



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 6th JULY, 2022

IN THE MATTER OF:

+ **CONT.CAS(C) 331/2022**

RAJNI RATHI

..... Petitioner

Through Mr. Manish Bhardwaj, Advocate

versus

GAJENDER SINGH

..... Respondent

Through Mr. Pramod Gupta, Ms. Mahima,
Mr. Manveen Sachdeva, Advocates

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The instant contempt petition has been filed under Sections 11 and 12 of the Contempt of Courts Act, 1971, read with Article 215 of the Constitution of India, 1950, seeking initiation of contempt proceedings for the alleged non-compliance of the Judgement dated 07.03.2017 passed by this Court in W.P.(C) 5685 of 2016.

2. The facts, in brief, leading to the instant petition are that the Petitioner herein had filed W.P.(C) 5685 of 2016 seeking:

(i). Quashing of inquiry proceedings against him by setting aside of Orders dated 13.05.2016, 03.06.2016, 08.06.2016, and subsequent Orders of the Inquiry Officer.

(ii). Payment of monetary emoluments to the Petitioner as per Fifth and Sixth Pay Commission Reports which had become applicable to schools in Delhi, including the Respondent No.2



therein/School wherein the Petitioner had been working as the Vice-Principal.

3. *Vide* Judgement dated 07.03.2017, this Court allowed the writ petition filed by the Petitioner to the extent that the Petitioner would be granted the monetary emoluments from 16.06.2013 till 29.09.2016 within a period of three months from the date of the Judgement. Furthermore, it was directed that in case the said amount was not paid to the Petitioner within those three months, the Petitioner would be entitled to interest at the rate of 9% per annum from the date the amounts became due. The relevant portion of the Judgement has been reproduced as followed:

"4. In view of the factual position emanating from the record that petitioner has not been paid monetary emoluments as per Fifth and Sixth Pay Commission Reports, but which can only be granted for a period prospectively from the date of three years before filing of the writ petition i.e from 16.6.2013 and till the petitioner's services were terminated on 29.9.2016, accordingly, this writ petition is allowed to the extent that petitioner will be granted aforesaid monetary emoluments from 16.6.2013 till 29.9.2016 within a period of three months from today. In case, the said amount is not paid to the petitioner within three months from today, then the petitioner will be entitled to interest at the rate of 9% per annum simple from the date the amounts became due to the petitioner from the respondent no. 2/school. So far as the prayer pertaining to challenge to the inquiry proceedings is concerned, the same is dismissed as infructuous with liberty granted to the petitioner to challenge the order of the disciplinary authority dated 29.9.2016 imposing the punishment of dismissal of services of the petitioner."



4. Mr. Manish Bhardwaj, learned Counsel for the Petitioner, submits that the Petitioner herein has been paid only Rs. 6,56,412/- *vide* Cheque No. 011601 dated 01.06.2017 for the period between 16.06.2013 to 20.03.2015. He states that the salary between 21.03.2015 to 29.09.2016 has been withheld and this conduct of the Respondent is in blatant violation of the directions rendered by this Court in the Judgement dated 07.03.2017.

5. The learned Counsel for the Petitioner further submits that a letter dated 19.06.2017 had been written to the Respondent seeking compliance of the Judgement dated 07.03.2017, and payment of the remaining arrears. The letter further noted that the calculation sheet did not reflect whether the fixation of the amount that was to be paid to the Petitioner was under the 5th or 6th Pay Commission, and the Petitioner also sought for the supply of her entire Service Book containing the complete pay fixation.

6. Mr. Bhardwaj submits that in response to the letter dated 19.06.2017, the Respondent stated that the calculation sheet had been prepared in accordance with the 6th Pay Commission. It further noted that as there had been unauthorized absence on the part of the Petitioner for the period from 20.03.2015 to 29.09.2016 and had been declared as *dies-non* by the Disciplinary Action Committee (DAC) *vide* Order dated 29.09.2016, therefore, the Petitioner would not be entitled to the pay for the said period. Mr. Bhardwaj submits that the reply to the letter 19.06.2017 by the Respondent states that the Service Book is in possession of the Petitioner. He states that this is contrary to the statement made by PW1- Kapil Kumar of DAC, who admitted that the service book is in custody of the Respondent.

7. The learned Counsel for the Petitioner submits that non-compliance of the Judgement dated 07.03.2017 amounts to contempt as per the Contempt of Courts Act, 1971, and that as the instant case is a matter of continuing



contempt, the limitation under Section 20 of the Contempt of Courts Act, 1971, shall not be applicable in the instant case.

