



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % **Date of order : 24th July, 2023**
 + **CONT.CAS(C) 33/2023**
MANPREET KAUR AND ANR Petitioners
 Through: **Mr.Khagesh B. Jha and Ms.Shikha**
Sharma Bagga, Advocates

versus

MS NIDHI GUPTA AND ORS Respondents
 Through: **Mr.Sameer Sharma, Advocate for R-1**
and 2
Mr.Yeeshu Jain, ASC with Ms.Jyoti
Tyagi, Mr.Hitanshu and Ms.Manisha,
Advocates for DoE

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant Civil Contempt Petition has been filed under Section 11 and 12 of the Contempt of Courts Act, 1971 (Act hereinafter) against the non-compliance of order dated 9th November 2022 and 24th November 2022 passed by this Court in Writ Petition Civil No. 5371 of 2022 seeking the following reliefs:

"(a) Initiate contempt of court proceedings against the respondent/contemnor for deliberately disobeying and not complying with the orders/directions dated 09.11.2022 &



*24.11.2022 passed by Hon'ble High court of Delhi in W.P. (C) no. 5371/2022 and punish them in accordance with law.
(b) Any other appropriate order which this Hon'ble court may deem fit and proper in the facts and circumstances of the case."*

2. The petitioners are teachers and are working as regular employees of the respondent No. 1 (respondent school hereinafter). Before and during the COVID-19 pandemic, the petitioners faced irregularities in the disbursement of their salaries which forced them to resign.

3. The petitioners herein filed a Writ Petition No. 5371/2022 against the respondent School for non-disbursement of salaries and arrears. This Court *vide* order dated 9th November 2022 directed the respondents to file the calculations of the amount due, if any, to the petitioners, but the same was not complied with.

4. Subsequently, the respondents were directed to pay salary to the petitioners on the 10th of every month *vide* order dated 24th November 2022.

The relevant part of the order is reproduced hereinbelow:

"1. Despite repeated opportunities, the respondent no.1 has not filed the calculations in terms of the last order.

2. Today, learned counsel for the respondent no.1 is not available as he is stated to be held up before another Bench and, therefore, a request for adjournment is made. The same is vehemently opposed by the learned counsel for the petitioners, who submits that the petitioners are facing grave financial hardships on account of non-release of their rightful dues.

3. However, since the respondent no.1 has not filed any calculations, hearing has to be deferred with a direction to the respondent no.1 to positively file its calculations along with a supporting affidavit within one week. The said respondent will



also pay costs of Rs.10,000/- to the petitioners within the same period of one week. Response, if any, to the said calculations be filed by the petitioner before the next date.

4. List on 31.01.2023.

5. In the meanwhile, the respondent no.1 will ensure that the petitioners are paid their due monthly salaries on or before 10th of every month.”

5. However, it is contended that the respondents failed to comply with both the above-mentioned orders and neither submitted any calculations of the amount due to the petitioners, nor paid the due salary.

6. The petitioners have made several representations before the respondents by way of several emails but did not receive any response from the respondents.

7. Being aggrieved by the conduct of the respondents, the petitioners have approached this Court by way of filing the instant Civil Contempt Petition.

8. Learned counsel appearing on behalf of the petitioners submits that the conduct of the respondents amounts to willful and deliberate non-compliance of the orders dated 9th November 2022 and 24th November 2022 passed by this Court.

9. It is submitted that the petitioners have faced undue delay in receiving their salaries from the respondent school. It is further submitted that respondent school has paid salaries as per their own whims and fancies, thereby violating the provisions of the Delhi School Education Act and Rules, 1973.



10. It is submitted that the respondents are falsely claiming financial deficit as an excuse to not pay the petitioners and other staffs their dues. It is further submitted that the respondents have put out advertisements dated 25th August 2021 and 24th November 2021 in The Times of India newspaper notifying the requirement of 24 posts and 16 posts respectively.

