IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 20.06.2019

Orders Pronounced on : 05.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Contempt Petition No.514 of 2017

C.Raghupathy,
Assistant Executive Engineer (Retd).,
Chennai City Municipal Corporation,
No.47/4, Raghavan Street,
Perambur,
Chennai-600 011.

... Petitioner

Vs.

Dr.D.Karthikeyan, I.A.S.,
Commissioner,
Chennai City Municipal Corporation,
Ripon Buildings,
Chennai-600 003.

... Respondent

Contempt Petition filed under Section 11 of the Contempt of Court Act, to punish the respondent for wilfully disobeying the Court Order in W.P.No.32005 of 2016, dated 20.09.2016.

For Petitioner : Mr.T.Ranganathan

For Respondent : Mr.S.R.Rajagopal,
Addl. Advocate General
for Mr.R.Arunmozhi

ORDER

The present Contempt Petition has been filed by the petitioner alleging non-compliance of the order dated 20.09.2016 passed by this Court in Writ Petition in

W.P.No.32005 of 2016, in and by which, this Court, while disposing of the said Writ Petition, directed as follows:

> "4. Considering the facts and circumstances of the case and considering the submissions made on either side, this Court directs the first respondent to consider the representation of the petitioner dated 19.08.2016 seeking to release the DCRG amount as already approved by the Director of Local Fund in his proceedings dated 13.06.2013 and pass appropriate orders, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that this Court has not expressed any opinion with regard to the claim projected by the petitioner and it is for the first respondent to consider the claim of the petitioner strictly on merits and in accordance with law. The Writ Petition is disposed of accordingly. No costs."

2. When the Contempt Petition is taken up for consideration, it is represented by the learned Additional Advocate General assisted by the learned Standing Counsel appearing for the respondent-Chennai City Municipal Corporation, by filing counter affidavit, dated 14.12.2018, that as per the above direction of this Court, the file for sanctioning the amount in respect of DCRG (Death-cum-Retirement Gratuity) was processed and upon scrutinising the same, it was found that the petitioner has to pay the Income Tax due for the Financial Year 2013-2014 totalling a sum of Rs.1,15,090/- and out of the above said amount, the petitioner has already paid Rs.47,757/- and the balance

amount of Rs.67,333/- has to be paid by the petitioner towards the Income Tax for the Financial Year 2013-2014.

3. In the counter affidavit, the arrears for the Financial Year 2013-2014 and Tax payable by the petitioner, are detailed as below:

Sl. No.	***Description of payments***	***Payment made*** ***Rs.***	***Tax payable amount in*** ***Rs.***	***10% of approximate Tax deduction and paid in*** ***Rs.***	***Balance Tax due to be paid*** ***Rs.***
1	Salary from April 2013 to June 2013	1,85,125	-	-	-
2	Pension from July 2013 to March 2014	2,43.696	-	-	-
3	Pay arrears from 31.12.2010 to 31.03.2013	1,42,091	14,209	14,209/- IOB, CH-3, BSR Code No.0270096dt. 29.05.2013	-
4	DA arrears January 2013 to April 2013	9,284	-	-	-
5	LPA encashment 10% tax EL encashment of Rs.5,18,992 - Rs.3,00,000	1,94,622 2,18,992 2,18,992/- (Audit Objection for 10% IT not paid)	19,462	19,462/- (IOB BSR Code No.0270096 dated 18.02.2014	-
6	EL surrender difference	5726			
	Total	9,99,496			
	Less Tax Exemption	90,840			
	Tax amount paid by the petitioner (1,85,125 +	-	-	14,086 (Form 1 ITR Assessment Year 2014-	

Sl. No.	***Description of payments***	***Payment made Rs.***	***Tax payable amount in Rs.***	***10% of approximate Tax deduction and paid in Rs.***	***Balance Tax due to be paid Rs.***
	2,43,696 = 4,28,821/-).			2015 PAN No. AGLPR 500 5K)	
	Taxable Income	9,08,660	1,15,090		
	Tax amount paid by the petitioner	-	1,15,090	47,757	67,333

4. The learned Additional Advocate General further relied on the Circular of the Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, New Delhi, dated 02.12.2015 in No.20/2015, F.No.275/192/2015-IT(B), for deduction of Income Tax from salaries under Section 192 of the Income Tax Act, in Clause 5.3.4 of the said Circular framed under the Income Tax Act, which provides as follows:

> "Clause 5.3.4. Any payment received by an employee of the Central Government or a State Government, as cash-equivalent of the leave salary in respect of the period of earned leave at his credit at the time of his retirement, whether on superannuation or otherwise, is exempt under Section 10(10AA)(i). In the case of other employees, this exemption will be determined with reference to the leave to their credit at the time of retirement on superannuation or otherwise, subject to a maximum of ten months' leave. This exemption will be further limited to the maximum amount specified by the Government of India Notification No.S.O.588(E) dated 31.05.2002 at Rs.3,00,000/- in relation to such employees who retire, whether on superannuation or otherwise, after 01.04.1998."

