

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/06/2006

CORAM

THE HON'BLE MR. JUSTICE P.K. MISRA

CONTEMPT PETITION NO.784 of 2002

S. Pitchumani
E51, Chemicals Colony
Mettur Dam 636 402 .. Petitioner

-Vs-

K. Palanisamy
Special Officer,
Mettur Chemical Employees
Cooperative Society,
Mettur Dam 636 402. .. Respondent

Petition filed under Sections 10 & 12 of the Contempt of Courts Act to punish the respondent for wilful and deliberate disobedience of the order dated 23.7.2002 in WP.M.P.NOs.17725 and 17726 of 2002 in W.P.No.1677 of 2001.

!For Petitioner : Mr.K. Chandrasekaran for
M/s. Row & Reddy

^For Respondent : Mr. Balan Haridas

:ORDER

The present application has been filed under Sections 10 and 12 of the Contempt of Courts Act alleging that there has been wilful and deliberate disobedience of the order dated 23.7.2002 in W.P.M.P.NOs.1772 5 & 17726 of 2002 arising out of W.P.No.1677 of 2001.

2. To consider the question, it is necessary to notice the relevant facts and circumstances.

The present applicant was working under the Mettur Chemicals Employees Co-operative Society of which contemnor was working as Special Officer. While the applicant was working as Assistant Secretary, the management had initiated a disciplinary proceeding. The Special Officer had imposed punishment of stoppage of one increment without cumulative effect and the period of suspension was directed to be treated as privilege leave. However, after applicant joined duty, the Secretary of the Society kept the order of the Special Officer in abeyance and for the self-same charge, imposed punishment of demotion as Clerk. At that stage, Industrial Dispute numbered as I.D.No.4

of 1999 was initiated. The Labour Court by order dated 22.11.2000 passed an award holding that punishment of demotion was illegal and had directed that the applicant should be reinstated with full backwages, continuity of service and all other attendant benefits and on such reinstatement, such employee should be imposed with punishment of stoppage of one increment without cumulative effect as already directed by the Special Officer. Said award of the Labour Court was challenged by the Management in W.P.No.1677 of 2001, which was admitted on 30.1.2001. An application for stay numbered as WMP.No.2290 of 2001 was filed. After hearing the counsel for both parties, the following order was passed by the learned single Judge on 4.10.2001 :-

□2. On a prima facie consideration, I find that the first respondent was of the view that after the order of the then Special Officer dated 26.10.1996 in having concluded the disciplinary action against the second respondent by imposing a lesser punishment, it was not open for the petitioner Society to re-open the disciplinary action again by imposing a higher punishment by its order dated 31.10.1996. Therefore, the 1st respondent/Labour Court interfered with the punishment imposed on the second respondent. Having regard to the said reasoning of the first respondent, I am of the view that there cannot be an absolute stay of the award of the first respondent / Labour Court. However, while granting stay, it is clarified that the stay will not operate in so far it relates to the direction of the first respondent to reinstate the 2nd respondent to the post of Assistant Secretary.

3. Further, since it is contended on behalf of the petitioner that the very charge which led to inflictment of punishment against the 2nd respondent was mishandling of funds, it is open to the petitioner not to entrust with the 2nd respondent any duties relating to handling of funds of the society.

4. In other respects, the award of the first respondent is stayed.

However, it is open to the second respondent to report for duty within one week from the date of receipt of a copy of this order.□

(emphasis supplied)

After the said order was passed, the present applicant joined duty as Assistant Secretary on 12.10.2001. However, the applicant was paid the wages which was being paid to him during the year 1997 and not the current salary of the Assistant Secretary. The applicant had issued a letter dated 6.11.2001 to the management to pay the current salary, but he was being paid Rs.7896/-, which was the salary payable in the year 1996. At that stage, the petitioner filed WPMP.No.17725 of 2002 for a direction to the management to pay the difference between the current wages payable and the wages actually paid. In WPMP.No.17726 of 2002, the applicant prayed for a direction to the management to promote the applicant as Secretary consequent on the retirement of one T. Natarajan. In such petitions, it had been stated by the applicant that his current wages should be calculated at Rs.16,000/-.

In the counter affidavit filed by the management, it was indicated that by the time the interim order dated 4.10.2001 was passed, the direction petition WMP.No.9470 of 2001 had been filed by the applicant claiming that he should be paid salary of Rs.16,000/- per month and such petition for direction had been listed along with the stay petition filed by the management and arguments had been advanced on both the aspects and even though the learned single Judge had only referred to the stay petition, it should be taken that

the order dated 4.10.20 01 had in fact disposed of both the petitions and it is therefore obvious that the petitioner's prayer for payment of Rs.16,000/- towards salary had been impliedly rejected at that stage. In the counter, the claim of the applicant to receive Rs.16,000/- as salary had also been denied. It was further indicated in the counter that the applicant was not entitled to increments or other benefits during the period of his absence as a matter of right. It was further indicated :-

□ ... the fitment and other benefits on his assuming charge as an Assistant Secretary taking into account his period of absence will have to be finalised only after the Writ Petition is decided.□

3. Such subsequent direction petitions, namely, WPMP.Nos.17725 & 17 726 of 2002 were disposed of on 23.7.2002 by passing the following order :-

□ Heard the learned counsel for the parties.

