

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13-07-2018

Pronounced on : 20.07.2018

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Contempt Petition No. 1405 of 2017

A. Kamalanabhan ... Petitioner

Versus

1. Mr. Chandrasekaran (In-charge)
Commissioner of Agriculture
Agriculture Department
Chepauk, Chennai - 600 005
2. Mr. Vasubabu
Joint Director of Agriculture
Kancheepuram
3. Mr. Sugandeeep Singh Bedi, I.A.S.,
Secretary, Agriculture Department
Government of Tamil Nadu
Fort St. George
Chennai - 600 009 ... Respondents

Petition filed under Section 11 of Contempt of Courts Act praying to punish the respondents for their wilful disobedience and violation of the order of this Court dated 28.11.2016 passed in WP No. 41245 of 2016 according to law.

For Petitioner : Mr. S. Sadashram

For Respondent : Mr. P.H. Aravind Pandian
Additional Advocate General
assisted by Mr. J. Purusothaman
Government Advocate

ORDER

The petitioner has come forward with this contempt petition complaining non-compliance of the order dated 28.11.2016 passed by this Court in WP No. 41245 of 2016 by the respondents and to punish them by invoking the provisions of

The Contempt of Courts Act. The said writ petition No. 41245 of 2016 was filed by the petitioner praying to issue a Writ of Mandamus directing the respondents to consider his representation dated 18.02.2016 and pay at the rate of 12% compound interest on Rs.2,67,873/- under Rule 45-A of the Tamil Nadu Pension Rules.

2. When the writ petition No. 41245 of 2016 was taken up for hearing, it was contended on behalf of the petitioner that the petitioner retired from service on 31.05.1997 and after his retirement, the terminal benefits such as DCRG, Commutation of Pension, Pension arrears and arrears of salary were paid to him belatedly in the year 2011 after a period of fourteen years and therefore, petitioner claimed interest for such belated payment. As the respondents did not pay interest inspite of his representations, the petitioner filed WP No. 12034 of 2011 praying to issue a Mandamus directing the respondents to pay a total sum of Rs.16,49,030/- towards compound interest at the rate of 18% per annum on the retirement benefits viz., pension, commuted pension, gratuity amount and leave salary paid to him after lapse of 14 years. The said WP No. 12034 of 2011 was allowed by this Court on 16.06.2011 by observing that the terminal benefits payable to the petitioner were paid belatedly and therefore he is entitled for payment of interest. As the order dated 16.06.2011 was not complied with, the petitioner has filed Contempt Petition No. 1892 of 2011. By order dated

01.08.2012, this Court closed the contempt petition No. 1892 of 2011 by recording the statement made on behalf of the respondents that a cheque dated 27.07.2012 was issued to the petitioner by the department towards payment of interest for the period from 01.09.1997 to 31.12.2010 at the rate of 12% per annum and therefore, contempt proceedings cannot be initiated against the respondents. At the same time, in the order dated 01.08.2012, this Court also given liberty to the petitioner to work out his remedy in a manner known to law, if he still disputes the quantum of amount paid by the Department. The petitioner thereafter filed WP No. 28102 of 2012 with the following prayer:-

"To issue a Writ of Certiorarified Mandamus, calling for the records in letter No.23096/AA4(1)/2012-1 dated 31.08.2012 on the file of the second respondent herein and quash the same inasmuch as the denial of 12% interest (compounded annually) on the retirement benefits for the period from 01.04.2004 to 31.10.2010 and direct the respondents 1 and 2 to calculate the interest on retirement benefits like gratuity, commutation of pension, pension arrears and leave salary at the rate of 12% per annum (compound annually) from 01.04.2004 upto 31.07.2002 together with the arrears of compound interest after deducting the interest amount already paid.

3. When the aforesaid WP No. 28102 of 2012 was taken up for hearing, this Court passed an order dated 19.12.2012 with the following directions:-

"6. Hence, the impugned order providing 8% interest under Rule 45A of Tamil Nadu Pension Rule for the period from 01.04.2004 to 31.12.2010 is set aside and the first respondent is directed to grant 12% interest compounded annually for the period from 01.04.2004 to 31.12.2010 also. The first respondent is directed to pay interest at the rate as stated

above within a period of four weeks from the date of receipt of a copy of this order.