5. The learned Additional Advocate General appearing for the respondent-Corporation of Chennai, also argued on the details of arrears for the Financial Year 2013-2014 and the Income Tax payable by the petitioner. He further contended that a letter dated 20.02.2017, vide BR.D.C.No.B2/780/2013, had been addressed to the petitioner directing to furnish the Statement of Income Tax paid for the Financial Year 2013-2014 for a sum of Rs.67,333/- in order to process the file for issuance of DCRG amount to the petitioner. He further contended that the petitioner has not furnished any Income Tax statement for the payment made by him with the Income Tax Department. Since the petitioner has not furnished the Income Tax Statement for the said sum of Rs.67,333/-, the General Department (Pension), Greater Chennai Corporation, had processed the file of the petitioner, after deducting the said sum of Rs.67,333/- from the DCRG amount payable to the petitioner. Further, after deducting the said amount of Rs.67,333/-, a sum of Rs.9,32,667/- had been sanctioned to the petitioner towards DCRG.

6. The learned Additional Advocate General appearing for the respondent-Corporation of Chennai further submitted that the General Department (Pension), Greater Chennai

Corporation , had addressed a letter dated 28.02.2017, vide

G.D.C.No.P12/5086/2017 to the petitioner, directing to submit the advance stamp receipt for a sum of Rs.10,00,000/- in order to issue a Cheque in favour of the petitioner towards DCRG. The learned Additional Advocate General also submitted that the Greater Chennai Corporation had filed a Compliance Report, dated 13.07.2017 before this Court in regard to this Contempt Petition stating the above facts. Further, when the Contempt Petition was taken up for hearing on 24.08.2017, this Court directed the petitioner to furnish the advance stamp receipt for issuance of the Cheque in his favour. Also, when the Contempt Petition came up for hearing on 08.09.2017, the officials of the Greater Chennai Corporation had produced a Cheque in favour of the petitioner for a sum of Rs.9,32,667/-, vide Cheque No.971499, dated 31.08.2017, drawn on Indian Overseas Bank, Chennai Corporation Branch, before this Court, but the petitioner refused to receive the same.

7. The learned Additional Advocate General also brought to the notice of this Court that when this Contempt Petition again came up for hearing on 22.09.2017, the petitioner again refused to receive the said Cheque, and hence, the same was sent to the petitioner through Registered Post, which was received by the petitioner on 03.11.2017 and returned the said Cheque with covering letter, containing objection by his counsel to Chennai Corporation and stated that the petitioner has given the

advance stamp receipt for a sum of Rs.10,00,000/-, but whereas, the Cheque was issued in favour of the petitioner for a sum of Rs.9,32,667/- and requested to pay the said sum of Rs.10,00,000/- in favour of the petitioner and also requested to return the advance stamp receipt issued by the petitioner, failing which the petitioner will initiate Criminal Proceedings against the respondent and Accounts Officer, Greater Chennai Corporation. The learned Additional Advocate General brought to the notice of this Court that the petitioner had given a complaint, dated 23.11.2017 to the Commissioner of Police, Greater Chennai, against the officials of the Greater Chennai Corporation, viz., the Assistant Commissioner (G.A. & P), Chief Accounts Officer (FM Cell) and Accounts Officers (Pension), Greater Chennai Corporation, requesting to take action under Sections 420, 409 and 120-B IPC. In this regard, the learned Additional Advocate General relied on Rule 70 of the Tamil Nadu Pension Rules, relating to Government Dues, and it deals with recovery and adjustment of Government Dues, form which it is clear that the retiring Government servant has to clear all Government dues before the date of his retirement including the Income Tax payable by the Government servant. For clear understanding, it is useful to extract the said Rule 70 as follows:

"GOVERNMENT DUES"

"Rule 70: Recovery and adjustment of Government dues:--(1) it shall be the duty of every retiring Government servant to clear all Government dues before the date of his retirement.

(2) Where a retiring Government servant does not clear the Government dues and such dues as ascertainable--

(a) an equivalent cash deposit may be taken from him; or

(b) out of the gratuity payable to him an amount equal to that recoverable on account of ascertainable Government dues shall be deducted therefrom.

