



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 04 October 2024**
Clarifications heard on : 26 November 2024
Judgment pronounced on: 15 January 2025

+ **CONT.CAS(C) 696/2013 & CM APPL. 9467/2023**

MALARIA RESEARCH CENTRE EMPLOYEES WELFARE ASSOCIATION & ANRPetitioners

Through: Dr. Amit George, Mr. Adhishwar Suri, Mr. Dushyant Kishan Kaul, Mr. Arkaneil Bhaumik, Ms. Rupam Jha, Ms. Suprana Jain, Ms. Ibansara and Mr. Rishabh Dheer, Advs.

versus

K.N. DESIRAJU, SECRETARY, DEPARTMENT OF HEALTH & FAMILY WELFARE & ORS.Respondents

Through: Mr. Ruchir Mishra, Mr. Sanjiv Kumar Saxena, Mr. Mukesh Kumar Tiwari, Ms. Poonam Shukla and Ms. Reba Jena Mishra, Advs. for R-1.
Mr. Ravi Sikri, Sr. Advocate with Mr. Jasbir Bidhuri and Mr. Shashwat Sharma, Advs. for R-3.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

JUDGEMENT

1. The present petition has been filed by the petitioners seeking initiation of the contempt proceedings under Sections 2 (B), 11 and 12 of the Contempt of Courts Act, 1971 against the respondents/contemnors for the alleged wilful disobedience of the directions



passed by this Court *vide* order dated 20.03.2013 in W.P.(C) No. 1554/2003 whereby this court directed that the directions given by the High Court of Judicature at Madras in the matter of **UOI & Ors v. G.R. Srinivasan**¹ will be equally applicable to the members of the applicant association.

BRIEF FACTS

2. The brief facts leading to filing of the present petitions are that the Indian Council of Medical Research [**“ICMR”**] is an autonomous body under the Department of Health Research, Ministry of Health and Family Welfare, Government of India. There was an on-going project of Indian Council of Medical Research, namely ‘Integrated Disease Vector Control project’ [**“IDVC”**] which was run by the National Institute of Medical Research [**“NIMR”**] under ICMR, Delhi (formerly known as ‘**Malaria Research Centre**’).

3. The Malaria Research Centre Employees Welfare Association filed a writ Petition No. 1554/2003 before this Court against the order dated 11.10.2002 passed by the Central Administrative Tribunal in T.A No. 29/1999 with O.A No. 228/2000, claiming regularisation of their purely temporary/contractual services in IDVC project of ICMR in NIMR.

4. While disposing of the present writ petition *vide* order dated 20.03.2013, the Ld. Single Judge adopted the reasoning of the Division bench of the High court of Madras in **G.R Srinivasan (supra)** and passed the following orders: -

“6. We adopt the reasoning of the Division bench of the High

¹ W.P.(C) No. 2260/2011



Court of Judicature at Madras and thus dispose of the instant writ petition declaring that the law declared by the Madras High Court, which it actually does, shall govern all project employees who are the members of the first petitioner.”

5. The offshoot of the above directions was that the members of the petitioner association were to be granted regularization from their initial date of appointment with all the consequential benefits. The petitioners however state that as on date, out of a total number of 247 members, only 118 have been regularized, and even those members have not been granted all the consequential benefits to which they are entitled to such as being covered under the Old Pension Scheme [“OPS”] which was granted in the case of **G.R. Srinivasan (supra)**. The relevant paragraph is reproduced herein:

“In case of similarly situated project staff of Human Reproductive Research Centre of the ICMR this court gave a direction to the authorities to consider the case of the employees for regularization from the date of their respective initial appointment and the Special Leave Petitions filed by the Union of India & Others before the Supreme Court, the Supreme Court, by order dated 29.10.2009, dismissed the Special Leave Petitions holding that the order passed by this court cannot be interfered with in any manner. Therefore, it is clear that the order passed by this court directing the authorities to consider the case of the employees for regularisation from the date of their respective initial appointment, had become final. When that being so, the respondents, who are, similarly situated like that of the employees concerned in the original applications referred to above and who are continuing in service even after the order of rejection dated 19.12.2009, are also entitled to be regularized in service from the date of their respective initial appointment, especially when they have been appointed by the petitioners in the said project between the years 1986 and 1990 and they have worked for more than 25 years”. (Emphasis supplied)