The petitioner has been reinstated. The management is, therefore, directed to pay the current wages relating to the petitioner from the month of July, 2002.□

4. Thereafter, the petitioner wrote letter dated 21.8.2002 to the management and the management replied that the matter was under consideration. Subsequently, the present contempt petition has been filed on the allegation that the applicant was being paid the salary which he was drawing 5 years back and his juniors are paid almost double the salary which was being paid to the applicant.

5. A copy of such contempt application was served on the counsel for the respondent in the contempt (counsel for the writ petitioner). At that stage, the following order was passed on 13.12.2002 :-

□2. The learned counsel for the respondent has submitted that even though an appeal has been filed against the order, such appeal has been disposed of and four weeks time is granted to pay the amount. The learned counsel for the respondent also submitted that the amount shall be paid within three weeks.

3. In view of the above submission of the learned counsel for the respondent, it is not necessary to proceed in the contempt matter. However, it is made clear that if the amount is not paid within three weeks, it would be open to the petitioner to file a memo to recall the present Contempt Petition.□

6. Subsequently, however, the applicant filed a memo in terms of the aforesaid order to the effect that the entire amount payable had not been paid. On the basis of such memo, the contempt proceedings was re-opened.

7. A counter affidavit has been filed on behalf of the contemnor. In such counter affidavit, apart from narrating the entire history of the litigation in paragraphs 1 to 9 of such affidavit, other averments have been made in paragraph 10 onwards relating to the steps taken by the management. It has been indicated as follows :-

□10. In obedience to the order of this Hon^{ble} Court, by an order

dated 22.01.2003 the pay scale of the petitioner was fixed in the pay scale of Rs.8,000-275-13500 with effect from 01.07.2002. He was placed in the pay scale of Rs.9,925/-, he was given 40% D.A. i.e. Rs.4,466 /-, Rs.310/- being the House Rent Allowance and Rs.50/- being the Medical Allowance. The total salary paid to the petitioner herein is Rs.14,751/-. It is further submitted that the arrears of difference in salary amounting to a sum of Rs.36,228/- was disbursed to the petitioner on 22.01.2003. The petitioner received this amount. Thereafter the petitioner further made a representation dated 23.01.2003 wherein he claimed that the Special Allowance and House Rent Allowance has been paid to the other Assistant Secretary and therefore he is also entitled to H.R.A. and Special Allowance.

11. I state that the petitioner was paid the salary as per the settlement entered under Section 18(f) of the Industrial Dispute Act, 1947 on 2.12.1998. As per clause 4 of this settlement it is made clear to such of those employees who are residing in the Company Quarters will be entitled to HRA only as per the earlier settlement dated 31.12.1997. As far as those who are not staying in the company quarters they will be entitled to HRA as given to the employees of the Government. The petitioner herein is staying in the quarters therefore he was paid the HRA as per the settlement dated 2.12.1998. It is further submitted that as per the settlement dated 2.12.1998, the special allowance is payable to the Assistant Secretary who is discharging (incharge) the work of Secretary. The petitioner being not entrusted with in-charge work of Secretary is not entitled to the Special Allowance. It is further submitted that as per the order dated 4.10.2001 of this Hon^{ble} Court, the society had been given liberty not to entrust work relating to handling of funds of the society to the petitioner. The petitioner has not been allocated any work relating to handling of funds. The work of the Secretary being one primarily to handle funds of the society. Therefore the petitioner cannot be given the in-charge work of Secretary. Therefore the petitioner is not entitled to the Special Allowance.

Therefore the claim of the petitioner in respect of HRA and Special Allowance is without substance. Hence the petitioner has filed this Contempt Petition without any basis. It is respectfully submitted that the society has fully complied with the orders of this Hon^{ble} Court. However the petitioner without disclosing these facts had filed this contempt petition.□

8. A reply affidavit has been filed by the applicant. In such reply affidavit it has been highlighted that in the proceedings dated 22.1 .2003 the management has fixed the basic pay of the applicant in the revised scale of Rs.8000-275-23500 at the stage of Rs.9,925/-, which is also the salary fixed for one L. Annamalai who was 18 years junior to the applicant and as a matter of fact the amount paid to the applicant is less than the amount paid to such Annamalai and it has been further indicated that the applicant on the very next day i.e., 23.1.2003 has objected to fixation of such pay. It has been further indicated that the annual increment due to the petitioner has not been released. In paragraph 4, it is stated :-

□4. I submit in the Writ Petition, the Learned Judge had granted stay of the award only with regard to back wages. Thus I am entitled for continuity of service and all other attendant benefits. I submit at the time of our promotion, my basic pay was fixed at Rs.3000 in the pay scale of 2200-75-2800-100-4000 whereas the said Annamalai's pay was fixed at 2350/-.