8. Heard Mr. Manish Bhardwaj, learned Counsel appearing for the Petitioner, and perused the material on record.

9. The purpose of the law of contempt was to secure public respect and confidence in the judicial process, and provide a sanction for any act or conduct which is likely to destroy or impair such respect and confidence. In U.N. Bora v. Assam Roller Flour Mills Assn., (2022) 1 SCC 101, after analysing the various principles of law on the point rendered, the Apex Court laid down the following parameters as to when action under the Contempt of Courts Act, 1971, should be initiated:

"9. We do not wish to reiterate the aforesaid settled principle of law except by quoting the reasoned decision of this Court in Hukum Chand Deswal v. Satish Raj Deswal [Hukum Chand Deswal v. Satish Raj Deswal, (2021) 13 SCC 166 : 2020 SCC OnLine SC 438] wherein the celebrated judgment in Ram Kishan v. Tarun Bajaj [Ram Kishan v. Tarun Bajaj, (2014) 16 SCC 204 : (2015) 3 SCC (L&S) 311] , has been quoted. The following paragraphs would govern the aforesaid principle : (Hukum Chand Deswal case [Hukum Chand Deswal v. Satish Raj Deswal, (2021) 13 SCC 166 : 2020 SCC OnLine SC 438] , SCC paras 20-21 & 25-27)

"20. At the outset, we must advert to the contours delineated by this Court for initiating civil contempt action in Ram Kishan v. Tarun Bajaj [Ram Kishan v. Tarun Bajaj, (2014) 16 SCC 204 : (2015) 3 SCC (L&S) 311] . In paras 11, 12 and 15 of the reported decision, this Court noted thus : (SCC pp. 209-11)

'11. The contempt jurisdiction conferred on



to the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi-criminal in nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities. (Vide V.G. Nigam v. Kedar Nath Gupta [V.G. Nigam v. Kedar Nath Gupta, (1992) 4 SCC 697 : 1993 SCC (L&S) 202] , Chhotu Ram v. Urvashi Gulati [Chhotu Ram v. Urvashi Gulati, (2001) 7 SCC 530 : 2001 SCC (L&S) 1196] , Anil Ratan Sarkar v. Hirak Ghosh [Anil Ratan Sarkar v. Hirak Ghosh, (2002) 4 SCC 21] , Bank of Baroda v. Sadruddin Hasan Daya [Bank of Baroda v. Sadruddin Hasan Daya, (2004) 1 SCC 360] , Sahdeo v. State of U.P. [Sahdeo v. State of U.P., (2010) 3 SCC 705 : (2010) 2 SCC (Cri) 451] and National Fertilizers Ltd. v. Tuncay Alankus [National Fertilizers Ltd. v. Tuncay Alankus, (2013) 9 SCC 600 : (2013) 4 SCC (Civ) 481 : (2014) 1



SCC (Cri) 172] .)

12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is “wilful”. The word “wilful” introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. “Wilful” means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a “bad purpose or without justifiable excuse or stubbornly, obstinately or perversely”. Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. “Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct.” (Vide S. Sundaram Pillai v. V.R. Pattabiraman [S. Sundaram Pillai v. V.R. Pattabiraman, (1985) 1 SCC 591] , Rakapalli Raja Ram Gopala Rao v.



Naragani Govinda Sehararao [Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararao, (1989) 4 SCC 255] , Niaz Mohd. v. State of Haryana [Niaz Mohd. v. State of Haryana, (1994) 6 SCC 332] , Chordia Automobiles v. S. Moosa [Chordia Automobiles v. S. Moosa, (2000) 3 SCC 282] , Ashok Paper Kamgar Union v. Dharam Godha [Ashok Paper Kamgar Union v. Dharam Godha, (2003) 11 SCC 1] , State of Orissa v. Mohd. Illiyas [State of Orissa v. Mohd. Illiyas, (2006) 1 SCC 275 : 2006 SCC (L&S) 122] and Uniworth Textiles Ltd. v. CCE [Uniworth Textiles Ltd. v. CCE, (2013) 9 SCC 753] .