7. Writ petition is disposed of accordingly. No costs."

4. According to the petitioner, as per the directions of this Court in WP No. 28102 of 2012, mentioned supra, the respondents have passed an order dated 28.07.2016 disbursing commutation payment together with pension payment calculation sheet for the period from 01.06.1997 to 31.07.2015. According to the petitioner, the respondents have paid pension by calculating his qualifying service as 26 years without taking into account the period of his suspension between 08.07.1991 and 31.05.1997. The petitioner therefore submitted representations seeking to take in to account the period of suspension for the purpose of disbursement of pension which was rejected by an order dated 19.11.2012. Challenging the order of rejection dated 19.11.2012, the petitioner has filed WP No. 3003 of 2013. The said writ petition was allowed on 18.09.2013 and the respondents were directed to count the period of suspension of the petitioner from 09.07.1991 to 31.05.1997 for the purpose of calculating pensionary benefits.

5. Thereafter, the petitioner has filed WP No. 20514 of 2014 contending that the respondents did not properly fix the pay while disbursing the retirement benefits. In the said writ petition, the petitioner prayed for issuing a Mandamus directing the respondents to determine the pensionary benefits due and payable to him, to revise the qualifying service

taking the suspension period from 02.07.1991 to 31.05.1997 into consideration towards qualifying service period according to FR 54-B and pay the arrears of a sum of Rs.2,36,861/- in the light of the representation dated 13.05.2014 and 19.06.2014 submitted by him.

6. By order dated 05.01.2015, this Court disposed of the writ petition No. 20514 of 2014 with liberty to the petitioner to submit a comprehensive representation along with statement of calculations to the second respondent, who in turn, was directed to consider the same and to pass orders on merits. Pursuant to the said direction, the second respondent passed an order dated 16.03.2015 determining the amount payable to the petitioner towards pension arrears as Rs.2,67,873/- and it was also paid to him by the Accountant General of Tamil Nadu. Thereafter, the petitioner has made a further representation on 09.09.2015 claiming interest for the said sum of Rs.2,67,873/-. As there was no response to the representation dated 09.09.2015, the petitioner sent further representations reiterating his request on 10.12.2015 and on 18.02.2016. Thereafter, the instant writ petition, being WP No. 41245 of 2016, was filed by the petitioner to issue a Writ of Mandamus directing the respondents to consider his representation dated 18.02.2016 and pay at the rate of 12% compound interest on Rs.2,67,873/- under Rule 45-A of the Tamil Nadu Pension Rules.

7. When the above WP No. 41245 of 2016 came up for hearing, this Court, by order dated 28.11.2016, directed the petitioner to forward a copy of the representation dated 18.02.2016 along with a copy of the order to the respondents within two weeks and on receipt of the same, the respondents were directed to consider it and pass orders thereof within a period of eight weeks thereafter. Complaining non-compliance of the said order dated 28.11.2016 in WP No 41245 of 2017, the petitioner has come up with this Contempt Petition.

8. Heard the learned counsel for the petitioner as well as the learned Additional Advocate General appearing for the respondents.

9. When the contempt petition is taken up for hearing, the learned Additional Advocate General appearing for the respondents, by placing reliance on the counter affidavit of the second respondent, would contend that the respondents have no intention to disobey the order passed by this Court and in fact, the direction issued by this Court has been duly complied with by passing an order in G.O. (D) No.196, Agricultural (AA IV(1) Department dated 18.07.2017. According to the learned Additional Advocate General, pursuant to the order dated 28.11.2016 passed in WP No. 41245 of 2016, in addition to Rs.11,05,546/- already paid towards interest to the petitioner for the belated payment of terminal benefits, a further sum of Rs.1,08,713/- has been sanctioned and disbursed

to him on 07.08.2017. The learned Additional Advocate General also produced a copy of G.O. (D) No.196 dated 18.07.2017, wherein, it is stated as follows:-

"Based on the orders of Hon'ble Court, the Government examined the individual's representation dated 18.02.2016 with rules in force. As per Rule 45 A of Tamil Nadu Pension Rules, 1976, the interest shall be sanctioned only for the belated payment of DCRG and there is no rule provision for sanction of interest for terminal benefits other than DCRG.

