

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CONT.CAS(C) 162/2014**

S P MANGLA

..... Petitioner

Through: Mr. S.K. Gupta, Advocate.

versus

SUSHIL KUMAR SAXENA

..... Respondent

Through: Mr. L.R. Khatana, Advocate.

Reserved on : 03rd May, 2017

Date of Decision: 22nd May, 2017

%

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. Present contempt petition has been filed alleging wilful disobedience of the judgment and order dated 04th March, 2013 passed by a Division Bench of this Court in LPA 568/2010.
2. Mr. S.K. Gupta, learned counsel for the petitioner stated that the petitioner, who is around 73 years of age, was being harassed on account of non-payment of pension and pensionary benefits in spite of clear cut directions in a Division Bench judgment dated 4th March, 2013.
3. He stated that the petitioner while working as Deputy Director was charge sheeted for major penalty proceedings in 1984 and thereupon, the petitioner was dismissed vide the order dated 20th June, 1986.

4. Challenging the order of removal dated 20th June, 1986 etc., the petitioner filed W.P.(C) 2296/1991 after exhausting departmental remedies and the writ petition was dismissed by a learned Single Judge of this Court vide the order dated 6th October, 2009.

5. He further stated that the petitioner filed an appeal being LPA No. 568/2010 challenging the order of learned Single Judge and ultimately, after hearing the parties on all issues including entitlement of pension the Division Bench allowed the appeal vide judgment and order dated 4th March, 2013. The relevant portion of the Division Bench's directions relied upon by learned counsel for petitioner is reproduced hereinbelow:-

“11. In our view, the ends of justice would be met by substituting the penalty of removal from service by penalty of stoppage of three increments without cumulative effect. We ordered accordingly. We also direct that despite modification of the penalty, the appellant will not be entitled to any back-wages, though he would be entitled to counting of whole of the service till the date of his superannuation for the purpose of working out his pension. He will not be entitled to any additional payments towards leave encashment or gratuity etc on account of modification of the penalty imposed upon him.

12. With above modification, the appeal stands disposed of. There shall be no orders as to costs.”

(emphasis added)

6. Mr. Gupta also stated that the respondent office introduced a pension scheme and in terms of communication dated 8th February, 1989, invited options from its employees to shift from Contributory Provident Fund to Provident Fund. He, however, stated that the petitioner could not furnish the

option as he was not in employment at that stage.

7. He stated that only on the ground that the petitioner had not exercised the option in terms of communication dated 8th February, 1989, the respondent filed a Review Petition No. 196/2013 stating that the petitioner was a Contributory Provident Fund subscriber and not eligible for pension. He emphasised that the Division Bench after hearing the parties dismissed the review petition by way of a non-reasoned order dated 11th April, 2013.

8. He stated that thereafter the petitioner sought implementation of the order by submitting one more representation dated 22nd April, 2013.

9. Mr. Gupta submitted that the response/ order dated 23rd September, 2014 issued by respondent ran contrary to the directions of the Division Bench judgment, which had attained finality.

10. He submitted that the Supreme Court in ***Prithawi Nath Ram Vs. State of Jharkhand and Ors., (2004) 7 SCC 261*** has held that “rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong the order has to be obeyed. Flouting an order of the Court would render the party liable for contempt. While dealing with an application for contempt the Court cannot traverse beyond the order, non-compliance of which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional directions.....”

(emphasis added)

11. Consequently, according to him, respondent/contemnor is guilty of contempt.

12. On the other hand, Mr. L.R. Khatana, learned counsel for respondent stated that the respondent issued a reasoned office order dated 23rd September, 2014 in compliance with the judgment dated 4th March, 2013 passed in LPA No. 568/2010. He contended that as the petitioner was a Contributory Provident Fund subscriber, no pension was payable to him even after counting the whole of his service as per the directions of the Division Bench. Since considerable emphasis was laid by learned counsel for respondent upon the office order dated 23rd September, 2014, the same is reproduced hereinbelow:-

“CC/2014 4734-4735

Dated: 23 Sept 2014

*Shri S P Mangla
704, Snatosh Apartments
Plot no 39 B, Sector 6
Dwarka, New Delhi-110075*

*Sub : LPA (Civil) No. 568/2010 in WP(C) 2296/1991 filed by
Shri S.P. Mangla, Ex. Deputy Director, EIA, Delhi in the
Hon'ble Court of Delhi – implementation of judgment – Reg*

Sir,

Please refer to your representation dated 18th March, 2013 on the subject cited above, wherein after having quoted from the judgment dated 04.03.2013, you have surmised that your pension has to be drawn w.e.f. 01.04.2003 and in that view of the matter you have requested to be allowed to fill up all pension papers etc.

