

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

917 CONTEMPT PETITION NO.180 OF 2021
IN WP/12494/2017

NIVRUTTI BHIMRAO GHOLAP
VERSUS
SHRI. DEVIDAS TEKALE

WITH
CONTEMPT PETITION NO.182 OF 2021
IN WP/13069/2017

RAJENDRA MOHANRAO KISWE
VERSUS
SHRI. DEVIDAS TEKALE

WITH
CONTEMPT PETITION NO.184 OF 2021
IN WP/12493/2017

REKHA BHANUDAS GORVE
VERSUS
SHRI. DEVIDAS TEKALE

WITH
CONTEMPT PETITION NO.185 OF 2021
IN WP/12495/2017

SAKHUBAI RAM GAIKWAD AND OTHERS
VERSUS
SHRI. DEVIDAS TEKALE

....

Mr T. M. Venjane, Advocate for petitioners;
Mr H. V. Patil, Advocate for respondent /sole

**CORAM : RAVINDRA V. GHUGE
AND
ARUN R. PEDNEKER, JJ.**

DATE : 28th July, 2022

PER COURT:

1. In all these petitions, the petitioners, who were before this Court in a group of writ petitions, which were decided by the Judgment dated 14/10/2019, allege disobedience of the orders of this Court. The learned Advocate for the petitioners heavily relies upon paragraph Nos.9 to 12 of the said Judgment, which read as under:-

“9. Though learned advocates for respondent – Corporation have submitted as aforesaid, a clear factual position emerges that petitioners had been directed to be reinstated without back wages by Labour court, since their respective dates of joining, directing continuity of service. Pursuant to the same, services of the petitioners were absorbed granting continuity and since then petitioners are in service without any interruption. No further orders in respect of the same, till the impugned communication had been issued, had been passed, disturbing the situation. Nor there is any court decision against orders passed by labour court, giving continuity in service to the petitioners.

10. While Industrial court had granted relief to the petitioners, directing granting of 5th pay commission pay scales with effect from 1st January, 1996, same is being received by the petitioners, albeit, writ petitions challenging the same are pending, yet there is obviously no decision thereon. In such a case, impugned communication is indeed from nowhere and is abrupt and it is unsustainable even on the ground of breach of principles of natural justice. It is also not disputed that the petitioners are class IV

(3)

employees. Paragraph No. 18 of the Supreme Court decision in the case of “State of Punjab” (supra), would also be pertinent to be taken into account.

11. In the circumstances, impugned communication is absolutely untenable and, as such, is quashed and set aside. So far as granting of pay scale is concerned, needless to refer to that the same would depend on the decision in pending writ petitions.

12. It appears that there is some argument with regard to recovery, while petitioners claim that recoveries have been effected, respondent – Municipal Corporation, however, states otherwise. In such a case, if recoveries are made pursuant to impugned order, same are obviously refundable and accordingly be refunded to concerned petitioners preferably within a period of three months.”

2. The learned Advocate further submits that, some of these petitioners have now crossed the age of superannuation, which is 60 years.

3. The learned Advocate for the petitioners submits that, this Court had granted continuity of service. However, the Corporation has not issued any specific order, declaring that the petitioners are granted such continuity. The learned Advocate for the Corporation submits that, if such declaration is not made till today, the same would be made within 15 days from today.

(4)

4. The respondent has entered an affidavit-in-reply, personally, dated 17/02/2022. The learned Advocate for the respondent points out that presently, as the petitioners were found to be earning amounts more than the pay-scale that they were entitled to, and as this mistake occurred post re-fixation of their pay-scales, the State Government issued a Government Resolution dated 01/09/2015 and the Municipal Corporations were directed to initiate steps to assess the cases, who are being paid excess payments. After noticing the error caused in pay fixation, leading to excess amounts being paid to the petitioners, the Corporation initiated steps in the light of the said Government Resolution and halted such payments. It is, however, clarified that, there is no recovery of the amounts though excess amounts have been paid.

5. The learned Advocate for the respondent draws our attention specifically to paragraph Nos.3 to 11 of the affidavit-in-reply, which are reproduced hereunder :-

“03. I say that, it is true that the petitioner was appointed on daily wages by the then Municipal Council, Latur, which is subsequently converted in Municipal Corporation namely Latur City Municipal Corporation of which I was Commissioner from 26.5.2020 to 27.01.2021. It is also true that the petitioner and some other employees had filed Complaint ULP No.71 of 2007 before the learned Industrial

(5)

Court Latur and said complaint was allowed on 01.01.1995 by judgment and order dated 30.09.2008, wherein directions were issued to grant permanency to the services of the petitioner and others with effect from 01.01.1995 so also consequential benefits.

04. I say and submits that, the order passed by the learned Industrial Court was challenged before this Hon'ble Court by the Municipal Council vide Writ Petition No. 1240 of 2009, in which Rule has been granted by this Hon'ble Court. I say and submits that, it is also true that the order granting continuity of service to the petitioner and other employees was cancelled by the learned Deputy Commissioner on 29.09.2017. Therefore, the Writ Petition No. 12494 of 2017 was filed by the petitioner challenging the order dated 29.09.2017 thereby refusing continuity of service as well as directing recovery of the excess payment made to the petitioner. It is also true that this Hon'ble Court by order dated 22.11.2017 issued notices to the respondents and directed not to enforce the recovery against the petitioner. It is also true that the Writ Petition No. 12494 of 2017 and other writ petitions were heard by this Hon'ble Court on 14th October, 2019 and the communication/order dated 29.09.2017 is quashed and set aside and if recovery any made by the Corporation is directed to be refunded within a period of three months.

