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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CONT.CAS(C) 251/2011

KAILASH NATH BHARDWAJ

..... Petitioner

Through: Petitioner in person.

versus

D VIJAYALAKSHMI & ORS

..... Respondents

Through: Mr. Kamal Mehta, Advocate.

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Date of Decision: 16th January, 2017

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. At the outset, the petitioner who appears in person, prays for an adjournment on the ground that his counsel who was available before lunch, is not available now.
2. Learned counsel for respondents vehemently objects to the adjournment. He points out that on the last two dates also, either the petitioner or his counsel had taken an adjournment.
3. Keeping in view the aforesaid fact, this Court was inclined to admit the matter on the ground that the petitioner was not showing any urgency to argue the case. At that stage, petitioner stated that he wishes to argue his

own case.

4. Consequently, petitioner has been heard at length as well as the learned counsel for the respondents.

5. It is pertinent to mention that the present contempt petition has been filed alleging wilful disobedience of the Division Bench order dated 07th March, 2011 on the ground that the petitioner has been denied pension and illegal deductions have been made on various accounts like non-handing over of library books.

6. With this statement, petitioner handed over one book to learned counsel for the respondents in Court. When the petitioner was informed that a book could not be returned in this manner in contempt proceedings, he took the book back and drew this Court's attention to Annexure P-11 which describes the heads under which payment has not been fully or partially paid.

7. On 20th July, 2012, the learned Predecessor of this Court had placed the matter before the Registrar General of this Court to submit a report as to whether any further amount is due and payable to the petitioner as per his calculations. The said order reads as under:-

“As per order dated 17.04.2012, the respondents were directed to file an additional affidavit within six weeks giving break up of each of the amounts indicated in the said order which evidently have been paid to the petitioner. It is not disputed that he has already received a sum of Rs.28,50,764/-. The petitioner submits that he has not received a copy of the additional affidavit. Mr. Mehta has supplied a copy of the additional affidavit in Court to the petitioner.

The petitioner says that there are additional sums due to him from the respondent which have not been paid to date. For this purpose, he has referred to his calculations, set out in the written submissions, which is filed at page 64 to 68 of the paper book. The calculations have been given at page 65 of the paper book under seven (7) heads.

In view of the variance in figures as submitted by the respondent and the petitioner, I propose to place this matter before the Registrar General of this court to submit a report to this Court as to whether any further amount is due and payable to the petitioner as per his calculations. The Registrar General will file his report before the next date.

List before the Registrar General on 07.09.2012.

List before the Court on 14.12.2012.”

(emphasis supplied)

8. In pursuance to the said order, the Registrar General has submitted a detailed report dated 20th May, 2013 in which it is stated that it has not been possible to make further calculations as the petitioner had been contending that he had not voluntarily retired on 31st March, 2010, even though according to the Court orders which had attained finality, petitioner is deemed to have voluntarily retired upon attaining the age of 55 years i.e. 31st March, 2010. The relevant portion of the report of the Registrar General is reproduced hereinbelow:-

“ 2..... Subsequently, during the course of hearing of the said petition it was brought to the notice of Hon’ble Court that the respondent corporation has accepted the request of voluntary retirement w.e.f. 30.09.2010. However, on the request of the petitioner, as is evident from the orders dated 03.12.2010 of Hon’ble Mr. Justice Manmohan Singh, his date of retirement was preponed to 31.03.2010 i.e. from the date when he attained the

age of 55 years. The Court further directed the respondent corporation to pay all dues which accrued to the petitioner upon his seeking voluntary retirement as was admissible under the rules governing his service conditions.

3.....Thus, as per the calculation furnished by the respondents a sum of Rs.1,99,819/- was liable to be recovered from the petitioner.

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5.....It was further submitted by them that through the existing employees were given option to switch over to the pension scheme on two occasions but petitioner did not prefer to opt for the said scheme and thus he cannot now claim as having retired with pensionary benefits.

6.Apart from the aforesaid contention, I may place on record that petitioner is trying to blow both hot and cold. On the one hand he has been relying on various orders passed by the Hon'ble Single Judge or Hon'ble Division Bench of this Court or even that of Hon'ble Supreme Court of India stating that despite directions the respondents have not been paying him his retiral dues but at the same time he has been claiming that he has not yet been formally retired and thus should be deemed to be continuing in the service of the corporation.

As is also evident from the order dated 03.12.2010 of Hon'ble Mr. Justice Manmohan Singh, petitioner was deemed to have voluntary retired from 31.02.2010 on his own request and thus, now it does not lie in his mouth to state that he is still in service. Furthermore, the petitioner failed to submit a proper reply bringing out the calculation in terms of the orders of the Hon'ble Court whereby he voluntary retired from the service of the corporation on 31.03.2010. Resultantly it has not been possible to make further calculations and there is no reason to doubt the calculations or statement of dues paid by the respondents to the petitioner. The contention of the respondents regarding the

excess amount of gratuity paid to the petitioner also does not appear to be without force, more so in the absence of a formal rebuttal by the petitioner.”

(emphasis supplied)

9. This Court is of the view that the claim that the petitioner is a pension optee is not borne out from the record. Also, keeping in view the aforesaid report of the Registrar General which states that petitioner has been claiming retiral dues on the ground that he has not yet formally retired, even though according to the Court orders he is deemed to have retired on 31st March, 2010, this Court is of the view that there is no wilful disobedience of the Division Bench order dated 07th March, 2011.

10. However, if the petitioner has any grievance with regard to any outstanding dues, petitioner is given liberty to file a suit for recovery in accordance with law. Rights and contentions of all parties are left open. With the aforesaid liberty, present contempt petition is closed and the notices issued are discharged.

MANMOHAN, J

JANUARY 16, 2017

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