Between my pay and Annamalai's pay 8 annual increments difference was there. In all fairness as per the orders of this Hon^{ble} Court, dt.23.07.2002 the respondent should have fixed my pay with 8 increments above the said Annamalai, but on the contrary they fixed my pay on par with my junior. The respondent is well aware of all these aspects.

9. On the basis of the aforesaid averments and the counter affidavit and the reply, contempt petition was heard. It is of course true that at the time when the contempt application was filed, the direction regarding payment of current wages had not been strictly complied with. Subsequently, however, when the matter was taken up, the counsel for the respondent submitted that the entire amount would be paid within a particular time. The main question which was pressed into at the time of hearing of the contempt petition is regarding entitlement of the petitioner the benefit of the increments during the period from 1996 till 2002.

10. The contention of the applicant is that there has been stay of the award only with regard to backwages, whereas according to the counsel for the management the Court has only directed for reinstatement and payment of current wages and in other respects the award has been stayed.

11. The main question is regarding the nature of stay passed by this Court. In the order dated 23.7.2002, there is merely a direction for payment of current wages, but there is no clear direction as to whether while calculating current charges the applicant was entitled to the benefit of the increments for the period from 1996 till the actual reinstatement. In such view of the matter, the question as to whether any contempt has been committed by not giving the benefit of increment for those years would obviously depend upon the interpretation of the order earlier passed on 4.10.2001. The relevant portion of such order has already been extracted. It is apparent that in the award there has been direction for reinstatement with backwages with all the attendant benefits and the consequential reliefs and upon such reinstatement the punishment of stoppage of one increment was to be imposed.

12. A perusal of the order of the learned single Judge dated 4.10.2001 indicates that the learned single Judge refused to stay so far as reinstatement is concerned, but granted stay in respect of other directions in the award. This is apparent from the observation in paragraph 2 to the effect " However, while granting stay, it is clarified that the stay will not operate in so far it relates to the direction of the first respondent to reinstate the 2nd respondent to the post of Assistant Secretary." and from paragraph 4, "In other aspects, the award of the first respondent is stayed". While passing the order dated 23.7.2002, such order has not been modified and the only direction is that current wages should be paid. It is thus obvious that there is stay in respect of the direction of the Labour Court regarding all attendant and consequential benefits as well as payment of backwages. In view of such categorical order dated 4.10.2001, the submission made by the counsel for the applicant that there has been stay of the award only with regard to backwages, cannot be accepted. Once it is held that there was stay of the award, save and except the direction regarding reinstatement, it must be taken that there was stay of the direction of the Labour Court regarding

payment of consequential and attendant benefits. In such view of the matter, it cannot be said that the management while passing the order dated 22.1.2003 has deliberately flouted the order dated 23.7.2002. The respondent in his counter has also explained that certain other allowances had not been paid to the applicant because the applicant was occupying the house allotted by the management, whereas others were differently placed. Denial of House Rent Allowance, if at all can be considered as a subsequent cause of action, it would not be appropriate to go into that aspect while dealing with the contempt petition.

13. In the reply affidavit, statement has been made that the applicant has not been paid the subsequent increments. Even though the order of stay can be said to have the effect of keeping in abeyance the question of grant of increments to the applicant before his actual reinstatement, there may not be any justification for the management to deny the benefit of increment to the applicant for the future period after reinstatement. It is expected that this error would be rectified by the management within a reasonable period.

14. While dealing with a matter relating to contempt, the court is ordinarily loathe to punish a person unless clear and wilful violation of the court's order is made out. In the present case, it cannot be said that there was any clear direction at any point of time to calculate the increments prior to the date of reinstatement while fixing the current wages. In the absence of any clear direction and in the face of the earlier order of stay dated 4.10.2001, it cannot be said that there has been any wilful violation. The contempt petition is accordingly destined to be closed. It is however made clear that the question as to whether the applicant would be entitled to the benefit of increments and other benefits including the question of backwages is a matter obviously to be decided in the writ petition and the fact that the present contempt petition is closed should not be construed as a final determination of such question. It is also made clear that the applicant should be paid the increment for the subsequent period after his actual reinstatement pursuant to the order dated 4.10.2001 passed by the High Court. Since the writ petition is of the year 2001, it is further observed that the writ petition may be listed for hearing before the appropriate court as expeditiously as possible.

14. With the above observations, the contempt petition is closed.

dpk

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