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

Date of Decision: 10th May, 2024

+ **CONT.CAS(C) 1590/2023**

SUNIL KUMAR SAXENA

..... Petitioner

Through:

Mr. Praveen Kumar, Adv.

M: 9868013891

Email: spemlex@gmail.com

versus

DR M BALAJI & ANR.

..... Respondents

Through:

Mr. L.R. Khatana, Advocate.

(M): 9811303050

Mr. Rakesh Kumar, CGSC with Mr.
Sunil, Advocate for respondent/UOI.

(M): 9811549455

Email: rakeshkumarcgsc@gmail.com

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

1. The present petition has been filed alleging willful disobedience of the judgment dated 18th August, 2023 passed by the learned Division Bench in *LPA No. 406/2019*. By way of the aforesaid judgment, the appeal filed by the petitioner herein was allowed to the extent that the petitioner herein was held entitled to be treated in service, till his actual date of superannuation. Further, the respondents were directed to fix the salary of the petitioner notionally, till the date of his actual superannuation, which would consequently, result in enhancement of pension and terminal dues.



2. Learned counsel appearing for the petitioner submits that after the passing of the aforesaid judgment dated 18th August, 2023, the petitioner had made a representation dated 21st August, 2023 to the respondents seeking the calculations with respect to the payments that were due and payable to the petitioner. He further submits that since no response was received by the petitioner to his representation dated 21st August, 2023, the present petition came to be filed.

3. Learned counsel appearing for the petitioner draws the attention of this Court to the compliance affidavit filed on behalf of the respondents to submit, that though the respondents have filed a compliance affidavit purportedly in terms of the directions passed by the learned Division Bench, however, the respondents have unauthorizedly made certain deductions from the pension, that had already been released to the petitioner. He, thus, submits that the said deductions could not have been made by the respondents, as there were no such directions by the learned Division Bench, for making such deductions.

4. Learned appearing for the petitioner also relies upon the judgment in the case of *State of Punjab and Others versus Rafiq Masih (White Washer) and Others, (2015) 4 SCC 334*, to contend that no deduction could have been made by the respondents from the pension, already paid to the petitioner.

5. Learned counsel appearing for the petitioner has also drawn the attention of this Court to the letter dated 29th January, 2024 issued by the respondents to the petitioner, which the petitioner has attached along with his rejoinder. By referring to the aforesaid letter dated 29th January, 2024, learned counsel appearing for the petitioner submits, that the said pension



payment order passed by the respondents is patently illegal, as deductions have been made from the pension of the petitioner in an illegal manner, and in violation of the directions of the Division Bench.

6. Per contra, learned counsel appearing for the respondents submits that the respondents have already complied with the directions passed by the learned Division Bench. He further submits that as per the judgment passed by the learned Division Bench, the petitioner was held entitled to be treated in service, till his actual date of superannuation. Thus, he submits that the petitioner has been treated in service till the actual date of superannuation. It is submitted that for the period, when the petitioner has not been treated in service, pension has been duly released. However, the petitioner is not entitled for any pension for the period, when he has been treated to be in service, for such period. Thus, the pension that was released for the period, which has now been directed to be treated in service, has rightly been adjusted by the respondents.

7. Having heard learned counsel for the parties, this Court notes that by the judgment dated 18th August, 2023 in *LPA No. 406/2019*, the learned Division Bench, had passed the following directions:

“xxx xxx xxx

*24. While the matter was being argued, learned counsel for the appellant, has categorically stated before this Court that the appellant is not praying for back wages nor is he claiming regular salary for the period during which he was under suspension. Accordingly, we allow the writ appeal and hold that **the appellant shall be entitled to be treated in service till his actual date of superannuation and the respondent shall fix his salary notionally till the date of his actual superannuation which will consequently result in enhancement of pension and terminal dues. It is made clear that he will not be entitled to back wages and salary for the period he was under suspension and for the period he was out of job as the appellant — who was present in Court, has not***



pressed for the aforesaid reliefs.

25. Resultantly, the writ appeal is allowed. The order of removal dated 02.11.2015, the order dated 14.02.2017 passed by the Appellate Authority, and the judgment dated 22.04.2019 passed by the learned Single Judge in W.P.(C.) No. 8335/2017, are hereby set aside with the aforesaid observations.”

