court was, whether a person who disobeyed the interim order made by the Civil Court can be punished under Order 39 Rule 2-A of Code of Civil Procedure, where it is ultimately found that the Civil Court had no jurisdiction to entertain and try the suit. Learned single Judge of Bombay High Court has opined that when it is held that the Civil Court has no jurisdiction to entertain the suit a person cannot be punished of violation of interlocutory order.

11.2. By referring to Section 9-A of CPC, as amended by Maharashtra Amendment Act No.65 of 1977, Supreme Court held as under:

“16. In our opinion, the provision merely states the obvious. It makes explicit what is implicit in law. Just because an objection to the jurisdiction is raised, the court does not become helpless forthwith — nor does it become incompetent to grant the interim relief. It can. At the same time, it should also decide the objection to jurisdiction at the earliest possible moment.

....

The question is whether the said decision of the High Court means that no person can be punished for flouting or disobeying the interim/interlocutory orders while they were in force, i.e., for violations and disobedience committed prior to the decision of the High Court on the question of jurisdiction. Holding that by virtue of the said decision of the High Court (on the question of jurisdiction), no one can

be punished thereafter for disobedience or violation of the interim orders committed prior to the said decision of the High Court, would indeed be subversive of the Rule of Law and would seriously erode the dignity and the authority of the courts. We must repeat that this is not even a case where a suit was filed in the wrong court knowingly or only with a view to snatch an interim order. As pointed out hereinabove, the suit was filed in the Civil Court bona fide. We are of the opinion that in such a case the defendants cannot escape the consequences of their disobedience and violation of the interim injunction committed by them prior to the High Court's decision on the question of jurisdiction.”

12. In **Ravi S.Naik v. Union of India**³, referred to in **Hind Rubber Industries** (supra), Supreme Court observed as under:

“19. It is settled law that an order, even though interim in nature, is binding till it is set aside by a competent court and it cannot be ignored on the ground that the court which passed the order had no jurisdiction to pass the same. **Moreover the stay order was passed by the High Court which is a superior Court of Record and ‘in the case of a superior Court of Record, it is for the court to consider whether any matter falls within its jurisdiction or not. ..’**”

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28. The correct principle, therefore, is the one recognised and reiterated in Section 9-A — to wit, where an objection to jurisdiction of a civil court is raised to entertain a suit and to pass any interim orders therein, the Court should decide the question of jurisdiction in the first instance but that does not mean that pending the decision on the question of jurisdiction, the Court has no jurisdiction to pass interim orders as may be called for in the facts and circumstances of the case. A mere objection to jurisdiction does not instantly disable the court from passing any interim orders. It can yet pass appropriate orders. At the same time, it should also decide the question of jurisdiction

³ 1994 Supp (2) SCC 641

at the earliest possible time. The interim orders so passed are orders within jurisdiction when passed and effective till the court decides that it has no jurisdiction to entertain the suit. These interim orders undoubtedly come to an end with the decision that this Court had no jurisdiction. It is open to the court to modify these orders while holding that it has no jurisdiction to try the suit. Indeed, in certain situations, it would be its duty to modify such orders or make appropriate directions. ...” [emphasis supplied]

13. It is also appropriate to note that though notice was issued before admission of writ petition no objection was raised on maintainability of writ petition. On further consideration, the court admitted the writ petition and issued rule. Thus, merely because the respondent takes objection on maintainability of the writ petition in counter affidavit is no good ground to disobey directions issued by the Court. Further, until issue of maintainability is decided and interim order is vacated same is binding on parties to litigation and requires its compliance.

14. Though Court is not expressing any opinion on the maintainability of writ petition on the question of territorial jurisdiction and/or on the claim of application of A.P. Revised Pension Rules, 1980, only to appreciate the contention of learned senior counsel, the issue is considered. *Prima facie*, it is seen that petitioner was working in State of Andhra Pradesh before his retirement, is living in State of Andhra Pradesh and his retirement benefits have to be paid in State of Andhra Pradesh. If he succeeds in his claim to monthly pension as per A.P. Revised Pension Rules, 1980, his monthly pension has to be paid in State of Andhra Pradesh. The cause of action is based on bundle of facts and even if a small fraction of cause of action arises in State of Andhra

Pradesh, this Court has jurisdiction to entertain the writ petition and merely the Head Office is located in Chennai in State of Tamil Nadu is no ground to reject the writ petition on that ground. Further, as per orders of State of Andhra Pradesh notified in G.O.Ms.No.14 Higher Education (UE.II) Department, dated 20.02.2010, the employees working in institution like this respondent appears to be covered by the provisions of A.P. Revised Pension Rules. Thus, it is not a case to throw away the writ petition on this ground. However, it is made clear these observations are made only to test the contention of learned senior counsel on this issue.