2. Your case has been engaging the attention of this office constantly and in the process this case was discussed a number of times but it continued to pose a problem and rather an intricate one inasmuch as the Hon'ble Court has directed to count your entire service for the purpose of pension but in fact you were a Contributory Provident Fund (CPF) subscriber and therefore, you were not entitled to and as a result thereof no

pension was payable to you. This dichotomous situation has been at the root of non-implementation of the directions of the Hon'ble Court so far and for the same reason your representation was also pending. It is also relevant to mention that the fact of being a CPF subscriber is discernible from the averments made by you yourself in your pleadings before the Hon'ble High Court as you had averred/admitted in your writ petition that you were under CPF and the said statement was available in on top of page 114 of the LPA Paper Book, wherein it was, inter alia, stated as follows:-

“.....that the petitioner applied to Shri D.C. Manjumdar, the Director (Inspection & Quality Control), respondent No. 5 for permission to be given to withdraw a sum of Rs.20,000/- from his Contributory Provident Fund to meet legal expenses for filling a suit in the court of law.....”

That in support of the above averment made by you in your writ petition you also placed on record your letter dated 8th October, 1983 as Annexure P9 to your writ petition, which was available at page 219 of the LPA Paper Book, which clearly bears out the fact, by your own admission, that you were under CPF and therefore, not entitled to pension.

3. However, this office was caught in an intractable situation as on the one hand no pension was payable to you (as you were a CPF subscriber) and on the other the Hon'ble Court has directed to count your whole of the service till the date of your superannuation for the purpose of working out his pension and hence a dichotomous situation had arise in the case.

4. In this context it is relevant to note that you had filed a writ petition before the Hon'ble High Court challenging the penalty imposed on him and the said writ petition was dismissed by the Hon'ble Single Judge. Thereafter you had filed the LPA before the Hon'ble Double Bench wherein the said directions came to be passed. The fact that you were a CPF subscriber was pointed out by the respondents to the Hon'ble Court by

filing a review petition but the same was dismissed by a non-speaking order. Thus viewing the entire gamut of the issue in totality, it is clear that you had approached the Hon'ble Court aggrieved by the disciplinary action against you and it was never your case before the Hon'ble Court that you were entitled to pension or there was any prayer for direction the respondents to pay you pension. Thus the Hon'ble Court has also not adjudicated the issue whether you are entitled to pension or not as the said issue was not before the Hon'ble Court at all. Thus the Hon'ble Court has only directed that you would be entitled to counting of whole of the service till the date of his superannuation for the purpose of working out his pension, which clearly means that the whole of your service be countable for the purpose of working out your pension, if you were entitled to pension at all, which as per records and your own pleadings, as referred to above, you were not because you were a CPF subscriber and in this regard a copy of the letter dated received from EIA, Kolkata confirming this fact is enclosed for your information (Annexure-I).

5. In the conspectus of the facts of the case and the position explained hereinabove, it clearly emerges that even after counting the whole of your service as per the directions of the Hon'ble High Court of Delhi, no pension is payable to you. The representation made by you is disposed of accordingly. In the facts and circumstances of the case you will kindly appreciate that the delay in disposing of your representation was solely attributable to the peculiar and piquant situation of the case and in no manner willful or deliberate. Nevertheless the same is regretted. This office order is issued in compliance/ implementation of the directions of the Hon'ble Delhi High Court passed in the judgment dated 04.03.2013 in LPA No. 568/2010.

Yours faithfully
Sd/-
Dr S K Saxena
Director (I&QC) ”

(emphasis added)

13. Mr. Khatana contended that Contributory Provident Fund subscribers were entitled to lump sum payment as per the Contributory Provident Fund Rules and no pension was payable to them as the pension rules were not applicable to them.