(Emphasis Supplied)

8. Reading of the aforesaid judgment categorically shows that while allowing the appeal filed by the petitioner herein, it had been held that the petitioner shall be treated in service, till his actual date of superannuation. Thus, the respondents had been directed to fix the salary of the petitioner notionally, till the date of his actual superannuation, for the purposes of enhancement of pension and terminal dues.

9. This Court takes note of the compliance affidavit filed on behalf of the respondents, relevant portions of which, read as under:

“xxx xxx xxx

3. It is, therefore, most respectfully submitted that the directions issued by this Hon'ble Court vide Judgment dated 18.08.2023 in LPA No.406/2019 have been fully implemented/ complied with as per the details given below:-

(a) **That the appellant/petitioner has been treated in service till his actual date of retirement, i.e., 31.01.2022.**

(b) **That his salary/pay has been notionally fixed till his actual date of superannuation, i.e., 31.01.2022, which has come to Rs.43500/- on the date of his superannuation as compared to the pay fixed earlier, i.e. Rs.12850/- on the date of his compulsory retirement.**

(c) **That as a result of (b) above, his pension has been enhanced to Rs.21750/- as compared to his pension fixed earlier (Rs.4283/- in 6th CPC and Rs.11008/- in 7th CPC).**

(d) **That likewise his gratuity has also be revised to Rs.961785/- from Rs.300181/- fixed and paid earlier.**



(e) That Leave encashment has also been paid as per the revised pay fixed as per the directions of this Hon'ble Court.

4. That the consequent payments of amount due have been made on 15.02.2024 by EIA-Delhi in his SBI Account.

5. That a copy of the Pension Payment Order issued in implementation of this Hon'ble Court's Judgment dated 18.08.2023 is annexed hereto and marked as Annexure-1."

(Emphasis Supplied)

10. Perusal of the aforesaid shows that the respondents have released the amounts to the petitioner, in terms of the calculations made by the respondents.

11. This Court also notes the contention made by learned counsel for the petitioner with respect to the letter dated 29th January, 2024 issued by the respondent, wherein, it has been noted that the amount of previous pension amounting to ₹ 6,39,304/-, has been adjusted in the revised retirement dues. The letter dated 29th January, 2024, issued by the respondent, reads as under:

"xxx xxx xxx

EIC/DMN/PSN/62512/2023-24/1535

29th January, 2024

To,
Sh. Sunil Kumar Saxena
House No.23/89,
East Azad Nagar,
New Delhi-110051

Sub.: Revised Pension Fixation and terminal dues in compliance to Hon'ble High Court of Delhi Judgement dated 18.08.2023 in LPA No.406/2019 in r/o. of Sh. Sunil Kumar Saxena, Ex-Dispatch Rider, EIA-Delhi-Reg.

Sir,

In compliance to the Judgement dated 18.08.2023 in LPA No.406/2019 which stated that "The appellant shall be entitled to be treated in service till his actual date of superannuation and the respondent shall fix his salary notionally till the date of his actual



superannuation which will consequently result in enhancement of pension and terminal dues", the pension and terminal dues has been revised and is being conveyed hereunder:-

i) Difference payable of DCRG	Rs.661604/- (Rupees Six Lakh Sixty One Thousand Six Hundred Four Only)
ii) Difference payable of Leave Encashment	EL-96 days

In addition to above, please find attached the revised pension payment order in compliance with above said Judgement. The earlier pension order dated 31.05.2017 may be treated as cancelled.

Further, it may be noted that, since the date of your retirement has been shifted from 02.11.2015 to 01.02.2022, the previous pension amounting to Rs.639304/- paid to you has been adjusted with the revised retirement dues.

EIA-Delhi is directed that the revised retirement dues as stated above may be paid to Sh. Sunil Kumar Saxena, Ex-Dispatch Rider, EIA-Delhi, after adjusting an amount of Rs. 639304/- for earlier pension paid to the individual. It may be ensured that no dues is outstanding against the individual while settling his revised retirement benefits. The statement of due drawn is enclosed.

This issues with the approval of Competent Authority.

xxx xxx xxx"

(Emphasis Supplied)

12. Perusal of the aforesaid letter clearly manifests that the respondents, as per their own understanding, have made certain adjustments. Though the order of the learned Division Bench does not specifically direct adjustment of any such pension already paid to the petitioner, however, as per the understanding of the respondents, such deductions were liable to be made, since the petitioner has been treated to be in service, for the period for which, earlier, pension had been released.