POINT NO.2:

15. In **Yaqoob Khan** (*supra*), on 19.03.1990 *ex parte* interim order was passed by the High Court while directing notice to the respondents in the writ petition as also in the stay petition with a direction to list the matter in the second week of May, 1990. Alleging non-compliance of the directions, on 02.04.1990 petitioner filed contempt case. Proceedings of contempt are initiated on the allegation of violation of interim directions. Aggrieved thereby, the State of Jammu & Khasmir preferred Civil Appeal No.3472 of 1992 before the Supreme Court. It was contended that as matter was directed to be listed for further consideration and no time limit was fixed in the interim order, the appellant State and its Officers were under the impression that they were not required to obey the orders immediately. Supreme Court noted that the direction issued by the High Court as an interim order in a pending interlocutory matter was, in substance, a final order allowing the

writ petition in part without hearing the other side and the direction was not for maintenance of *status quo* nor was it a restraint order on the State authorities forbidding them from taking any step. Supreme Court held as under:

“5. We find great force in the argument of Mr Salve that so long the stay matter in the writ petition was not finally disposed of, the further proceeding in the contempt case was itself misconceived and no orders therein should have been passed.

6. ... The scope of a contempt proceeding is very different from that of the pending main case yet to be heard and disposed of (in future). Besides, the respondents in a pending case are at a disadvantage if they are called upon to meet the merits of the claim in a contempt proceeding at the risk of being punished. It is, therefore, not right to suggest that it should be assumed that the initial order of stay got confirmed by the subsequent orders passed in the contempt matter.

7. We, therefore, hold that the High Court should have first taken up the stay matter without any threat to the respondents in the writ case of being punished for contempt. Only after disposing it of, the other case should have been taken up. It is further significant to note that the respondents before the High Court were raising a serious objection disputing the claim of the writ petitioner. Therefore, an order in the nature of mandatory direction could not have been justified unless the court was in a position to consider the objections and record a finding, *prima facie* in nature, in favour of the writ petitioner. Besides challenging the claim on merits, the respondent was entitled to raise a plea of non-maintainability of a writ application filed for the purpose of executing a decree. It appears that at an earlier stage the decree in question was actually put in execution when the parties are said to have entered into a compromise. According to the case of the State the entire liability under the decree (read with the compromise) has already been discharged. The dispute,

therefore, will be covered by Section 47 of the Code of Civil Procedure. It will be a serious question to consider whether in these circumstances the writ petitioner was entitled to maintain his application under Article 226 of the Constitution at all. We do not want to decide any of these controversies between the parties at this stage except holding that the orders passed in the contempt proceeding were not justified, being premature, and must, therefore, be entirely ignored. The High Court should first take up the stay matter in the writ case, and dispose it of by an appropriate order. Only thereafter it shall proceed to consider whether the State and its authorities could be accused of being guilty of having committed contempt of court.”

16. W.P.No.41555 of 2015 is filed challenging the decision of APAT and the decision of the authorities impugned before APAT. Petitioner sought for interim suspension of order of APAT, the order impugned and direction to reinstate. The Court granted interim suspension as prayed. Contempt Case No.150 of 2016 is filed alleging that interim order dated 22.12.2015 was not complied. There was difference of opinion between two learned Judges composing the Division Bench on application of decision in **Mohd.Yaqoob Khan** (supra). On two points, matter was referred to *Hon'ble Justice V.Ramasubramanian* for his opinion. They are:

- i) Whether the second respondent is guilty of wilful and deliberate disobedience to the order dated 22-12-2015 passed by this Court in W.P.M.P.No.53654 of 2015 in W.P.No.41555 of 2015 in terms of Section 2(b) of the Contempt of Courts Act, 1971? and
- ii) Whether the disposal of W.P.No.41555 of 2015 by a final order dated 24-6-2016 recording that miscellaneous petitions, pending if any, stand disposed of as infructuous would have any impact upon the interim order dated 22-12-2015 in relation to which these contempt proceedings were initiated?

