THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CONTEMPT CASE Nos.1913 & 1856 of 2016

COMMON ORDER:

Alleging that the common order of this Court passed in W.P.Nos.8563 & 2996 of 2005, dated 11.02.2016 has not been complied with by respondent No.1, these two contempt cases are filed.

2. The petitioners filed WP Nos.8563 & 2996 of 2005 individually seeking certain benefits on account of their disability caused during course of their employment under the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. This court after having heard the learned counsel passed the following order:

> "After having heard the learned counsel appearing on either side, it is felt that instead of providing alternative employment to the dependents of the employees, one time settlement available in the respondent company of Rs.12.50 lakhs towards *ex gratia*, the respondents shall pay to the employees in lieu of providing employment to the dependents of the petitioners.
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> Accordingly, both the Writ Petitions are disposed of directing the respondents to pay a sum of Rs.12.50 lakhs (Rupees twelve lakhs and fifty thousands only) to each of the petitioners towards one time lump sum *ex gratia* in lieu of providing employment to the dependents of the writ petitioners."

3. The petitioners contended that they made representations to the 1st respondent requesting them to implement the orders of this Court and finally got issued legal notices on 12.07.2016, which were received by the 1st respondent on 16.07.2016, but the respondents did not take any steps for implementing the order of this court and they wilfully and wantonly

violated the orders of this court and hence they are liable to be punished under the provisions of the Contempt of Courts Act.

4. Admittedly, the petitioners who filed the writ petitions were granted the relief to the effect that each one of them should be paid a sum of Rs.12,50,000/- towards *ex gratia* as one time settlement in lieu of providing alternative employment as is the scheme in the Singareni Collieries. After the order is passed in both the writ petitions, directing the respondents to pay *ex gratia* amount, it appears that they have paid the amounts, but, however, they withheld certain amounts towards income tax as Tax Deducted at Source (TDS) and paid the remaining amount.

5. Learned counsel for the petitioners submitted that the respondents are not supposed to deduct TDS from the amount which has been directed to be paid to the petitioners and the same is contrary to the rules.

6. On the other hand, the learned counsel for the respondents submitted that it is the statutory obligation on the part of the Drawing and Disbursing Officers to deduct the taxes as per the provisions of the Income Tax Act, more particularly, since the amount that is being paid is more than Rs.10 lakhs. Therefore, they have deducted the tax as per the provisions of the Income Tax Act and there is no question of there being any contempt.

7. Having heard the learned counsel on either side elaborately and having heard the learned standing counsel for Income Tax Department, who has been impleaded for assisting the court, what is noticed is that the controversy is as to whether the *ex gratia* payment made to the employees of the corporation falls within the ambit of tax deductible at

source or whether it is exempt there from. The learned counsel has taken the court through the provisions of the Income Tax Act, more particularly, Sections 15, 17 and 192.

8. There is no dispute in so far as the obligation of the Drawing and Disbursing Officer is concerned for deducting the tax at source. However, according to the learned counsel for the petitioners the amount that is paid to the petitioners is exempt, since it is not a salary, but it is only *ex gratia* which was directed to be paid to them in lieu of providing alternative employment. Reference is made by the petitioners to the Circular of the Income Tax Department No.776, dated 08.06.1999. The said Circular reads as under:

> "35.Taxability of *ex gratia* payment made by Central Government/State Government/Local Authority/Government Public Sector Undertaking to heirs of employee on his death, etc.
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> Circular No.573, F.No.200/115/90-ITA-I, dated 21-8-1990 provided that a lump sum *ex gratia* payment made, to the widow or other legal heirs of an employee, who dies while still in active service, will not be taxable as income under the Income Tax Act, 1961.
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> It is noted that there can be situations in which a person or his heir receives *ex gratia* payment from the Central Government/State Government/Local Authority/Public Sector Undertaking, consequent upon injury to the person/death of a family member, while on duty. Such an *ex gratia* payment will not be liable to income-tax under the Income Tax Act, 1961.
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> Circular: No.776, dated 8-6-1999"

9. Basing upon the said Circular, the petitioners contend that the respondents ought not to have deducted the tax from the *ex gratia* payment treating it as salary, and hence it amounts to non-compliance of the orders of this Court in the writ petitions.

10. The question as to whether the amount that is paid to the petitioners at Rs.12,50,000/- each is exempt from the Income Tax Act or whether it is liable to be taxed cannot be adjudicated in the present contempt petitions. Suffice it to observe that the deduction of tax is made by the respondents towards discharge of their legal obligation in pursuance to the provisions of the Income Tax Act, and even if it was erroneous deduction, that cannot amount to wilful disobedience on the part of the respondents in implementing the orders of this court, and it cannot fall within the contours of the contempt. If the petitioners can establish that the amount is exempt from income tax, it is always open to them to obtain TDS certificate from the respondents and submit returns to the Assessing Authorities and claim refund of the amount. It is for the Assessing Authority to adjudge as to whether the *ex gratia* paid to the petitioners is taxable under the provisions of the Income Tax Act or is exempt, as has been stated in the Circular, referred to above.

11. In view of the above, these two Contempt Cases are closed with the following directions:

1) The respondents shall issue a certificate to each of the petitioners certifying the amount deducted towards tax at source on the amount paid to them towards *ex gratia* in lieu of alternative employment. They should also furnish the details of remitting the said amounts to Income Tax Department.

2) On the basis of that certificate, the petitioners can individually claim refund from the Income Tax authorities, and if the Income Tax authorities find that the amount paid

to each of the petitioners towards *ex gratia* is not liable to tax and is exempt there from in view of the provisions of the Act and also the Circular, referred to supra, the amount shall be refunded to the petitioners.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL, J

Date: .09.2017
Dsr