13. Learned counsel appearing for the respondent has justified the said adjustment, in terms of letter dated 29th January, 2024, which is vehemently



disputed by learned counsel appearing for the petitioner.

14. Thus, this Court notes that compliance has been done by the respondents, as per their own understanding, of the order passed by the learned Division Bench.

15. It is undisputed that once a party has complied with an order, as per its own understanding, the legality or the correctness or wrongness of the decision of the said party, will not be adjudicated by the Court in contempt proceedings.

16. Thus, Supreme Court in the case of *Bihar State Government Secondary School Teachers Association versus Ashok Kumar Sinha and Others, (2014) 7 SCC 416*, has held that if there is substantial compliance with the direction given in the judgment, a contempt Court will not go into the details of the various measures taken by the respondents. Thus, it has been held as follows:

“xxx xxx xxx

24. At the outset, we may observe that we are conscious of the limits within which we can undertake the scrutiny of the steps taken by the respondents, in these contempt proceedings. The Court is supposed to adopt cautionary approach which would mean that if there is a substantial compliance with the directions given in the judgment, this Court is not supposed to go into the nitty-gritty of the various measures taken by the respondents. It is also correct that only if there is wilful and contumacious disobedience of the orders, that the Court would take cognizance. Even when there are two equally consistent possibilities open to the Court, case of contempt is not made out. At the same time, it is permissible for the Court to examine as to whether the steps taken to purportedly comply with the directions of the judgment are in furtherance of its compliance or they tend to defeat the very purpose for which the directions were issued. We can certainly go into the issue as to whether the Government took certain steps in order to implement the directions of this Court and thereafter withdrew those measures and whether it amounts to non-implementation. Limited inquiry from the aforesaid perspective, into the provisions of the 2014 Rules can also be undertaken to find out as



to whether those provisions amount to nullifying the effect of the very merger of BSES with BES. As all these aspects have a direct correlation with the issue as to whether the directions are implemented or not. We are, thus, of the opinion that this Court can indulge in this limited scrutiny as to whether provisions made in the 2014 Rules frustrate the effect of the judgment and attempt is to achieve those results which were the arguments raised by the respondents at the time of hearing of CAs Nos. 8226-27 of 2012 but rejected by this Court. To put it otherwise, we can certainly examine as to whether the 2014 Rules are made to implement the judgment or these Rules in effect nullify the result of merger of the two cadres.

xxx xxx xxx”

(Emphasis Supplied)

17. Similarly, in the case of **Midnapore Peoples’ Coop. Bank Ltd. and Others versus Chunilal Nanda and Others, (2006) 5 SCC 399**, Supreme Court has held as follows:

“xxx xxx xxx

11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarised thus:

I. An appeal under Section 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of “jurisdiction to punish for contempt” and, therefore,



not appealable under Section 19 of the CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under Section 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases).

The first point is answered accordingly.

xxx xxx xxx”

(Emphasis Supplied)

18. It is no longer *res integra* that in proceedings under contempt jurisdiction, this Court will not issue any incidental or consequential directions. Thus, Supreme Court in the case of ***V. Senthur and Another Versus M. Vijayakumar, IAS, Secretary, Tamil Nadu Public Service Commission and Another, 2021 SCC OnLine SC 846***, has held as follows:

“xxx xxx xxx

15. There can be no quarrel with the proposition that in a contempt jurisdiction, the court will not travel beyond the original judgment and direction; neither would it be permissible for the court to issue any supplementary or incidental directions, which are not to be found in the original judgment and order. The court is only concerned with the wilful or deliberate non-compliance of the directions issued in the original judgment and order.

xxx xxx xxx”

(Emphasis Supplied)

19. Accordingly, no further orders can be passed by this Court in the present proceedings.

20. However, liberty is granted to the petitioner to challenge the order dated 29th January, 2024 issued by the respondent, by virtue of which, the



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respondent has sought to adjust the pension amount, already released in favour of the petitioner, from the revised retirement dues.

21. With the aforesaid directions, the present petition is disposed of.

MAY 10, 2024
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MINI PUSHKARNA, J