15. It is well-settled principle of law that if two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. The effect and purport of the order is to be taken into consideration and the same must be read in its entirety. Therefore, the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act. [See Sushila Raje Holkar v. Anil Kak [Sushila Raje Holkar v. Anil Kak, (2008) 14 SCC 392 : (2009) 2 SCC (L&S) 497] and Three Cheers Entertainment (P) Ltd. v. CESC Ltd. [Three Cheers Entertainment (P) Ltd. v. CESC Ltd., (2008) 16 SCC 592]]

21. Similarly, in R.N. Dey v. Bhagyabati Pramanik [R.N. Dey v. Bhagyabati Pramanik, (2000) 4 SCC 400] , this Court expounded in para 7 as follows : (SCC p. 404)



*'7. We may reiterate that the weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. **Discretion given to the court is to be exercised for maintenance of the court's dignity and majesty of law.** Further, an aggrieved party has no right to insist that the court should exercise such jurisdiction as contempt is between a contemner and the court. It is true that in the present case, the High Court has kept the matter pending and has ordered that it should be heard along with the first appeal. But, at the same time, it is to be noticed that under the coercion of contempt proceeding, the appellants cannot be directed to pay the compensation amount which they are disputing by asserting that claimants were not the owners of the property in question and that decree was obtained by suppressing the material fact and by fraud. Even presuming that the claimants are entitled to recover the amount of compensation as awarded by the trial court as no stay order is granted by the High Court, at the most they are entitled to recover the same by executing the said award wherein the State can or may contend that the award is a nullity. In such a situation, as there was no wilful or deliberate disobedience of the order, the initiation of contempt proceedings was wholly unjustified.'*

25. Pertinently, the special leave petitions were filed by the respondent against the order dated 28-1-2019 [Sagu Dreamland (P) Ltd. v. Jingal



Bell Amusement Park (P) Ltd., 2019 SCC OnLine Del 6720] , which as aforesaid, did not deal with the question regarding the monthly rent payable by the respondent but explicitly left the parties to pursue the same before the executing court. The plaintiff-petitioner having acquiesced of that observation of the High Court, cannot be allowed to contend to the contrary. This Court in Jhareswar Prasad Paul v. Tarak Nath Ganguly [Jhareswar Prasad Paul v. Tarak Nath Ganguly, (2002) 5 SCC 352 : 2002 SCC (L&S) 703] , in para 11, opined thus : (SCC p. 360)

*'11. ... The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. **The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition, be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which is alleged to have committed deliberate default in complying with the directions in the judgment or order.** If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order. If this limitation is borne in mind then*



criticisms which are sometimes levelled against the courts exercising contempt of court jurisdiction “that it has exceeded its powers in granting substantive relief and issuing a direction regarding the same without proper adjudication of the dispute” in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the judgment or order passed in the contempt proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended to maintain the majesty and image of courts.’

(emphasis supplied)

10. Disobedience of the Order whose non-compliance has been alleged must be "wilful". The term “wilful” implies that one has knowingly, intentionally, consciously, calculatedly, and deliberately with full knowledge of the consequences flowing therefrom chosen to not comply with the directions rendered in a judicial order. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. However, if such disobedience is the result of some compelling circumstances under which it is not possible for the contemnor to comply with the order, then contempt shall not be made out.

11. In the instant case, *vide* Judgement dated 07.03.2017 in W.P.(C) 5685/2016, this Court had directed Respondent No.2 in the said writ petition to grant the Petitioner monetary emoluments from 16.06.2013 till 29.09.2016 within a period of three months from the date of the Judgement. Accordingly, Rs. 6,56,412/- *vide* Cheque No. 011601 dated 01.06.2017 for



the period between 16.06.2013 to 20.03.2015 was paid to the Petitioner. However, the arrears for the period between 21.03.2015 to 29.09.2016 remain unpaid.

12. Consequently, the Petitioner wrote a letter dated 19.06.2017 seeking payment of the arrears and compliance of the Judgement dated 07.03.2017. *Vide* letter dated 13.07.2017, the Respondent replied to the letter dated 19.06.2017, stating that the DAC, *vide* Order dated 29.09.2016, had stated that there had been unauthorized absence on the part of the Petitioner from 20.03.2015 to 29.09.2016 and had been declared *dies-non*, therefore, the Petitioner would not be entitled to monetary emoluments for the said period.

13. This Court is of the opinion that there has been compliance of the Judgement dated 07.03.2017 in W.P.(C) 5685/2016 and there is no wilful disobedience as such in terms of the definition of “civil contempt” under Section 2(b) of the Contempt of Courts Act, 1971. The Respondent has paid Rs. 6,56,412/- for the period between 16.06.2013 to 20.03.2015, and due reasoning has been provided for non-payment of the arrears for the period between 20.03.2015 to 29.09.2016. Therefore, it cannot be said that the Respondent has committed contempt of Court by not complying with the Judgement dated 07.03.2017.

2. In view of the above observations, the instant contempt petition is dismissed. All pending application(s), if any, stand disposed of,

SUBRAMONIUM PRASAD, J.

JULY 06,2022

Rahul