Note.(1)--The expression "ascertainable Government dues" includes balance of house building or conveyance advance, arrears of rent and other charges pertaining to occupation of Government accommodation, over-payment of pay and allowances and arrears of income-tax deductible at source under the Income-tax Act, 1961 (43 of 1961). It also includes dues to the local bodies or to the Staff Co-operative Societies comprising of Government servants and registered under the Tamil Nadu Co-operative Societies Act, 1961 or to the Tamil Nadu Housing Board or to the Corporation owned/controlled by the State Government.

Note (2): Gratuity shall not be liable to attachment in accordance with the provision of clause (g) of the proviso to sub-section (1) of Section 60 of the Code of Civil Procedure, 1908 (Central Act V of 1908)."

8. Thus, the learned Additional Advocate General appearing for the respondent-Greater Chennai Corporation submitted the petitioner is disputing only the deduction of TDS (Tax Deducted at Source), because this TDS is bound to be deducted as per the relevant Rules in force.

9. In reply, by filing Reply Affidavit, dated

14.06.2019, the learned counsel for the petitioner submitted that the petitioner retired from service on 30.06.2013. The Director of Local Fund Accounts, in his Letter in Ni.Mu.No.A4/2477/2013, dated 13.06.2013, had sanctioned a sum of Rs.16,965/- as pension and a sum of Rs.10 lakhs as DCRG amount, but only pension was paid and the DCRG amount of Rs.10 lakhs had not been released on 01.07.2013. In that regard, the petitioner had also made various representations from 2014, the latest one being 19.08.2016. The stand of the respondent-Corporation of Chennai taken with regard to the Audit Objection for the year 1999-2000, is a fictitious story. No fruitful action was taken on the said representations.

10. The learned counsel for the petitioner, by relying upon the said Reply Affidavit, further contended that the arrears amount paid to the petitioner in the post of Assistant Executive Engineer from 31.12.2010 to 31.03.2013 to the tune of Rs.1,42,091/-, had already been assessed and an amount of Rs.14,209/- has already been deducted as Income Tax on 29.05.2013, which is improper, since the arrears should be credited to the respective years by staggering the period. It is the grievance of the petitioner that the respondent-contemnor is trying to boost the taxable income amount by adding the said arrears amount of Rs.1,42,091/-, for which the Income Tax has already been paid on 29.05.2013. Similarly, the Income Tax deduction for

the Surrender Leave from 01.12.2011 to 01.12.2012 had been deliberately shown in the 2013-2014 Income Tax Statement. Further, the petitioner has already filed the Income Tax Statement for the year 2013-2014, wherein he has shown the Taxable Return of Income as Rs.6,32,663/-. After deducting the Taxable Refundable amount of Rs.18,830/-, the petitioner has paid Rs.22,720/- as Income Tax for the period upto March 2014. Contrary to the Income Tax Return filed by the petitioner, the respondent has deliberately added a sum of Rs.2,43,696/- being the pension paid to the petitioner from 01.07.2013 to 31.03.2014, for which the petitioner has already filed separate Income Tax Return before the Income Tax Department. It is further contended by the petitioner that the employer-employee relationship ceased on 01.07.2013 and therefore, the respondent has no authority to raise the Income Tax after 30.06.2013 being the date of the petitioner's retirement.

11. The learned counsel for the petitioner further submitted that a sum of Rs.19,462/- had already been deducted as Income Tax on Encashment of Leave on Private Affairs and therefore, Rs.4,13,614/- should not be added to the Taxable Income once again. Further, the pension amount of Rs.2,43,696/- from July 2013 to March 2014 had already been disclosed by the petitioner in his Income Tax Statement submitted for the year 2013-2014 and hence, once again, the respondent had included the said pension amount in the Statement also. It is the further grievance of the

petitioner that by calculating the Tax already paid at Rs.47,757/-, deducted by the respondent, a sum of Rs.37,663/- was paid by the petitioner in the Income Tax Return for the year 2013-2014. Thus, totally the petitioner had paid Rs.85,420/- as Income Tax for the year 2013-2014. It is also contended by the learned counsel for the petitioner that the respondent is the only authority to release the amount due, but has not done from 01.07.2013 to 28.02.2017, and inspite of repeated representations, his case for payment of DCRG, was not considered. If at all any amount is due from the petitioner, the same should have been deducted by 01.07.2013 itself, but has simply with-held the amount over six years without any authority, coupled with the fact that the said representations have also not been considered by the respondent. The respondent did not disclose the factum of "Audit Objection" either in the counter affidavit or in any of the so-called references. The Surrender Leave amount and D.A. arrears, do not relate to the period 2013-2014, but the same had been included and the Tax was arrived at wrongly as if the petitioner should pay the same. Moreover, the Encashment of Earned Leave is not assessed to Income Tax as per the relevant Rules in force. If at all the Income Tax has to be paid, it comes to only Rs.22,455/-.