14. He emphasised that the petitioner in his rejoinder dated 29th September, 2014, for the first time, introduced a new document, namely, the communication dated 8th February, 1989 and raised the issue of switchover to pension scheme, which amounted to enlarging the scope of the contempt proceedings. In support of his submission, he relied upon judgment of the Supreme Court in ***J.S. Parihar Vs. Ganpat Duggar and Others, (1996) 6 SCC 291*** wherein it has been held as under:-

“6. The question then is whether the Division Bench was right in setting aside the direction issued by the learned Single Judge to redraw the seniority list. It is contended by Mr S.K. Jain, the learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three Benches, the learned Judge cannot come to a conclusion whether or not the respondent had wilfully or deliberately disobeyed the orders of the Court as defined under Section 2(b) of the Act. Therefore, the learned Single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2-7-1991. Subsequently promotions came to be made. The question is whether seniority list is open to review in the contempt proceedings to find out whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that

would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the Single Judge; the Division Bench corrected the mistake committed by the learned Single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned Single Judge when the matter was already seized of the Division Bench.

7. The appeals are accordingly dismissed. It may be open to the aggrieved party to assail the correctness of the seniority list prepared by the State Government, if it is not in conformity with the directions issued by the High Court, if they so advised, in an appropriate forum. No costs."

(emphasis added)

15. Having heard learned counsel for the parties, this Court is of the view that the petitioner neither agitated before the Division Bench that he was entitled to pension nor did he contend that he should be deemed to have migrated from Contributory Provident Fund to Pension Scheme in accordance with the communicated dated 08th February, 1989.

16. The Division Bench in its judgment and order dated 04th March, 2013 also did not hold that the petitioner was a deemed pension optee in accordance with the communication dated 08th February, 1989 or that the petitioner was entitled to pension.

17. Consequently, the respondent's contention that even after counting the whole of the petitioner's service in accordance with the direction of the Division Bench dated 04th March, 2013, no pension is payable to the petitioner is well founded.

18. In any event, it is settled law that a person can be held guilty of contempt only if he has wilfully disobeyed any judgment, order or direction. Though the term 'wilful' has not been defined, the Supreme Court has, in number of judgments, explained its meaning. In **All India Anna Dravida Munnetra Kazhagam vs. L.K. Tripathi and Ors., (2009) 5 SCC 417** the Supreme Court has held as under:-

“54. An analysis of Section 2(b) of the 1971 Act shows that wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court constitutes civil contempt. If this definition is read with Article 129 of the Constitution of India, it becomes clear that being a court of record, this Court can punish a person for civil contempt if it is found that he has wilfully disobeyed any judgment, etc. or violated an undertaking given to the Court.

55. The term “wilful” (willfull) has not been defined in the 1971 Act. Therefore, it will be useful to notice dictionary meaning of the said term. As per The New Oxford Illustrated Dictionary (1980 Edn.), the term “wilful” means “asserting or disposed to assert one's own will against instruction, persuasion, etc.; obstinately self-willed; deliberate, intentional, showing perversity or self-will”.

56. According to Black's Law Dictionary (8th Edn.)—“Wilful” means “[v]oluntary and intentional, but not necessarily malicious” and “wilfulness” means

- “1. The fact or quality of acting purposely or by design; deliberateness; intention; wilfulness does not necessarily imply malice, but it involves more than just knowledge.*
- 2. The voluntary, intentional violation or disregard of a known legal duty.”*

57. As per Stroud's Judicial Dictionary, Vol. 5 (4th Edn.), “wilful disobedience” means:

“(1) The wilful disobedience of a SEAMAN or apprentice is ‘wilfully disobeying any lawful command DURING the engagement’: ‘There may be many cases in which DESERTION, or ABSENCE without leave, would not amount to wilful disobedience, and in these cases the seaman would only be liable to the lesser penalty. Where, however, the seaman deserts or is intentionally absent without leave after the time at which he has been lawfully ordered to be on board, his desertion or absence may amount to “wilful disobedience,” and, consequently, that he would be liable to imprisonment. The words “during the engagement” seem to suggest that the contract between the employer and the employed should be taken into account, and that if, having regard to that contract, the order was one which the employed was bound to obey, his disobedience might be dealt with under clause (d)’;”

58. In Shorter Oxford English Dictionary, the term “wilful” has been defined as:

- “1. Asserting or disposed to assert one's own will against persuasion, instruction, or command; governed by will without regard to reason; obstinately self-willed or perverse.*
- 2. Willing; consenting; ready to comply with a request, desire, or requirement—1598.*
- 3. Proceeding from the will; done or suffered of one's own free will or choice; voluntary—1687.*

