

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(CONTEMPT JURISDICTION)

TUESDAY, THE 31ST DAY OF AUGUST, 2010

THE HON'BLE MR.JUSTICE T.RAJA

CONTEMPT PETITION No.740 of 2010

AND

SUB APPLICATION NO.280 OF 2010

AND

CONTEMPT PETITION NO.494 OF 2010

D.Gurusamy,
New No.21, Old No.13-A,
Karpagambal Nagar,
Mylapore, Chennai - 600 004.

... Petitioner in both Contempt Petitions

vs.

Dr.Shanthini Kapoor IAS.,
The Chief Executive Officer (CEO),
Tamil Nadu Khadi and Village
Industries (Khadi Board),
Kuralagam, Chennai 600 108.

... Respondent in Contempt Petn.No.740/2010

G.Sundaramurthy, IAS,
The Commissioner,
Director of Industries and
Commerce - Holding additional
Charge of Chairman and
Managing Director, Tamil Nadu
Leather Development Corporation
Limited (TALCO), Chepauk,
Chennai 600 005.

... Respondent in Contempt Petn.No.494/2010

SUB APPLICATION NO.280/2010

Industries (Khadi Board),
Kuralagam, Chennai 600 108.

... Petitioner

Vs

D.Gurusamy,
New No.21, Old No.13-A,
Kakrpagambal Nagar,
Mylapore, Chennai - 600 004.

... Respondent

Contempt Petition No.740 of 2010 praying that this Court be pleased to punish the respondent for having violated the order of this Hon'ble Court dated 26/10/2009 and made in W.P.No.11015 of 2009.

Sub Application No.280 of 2010 praying that this Court be pleased to dispense with the personal appearance of the petitioner pending disposal of the above contempt petition.

Contempt Petition No.494 Of 2010 praying that this Court be pleased to punish the respondents for having violated the order of this Hon'ble Court dated 26/10/2009 and made in W.P.No.11015 of 2009

The above Contempt Petitions and Sub Application coming on 04/08/2010 before this Court for hearing in the presence of Mr.V.Suthakar, Advocate for Mr.M.S.Palanisamy, Advocate for the petitioner in Contempt Petition Nos.740 & 494 of 2010 and for the respondent in Sub Application No.280 of 2010; and of Mr.S.Packiaraj, Advocate for the respondent in Contempt Petition No.740 of 2010 and for petitioner in Sub Application No.280 of 2010; and of

Mr.S.Sathiamurthi, Advocate for the respondent in Contempt Petition No.494 of 2010; and upon reading the petition and

the affidavit of D.Gurusamy, filed in contempt petition No.740 & 494 of 2010; and the application and the affidavit of Dr.Shanthini Kapoor, IAS., filed in Sub Application No.280 of 2010 ; and the Counter Affidavit of G.Sundaramurthy, IAS, filed herein; and the Counter Affidavit of Dr.Shanthini Kapoor, IAS, filed herein; and having stood over for consideration, the Court made the following order:-

The petitioner herein seeks to punish the respondents under Section-11 of the Contempt of Courts Act, 1971, for having violated the order, dated 26.10.1999, passed in W.P. No.11015 of 2009, whereby, the respondents were directed to take steps within the time stipulated therein to settle the retirement and pension benefits of the petitioner.

2. The facts leading to filing of the contempt petitions need to be abridged as follows:-

The petitioner D. Gurusamy, while serving as Works Manager of Tamil Nadu Small Industries Corporation Limited (TANSI), came to be transferred and posted as Works Manager of Tamil Nadu Leather Development Corporation (TALCO). By G.O. Ms. No.54, Small Industries (SID) Department, dated 30.10.2000, the TALCO was taken over by the Tamil Nadu Khadi and Village Board (KHADI BOARD) and subsequently, the employees of the TALCO were absorbed into service by the Khadi Board. The petitioner was posted as General Manager,

Khadi Board, Chennai, and he continued in the said post until he attained the age of superannuation on 30.04.2009.

When the petitioner was serving in the earlier Department - TALCO, he was issued with three charge memos dated 15.04.1994, 21.03.1996 and 02.11.1996. To deal with the first charge memo, dated 15.04.1994, an IAS Officer was appointed as Enquiry Officer. After conducting enquiry, he submitted his report on 15.11.1997, holding that the charges are not proved. Acting on such finding, the charges were dropped and the Khadi Board passed a Resolution and sent the same seeking concurrence therefor from the Government. The Government, after receiving the resolution, directed the Khadi Board, being the competent authority, to take its decision thereon.

With regard to the second charge memo, dated 21.3.1996, an enquiry was held and, on conclusion of the enquiry, the Enquiry Officer submitted his report on 06.11.1998, holding that only minor lapses against the petitioner found proved, for which, stoppage of increment for one year without cumulative effect was recommended. The Board, in its 75th Meeting held on 28.12.1998, accepting such finding, passed a Resolution and forwarded the same to the Government for concurrence.

In respect of 3rd charge memo, dated 02.11.1996, on completion of the enquiry, the Enquiry Officer submitted his report on 06.11.1998, finding that there were only technical

lapses on the part of the petitioner and recommending that no punishment was warranted.