12. From the above submissions made on either side and on a perusal of the materials available on record, it

is seen that there are disputed questions of fact between the parties, which cannot be gone into/decided in this Contempt Petition.

13. In this context, it is worthwhile to extract the Memo, dated 27.03.2019, filed by the learned Standing Counsel appearing for the respondent-Corporation of Chennai, stating as follows:

> "1. The respondents submit that the petitioner was worked as Assistant Executive Engineer, Greater Chennai Corporation till 30.06.2013. The petitioner was due to retire on 30.06.2013 and he was eligible to get the DCRG and pensionary benefits.
>
> 2. The respondent submit that as per letter dated 15.09.2016 by Joint Director of Local Fund Audit relating to Mr.C.Ragupathy audit objection for the year 1999-2000 para 6 which was cleared.
>
> 3. The petitioner filed the W.P.No.32005 of 2016 praying that the respondent to pass appropriate orders on the representation of the petitioner dated 19.08.2016 requesting the first respondent to release the DCRG amount as already approved by the Director of Local Fund in his proceedings dated 13.06.2013 due to payment. After hearing both sides the Hon'ble Court directing the respondent the Chennai Corporation to consider representation dated 19.08.2016 relating to the DCRG as approved by the Director of Local Fund Audit in his letter dated 13.06.2013 and pass appropriate orders, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.
>
> 4. After receipt of the order dated 20.09.2016 this respondent passed order on representation filed by the petitioner and sanctioned DCRG with condition to deduct I.T. with various arrears due to the petitioner on 23.12.2017.

5. This respondent arrived calculation and decided I.T. as per Rule 70 of Income Tax Rules and released DCRG to him the calculation which shown as below:

Sl. No.	***Income Details***	***Amount Rs.***	***Total IT Rs.***	***IT paid Rs.***	***IT to be paid Rs.***
1	Monthly Salary from April-2013 to June-2013	1,85,125			
2	A.E.E. Pay fixation arrears period from 31.12.2010 to 31.03.2013	1,42,091		14,209 IOB, Ch-3 BSR Code No. 0270096, dated 29.05.2013 by GCC	
3	Surrender difference arrear from 01.12.2011 to 01.12.2012	5,726			
4	DA Arrears from January 2013 to April 2013	9,244			
5	Pension from July 2013 to March 2014	2,43,696			
6	LPA encashment 10% Tax EL encashment of Rs.5,18,992 - Rs.3,00,000	4,13,614		19,462/- (IOB BSR Code: 0270096, dated 18.02.2014) by GCC Individual Paid Tax Rs.14,086/-	
Total Income for 2013-2014 (Financial Year)		9,99,496	1,15,000	Total tax paid Rs.47,757/-	67,333/-

6. This respondent had worked out the above calculation and also deducted I.T. as follows:

Total due DCRG	Rs.10,00,000/-
I.T. as per above statement(-)	Rs. 67,333/-
Balance to be paid	Rs.9,32,667/-

7. I humbly submit that the petitioner may be accepted cheque after deduction I.T. and to claim refund from I.T. Department."

14. Even when the matter is taken up for hearing on 20.06.2019, the learned Additional Advocate General appearing for the respondent produced a Cheque for Rs.9,32,667/- and when it was handed over to the learned counsel for the petitioner, he refused to receive the same, as has been instructed by the petitioner. Therefore, the said Cheque is returned to the learned Additional Advocate General.

15. Be that as it may. This Court in the said W.P.No.32005 of 2016, by order dated 20.09.2016, had given a direction to consider the representation, as extracted above. Inasmuch as this Court has not given any positive direction, this Court has not expressed any opinion on the disputed questions of fact. Under such circumstances, when

the respondent-Corporation of Chennai is ready to pay the necessary amount to the petitioner, this Court does not find that any contempt is made out against the respondent/contemnor. In fact, it is only the petitioner who is unnecessarily dragging on the matter by disputing the amount under due to him. This is not a fit case where in the Contempt Petition, a direction for payment could be issued. In fact, this is a fit case where costs will have to be imposed on the petitioner, however, taking a lenient view, this Court is not imposing any costs.

16. In view of the above observations, the Contempt Petition is dismissed. No costs.

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

cs

//Certified to be true copy//

Dated at Madras this the day of 2019.

COURT OFFICER(O.S.)

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Mv/10/07/2019

To

The Commissioner,
Chennai City Municipal Corporation,
Ripon Buildings,
Chennai-600 003.