17. From the reference answered by *Hon'ble Justice V.Ramasubramanian*, following principles can be culled out:

i) In all fairness, the vacate stay petition should be up first before deciding the contempt. No party to a proceeding can be held to ransom with *ex parte* interim orders, especially when an application for vacating the interim order was already on file;

ii) The principle behind Article 226 (3) has to be kept in mind while dealing with a contempt petition; and

iii) Enforcement of *ex parte* interim stay/suspension/direction is prone to result irreversible consequences. **Mohd. Yaqoob Khan** (supra) does not make distinction on the ground that implementation of interim order would not have become either final or irreversible.

18. In the case on hand, on 16.03.2016, Notice before admission was issued. Counsel for petitioner was also permitted to take out personal notice on respondents 2 to 4 by registered post with acknowledgement due and file proof of service. On 28.03.2016 appearance was entered for 4th respondent. On 06.04.2016, Writ Petition was admitted and *Rule Nisi* was issued, returnable in four weeks and WPMP No.6424 of 2016 was directed to be listed after summer vacation. On 18.01.2017, when WPMP No.6424 of 2016 was taken up for consideration, there was no representation for respondents and matter was adjourned to 19.01.2017. Matter was taken up on 20.01.2017. On 20.1.2017 also, when the matter was called, there was no representation on behalf of respondents. After affording sufficient time, on hearing counsel for petitioner and on

perusal of material on record as Court was *prima facie* satisfied of the claim of petitioner, interim order was passed directing grant of pension and gratuity as per A.P. Revised Pay Rules. Thus, interim order was made after affording due opportunity and was not an *ex parte* order at the initial stage of institution of the writ petition as sought to be projected by the learned senior counsel. Further, WVMP was filed on 25.06.2017 only after notice in contempt case was issued.

19. Admittedly, so far order of this Court is not complied. Defence of the respondents on both counts i.e., on jurisdiction of this Court to entertain the writ petition and maintainability of claim of pension under the A.P. Revised Pay Rules and that the order, which is sought to be complied with, is an *ex parte* order, stated to be rejected. Except contending on merits of the claim of petitioner, no explanation is offered on allegations of disobedience of the order of Court. It is clear from the facts of this case that there is clear disobedience of order of the Court.

20. Disobedience of an order of court, whether prohibitive or mandatory, whether made *ex parte* or upon hearing both parties, whether interim or perpetual, amounts to contempt if it is calculated or tends to interfere with the administration of justice, or brings it into disrespect or disregard. If an order, passed by a competent court, is clear and unambiguous, disobedience or breach of such an order would amount to contempt of Court. Once a direction is issued by a competent Court, right or wrong, it has to be obeyed and implemented without reservation. Flouting an order of the Court would render the party liable for contempt.

(Jagarmudi Chandramouli v. K.Appa Rao⁴; Director of Education, Uttaranchal v. Ved Prakash Joshi⁵; Union of India v. Subedar Devassy PV⁶; Prithawi Nath Ram v. State of Jharkhand⁷; Karnataka Housing Board v. C. Muddaiah⁸; Patel Rajnikant Dhulabhai and Anr. vs. Patel Chandrakant Dhulabhai and Ors.⁹).

21. Respondent has not offered any explanation why it is not complied. It is, therefore, necessary to see whether the disobedience is deliberate and/or wilful.

22. In **K.Mallaiah and Ors. vs. Sandeep Kumar Sultania and Ors.**¹⁰, this Court extensively reviewed the law on various aspects of contempt of Court. On what amounts to wilful disobedience, Division Bench observed:

“34. Wilful means an act or omission which is done voluntarily and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with the purpose of either disobeying or disregarding the law. (Patel Rajnikant Dhulabhai MANU/SC/3163/2008MANU/SC/ 3163/2008 : (2008) 14 SCC 561; Ashok Paper Kamgar Union v. Dharam Godha MANU/SC/0679/2003MANU/SC/ 0679/2003 : (2003) 11 SCC 1). Wilful would exclude casual, accidental, bona fide or unintentional acts or genuine inability to comply with the terms of the order. Whether or not disobedience is willful depends on the facts and circumstances of each case. Even negligence and carelessness can amount to disobedience. (Kapildeo Prasad Sah MANU/SC/0516/1999MANU/SC/0516/1999 : (1999) 7 SCC 569).