4. Done on purpose or wittingly; purposed, deliberate, intentional. (Chiefly, now always, in bad sense of a blameworthy action; freq. implying 'perverse, obstinate'.)"

xxx

xxx

xxx

62. Para 17 of the judgment which contains discussion on the subject reads as under: (Dharam Godha case [(2003) 11 SCC 1], SCC pp. 14-15)

"17. Section 2(b) of the Contempt of Courts Act defines 'civil contempt' and it means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of undertaking given to a court. 'Wilful' means an act or omission which is done voluntarily and intentionally 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 bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose. Therefore, in order to constitute contempt the order of the court must be of such a nature which is capable of execution by the person charged in normal circumstances. It should not require any extraordinary effort nor should be dependent, either wholly or in part, upon any act or omission of a third party for its compliance. This has to be judged having regard to the facts and circumstances of each case. The facts mentioned above show that none of the respondents to the petition can be held to be directly responsible if the Scheme which had been formulated by the Government of India on 28-6-1996 and had been approved by this Court by the order dated 8-7-1996 could not be implemented in letter and spirit as many factors have contributed to the same. The reasons given for non-inclusion of Shri Umadhar Prasad Singh in signing of the agreement appear to be quite plausible. NCFL has undoubtedly

not discharged its liability of making payment of its entire liability of Rs 6 crores. However, it has come out with a case that some additional expenditure has been incurred in running the unit. It is not possible to get the complete financial picture only on the basis of the affidavits filed in the present petition. On the material on record, therefore, it is not possible to hold that the charge of having committed contempt of court on account of alleged non-compliance with the orders passed by this Court on 8-7-1996, 1-5-1997 [Ashok Paper Mills Kamgar Union v. Union of India, (1997) 10 SCC 113] and 31-7-2000 [Ashok Paper Mills Kamgar Union v. Union of India, (2003) 11 SCC 16] has been established against any one of the respondents.”

(emphasis added)

63. In DDA v. Skipper Construction [(1995) 3 SCC 507] this Court highlighted the distinction between the civil and criminal contempt in the following words: (SCC p. 517, paras 43-44)

“43. Civil contempt is defined under Section 2(b) of the Act. Thus, any wilful disobedience to the order of the court to do or abstain from doing any act is prima facie a civil contempt. Civil contempt arises where the power of the court is invoked and exercised to enforce obedience to orders of the court.

44. On the contrary, criminal contempts are criminal in nature. It may include outrages on the Judges in open court, defiant disobedience to the Judges in court, libels on Judges or courts or interfering with the courts of justice or any act which tends to prejudice the courts of justice.”

64. In Kapildeo Prasad Sah v. State of Bihar [(1999) 7 SCC 569 : 1999 SCC (L&S) 1357] the Court outlined the object of its contempt jurisdiction in the following words: (SCC pp. 573-74, paras 9 & 11)

“9. For holding the respondents to have committed contempt, civil contempt at that, it has to be shown that there has been wilful disobedience of the judgment or order of the court. Power to punish for contempt is to be resorted to when there is clear violation of the court's order. Since notice of contempt and punishment for contempt is of far-reaching consequence, these powers should be invoked only when a clear case of wilful disobedience of the court's order has been made out. Whether disobedience is wilful in a particular case depends on the facts and circumstances of that case. Judicial orders are to be properly understood and complied with. Even negligence and carelessness can amount to disobedience particularly when the attention of the person is drawn to the court's orders and its implications. Disobedience of the court's order strikes at the very root of the rule of law on which our system of governance is based. Power to punish for contempt is necessary for the maintenance of effective legal system. It is exercised to prevent perversion of the course of justice.

11. No person can defy the court's order. Wilful would exclude casual, accidental, bona fide or unintentional acts or genuine inability to comply with the terms of the order. A petitioner who complains breach of the court's order must allege deliberate or contumacious disobedience of the court's order.”

(emphasis added)”

19. In the same judgment, it was also reiterated that the contempt of Court is a quasi criminal act and as such the standard of proof required is that of a criminal proceeding and the breach or wilful disobedience has to be established beyond all reasonable doubt.

