



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

% **Judgment reserved on : 16 October 2024**
Judgment pronounced on: 29 November 2024

+ **CONT.CAS(C) 534/2021 & CM APPL. 24240/2022**

NARINDER PAUL KAUSHIK & ORS.Petitioners

Through: **Mr. Tushar Gupta, Mr. Sumit Mishra & Mr. Parinay Gupta,**
Advs.

versus

CHIEF SECRETARY & ORS.Respondents

Through: **Mrs. Avnish Ahlawat, SC**
with Mr. Nitesh Kumar Singh,
Ms. Laavanya Kaushik, Ms.
Aliza Alam & Mr. Mohnish
Sehrawat, Advs.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The petitioners, who were initially five in number, seek initiation of contempt proceedings against the respondents for wilful disobedience of the directions contained in the common order-cum-judgement dated 12.02.2019¹ of the Division Bench of this Court and the common order dated 08.11.2019 passed by the Division Bench in review petitions² and CM Application No.22027/2019, in terms of the provision of Article 215 of the Constitution of India, 1950, read with Section 12 of the Contempt of Courts Act, 1971³.

¹ LPA Nos. 322, 333, 334, 335 & 345/2018

² R.P. Nos. 126, 141 & 142/2019

³ The CC Act



2. Shorn of unnecessary details, the petitioners, some of whom retired as the judicial officers from the District Courts of Delhi, while others from the Executive Department of the GNCTD⁴ were appointed as Members in the State Consumer Disputes Redressal Commission⁵ and District Consumer Redressal Forums⁶ in Delhi.

3. In terms of Amended Rules 3(1)(b) and 6(1)(b) of the Delhi Consumer Protection Rules, 1987⁷, as amended *vide* the notification dated 17.09.2013, it is stated that upon appointment as Members in the aforesaid authorities *viz.*, SCDRC and DCRF, the petitioners had the option to receive salaries based on the last pay drawn *minus* their pension.

4. At this juncture, it may be clarified that, except for the petitioner No.4/Shri O.P. Gupta, the remaining petitioners have since been granted appropriate reliefs by the respondents.

5. The original petitioners initially preferred writ petitions⁸ under Article 226 of the Constitution of India, 1950, which were later clubbed together, seeking prayers to the effect that the 'last pay drawn' included the allowances and perquisites as well, which were unlawfully denied to them by the respondents. The said writ petitions were initially dismissed *vide* judgment dated 11.05.2018 by a learned Single Judge of this Court.

⁴ Government of National Capital Territory of Delhi

⁵ SCDRC

⁶ DCRF

⁷ The Rules

⁸ W.P.(C) 3134/2015, W.P.(C) 10512/2015, W.P.(C) 10516/2015, W.P.(C) 10518/2015, W.P.(C) 10531/2015, W.P.(C) 8423/2015, W.P.(C) 8976/2015, W.P.(C) 4055/2016, W.P.(C) 4508/2016, W.P.(C) 9746/2016



6. Aggrieved thereof, the petitioners preferred the aforesaid Letters Patent Appeals and the Division Bench of this Court *vide* order dated 12.02.2019 passed the following directions: -

“25. For the above reasons, the impugned judgment of the learned Single Judge is accordingly set aside. It is declared that the expression 'last pay drawn' occurring in the proviso to Rule 3 (1) (b) and Rule 6(1) (b) of the Rules would include not only basic pay but also Dearness Allowance. The emoluments payable to the Appellants for the period during which they served as Members of the DCDRF or SCRDC shall be re-worked accordingly and the arrears paid to each of them by the Respondents within a period of eight weeks from today, failing which the Respondents would be liable to pay simple interest @ 6% per annum on the said sum till the date of payment.

26. The appeals are accordingly allowed but in the circumstances with no order as to costs. The pending applications are also disposed of.”

7. However, the appellants/petitioners were constrained to prefer review petitions, raising a short question to the effect that the expression ‘last pay drawn’ occurring in the proviso to Rules 3(1)(b) and 6(1)(b) of the Rules would include ‘*not only basic pay but also all other allowances including dearness allowance*’. The review petitions were allowed, and in the operative portion of the directions contained in the order dated 08.11.2019, it was declared that the expression ‘last pay drawn’ would include not only the Basic Pay but all other allowances including dearness allowances⁹, which were drawn prior to the appointment as Member of either the SCDRC and DCRF.

