

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**CONTEMPT PETITION NO.178 OF 2019**  
**IN**  
**WRIT PETITION NO. 4562 OF 2013 (DECIDED)**

Mr.Anil s/o. Waktuji Thaware

vs.

Shri. Subhash Sahebrao Zape and others

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Office Notes, Office Memorandum of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

Shri. A. W. Thaware, petitioner in person.  
Shri. V. C. Marpakwar, counsel for respondent Nos.2, 3 and 5.  
Shri. B. J. Lohare, counsel for respondent No.4.

**CORAM : MANISH PITALE J.**

**DATED : 09/03/2020**

By this contempt petition, the petitioner alleges that the respondents herein have committed contempt of the order of this Court passed on 24/01/2019 and 25/01/2019 in Writ Petition No.4562/2013.

2. By the aforesaid order, this Court had disposed of the writ petition in the following manner :-

“(i) The order dated 08<sup>th</sup> January, 2008 absorbing / transferring the respondent No.1 on the post of Millwright Maintenance Mechanic is quashed.

(ii) The petitioners are directed to absorb the respondent No.1 in the post of Master Craftsman in the revised pay-scale of Rs.9300-34800 with grade pay of Rs.4300/-. This absorption shall be w.e.f. 08<sup>th</sup> January, 2008.

(iii) The absence of respondent No.1 for the period from 08<sup>th</sup> January, 2008 till today shall be treated as duty period. The leaves which are balance in account of respondent No.1 shall be adjusted and the balance period of absence shall be treated as leave without pay, however, it shall be treated that the respondent No.1 had been in continuous service for all other purposes except for the actual emoluments.

(iv) The respondent No.1 shall be permitted to report on duty on the post of Master Craftsman at Maintenance Unit Amravati from 1<sup>st</sup> March, 2019. The service record of the respondent No.1 shall be updated within one month and his regular salary shall be made available to him from February, 2019 paid in March, 2019 alongwith other employees.

(v) The issue of tendering unconditional apology by the respondent No.1 and consideration of dropping of enquiry going on and / or proposed against the respondent No.1 is referred for mediation to Shri. S. Y. Deopujari, Advocate. The Authorized officer / officers of the petitioners, and the respondent No.1 shall appear before the learned Mediator at the High Court Mediation Center, Nagpur on 8<sup>th</sup> February, 2019 at 1.45 p.m. The learned Mediator shall submit report till 19<sup>th</sup> February, 2019. List the petition on 22<sup>nd</sup> February, 2019, only to consider the report of mediation.”

3. After notice was issued in this contempt petition submissions and additional submissions were filed on behalf of the respondents in pursuance of orders passed by this Court and it was stated on the basis of documents placed on record that the respondents had complied with the aforesaid directions of this Court and that therefore, there was no willful disobedience of the order of this Court and no case for contempt was made out.

4. Before dealing with the submissions made on behalf of the respondents, it would be relevant to refer to the fact that in pursuance of direction (v) quoted above, an attempt was made at mediation, but the same failed and this fact was recorded by this Court in the order dated 22/02/2019 and it was recorded that no further orders were necessary. It is also an admitted position that in pursuance of failure of mediation, enquiry proceeded against the petitioner herein and by order dated 24/07/2019, the petitioner was dismissed from service. He filed a statutory appeal against the said order, which also stood dismissed on 09/10/2019. In this context it is claimed by the petitioner that the said orders are now subject matter of challenge in the form of a purported review before the Hon'ble Governor of the State of Maharashtra. Be that as it may, since the said controversy does not concern the present petition, this Court has only recorded the fact that as on today, the petitioner stands dismissed from service.

5. The petitioner has claimed in this contempt petition that the respondents have committed contempt of the aforesaid directions of this Court, because firstly, service book was not updated by the respondents in terms of clause (iv) of the aforesaid order passed by this Court, because they were supposed to update the service within a period of one month. Secondly, it is claimed that the amounts that have been paid to the petitioner are not properly calculated and that deficient amount has

been paid to him.

6. On the first allegation, the respondents have stated in their submission, the reason why the time period of one month could not be complied with while updating the service book. The said explanation reads as follows :-

**“2.** Accordingly, the petitioner Shri. Anil Thaware joined on 01/02/2019 and his regular salary was paid alongwith other employees in March, 2019. That, process to update the service book of the petitioner started immediately from 24/01/2019. That, the petitioner had only 28 days of earned leave and 16 days medical leave to his credit. Thus, the petitioner had in all 44 days of leave to his credit, which has been adjusted from 01/02/2013 to 16/03/2013.