20. The Supreme Court in *Ram Kishan Vs. Tarun Bajaj & Others*, (2014) 16 SCC 204 has also held as under:-

12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is "wilful". The word "wilful" introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. "Wilful" means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a "bad purpose or without justifiable excuse or stubbornly, obstinately or perversely". Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. "Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct."
(Vide *S. Sundaram Pillai v. V.R. Pattabiraman* [*S. Sundaram Pillai v. V.R. Pattabiraman*, *Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararao* [*Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararao*, *Niaz Mohammad v. State of Haryana* [*Niaz Mohammad v. State of Haryana*, *Chordia Automobiles v. S. Moosa* [*Chordia Automobiles v. S. Moosa*, *Ashok Paper Kamgar Union v. Dharam Godha* [*Ashok Paper Kamgar Union v. Dharam Godha*, *State of Orissa v. Mohd. Illiyas* [*State of Orissa v. Mohd. Illiyas and Uniworth Textiles Ltd. v. CCE* [*Uniworth Textiles Ltd. v. CCE*.)

13. *In Lt. Col. K.D. Gupta v. Union of India* [Lt. Col. K.D. Gupta v. Union of India, this Court dealt with a case wherein direction was issued to the Union of India to pay the amount of Rs 4 lakhs to the applicant therein and release him from defence service. The said amount was paid to the applicant after deducting the income tax payable on the said amount. While dealing with the contempt application, this Court held that: (SCC p. 567, para 4)

“4. ... withholding the amount cannot be held to be either mala fide nor is there any scope to impute that the respondents intended to violate the direction of this Court.”

14. *In Mrityunjoy Das v. Sayed Hasibur Rahaman* [Mrityunjoy Das v. Sayed Hasibur Rahaman, the Court while dealing with the issue whether a doubt persisted as to the applicability of the order of this Court to the complainants held that it would not give rise to a contempt petition. The Court was dealing with a case wherein the statutory authorities had come to the conclusion that the order of this Court was not applicable to the said complainants while dealing with the case under the provision of the West Bengal Land Reforms Act, 1955.

15. It is well-settled principle of law that if two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. The effect and purport of the order is to be taken into consideration and the same must be read in its entirety. Therefore, the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act. [See Sushila Raje Holkar v. Anil Kak [Sushila Raje Holkar v. Anil Kak and Three Cheers Entertainment (P) Ltd. v. CESC Ltd. [Three Cheers Entertainment (P) Ltd. v. CESC Ltd.]

16. In view of the aforesaid settled legal proposition, we have repeatedly asked the learned counsel appearing for the

applicant under what circumstances this Court can ask the statutory authority to pay the salary to two persons for one post, particularly in view of the fact that Smt Poonam Bhasin had never been a party to the lis, nor her redesignation/promotion had ever been challenged by the applicant or someone else. More so, the learned counsel for the applicant could not point out the service rules applicable to the applicant to assess his eligibility, etc.

17. In such a fact situation, leaving the issue of entitlement of the applicant, we are of the considered opinion that no case is made out to initiate the contempt proceedings against the respondents. The petition is totally misconceived and devoid of merit, hence, it is dismissed. No order as to costs.”

(emphasis added)

21. The Supreme Court in ***Sahdeo alias Sahdeo Singh vs. State of Uttar Pradesh & Ors., (2010) 3 SCC 705*** after referring to the Constitution Bench judgment in ***State of Bihar vs. Sonabati Kumar, AIR 1961 SC 221*** has further held that the provisions of Contempt of Courts Act, 1971 deal with the wilful defiance of the order passed by the court and order of punishment is not to be passed if the court is satisfied that the party was, in fact, under a misapprehension as to the scope of the order or there was an unintentional wrong for the reason that the order was ambiguous and reasonably capable of more than one interpretation or the party never intended to disobey the order but conducted itself in accordance with the interpretation of the order.

22. In view of the aforesaid mandate of law, this Court is of the opinion that the order of the respondent dated 23rd September 2014 is based on a bonafide interpretation of the judgment and order of the Division Bench dated 04th March, 2013.

23. Consequently, no case of contempt is made out. If the petitioner is aggrieved by the order dated 23rd September, it is always open to him to challenge the same in accordance with law.

24. With the aforesaid liberty, present contempt petition stands disposed of and the notice issued is discharged.

MANMOHAN, J

MAY 22, 2017

rn