05. I say and submits that, now the contempt petition is filed by the petitioner on the pretext that an amount of Rs. 3,387/- for the month of March 2018 is deducted from his salary even after the communication dated 29.09.2017 was set aside by this Hon'ble court by order dated 14.10.2019.

06. I say and submits that, this contempt petition is filed on the pretext that despite there was stay to the recovery by this Hon'ble court and despite of the fact that order dated 29.09.2017 refusing continuity of service and recovery of

(6)

excess payment is quashed and set aside by this Hon'ble Court, the respondent has deducted an amount of Rs. 3,387/- since March 2018 from the salary of the petitioner and the said amount comes to Rs. 68,000/- and same is an act of disobedience of the order of this Hon'ble Court and on that ground contempt petition is filed.

07. I say and submits that, with due respect I reiterate that the action taken by the answering respondent is neither intentional, deliberate nor there is willful disrespect and disobedience towards the order passed by this Hon'ble Court. In fact, there is no deduction from the salary of the petitioner as per the letter dated 29.09.2017 and there appears to be confusion in the mind of the petitioner that there is deduction from his salary.

08. I say and submits that, though by order dated 29.09.2017 continuity of services given to the petitioner and other 35 employees/Safai Kamgar, was withdrawn and though recovery was directed for excess payment of amount, there was no recovery as such from their salary and the statement made by the petitioner is patently false and illegal and on this ground the contempt petition deserves to be dismissed.

09. I say and submits that, the Government of Maharashtra vide its resolution dated 01.09.2015 directed refixation of pay of the employees. The said Government resolution was issued in respect of those employees whose pay was fixed as per the provisions of the Maharashtra Civil Services (Revision of Pay) Rules, 2009 as in respect of some of the employees fixation of pay was exceeding the slab of pay in the pay band. By way of the said resolution, a clarification is given by the State Government that, it was noticed by some of the establishments that, while granting annual increment if the pay is exceeding than the pay scale mentioned in the pay band, then said pay is required to be

(7)

limited at the maximum pay. As such clarification is given as per Rule 10 of the Maharashtra Civil Services (Revision of Pay) Rules and highest pay band would be applicable, however, while granting the pay band, there would be no change in the pay fixation. The respondent Corporation had implemented the G.R. dated 01.09.2015 and refixed the pay scale and payment of the employees including the petitioner with effect from 01.03.2018. The copy of the G.R. dated 01.09.2015 issued by the Finance Department of the State government is annexed herewith and marked as Exhibit-R-1.

10. I say and submits that, in view of the above said Government Resolution, refixation of pay of the employees was directed and if found excess amount is paid, then recovery of said excess amount is to be made. Therefore, in view of that, revision of pay of the petitioner was done and it is found that the petitioner is not entitled for higher pay band and his pay was restricted at the maximum level. Hence there is no recovery as alleged by the petitioner, as per letter dated 29.9.2017. I say and submit that, in February 2018 i.e. prior to refixation of salary in pay band of Rs. 4440 – 7440 with Grade pay of Rs. 1600/-, whereas his gross salary was Rs. 27,721/-. After the pay fixation of pay scale of the petitioner as per G.R. dated 01.09.2015, the pay scale of the petitioner was Rs. 4440 – 7440 with Grade Pay of Rs. 1600/- and the gross salary of the petitioner in March 2018 was Rs. 24,334/-. In February 2018 the petitioner was getting gross salary of Rs. 27,742/-, whereas in March 2018 the gross salary of the petitioner was shown as Rs. 24,355/- because of refixation of pay. Therefore, it was found that, the petitioner is not entitled for higher pay scale in next pay band and therefore the petitioner is getting less salary than his earlier salary.

11. I say and submits that, in view of the refixation of pay, the petitioner was paid less amount and in fact same is not

deduction as per the communication dated 29.09.2017 which is quashed and set aside by this Hon'ble Court in Writ Petition No. 12494 of 2017. However, it is refixation of pay scale and because of that pay was fixed on higher side which was exceeding the maximum limit of pay band and same was not permissible as per law. As such, there was difference in gross salary of the petitioner the petitioner is under impression that it is recovery of Rs. 3,387/-. however it is not so. Therefore, there is no any disrespect or disregard towards the orders passed by this Hon'ble Court."

6. It is well settled, that in contempt proceeding, the disobedience of the order of the Court must be apparent and must appear to be willful, intentional and deliberate. If a case is made out by the Contemnor, indicating that there is no deliberate disobedience, the contempt proceedings have to fail.

7. We have perused the Judgment dated 14/10/2019, delivered by this Court, in which, there is no reference to the Government Resolution dated 01/09/2015. Since the respondent has come up with the case that, the said Government Resolution has been pressed into service now and as a consequence of the same, the excess payments have been halted, we find that, in such a fact situation, it would be unfair to conclude that, the respondent has disobeyed the order of this Court and has committed willful, intentional and deliberate disobedience.

8. In view of the above, these petitions are disposed off. Nevertheless, the petitioners are at liberty to challenge the fresh action of the respondent, which is based upon the Government Resolution dated 01/09/2015, by availing of a remedy, as may be permissible in law.

(ARUN R. PEDNEKER, J.)

(RAVINDRA V. GHUGE, J.)

sjk