4) Accordingly, the Government accord sanction for a sum of Rs.1,08,713/- (Rupees One Lakh Eight Thousand Seven Hundred and Thirteen Only) towards belated payment of DCRG for the period from September 1997 to August 2015 to Thiru. K. Kamalanabhan, Assistant (Retired)."

10. Thus, according to the learned Additional Advocate General, as directed by this Court, the representation of the petitioner was considered and an order was passed by the Government sanctioning a sum of Rs.1,08,713/- (Rupees One Lakh Eight Thousand Seven Hundred and Thirteen Only) towards belated payment of DCRG payable to the petitioner for the period from September 1997 to August 2015. While so, it cannot be said that the respondents have in any manner disobeyed the order passed by this Court and prayed for dismissal of the writ petition.

11. Opposing the submissions of the learned Additional Advocate General appearing for the respondents, the learned counsel for the petitioner would submit that in the representation dated 18.02.2016, the petitioner has furnished

balance to be paid. According to the counsel for the petitioner, a sum of Rs.2,67,873/- is payable by the respondents towards belated interest. Even before this Court, the counsel for the petitioner produced the particulars of retirement benefits and compound interest already paid as per which, after adjusting the revised retirement benefit paid to the petitioner on 20.08.2015, a total sum of Rs.2,67,873/- is payable but only a sum of Rs.1,08,173/- has been paid to the petitioner by virtue of the order passed in G.O. (D) No.196 dated 18.07.2017. In such circumstances, according to the counsel for the petitioner, the order passed by the respondent in G.O. (D) No.196, Agricultural (AA IV(1) Department dated 18.07.2017 cannot be said to be in compliance with the directions issued by this Court in the order dated 28.11.2016 in WP No 41245 of 2016. Thus, according to the learned counsel for the petitioner, the respondents failed and neglected to comply with the order passed by this Court and therefore, they are guilty of breach of the order passed by this Court. In such circumstances, the learned counsel for the petitioner prayed for initiating appropriate contempt proceedings against the respondents for non-compliance of the order passed by this Court.

12. I heard the counsel for both sides and perused the materials placed on record. By the order dated 28.11.2016 in WP No 41245 of 2017, this Court only directed the respondents to consider the representation that may be preferred by the

petitioner and to pass an order on merits. Pursuant to such direction, Government has passed an order in G.O. (D) No.196, Agricultural (AA IV(1) Department dated 18.07.29017 by which a sum of Rs.1,08,713/- was sanctioned to the petitioner towards belated payment of DCRG for the period from September 1997 to August 2015. Notwithstanding the said order, the petitioner would contend that he is entitled for payment of interest to the tune of Rs.2,67,873/- but what was sanctioned and paid is only a sum of Rs.1,08,173/-. The fact remains that this Court only directed the respondents to consider the representation of the petitioner on merits and this Court did not issue any positive direction to the respondents to pay interest to the tune of R. 2,67,873/- as claimed by the petitioner in his representation. The counsel for the petitioner also admits that pursuant to the order dated 28.11.2016 passed by this Court in WP No 41245 of 2016, the Government has passed an order in G.O. (D) No.196, Agricultural (AA IV(1) Department dated 18.07.29017 sanctioning a sum of Rs.1,08,713/- to the petitioner representing belated payment of DCRG for the period from September 1997 to August 2015. If the petitioner disputes the quantum of interest paid to him by the respondents, it cannot be pursued by him in this contempt petition. In the contempt petition, this Court can only examine as to whether the order passed by this Court has been violated by the official respondents and if so, whether such violation is wilful and deliberate warranting initiation of contempt proceedings. In the present case, I find that

absolutely, there is no disobedience on the part of the respondents in complying with the directions issued by this Court on 28.11.2016 in WP No 41245 of 2017. In such circumstances, I hold that the contempt petition is liable only to be dismissed as devoid of merits. It is needless to mention that it is always open to the petitioner to challenge the order passed by the Government in G.O. (D) No.196, Agricultural (AA IV(1) Department dated 18.07.29017 in a manner known to law. Accordingly, the contempt petition is dismissed. No costs.

SD/-

ASSISTANT REGISTRAR (COMM.CASES)

//Certified to be true copy//

Dated at Madras this the day of 2018.

COURT OFFICER (O.S.)

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CO/01/08/2018

one cc to Mr.S.Sadasharam, Advocate, Sr.No.10110

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