11. It is submitted that all the respondents, and especially the respondent No. 3 being the Directorate of Education is duty bound to protect the rights of the petitioners and disburse the salary due to them in a timely manner. It is further submitted that the respondent No. 3 failed to issue any directions to the School thereby failing to comply with the orders passed by this Court.

12. It is further submitted that despite receiving several representations from the petitioners and getting numerous opportunities to comply with various orders, the respondents deliberately, willfully and with malafide intention disobeyed the direction and order of this Court.

13. Hence, in view of the foregoing submissions, the petitioner seeks respondents to be held in contempt of the orders of this Court and further be directed to comply with the same and disburse the amount due to the petitioners.

14. *Per Contra*, the learned counsel appearing for the respondent School vehemently opposed the petition and stated that the respondent has duly complied with the order of this Court and has paid salaries of the petitioners.



15. It is submitted that the respondent School has been facing financial difficulties since COVID-19 pandemic and has not been able to fully recover from the same till date.

16. It is also submitted that the respondent School has complied with the order dated 24th November 2022 and had released the salary for the months of February (10th March 2022), May (19th May 2022), July (6th July 2022), August (2nd August 2022), September (13th September, 2022) and November (7th November 2022). It is further submitted that if there is any non-compliance of the order or direction of this Court, it is certainly not intentional or deliberate.

17. Therefore, in view of the foregoing submissions, the instant petition being devoid of any merit, is liable to be dismissed.

18. Heard the learned counsel for the parties and pursued the records.

19. The petitioners have approached this Court by filing the instant contempt petition due to untimely payment of the accrued salary which was directed by this Court *vide* earlier order passed in the Writ Petition No. 5371/2022.

20. The petitioners have sought to initiate civil contempt against the respondents. The civil contempt has been defined under Section 2(b) of the Contempts of Courts Act, 1971 in following manner:

“2. Definitions

(b) “civil contempt” means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.”



21. On perusal of the said provision, it is evident that the term ‘wilful disobedience’ as used in the provision is a necessary condition for initiation of civil contempt. The said proposition is a settled principle of law and has been discussed by the Courts in various cases.

22. In **V.G. Nigam v. Kedar Nath Gupta, (1992) 4 SCC 697** the Hon’ble Supreme Court held that the wilful disobedience is a primary and necessary condition for initiation of contempt under the Act. The Court held:

“6. Since the respondent has approached the Tribunal against his appointment, to an alleged equivalent post, we do not propose to express any opinion on it. As regards the order of the Tribunal sentencing the appellants for not complying with the order in ‘letter and spirit’ while deprecating the practice or any attempt to ignore or bypass the order passed by courts or Tribunals it would be too hazardous to sentence in exercise of contempt jurisdiction on mere probabilities. The wilful conduct is the primary and basic ingredient of such an offence. We do not propose to express any opinion on the effect of filing of special leave petition in this Court. Nor do we express any opinion if the appellants were guilty of contempt for non-summoning of DPC for promoting to the post of Joint Director or Additional Director. But we are satisfied that the Tribunal having not taken any action on earlier occasion and granted one more opportunity to the appellants to implement the order and that having been done the facts and circumstances did not justify the sentence awarded to the appellants. We hasten to clarify that we may not be understood as saying that if the DPC has not followed the directions of the Court or the Tribunal its orders are not liable to scrutiny. Since we are not laying down or declaring any law and deciding the validity of the order on facts of case we do not consider it necessary to say any further.”



23. In *Niaz Mohd. v. State of Haryana*, (1994) 6 SCC 332 the Hon'ble Supreme Court extensively discussed the nature and scope of civil contempt. The relevant paragraph of the judgment is as follows:

“9. Section 2(b) of the Contempt of Courts Act, 1971 (hereinafter referred to as ‘the Act’) defines “civil contempt” to mean “wilful disobedience to any judgment, decree, direction, order, writ or other process of a court ...”. Where the contempt consists in failure to comply with or carry out an order of a court made in favour of a party, it is a civil contempt. The person or persons in whose favour such order or direction has been made can move the court for initiating proceeding for contempt against the alleged contemner, with a view to enforce the right flowing from the order or direction in question. But such a proceeding is not like an execution proceeding under Code of Civil Procedure. The party in whose favour an order has been passed, is entitled to the benefit of such order. The court while considering the issue as to whether the alleged contemner should be punished for not having complied with and carried out the direction of the court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the Act while defining civil contempt, have said that it must be wilful disobedience to any judgment, decree, direction, order, writ or other process of a court. Before a contemner is punished for non-compliance of the direction of a court, the court must not only be satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was wilful and intentional. The civil court while executing a decree against the judgment-debtor is not concerned and bothered whether the disobedience to any judgment, or decree, was wilful. Once a decree has been passed it is the duty of the court to execute the decree whatever may be consequence thereof. But while examining the grievance of the person who has invoked the jurisdiction of the court to initiate the proceeding for contempt



for disobedience of its order, before any such contemner is held guilty and punished, the court has to record a finding that such disobedience was wilful and intentional. If from the circumstances of a particular case, brought to the notice of the court, the court is satisfied that although there has been a disobedience but such disobedience is the result of some compelling circumstances under which it was not possible for the contemner to comply with the order, the court may not punish the alleged contemner.”

24. In **Anil Ratan Sarkar v. Hirak Ghosh, (2002) 4 SCC 21** the Hon’ble Supreme Court observed that the element of willingness is an indispensable requirement to bring the charges within the meaning of the Act. The relevant paragraph is as under:

“15. It may also be noticed at this juncture that mere disobedience of an order may not be sufficient to amount to a “civil contempt” within the meaning of Section 2(b) of the Act of 1971 — the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act and lastly, in the event two interpretations are possible and the action of the alleged contemnor pertains to one such interpretation — the act or acts cannot be ascribed to be otherwise contumacious in nature. A doubt in the matter as regards the wilful nature of the conduct if raised, question of success in a contempt petition would not arise.”

25. In **Ram Kishan v. Tarun Bajaj, (2014) 16 SCC 204**, the Hon’ble Supreme Court analyzed the aspect of wilful disobedience in following manner:

“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.”

26. The term ‘wilful disobedience’ as provided under the said provision of the Act needs to be satisfied for initiation of the contempt proceedings. Therefore, this Court needs to analyse whether the said metric has been met in the instant case.

27. It is on record that the respondent School had paid 6 months salary to the petitioners i.e., for the months of February, May, July, August, September and November and cited financial difficulties for delay in the disbursement of the salaries for rest of the months due to the COVID-19 pandemic.

28. The respondent School was unable to pay the salaries of the petitioners timely, owing to the financial difficulties faced by it. Moreover, the respondents have also submitted that the rest of the salaries shall be paid



whenever the financial condition of the respondent School improves in the near future.

29. The term ‘wilful disobedience’ as mandated under Section 2 of the Act requires the disobedience of the order of the Court in *toto*. Therefore, the non-disbursement of the remaining salaries due to intervening circumstances which are beyond control of the respondent School cannot be construed as a willful disobedience and cannot qualify as a case fit for initiation of contempt proceedings against the respondent School.

30. In light of the above facts and circumstances, the untimely payment of the remaining salary cannot amount to wilful disobedience, rather, it can be established that the respondent School is willing to pay the salaries of the petitioners. Even though the respondent School has not paid the arrears, the same cannot be termed as contempt of the Court’s Order. For the initiation of a contempt proceeding, the unwillingness on part of the respondent has to be established. In the instant case, part payment of arrears of salary clearly establishes the intent of the respondent School to comply with the orders passed by this Court in the Writ Petition.

31. This Court is hence not inclined to initiate civil contempt proceedings against the respondents, since the petitioners have not been able to satisfy the requirements and ingredients of the civil contempt.

32. Accordingly, the petition being devoid of any merit, stands dismissed.



33. Pending applications, if any, also stands dismissed.
34. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 24, 2023

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Click here to check corrigendum, if any