8. Insofar as the present petitioner No.4/Shri O.P. Gupta is concerned, who served for about five years and six months in the SCDRC, the issue remains pending about the supposed arrears

⁹ DA



pertaining to the CPF¹⁰ to be released by the respondents. It appears that *vide* letter dated 21.03.2022, the said petitioner preferred a representation to the effect that prior to joining SCDRC with effect from 22.07.2015, he was working as a Member (Judicial), Municipal Taxation Tribunal under the Ministry of Urban Development, GNCTD.

9. Learned counsel for the petitioner alluding to the LPC¹¹ on record, urged that the Government had been contributing its share of 10% in his PRAN No.110053207607 and it was urged that although the petitioner No. 4 had always been ready and willing to make contribution towards CPF, his earlier representation dated 03.01.2022 was rejected on the ground that there is no provision in the Consumer Protection Act, 1986¹² or the Rules for contribution towards the 'CPF' for the members of the State Commission.

10. It is pertinent to mention here that the present contempt petition was filed on 10.08.2021 and upon which a notice was issued to the respondents/GNCTD¹³. A compliance affidavit was filed by Sh. Vinod Kumar, working as Assistant Director (Consumer Affairs) Department of Food Supplies and Consumer Affairs K-Block, Vikas Bhawan, New Delhi dated 06.09.2023, whereby the following statement was made *vide* the paragraph No.4: -

“4. That Petitioner No.4 made a representation for payment of Contributory Provident Fund (CPF). The said Representation was considered and was rejected after consultation with the Finance Department, Govt. of NCT of Delhi as there is no provision in

¹⁰ Contributory Provident Fund

¹¹ Last Pay Certificate

¹² The CP Act

¹³ Government of National Capital Territory of Delhi



Consumer Protection Act/Rules for deduction of CPF for the Presidents/Members of State Commission/District Commission who are in receipt of any pension from the Government as CPF rules are applicable to non-pensionable servants. Thus, the CPF deduction is not applicable in the present case. Noting of Finance (Exp.-1) Department is Annexed as Annexure-A.”

ANALYSIS AND DECISION

11. I have given my thoughtful consideration to the submissions advanced by the learned counsel for the parties at the bar and I have also perused the relevant record of the case. It is evident that the representations of the petitioner dated 03.01.2022 and 21.03.2022 were rejected primarily on the grounds that there is no provision in the relevant rules for deduction/contribution in the CPF for the President/Member of the State Commission/District Forums; and that the ‘CPF’ rules are applicable for non-pensionable government servants only.

12. At the outset, the aforesaid plea of the respondents cannot be countenanced in law. Although Rule 4 of the “Contributory Provident Fund Rules” by Swamy provides that such rules would be applicable to every non-pensionable servant of the Government belonging to any service under the control of the President, however, it appears that the respondents overlooked the *proviso* which clearly provides as under: -

“provided also that nothing contained in this rule shall apply to a Government servant appointed on or after the first day of January, 2004.”

13. At the cost of the repetition, the petitioner joined SCDRC as Member (Judicial) with effect from 22.07.2015 and as per the LPC (Annexure C-6), and evidently the position was summarised as under:-



**“PROVISIONAL
Last Pay Certificate**

As requested vide letter dated 16-07-2015 by Sh. O. P. Gupta Member, (Judicial) Municipal Taxation Tribunal, Delhi, this is to certify that he was being paid at last drawn pay minus pension, per month as follows:-

Basic Pay	:	Rs.77,990/-
D.A.	:	Rs.88,129/-
H.R.A.	:	Rs.23,397/-
Sumptuary Allowance	:	Rs.3100/-
Contribution to CPF in PRAN A/C No.110053207607	:	Rs.16,612/-
Similar account is being contributed by Govt. @ 10% of Basic Pay + D.A.		
Pension is being deducted @ Rs.38,995/- per month.		

in addition he was being reimbursed the following amounts
per month:-

50% of Electricity Bills (Two)
50% of Water Bill
Land Line telephone Bill of MTNL Subject to
ceiling of Rs.1500/-
Mobile Phone Bill subject to ceiling of Rs.1500/-
Two Newspaper & Two Magazines after deducting
towards waste charges.
50% Salary of two un-skilled orderlies for
residential camp office @ minimum wages
prescribed by Govt. of NCT Delhi. At present the
same is Rs.9,048/- per month for one orderly.

