

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CONTEMPT PETITION NO. 216 OF 2015
IN
WRIT PETITION NO. 6650 OF 2013**

Dr. Vilas S. Alure ...Petitioner
Versus
Ms Sujata Saunik and ors. ...Respondents

Mr.N.V. Bandiwadekar i/b Mr. S.A.Mane for the Petitioner.
Mr. O.M. Kulkarni, AAGP for the Respondents/State.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 19th MARCH 2018

P.C.

1] Heard learned counsel for the parties.

2] Mr. Bandiwadekar, learned counsel for the petitioner, points out that this contempt petition has been adjourned from time to time awaiting the decision of the respondents on the issue of precise retiral benefits payable to the petitioner. He makes specific reference to the order dated 15th February 2018 made by us in this petition.

3] In response, Mr. Kulkarni, learned AAGP produces communication dated 17th March 2018, in which, it is

stated that non-practising allowances is not to be taken into consideration for the purpose of determining terminal benefits.

4] Mr. Bandiwadekar seeks for some time to challenge the communication dated 17th March 2018 in this petition since, according to him, the interpretation of the respondents is contrary to the order dated 4th October 211 made by the Maharashtra Administrative Tribunal (MAT), Mumbai in O.A. No. 495 of 2008. He points out that the MAT's order has in fact been confirmed by this Court in its order dated 25th August 2014 in Writ Petition No. 6650 of 2013. Mr. Bandiwadekar submits that adoption of such an interpretation and denial of the relief as claimed for by the petitioner amounts to a contempt of this court and therefore, an issue as to whether the interpretation is correct or not may be gone into in this contempt petition itself.

5] For at least two reasons, we are of the opinion that we ought not to entertain the present contempt petition ourselves, but leave it open to the petitioner to institute

appropriate proceedings before the MAT for redressal of his grievances, *inter alia* with regard to the communication dated 17th March 2018 now produced before us on behalf of the respondents.

6] Firstly, in our order dated 25th August 2014 made in Writ Petition No. 6650 of 2013, although, we had declined to interfere with the MAT's order dated 4th October 2011, we had not expressed any opinion in respect of total amount due from the State in favour of the petitioner. This is clear from reading the last four lines of paragraph 4 of our order dated 25th August 2014.

7] Secondly, what the petitioner substantively alleges is the contempt of the MAT's order dated 4th October 2011 in O.A. No. 495 of 2008. If this is so, reference is necessary to the provisions of sections 17 and 27 of the Administrative Tribunals Act, 1985. Section 17 empowers the tribunal to punish any party for contempt of its orders. Section 27 is a provision for execution of the orders of a tribunal. There is no good reason as to why the petitioner should not be relegated to avail all the remedies provided under the

Administrative Tribunals Act, 1985 itself, rather than invoke the contempt jurisdiction of this court.

8] Besides, reference in the aforesaid context is necessary to the decision of the Hon'ble Supreme Court in case of ***T. Sudhakar Prasad v. Govt of A.P. - (2001) 1 SCC 516***. The issue which arose for determination in this case was whether Administrative Tribunals set up under the provisions of Administrative Tribunals Act, 1985, have the power to punish for their contempt ? A further issue arose as to whether after the decision of the Constitution Bench of the Supreme Court in ***L. Chandra Kumar vs. Union of India - (1997) 2 SCC 261***, section 17 of the Administrative Tribunals Act, 1985 is rendered unconstitutional or otiose ?

9] Upon detailed analysis, the Hon'ble Supreme Court has held that the Constitution bench in *L. Chandra Kumar (supra)*, has not declared the provisions of Article 323-A (2) (b) or Article 323-B(3)(d) or section 17 of the Administrative Tribunals Act, 1985 has *ultra vires* the Constitution. In the context of section 17 of the

Administrative Tribunals Act, 1985, the Hon'ble Supreme Court has held that this section derives its legislative sanctity from provisions of Article 323-A(2)(b). Further, the power of the High Court to punish for contempt of itself under Article 215 of the Constitution of India remains intact but the jurisdiction, power and authority to hear and decide the matters covered by section 14(1) of the Administrative Tribunals Act, 1985 having been conferred upon the administrative tribunals, the jurisdiction of the High Court to that extent has been taken away and hence the same jurisdiction which vested in the High Court to punish for the contempt itself in the matters now falling within the jurisdiction of the tribunal, if those matters would have continued to be heard by the High Court has now been conferred upon the administrative tribunals under section 17 of the Administrative Tribunals Act, 1985. The jurisdiction is the same as vesting in the High Courts under Article 215 of the Constitution read with the provisions of Contempt of Courts Act 1971. The need for enacting section arose, firstly, to avoid doubts and secondly, because the tribunals are not "*courts of record*". The Supreme Court has further held that the availability of

the jurisdiction to punish for contempt provides efficacy to the functioning of the judicial forum and enables the enforcement of the orders on account of its deterrent effect on the avoidance. Viewed from this angle, the validity of the section 17 of the Administrative Tribunals Act, 1985 is protected not only by sub - clause (b) of clause (2) of Article 323-A but also by sub-clause (g) thereby. The Hon'ble Supreme Court in fact, ordered the Contempt Case No.1054 of 1998 filed before the High Court invoking its contempt jurisdiction for the alleged breach of the order made by the CAT, to be transferred to the tribunal for being dealt with under section 17 of the Administrative Tribunals Act, 1985.

10] Taking into consideration the facts and circumstances of the present case, as also the aforesaid ruling of the Hon'ble Supreme Court in *T. Sudhakar Prasad (supra)*, we do not deem it appropriate to entertain the present contempt petition.

11] However, we grant liberty to the petitioner to take out appropriate proceedings before the MAT in the matter of

alleged non-implementation of the directions in the judgment and order dated 4th October 2011 as well as the petitioner's grievance regards communication dated 17th March 2018. We have no doubt that if such proceedings are taken out, the MAT will dispose of the same expeditiously and in accordance with law.

12] With aforesaid liberty, the present contempt petition is disposed of.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)