**3.** The pay of the petitioner was fixed accordingly and his service book was also updated. That, as per Maharashtra Civil Services (Leave) Rules, it was and is the duty of the employee to fill in the requisite form / apply for grant of leave. This was never done by the petitioner. The petitioner was supplied with the requisite form for grant of leave. The petitioner refused to accept and fill the form. Despite this, the department granted the leave to the petitioner by mentioning the order passed by this Hon'ble Court and paid the arrears also. Thus, it took some time in updating the service book as the petitioner flatly refused to fill the requisite forms. A copy of the updated service book of the petitioner is enclosed herewith as **ANNEXURE-R3-1.** Accordingly, there were arrears to the credit of the petitioner. The amount of Rs.60,700/- was credited to the account of the petitioner on 17/07/2019. A copy of bill towards arrears of leave sanctioned towards 44 days is enclosed herewith as **ANNEXURE-R3-2.”**

7. It is further explained by the respondents in their subsequent submissions as follows :-

**“5.** That, the respondent No.3 forwarded the entire documents pertaining to the petitioner to the department. After submission of documents, the respondent No.3 issued order dated 20/03/2019. By the said order, the order passed by this Hon’ble Court has been complied with. The petitioner has been fixed in the appropriate pay scale as per the recommendations of the 7<sup>th</sup> Pay Commission with effect from 01/01/2016 and accordingly the arrears have also been paid. Infact, the employees working under the government departments, including the respondents have not been paid the arrears arising out of fixation as per the 7<sup>th</sup> Pay Commission. Only the petitioner has been granted the arrears of Pay Commission as a special case and in view of the orders passed by this Hon’ble Court.

**6.** The respondents, to avoid any controversy, again got the entire documents scrutinized from the accounts department. That, Shri.Kumre re-verified the records and accordingly found that the notional increment has not been added and thus there is some less payment. Accordingly, as per the directions given by the answering respondent No.3 the pay of the petitioner was re-fixed vide order dated 24/07/2019. Thus, the order has been duly complied with. The delay caused is unintentional. That, the arrears after proper fixation of notional fixation as per the recommendations of 7<sup>th</sup> Pay Commission has been paid to the petitioner. Thereafter, the service book has been rectified and entries have been taken accordingly.”

8. Having perused the aforesaid explanation given on behalf of the respondents, this Court is satisfied that there were reasons why the specific time limit of one month given by this Court could not be adhered to and

since the respondents were anxious to ensure compliance with the order of this Court as regards the amount payable to the petitioner that the service book had to be updated again. Although it would have been ideal for the respondents to have approached this Court for extension of time for updating the service book in these circumstances, the explanations given in the portions quoted above have satisfied this Court that there was no willful disobedience of the order of this Court on part of the respondents. Therefore, it is found that there is substantial compliance of direction No.(iv) given by this Court.

9. On the second aspect as regards the exact amount payable to the petitioner in pursuance of the aforesaid directions given by this Court while disposing of the writ petition, since the said issue was being repeatedly raised by the petitioner, on a direction given by this Court, submissions specifically pertaining to the said aspect have been placed on record by the respondents, relevant portion of which reads as follows :-

**“10.** That, the petitioner is relying on the document placed at page No.102. The said amount is shown as Rs.1,22,917/-. Out of the said amount, Rs.54,116/- is the officiating pay / salary till 24/07/2019, Rs. 69,375/- is the difference towards arrears of fixation regarding Pay Commission, Rs.6494/- towards Dearness Allowance, 8659/- towards House Rent Allowance, Rs.310/- towards transport allowance, Rs.93/- towards C.L.A. The total amount comes to Rs.1,39,047/-. That, out of the said amount Rs.3000/- was deducted towards festival advance, Rs.5000/- towards

GPF contributions (deductions), Rs.4850/- deductions towards GPF advance, Rs.1399/- towards house building advance, Rs.200/- towards income tax, Rs.480/- towards Group Insurance Scheme (GIS), Rs.200/- towards professional tax, Rs.1000/- toward Credit Society Fee (membership fee) and Re.1/- towards revenue stamp. A chart indicating the bifurcation is enclosed herewith as **ANNEXURE-R2-1**. Further, the detailed bifurcation of salary, arrears, deductions (government and non-government), etc. is enclosed to this submission and marked as **ANNEXURE-R2-2**.”

10. Having perused the aforesaid statements, as also the detailed documents placed on record, this Court finds that there is substantial compliance of the directions given by this Court and that the petitioner has not been able to make out a case for proceeding against the respondents under contempt jurisdiction. There does not appear to be any substance in the contentions raised on behalf of the petitioner, who appears in person, that the respondents deliberately and willfully violated the directions given by this Court, warranting action under contempt jurisdiction.

11. But, the petitioner is insisting that he has not been paid full amount and that there is some calculation mistake, this Court is of the opinion that such question of calculation mistakes cannot be gone into contempt jurisdiction, because in this petition this Court is concerned with the question as to whether there is compliance of directions given by this Court.

12. The dispute in calculation can be raised by

the petitioner by moving an appropriate representation before respondent No.4 i.e. Manager maintenance unit. Such a representation may be moved by the petitioner before respondent No.4 within a period of three weeks from today. The respondent No.4 shall dispose of such representation within four weeks of its receipt. If the petitioner is dissatisfied with the manner in which the representation is disposed of, he may challenge the same or raise a dispute regarding the same in accordance with law.

**13.** Contempt petition is dismissed with above observations. No order as to costs.

**JUDGE**