

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

CONTEMPT PETITION NO. 3 OF 2022 IN
WRIT PETITION NO.3779 OF 2012(D)

Balajee Digambarrao Kotgire

vs.

S.S.Mallikarjuna Rao, MD and CEO of Punjab National Bank, New Delhi and
others.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Petitioner in person.

Shri Anand Parchure, Advocate for respondent nos. 2 and 3.

CORAM :- A.S.CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
ARGUMENTS WERE HEARD ON : 23.08.2022
ORDER IS PRONOUNCED ON : 08.09.2022

The petitioner in person has filed this Contempt Petition alleging deliberate and wilful disobedience of the order passed by this Court in Writ Petition No. 3779 of 2012 dated 04.04.2012.

2. The petitioner was in employment with the Oriental Bank of Commerce. During the course of his employment, he was removed from service by an order dated 22.12.2004 after holding departmental enquiry. He challenged that order by filing Writ Petition No. 2863 of 2007 which was partly allowed. After setting aside the order of removal and treating the petitioner to be under deemed suspension from the date of the judgment, the enquiry was directed to be completed. The petitioner was directed to be paid subsistence allowance from 01.09.2011 till the Disciplinary Authority passed final orders in the enquiry. The enquiry was thereafter held in

accordance with the directions issued and on 24.10.2011 the punishment of removal from service was maintained. The Appellate Authority dismissed the appeal on 25.07.2012. Being aggrieved the petitioner challenged the said order in Writ Petition No.3779 of 2012. On 04.04.2014 the writ petition was partly allowed. After setting aside the order of punishment dated 24.10.2011 and the Appellate order dated 25.07.2012, the Disciplinary Authority was directed to extend an opportunity of hearing to the petitioner and thereafter proceed further in accordance with law. The subsistence allowance as directed to be paid earlier was continued till the final orders were passed. In paragraph 23 of the judgment dated 04.04.2014 it was observed as under :

“23. The entitlement of the petitioner to back wages and continuity shall depend upon the view Disciplinary authority takes in the matter. If he is exonerated, he shall be entitled to relief of reinstatement with continuity and wages from 22.12.2004 onwards. In other words, doctrine of relation back shall apply.”

3. The Appellate Authority on 13.01.2017 allowed the appeal and held that the order of punishment dated 21.06.2014 passed by the Disciplinary Authority was perverse. The order of removal from service was set aside and the petitioner was directed to be reinstated in service with all consequential benefits from 22.12.2004. It was directed that the petitioner would not be entitled to any benefit for the period of suspension till 22.12.2004 except the amount of subsistence allowance received by him. It was observed that the petitioner was responsible for delaying the disciplinary proceedings on one pretext or the other. It was directed that

subsistence allowance paid from 01.09.2011 to 20.06.2014 would be deducted from the arrears of salary payable to him.

According to the petitioner, the observations in paragraph 23 of the judgment dated 04.04.2014 have not been complied with and the benefit of doctrine of relation back was not applied.

4. In the reply filed on behalf of the respondents it has been stated that in view of the order dated 13.01.2017 the petitioner was paid his salary which was undisputed. He was also granted the benefit of continuity in service. He was also paid the amount of gratuity, commutation of pension alongwith the arrears of pension and the amount of provident fund to which he was entitled.

5. In the additional affidavit filed on behalf of the respondents it has been stated that though the petitioner was granted continuity in service, he could not be promoted automatically since such promotions were liable to be granted subject to clearing of requisite examination, interview and the service satisfactorily rendered. The continuity granted was only for the purposes of pensionable service. In the further affidavit dated 25.04.2022 it has been clarified that since the petitioner had reached the stage of receiving the maximum grade pay, there was no question of releasing any further increment in his favour. The petitioner was entitled to stagnation increment after every three years, which was already awarded to him. All increments due and payable to the petitioner were released in his favour.

By filing a counter affidavit, the petitioner has reiterated that the doctrine of relation back has not been duly considered by the respondents. It is therefore stated that the respondents had wilfully disobeyed the directions issued in Writ Petition No.3779 of 2012.

6. On 26.04.2022 after the Contempt Petition was heard for sometime, the following observations were made in the order passed on that date:

“2. It is quite clear from the first three lines of paragraph 23 of the judgment that complete discretion has been given to the Disciplinary Authority to form its own view regarding entitlement of the Petitioner to the back wages and continuity in service. Of course, in the three lines thereafter, this Court also noted that if the Petitioner was to be exonerated, he would be entitled to relief of reinstatement with continuity and wages from 22.12.2004 and onwards based upon the doctrine of relation back. But, these observations are required to be considered in the light of the observations appearing in the first three lines according to which, complete discretion has been allowed to Disciplinary Authority to take its own view regarding entitlement of the Petitioner to back wages and continuity. When these observations are considered in their entirety, prima facie, it appears that this Court gave complete discretion to the Disciplinary Authority to decide the issue of payment of back wages and granting of continuity in service to the Petitioner keeping in view the doctrine of relation back.

3. Now, if the Disciplinary Authority has ignored the doctrine of relation back or has failed to apply the doctrine of relation back appropriately, the grievance that would arise would be a cause of action for filing of an appeal or writ petition, as the case may be, for seeking of an appropriate relief for revising the order of the Disciplinary Authority and prima facie, it would not give rise to cause of action for initiating contempt proceedings against the Disciplinary Authority. After all, Disciplinary Authority which passes an order and imposes penalty or exonerates the delinquent officer in the departmental enquiry proceedings acts in quasi

judicial manner, and therefore, it would have the jurisdiction to decide the issue of grant of continuity in service and back wages one way or the other. This discretion cannot be curtailed in a manner that it is left with no choice whatsoever, and that too, even before the Disciplinary Authority has taken its decision in the matter or has applied its mind to the facts established on record.”.....

7. From the affidavits filed on behalf of the respondents, it is evident that the petitioner has been paid arrears of salary pursuant to the order dated 31.01.2017 passed by the Appellate Authority. Similarly he has received benefit of continuity in service as well as various amounts towards gratuity, commutation of pension, provident fund and arrears of pension. There does not appear to be any deliberate disobedience or non-compliance of the directions issued in Writ Petition No.3779 of 2012 on 04.04.2014. If the petitioner is not satisfied with the order passed by the Appellate Authority or that the same has not been complied with in its true, letter and spirit, the petitioner would have to invoke appropriate jurisdiction for seeking relief in that regard. Execution of that order cannot be sought by initiating proceedings under the Contempt of Courts Act, 1971. We do not find that there is any wilful breach or disobedience of any direction issued in the aforesaid Writ Petition. If according to the petitioner the appropriate relief to which he claims to be entitled based on the doctrine of relation back has not been granted to him, he is free to take recourse to appropriate proceedings in that regard.

8. In that view of the matter we do not find any reason to grant the prayers made in the Contempt Petition. With liberty to the petitioner to

take such steps as are permissible in law if he is not satisfied with the order dated 13.01.2017 passed by the Appellate Authority or its enforcement, the Contempt Petition stands dismissed with no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)

Andurkar.