6. It is further submitted by the petitioners that in the case of **G.R. Srinivasan (supra)**, the respondents *vide* order dated 26.04.2013, had



done the needful and the applicants therein were regularized from their initial date of appointment and were granted all the consequential benefits including the OPS which was clarified *vide* order dated 01.08.2012 by the High Court of Madras as well as the Supreme Court. Pursuant to the passing of the order dated 20.03.2013 by this Court and the modification order dated 26.04.2013, the petitioner association *vide* letter dated 20.05.2013 requested the respondents to comply with the same.

7. Subsequently, the petitioner association sent a legal notice dated 22.07.2013 to the respondents. The petitioner then filed a contempt petition against the respondents on 29.08.2013. In the meanwhile, the respondents also challenged the order dated 20.03.2013 of this Court before the Supreme Court *vide* SLP [C] No. 14859/2014, which was dismissed on 15.09.2014.

8. Further, the respondents *vide* letter dated 16.12.2014 had requested the petitioner association to furnish the list of the members of the Association that were mentioned in the writ petition. During the pendency of the contempt petition, the respondents requested the list of members for regularization. A list of 247 members was provided, reflecting the membership numbers as of the filing of the writ petition and the date of the judgment. However, disputes arose when the respondents contested the authenticity of the list and requested supporting documents *vide* CM No. 1192 of 2015.

ANALYSIS:

9. Having given my thoughtful consideration to the submission advanced by the learned counsel for the petitioners as well as learned



senior counsel for the respondents and on perusal of the record, suffice to mention that during the course of arguments, learned counsels for the parties flagged four issues that were espoused by the petitioners and remained to be addressed by the respondents. The same are as follows:

(i) Non-application of Old Pension Scheme to the employees regularized under the orders of the Court

At the outset, this issue has since been addressed and the respondents have given the benefit of the OPS to all the employees/members of the petitioner association who have been regularized in accordance with the directions of this Court. It goes without saying that the judgment of the Madras High Court dated 01.08.2012 was categorical that OPS would apply to the regular employees, which order has been affirmed by the Supreme Court.

(ii) Grant of Scheme of MBAPS² to such employees:

First things first, admittedly the employees/members of the petitioners association have been accorded the benefit of the ACP³ or MBAPS depending upon the various layers in the cadre. The stand espoused by the learned senior counsel for the respondent is that there were no directions by this Court to grant the MBAPS Scheme to the project employees. Additionally, it is pointed out that the said Scheme came into force much after the passing of the orders of this Court and it is canvassed that the same is applicable to the regular employees and not to the project employees who have been regularized on supernumerary post.

² Merit Based Assessment Promotion Scheme

³ Assured Career Progression



Unhesitatingly, the aforesaid stand of the respondents cannot be sustained in law. The directions of this Court *vide* order dated 20.03.2013, which fully endorsed the reasoning given by the Division Bench of the Madras High Court in the case of **G.R. Srinivasan** (*supra*) was categorical that the employees/members of the petitioner association consequent to their regularization from the initial date of appointment shall be granted all consequential benefits.

Assuming for the sake of convenience that MBAPS Scheme was introduced subsequent to the directions of this Court, the employees/members of the petitioner association are entitled to claim such benefits thereby seeking parity with the other employees of the respondents in their service conditions.

(iii) Grievance qua non-regularization of 13 employees:

Learned senior counsel for the respondent pointed out that initially a list of 211 employees was supplied by the petitioner association and thereafter a fresh list of 247 employees was submitted by the petitioners association. It was urged that the department went out of the way to consider the cases of each of such employees.

It is brought out that of all 247 members of the petitioners association, 225 were found eligible and have been regularised. As regards the remaining 22, it was pointed out that 13 employees had made several representations for the benefit of regularization, which representations were forwarded to the Council; and the Council has rejected their requests *vide* order dated 18.04.2016, 01.12.2016, 13.10.2017, 16.04.2018, 13.10.2017, 16.04.2018, 24.07.2018 and 14.06.2019, which orders have been communicated to each of the 13



employees.

