IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1031 CONTEMPT PETITION NO.296 OF 2024
IN WP/14163/2023

Dronavilli Sivaiah,
Age 70 yrs., Occ. Retired,
R/o Flat No.B/302, Vasanth Nagar,
Poranki Krishana D.T. - 521 137.
(Andhra Pradesh)

… **Petitioner**

… **Versus** …

Ramesh Kumar,
Age 45 yrs., Occ. Service,
The Regional Provident Fund Commissioner-II,
Regional Office of Employees Provident Fund
Organization, Plot No.02, Town Centre,
CIDCO, Aurangabad.

… **Respondent**

…

Mr. N.D. Sonavane, Advocate for petitioner

Mr. N.K. Choudhari, Advocate for sole respondent

…

CORAM : SMT. VIBHA KANKANWADI &
ROHIT W. JOSHI, JJ.

DATE : 10th DECEMBER, 2024

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present petition is filed under Section 12 of the Contempt of

Courts Act, 1971. The petitioner is the original petitioner in Writ Petition No.14163 of 2023, wherein this Court has passed order on 07.11.2023. It is alleged that respondent has committed breach of order passed in the said writ petition.

2 The fact under which the said writ petition was filed was that petitioner was in service with Indo German Tool Room, Aurangabad. He stood retired on 31.03.2009 by superannuation. Employees Pension Scheme, 1995 was applicable to him. On the date of his retirement his salary was Rs.9,990/- per month and deduction towards Provident Fund was on actual salary and not on ceiling limit. After the retirement, monthly pension that was given to the petitioner was Rs.1,633/-. Petitioner had then applied to respondent to give monthly pension on the actual last drawn salary and the deduction thereon which is more than the ceiling limit. Respondent considered the case of petitioner in view of decision in **R.C. Gupta vs. Regional Provident Fund Commissioner** [(2018) 14 SCC 809] and, therefore, the pension was enhanced to Rs.13,353/- per month from Rs.1,633/- from 01.04.2009. However, respondent without giving any opportunity of hearing reduced that pension and started payment with the old rate i.e. Rs.1,633/- and also directed petitioner to refund the excess difference by order dated 29.10.2020. The said order was challenged by filing Writ Petition No.3725 of

2021. This Court had then stayed the recovery by interim order dated 25.02.2021 and clarified that till the disposal the respondent to pay original pension payable to the petitioner. Writ petition was disposed of with the similar order by keeping the recovery in abeyance and remitted the matter back to respondent authorities to pass a fresh order after hearing the petitioner. According to the petitioner, in the light of continuation of the interim protection that order would merge in the final order and after final order would be passed the interim order will come to an end. The respondent, however, refused to pay the enhanced pension and again passed the order on 29.10.2020 maintaining the old order. Therefore, there is breach of order passed.

3 Heard learned Advocate Mr. N.D. Sonavane for petitioner and learned Advocate Mr. N.K. Choudhari for sole respondent. Perused all orders.

4 This Court in Writ Petition (Stamp) No.21949 of 2020 (stated to be similarly situated person) had passed following order :

> “1) …………
>
> 2) …………
>
> 3) Till then, recovery shall not be claimed by the respondents from the petitioners pursuant to the impugned action.

> 4) Mr. Choudhari, learned counsel submits that the original pension that is prior to the enhancement of pension is being regularly paid to the petitioners and is credited in their accounts.
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> 5) Mr. Sonavane, learned counsel for the petitioners submits that the same is not paid to the petitioners on the ground recovery is claimed.
>
> 6) We have stayed the recovery under the present order. There would be no impediment for the respondents to pay original pension payable to the petitioners.
>
> 7) Till the next date, the same shall be paid without prejudice to the rights and contentions of either parties."

5 In Writ Petition No.3725 of 2020 filed by the present petitioner order came to be passed on 08.02.2023, whereby this Court disposed of the writ petition by continuing the interim protection granted by Court to petitioner. The matter was relegated to the Provident Fund authority to pass fresh order by giving an opportunity to the petitioner. Thereupon it appears that the respondent has informed the petitioner vide letter dated 06.12.2023 that office order dated 15.09.2023 was passed in the light of directions of Hon'ble Supreme Court order dated 04.11.2023 and followed the directions given by this Court vide order dated 08.02.2023 and further informed that no changes were made in pension as a result of the office order dated 15.09.2023. It can be seen that the opportunity was given to the petitioner

to put-forth his say. A detailed communication has been forwarded. Now, the question is – Whether there is contempt ? Affidavit-in-reply has been filed by respondent, wherein he has stated that the amount of pension @ Rs.1,447/- is regularly paid to the petitioner. He has taken the factual note as well as relies upon the relevant excerpts from **R.C. Gupta** (supra) and stated that neither the petitioner nor his employer had opted for and/or deposited the amount of the contribution into the funds established as per the provisions of the Act, 1952. He further relies upon the relevant excerpts from **Employees' Provident Fund Organization and another vs. Sunil Kumar B. and others** [AIR 2022 SC 5634] and stated that the scheme as it stood before 01.09.2014 did not provide for any cut-off date and thus those members shall be entitled to exercise option in terms of paragraph 11(4) of the scheme, as it stands at present. Their exercise of option shall be in the nature of joint options covering pre-amended paragraph 11(3) as also the amended paragraph No.11(4) of the Pension Scheme. There was uncertainty as regards validity of the post amendment scheme. All the employees who have not exercised option but were entitled to do so, however, could not due to the interpretation of cut-off date by the authorities ought to have given a further chance to exercise their option was the interpretation put forth by him. The petitioner stood superannuated on 31.03.2009. Petitioner had no basis whatsoever to claim the revision of the pension in the light of the said

Judgment. He submits that the petitioner has misinterpreted the order passed by this Court implying that the stay that the impugned order dated 06.12.2023 purportedly directed to respondent to release the enhanced pension as is being claimed by the petitioner by way of the final relief.

6 Thus, it is to be noted that what was stayed was the recovery of the alleged excess amount. Even as per the facts given in the writ petition as well as this petition, the pension amount which was granted earlier was restored on 29.10.2020 by passing the specific order and it was specifically stated that "there would be no impediment for the respondents to pay original pension payable to the petitioners". The original pension was Rs.1,633/- per month. The same was continued while disposing the petition on 08.02.2023. In view of the directions given by this Court, after the communication was forwarded by respondent on 06.12.2023, fresh cause of action arose for the petitioner to challenge the same, if he was aggrieved. There was no question of coming to a conclusion that there is intentional breach of the order passed by this Court. Taking into consideration these facts there is no necessity to take any action under the Contempt of Courts Act. Petition stands dismissed.

(ROHIT W. JOSHI, J.) **(SMT. VIBHA KANKANWADI, J.)**

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