Cont.P.No.565 of 2022

DR.ANITA SUMANTH, J.

This matter is listed today under the caption 'to report compliance'.

2. Read this order in conjunction with orders dated 07.09.2022 and 30.09.2022 reading as follows:

Order dated 07.09.2022.

The matter is listed for the parties to report compliance of order dated 12.07.2022.

2.Order dated 12.07.2022 has two components; one, as per paragraph (2) of aforesaid order and two, costs of a sum of Rs.50,000/- for substantial delay in compliance of order dated 02.09.2021

3.Mr.Silambannan, learned Additional Advocate General, who appears for the respondents, states that as far as the second component of costs is concerned, Contempt Appeal has been filed in Cont.A.No.7 of 2022 and by order dated 07.09.2022, the Division Bench has stayed that part of the order relating to the levy of costs.

4.According to him, the remaining amounts have been computed and paid over to the petitioner as per order dated 02.09.2021. Petitioner, however, disputes the same. Let the particulars of remittance be handed over to the learned counsel for the petitioner within a day from today, to enable her to verify and confirm the same.

5.List on 14.09.2022 under the same caption and in the same position.

Order dated 30.09.2022.

This matter was listed for reporting compliance on 14.09.2022 when G.O. dated 06.09.2022 bearing No.183 had been circulated by the respondents. It is based on this order that the respondents urge that they have complied with the order of this Court in respect of which contempt is filed. The aforesaid order opens up an entirely new dimension and argument, hitherto not pursued by the respondents.

2.This Court, as well as both parties, had proceeded on the basis that the petitioner is entitled to the arrears of pension as well as salary and other emoluments in hard cash. This was the understanding upon which order dated 02.09.2021 has been passed. In fact, at paragraph No.11 of the order, I have *categorically held that the petitioner shall be entitled to all consequential benefits of this order, to be quantified by R1 & R2 and paid over within a period of six (6) weeks from today.*

3. A 'pay over' indicates settlement of dues in cash and this aspect of the matter was never questioned by the State at any point in time, till now. For the respondents to now take a stand that the benefit was only to be notional is certainly not appropriate or correct.

4.Mr.Silambanan would make light of the situation relying upon Fundamental Rule 27(17) to state that arrears shall only be notional in cases where candidates / employee in question have not served in the posting in question. There is no dispute in this case that the petitioner has received all arrears of pay in regard, and upto the post of Assistant Inspector General (AIG) of Registration.

5. From that stage onwards, his pay has been given only notional effect, as relevant to the determination of last-drawn pay for the purposes of pension, since he has never held the post of AIG of Registration. The aforesaid stand has never been taken by the respondents till date in any of the hearings either at the time writ petition or in the contempt.

6. That apart, the interpretation of Fundamental Rule 27(17) is also not cast iron, liable to be applied in all cases. The Hon'ble Supreme Court, in State of Kerala Vs E.K.Baskaran Pillai [2007 6 SCC 524], the settled the position that the principle of 'no work no pay' is not a rule of thumb and the matter of remuneration, whether notional or otherwise, should be considered on a case on case basis.

7. The above ratio has been reiterated in D.D.Tiwari (dead), through legal representatives Vs Uttar Haryana Bijli Vitran Nigam Limited and Others [2014 8 SCC 894] and Ramesh Kumar Vs Union of India and others [2015 14 SCC 335]. This is all the more, and specifically, in a matter where the denial of the specific post to the petitioner is on account of an error committed by the employer. Paragraph No.4 of the judgement in Baskaran Pillai is extracted below:

> *"Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the*

court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle "no work no pay" cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also."

8.The relevant paragraph of the decision in Ramesh Kumar reads as follows:

"15. We are conscious that even in the absence of statutory provision, normal rule is "no work no pay". In appropriate cases, a court of law may take into account all the facts in their entirety and pass an appropriate order in consonance with law. The principle of "no work no pay" would not be attracted where the respondents were in fault in not considering the case of the appellant for promotion and not allowing the appellant to work on a post of Naib Subedar carrying higher pay scale. In the facts of the present case when the appellant was granted promotion w.e.f.1.1.2000 with the ante-dated seniority from 01.08.1997 and maintaining his seniority along with his batchmates, it would be unjust to deny him higher pay and allowances in the promotional position of Naib Subedar."

9.Thus, for the respondents to insist that a notional payment amounts to compliance of order dated 02.09.2021 despite the categoric direction of this Court to 'pay over' the arrears to the petitioner is mis-conceived and unacceptable. The Court has had to cite the above cases solely to meet the point raised at this belated juncture, that is, in my considered view, nothing but an afterthought.

10. No clarification was ever sought from the Court in this regard either before me or before the Appellate Court that has confirmed order dated 02.09.2021 on 13.06.2022 and there is no doubt in my mind that there was no doubt in the mind of the respondent that the order of this Court was for a 'pay over' in actuals, of the amounts *in question. The argument of the respondents is thus rejected and a final opportunity is given to the respondents to pay over the amounts to the petitioner within three (3) weeks from today.*

11. List on 14.10.2022 for reporting compliance as a final chance.

DR.ANITA SUMANTH, J.

3. Mr.Silambannan, learned Additional Advocate General assisted by Mrs.C.Sanghamithirai, learned Special Government Pleader for the respondents would categorically confirm that revised pension proposals have been sent in the case of the petitioner which take into account all revisions as directed by way of previous orders. This is recorded. A copy of the pension proposal has also been given to the learned counsel for the petitioner.

4. In such circumstances, what remains is for the petitioner to follow the matter up with the office of the Accountant General. In the event that the petitioner believes that the amount computed by the office of the Accountant General is not in line with the order of this Court, he is always at liberty to approach this Court.

ska
14.10.2022