(SANJEEV KUMAR)
Drawing & Disbursement Officer
Municipal Taxation Tribunal
Dy.Assessor & Collector (House Tax)
Civil Line Zone
North Delhi Municipal Corporation, Delhi

Dated: 16-07-2015
Sh. O. P. Gupta
Member (Judicial)
Municipal Taxation Tribunal
DELHI.”



14. The said LPC was issued by the Drawing and Disbursing Officer, Municipal Taxation Tribunal, Dy. Assessor & Collector (House Tax), Civil Line Zone, North Delhi Municipal Corporation, Delhi, which is not disputed. What therefore follows is that, during his tenure as Member (Judicial), Municipal Taxation Tribunal, the petitioner No. 4 was contributing ₹16,612/- to his CPF account, with an equivalent amount being contributed by the State Government. Evidently, such disposition continued till the time he served as the Member (Judicial) in the Municipal Taxation Tribunal.

15. During the course of the arguments, learned counsel for the petitioners highlighted that in various analogous departments of the Delhi Government, provisions for 'CPF' already exist. Reference was invited to Regulation 18 concerning the Delhi Value Added Tax Appellate Tribunal, as per the notification dated 04.03.2009¹⁴, which stipulates that members of the Tribunal shall be governed by the new defined contributory pension scheme, while members appointed on deputation are governed by the General Provident Fund.

16. Likewise, reference is invited to the notification by the Ministry of Finance (Department of Revenue) dated 01.06.2017, whereby paragraph No. 12 also provides the applicability of CPF in the case of Chairman, Chairperson or President apart from the Members (Judicial) or otherwise who are appointed in the Tribunal under the Central Government. In fact, it is also pointed out that even in respect of Delhi Electricity Regulatory Commission, the Members (Judicial)

¹⁴ No.F.3(32)/Fin.(T&E)2008-09/JSFin/110



appointed *vide* the Section 8¹⁵ are governed by the provision of the CPF Rules, 1962 and no option to subscribe under the provisions of the General Provident Fund (Central Services) Rules, 1960, would be applicable.

17. In the said backdrop, learned counsel for the petitioners also pointed out that the benefits claimed by petitioner No.4 has already been extended to other retired officials from the district judiciary viz. Mr. J.P. Sharma, Former President, DCDRF, and Mr. B. B. Chaudhry, President of DCDRF. In this regard, the petitioner has relied on a photocopy of the CPF book having CPF account No.13 allotted by GPF PAO CPF, showing that from August 2007 to July 2010, Mr. J. P. Sharma received a subscription of ₹3,578/- to ₹3,728/- per month as CPF. Similarly, a copy of the payable statement for CPF account No. 19 shows that Mr. B. B. Chaudhry received contributions of ₹6,113/- to ₹12,079/- per month as CPF from December 2009 to January 2014.

18. Although Ms. Avnish Ahlawat, learned standing counsel for the respondents, alluding to Rule 4 of the Swamy's Compilation of Contributory Provident Fund Rules, has urged that it applies to every non-pensionable servant of the Government. At the cost of repetition, the proviso is categorical that the aforesaid Rule shall not apply to a Government servant appointed on or after 1st day of January, 2004. In her submissions, learned Standing Counsel for the respondents relied on decisions in **J.S. Parihar v. Ganpat Duggar**¹⁶; **Anil Kumar Sahi**

¹⁵ Delhi Electricity Regulatory Commission (Salary, Allowances & Other Conditions of Service of the Chairperson and Members) Rules, 2001.

¹⁶ (1996) 6 SCC 291



v. Prof. Ram Sevak Yadav¹⁷; and K. Arumugam v. V. Balakrishnan¹⁸ and endeavoured to hammer the point that once the decision of the Court has been implemented as per the directions issued by the Court, no further directions can be issued for any other relief and the petitioner should seek redressal in appropriate forum, which would be the fresh cause of action for the aggrieved party.

19. The said decisions do not help the respondents in any manner. The directions of this Court were categorical that “last pay drawn” would not only include the basic pay *but all other allowances* including the DA. The said part still remains to be un-complied with. The issue raised by the petitioner is not a new cause of action, as argued by the learned Standing Counsel for the respondent, but rather arises from the directions previously passed by this Court. If the respondent's counsel's plea is accepted, it would essentially require this Court to reassess the legality and implications of those directions, which is not permissible under law.