There is advanced a very plausible and justifiable reason that these 13 employees were those who had resigned from the project before the judgment of this Court dated 20.03.2013, but subsequently rejoined the project which obviously tantamount to taking a fresh appointment with the respondents.

There is no gain saying that on resignation from the project, the said 13 employees brought about a break in their service tenure and their appointments were done afresh, and therefore, this set of 13 employees cannot be given the benefit of regularization. As regards the remaining 9, it is an admitted fact that services of two employees were terminated, 1 employee never joined the services and 1 left the services after joining; and the documents with regard to the four remained unverified and inconclusive and one employee had died.

(iv) Extension of age of retirement from 60 to 62 years of such employees:

Insofar as this issue is concerned, the stand of the respondents that the benefit of extension of age of retirement from 60 to 62 years is to be given to the regular scientific staff only is well made out. The age of retirement of the employees/members of the petitioners association who are non-scientific employees cannot be extended.

DECISION:

10. The Contempt of Courts Act, 1971, envisages a civil contempt which should demonstrate a wilful disobedience of a decision of the Court. Avoiding long academic discussion, in the cited case of U.N.



Bora v. Assam Roller Flour Mills Assn.⁴, after examining a plethora of case laws on the subject, it was reiterated that:

- “(i) It should be shown that there was due knowledge of the order or directions and that the disobedience is a deliberate, conscious and intentional act.
- (ii) When two views are possible, the element of wilfulness vanishes as it involves a mental element.
- (iii) Since the proceedings are quasi-criminal in nature, what is required is a proof beyond reasonable doubt since the proceedings are quasi-criminal in nature.
- (iv) when a distinct mechanism is provided and that too, in the same judgment alleged to have been violated, a party has to exhaust the same before approaching the court in exercise of its jurisdiction under the Contempt of Courts Act, 1971.
- (v) While dealing with a contempt petition, the Court is not expected to conduct a roving inquiry and go beyond the very judgment which was allegedly violated.”

11. There are a plethora of case laws that propound that in order to punish a contemnor, it has to be established that the act of 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 do 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

⁴(2022) 1 SCC 101



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 an evil motive on his part. Even if there is 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.”

12. In view of the aforementioned proposition of law, this Court finds that there are no grounds to hold the respondents guilty of committing contempt of the directions of the Court *vide* order dated 20.03.2013. The aforementioned directions were indeed exhaustive to the effect that the employees/members of the petitioners association have to be regularized with all consequential benefits. However, the post being supernumerary, the think-tank of the department took a policy decision of not extending certain benefits to them. Anyhow, all benefits have since been granted except for benefit under the MBAPS Scheme. The non-grant of such benefit is a separate cause of action and such inaction on the part of the respondents cannot be brought within the ambit of the present contempt petition.

13. Reliance can be placed on **Jharieswar Prasad Paul v. Tarak Nath Ganguly**⁵, whereby the Supreme Court while deciding on the issue of promotion and consequent benefits to be given to persons holding ex cadre posts of Clerk-cum-Cash Collector held that:

⁵ (2002) 5 SCC 352



“11. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law, since the respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined. The Contempt of Courts Act, 1971 has been introduced under the statute for the purpose of securing the feeling of confidence of the people in general for true and proper administration of justice in the country. The power to punish for contempt of court is a special power vested under the Constitution in the courts of record and also under the statute. The power is special and needs to be exercised with care and caution. It should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct. It is to be kept in mind that the court exercising the jurisdiction to punish for contempt does not function as an original or appellate court for determination of the disputes between the parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. **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.”

{Bold portions emphasized}



14. Resultantly, the present contempt petition is dismissed. However, individual petitioners, if so desire and advised, may seek remedy for entitlement to be considered for MBAPS Scheme in a separate proceeding in accordance with law.

15. The pending application also stands disposed of.

DHARMESH SHARMA, J.

JANUARY 15, 2025

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