⁴1967(1) An.W.R.129

⁵ 2005(6) SCC 98

⁶ 2006(1) SCC 613

⁷ (2004) 7 SCC 261

⁸ (2007) 7 SCC 689

⁹ MANU/SC/3163/2008=(2008) 14 SCC 561

¹⁰ MANU/AP/0361/2015

35. If a party who is fully in the know of the order of the Court, or is conscious and aware of the consequences and implications of the Court's order, ignores it or acts in violation thereof, it must be held that the disobedience is wilful. It may not be possible to prove the actual intention behind the act or omission. A Court can approach the question only objectively, and it may presume the intention from the act done as every man is presumed to intend the probable consequence of his act. (N.S.Kanwar MANU/PH/ 0346/1994MANU/PH/0346/1994: 1995 Cri.L.J. 1261 (Punjab & Haryana HC DB)). To establish contempt of court, it is sufficient to prove that the conduct was willful and that the contemnor knew of all the facts which made it a breach of the order. It is not necessary to prove that he appreciated that it did breach the order. (St. Helens Ltd. v. Transport & General Workers Union (1972) 3 All ER 101; Adam Phones Ltd. v. Goldschmidt (1999) 4 All ER 486). While the jurisdiction exercised in cases of contempt is quasi-criminal in nature and the court must be satisfied, on the material before it, that contempt of court was in fact committed, such satisfaction may be derived from the circumstances of the case. (Ram Autar Shukla v. Arvind Shukla MANU/SC/0636/2000MANU/SC/0636/2000 : 2000(8) SCC 512; Bank of India v. Vijay Transport MANU/SC/0023/1987MANU/SC/0023/1987 : 1986 (2) A.L.T. 131). For the purposes of judging 'civil contempt', intention or mens rea is not relevant. The question is only whether the breach was on account of willful disobedience i.e., whether it was not casual or accidental and unintentional. (V.C. Govindaswami Mudali v. B. Subba Reddy (2013) 11 SCC 332).

36. Of late, Courts are coming across several instances where senior government officers display scant regard for orders of the court, and offer lame excuses for its violation. (E.T. Sunup vs. C.A.N.S.S. Employees Association and Anr MANU/SC/0886/2004MANU/SC/0886/2004 : (2004) 8 SCC 683). It has become a tendency with government officers to somehow or the other circumvent the orders of the court taking recourse to one justification or the other even if, ex facie, they are unsustainable. This tendency of undermining the court order should not be countenanced. (Maninderjit Singh Bitta MANU/SC/1246/2011MANU/SC/1246/2011 : (2012) 1 SCC 273; E.T. Sunup v. C.A.N.S.S. Employees Assn. MANU/SC/0886/ 2004MANU/ SC/0886/2004 : (2014) 7 SCC 280).

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70. Anyone who deflects the course of judicial proceedings, or sullies the pure stream of the judicial process, must be held to

have interfered with the due course of justice, and to have obstructed administration of justice. Such persons must be punished not only for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice. (Chandra Shashi v. Anil Kumar Verma MANU/SC/0558/1995MANU/SC/0558/1995 : 1995(1) SCC 421; Dhananjay Sharma v. State of Haryana MANU/SC/0707/1995MANU/SC/0707/1995 : (1995) 3 SCC 757).”

23. It is palpable from material on record that disobedience is voluntary. Respondent is in the knowledge of the order of Court and its implications, but ignores it. Thus, the actions of respondent amounts to wilful and deliberate disobedience. He was labouring under the illusion that he has no obligation to comply with Court order unless his objections on maintainability are considered in the writ petition. His conduct amounts to open defiance. By his actions, respondent has interfered with due course of justice and is liable to be punished.

24. Respondent is held guilty of wilful disobedience of order of this Court dated 20.01.2017 passed in WPMP.No.6424 of 2016 in W.P.No.5029 of 2016. Respondent is sentenced to pay fine of 2000/- (Rupees two thousand only). The respondent shall pay fine as directed above within four weeks from today, failing which he shall undergo the sentence of simple imprisonment for three days. The Contempt Case is accordingly disposed of.

Miscellaneous petitions if any pending shall stand closed.

No costs.

JUSTICE P.NAVEEN RAO

Date: 22.12.2017
kkm / tvk

HON'BLE SRI JUSTICE P.NAVEEN RAO



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