20. At this juncture, it may also be appreciated that ‘the note’ to the proviso further reads as under:-

“NOTE-Any officer retired from any Civil or Military Department of the Central Government or from services of any State Government or from the services of any local fund administered by the Government, or Port Trust or Railways, **may on re-employment in Civil Department be admitted to the Fund by the Appointing Authority subject to the general orders issues in this behalf by the Government of India**, in the Ministry of Finance, from time to time.”

¹⁷ (2008) 14 SCC 115

¹⁸ (2019) 18 SCC 150



21. It may further be noted the Rule 12 of Swamy's Compilation on Re-Employment of Pensioners (Civilians and Ex-Servicemen), pertaining to Contributory Provident Fund, provides as under: -

“12. CONTRIBUTORY PROVIDENT FUND

Re-employed officers might be permitted to contribute to the contributory provident fund, provided that where the term of re-employment is initially for a year or less but is later extended so as to exceed on year. The Government's contribution with interest shall be credited only after the completion of one year's re-employment service. The Government's contribution with interest shall be payable for the entire period for which the re-employed officer is allowed to contribute to the CPF if such period exceeds on year.”

22. The sum and substance of the aforesaid discussion is that this Court *vide* order dated 12.02.2019, as clarified later *vide* order dated 08.11.2019 categorically laid down that Rule 3(1)(b) and Rule 6(1)(b) would include not only basic pay but “all other allowance” including dearness allowance. There is no denying that the term 'all other allowances' is broad and encompasses various benefits, including financial advantages such as government contributions to the CPF.

23. Incidentally, the respondents have not cared to file a counter-affidavit, and the compliance affidavit filed by Mr. Vinod Kumar, Assistant Director (Consumer Affairs) Department of Food Supplies and Consumer Affairs, dated 04.09.2023, is based on input from the Finance Department, Govt. of NCT of Delhi, and cannot be sustained in law. Furthermore, the respondents in the aforesaid writ petitions and the review petitions never raised any objection that ‘all other allowances’ would not include any contribution to be made to the CPF by the Government. It is also evident that the respondents have



applied different yardsticks to the earlier Member (Judicial), as detailed in the paragraph No.17 hereinabove, by granting them the benefit in the nature of contribution to the CPF while denying the same to the present petitioner. It is also pertinent to note that shortly after joining as a Member(Judicial) in the SCDRC, the petitioner made a representation on 15.07.2015, expressing his readiness and willingness to make his own contributions towards the CPF. However, this request was not accepted on the above discussed fallacious grounds.

24. This case involves more than a mere misinterpretation of rules. It constitutes a deliberate denial of the petitioner's legitimate rights to Government contributions to the CPF as per the relevant Rules, thereby depriving him of his rightful allowances. In light of the foregoing discussion, this Court has no hesitation in holding that the respondents have committed a wilful and deliberate breach of this Court's directions, as contained in the order dated 12.02.2019, and clarified vide order dated 08.11.2019.

25. Therefore, the respondents are held guilty of committing contempt of this Court's directions. However, to allow the respondents to purge themselves of the contempt, they are directed to calculate the Government's contribution to the petitioner's CPF, as per the Leave Preparation Certificate (LPC) dated 16.07.2015, drawn by the Drawing and Disbursing Officer [“DDO”], with reference to paragraph Nos. (13) and (14). The calculation shall be from the date of the petitioner's joining the State Consumer Disputes Redressal Commission [“SCDRC”] on 22.07.2015, until the expiry of his tenure



i.e., by 04.02.2021. This exercise shall be completed within four weeks from today.

26. It is clarified that since the petitioner's request, conveyed through a letter dated 15.07.2015, to allow him to contribute to his CPF was not accepted, and given the fact that he has now retired, it would serve no purpose to require the petitioner to make his own CPF contributions. In any case, upon retirement, he would be entitled to withdraw the entire CPF amount. To reiterate, the focus should be on addressing the respondents' contribution obligations.

27. A Compliance Report be filed within two weeks thereafter, failing which Secretary/Director of Department of Food Supplies and Consumer Affairs shall appear before this Court in person for deciding the quantum of punishment in accordance with the law.

28. The present contempt petition is disposed of.

29. Re-notify on 08.01.2025.

DHARMESH SHARMA, J.

NOVEMBER 29, 2024

Ch