THE HON'BLE SRI JUSTICE P. NAVEEN RAO

CONTEMPT CASE No.2479 OF 2016

Dated:06.10.2017

Between:

Y. Suryanarayana, S/o. Sambaiah,
Aged about 66 years, Occ: Retd Employee,
R/o.H.No.2-12-293/16, Vijayanagar Colony,
Vidyaranyapuri Post, Gopalpur Road,
Hanamkonda, Warangal District and others .. Petitioners

And

Sri Vikas Raju, IAS., Principal Secretary,
Panchayat Raj & Rural Development
Department, State of Telangana,
T.Secretariat, Hyderabad and others .. Respondents

The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

<u>CONTEMPT CASE No.2479 OF 2016</u>

<u>ORDER:</u>

By order dated 07.01.2016, W.P.No.654 of 2016 was disposed of. The operative portion of the said order reads as under:

> "… Following the said order, the Writ Petition is disposed of, directing the Chief Executive Officer, Society for Elimination of Rural Poverty (SERP), Hyderabad (3rd respondent) to consider the case of the petitioners for grant of pensionary benefits taking into account the orders of the Government in G.O.Ms.No.313, Panchayat Raj and Rural Development (RD.I) Department, dated 02.07.2013, and pass appropriate orders thereof, as expeditiously as possible, preferably within a period of six (6) weeks from the date of receipt of copy of this order. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed."

2. According to petitioners, in terms of the said order, they are entitled to pension, but the same is not paid to them and therefore there is deliberate and willful violation of the directions issued by this Court. Alleging the said violation, this Contempt Case is filed.

3. According to petitioners, a pension fund is created in lieu of benefits under the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short, 'the Act') and though fund is created, pension is not paid. The stand of the SERP is that there is no sufficient fund available to meet the requirements of monthly pension being paid to the retired employees and unless the Government makes provision for additional fund, pension cannot be paid.

4. Taking note of averments of the Chief Executive Officer of the Society for Elimination of Rural Poverty (SERP), the incumbent

Principal Secretary, Panchayat Raj and Rural Development, is arrayed as respondent. *Prima facie* having noticed that there is violation of the directions issued by this Court, he was directed to appear before this Court. The Principal Secretary, Sri Vikas Raj, appeared and counter affidavit deposed by him is filed.

5. Heard learned counsel for the petitioners and learned Special Government Pleader representing the 1st respondent.

6. In the counter affidavit filed by the 1st respondent, it is specifically asserted that pension fund was sought to be created by utilizing employer contribution to the Employees Provident Fund (EPF) and the administrative expenditure that can be incurred by the SERP towards EPF, whereas the employer contribution under the EPF was withdrawn by the employees and therefore no sufficient fund remained in the account to honour the commitment given by the Government in G.O.Ms.No.313, dated 02.07.2013.

7. Learned Special Government Pleader brought to the notice of the Court paragraph Nos.4 and 6 of the said G.O. and contended that the fund itself is created only by way of adjustment of the employers contribution already made and the annual administrative expenditure that can be incurred by the SERP and since there is no amount left in the employer contribution under the EPF, fund could not be created. He therefore submits that there is no willful and deliberate violation of the directions issued by this Court. He further submits that the Court directed consideration of the issue by the Chief Executive Officer. On due consideration of the issue, the Chief Executive Officer vide proceedings dated 29.06.2017 passed orders informing the

employees that it is not possible to implement the pension scheme to DRDA employees on par with the Government employees and therefore their claim is rejected.

8. As can be seen from the order of the Court, as extracted above, the direction was to consider the case of the petitioners for grant of pensionary benefits taking into account the orders of the Government in G.O.Ms.No.313, dated 02.07.2013, and to pass appropriate orders. Since the order was already passed by the Chief Executive Officer on 29.06.2017, the direction issued by the Court can be said as complied with though there is delay in such compliance. Furthermore, as can be seen from paragraph No.6 of G.O.Ms.No.313, the fund is sought to be created by diverting the employer contribution under the EPF. When specifically asked, learned counsel for the petitioners and learned Special Government Pleader fairly submit that the petitioners are not taken out of the purview of the EPF Act by following due procedure and the amounts lying in the account were not transferred, though a separate pension fund was sought to be cratered. Be that as it may, the petitioners do not dispute the fact that the employer contribution under the EPF was also withdrawn by them.

9. The issue for consideration in the Contempt Case is whether there is deliberate and willful violation of the directions by the respondents and there is non-compliance of the directions issued by this Court.

10. As seen from the G.O.Ms.No.313, dated 02.07.013, commitment of the Government was to create a pension fund by utilizing the employer contribution made under the EPF. Once

fund is created in the said manner, if there is any lapse in payment of pension, then it may be said that there is violation of the direction. But, as noted above, it appears, the fund is not created. On the above analysis, having regard to the facts of this case, it cannot be said that the 1st respondent has willfully and deliberately violated the directions of this Court to initiate proceedings under the Contempt of Courts Act, 1971. The Chief Executive Officer has passed orders on 29.06.2017 rejecting the claim of the petitioners. The respondents are discharged from contempt proceedings.

11. The above observations are made for the purpose of consideration as to whether the respondents have violated the directions of this Court and same cannot be treated as findings recorded with reference to the claims of the petitioners. It is open to the petitioners to work out their remedies as available in law, if so advised, against the decision of Chief Executive Officer. At this stage, it is also appropriate to note the averments made in paragraph No.8 of the 1st respondent's counter affidavit. In view of this statement, it is also open to the petitioners to make appropriate representation to the Government to create fund for payment of pension.

12. With the above observations, the Contempt Case is closed.

Miscellaneous Petitions, if any, pending in the Contempt Case shall stand closed.

P. NAVEEN RAO, J

Date:06.10.2017

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