On the basis of such findings and recommendations made, the Khadi Board, in its 75th Meeting, concluded that two set of charges pertaining to first charge Memo dated 15.04.1994 and the 3rd charge memo dated 02.11.1996 would be dropped and that the suspension period the petitioner underwent between 08.05.1990 and 26.11.1993 would be treated as 'on duty'. However, the said Resolution was not given effect to, in view of the fact that the subsequent Chairman and Managing Director of TALCO took a decision to re-open the entire issue by framing fresh charges and to proceed further. A decision to that effect was placed in the 83rd and 84th Board Meeting held on 12.06.2000 and 13.09.2000 respectively.

It is relevant to point out that the petitioner was permanently absorbed in the Khadi Board with effect from 01.12.2000 consequent upon winding up of TALCO vide G.O.Ms.No.54, Small Industries (SID) Department, dated 30.10.2000. Since the petitioner, in the meantime attained the age of superannuation on 30.04.2009, he was permitted to retire on the afternoon of 30.04.2009 without prejudice to the disciplinary proceedings pending against him. However, the petitioner suffered the delay in receiving the terminal benefits and the monthly pension payable to him. Therefore, he filed W.P. No.11015 of 2009 on the file of this Court,

seeking issuance of a writ of mandamus, directing the respondents to pay the accrued terminal benefits with 12% interest from 01.05.2009 and monthly pension payable to him from 01.06.2009 onwards.

It is pertinent to advert to here two aspects - firstly, the 4th respondent in the W.P. (respondent in contempt petition No.494 of 2010) - the Commissioner, Director of Industries and Commerce Holding Additional Charge of Chairman and Managing Director, TALCO, Chempauk, Chennai-5, neither engaged a counsel to represent the case nor filed any document or counter affidavit to oppose the claim made by the petitioner; secondly, R3 (respondent in contempt petition No.740 of 2010) - the Chief Executive Officer (CEO), Khadi Board, Chennai-108, though represented by counsel, did not choose to file any counter affidavit to oppose the claim of the petitioner for payment of accrued terminal benefits with 12% interest from 01.05.2009 and the monthly pension payable to the petitioner. From this background, the Writ Petition was taken up for final disposal on 26.10.2009 and, after considering the prayer of the petitioner in the light of the submissions made and arriving at a finding that, out of the three charge memos, charge memo Nos.1 and 3 dated 15.04.1994 and 02.11.1996 came to be dropped on the ground that the petitioner was not found guilty of any of the charges leveled against him and he was found guilty only in respect of charge memo dated

21.03.1996, for which, a punishment of stoppage of increment without cumulative effect for one year was imposed, and taking note of the Resolution passed by the Khadi Board in its 75th Meeting held on 28.12.1998 to the following effect:-

"the Enquiry Officer Thiru.R.Ramalingam, Addl. Director of Industries & Commerce has held that charges Nos.1 to 4 & 8 as not proved. These are grave charges misuse of official position resulting in shortage of stock to the tune of nearly Rs.55.00 lakhs etc. These charges have been held not proved. Charges No.5,6&7 deal with failure to verify stock in the stores, furnishing of incorrect stock statement to the bank and similar procedural lapses. With regard to the charge regarding filing incorrect stock statement, the Board felt that sometimes this resorted to safeguard drawing power in the best interest of the corporation. This does not enrich any individual though it is technically speaking not proper. Though the nature of the lapses proved are procedural in nature the Board resolved to inflict a punishment of stoppage of increment for one year without cumulative effect. ",

this Court, highlighting the aspect that the Board further resolved to regularize the period of suspension as duty, and advertent to the fact that no departmental proceedings were pending against the petitioner, directed thus:-

"The 4th respondent is directed to pass suitable orders to the petitioner to get monthly pension by complying the minor formalities within a period of six weeks from the date of receipt of a copy of this order. The third respondent is the authority to make the pensionary benefits including the monthly pension. It is needless to mention that the 3rd

respondent shall process the entire pension proposal and other proposals for the purpose of getting retirement benefit, including the monthly pension within 3 weeks from the date of receipt of a copy of this order. The above said both exercises shall be done together within a period of 9 weeks. "

Now, the petitioner has once again approached this Court by filing the above contempt petitions alleging non-compliance of the aforementioned direction on the part of the respondents herein.

3. The submissions made by the learned counsel appearing for the petitioner are that, after passing of the final order, directing the third respondent to process the entire pension papers for the purpose of getting retirement benefits including monthly pension, and the fourth respondent to pass suitable orders, by complying with minor formalities involved, in favour of the petitioner so that he could get monthly pension within six weeks from the date of receipt of copy of the order; the 4th respondent in the WP/respondent in Contempt Petition No.494 of 2010, in proceedings No.019/TALCO/2009, dated 16.04.2010, observed that, in the Special Board Meeting held on 06.04.2010, it was decided to modify the 75th Board Meeting decision, thereby, it will have the effect of imposing a punishment of one year increment cut without cumulative effect and

accordingly, the 2nd part of the order came to be modified in view of the Ruling in the FR, with the net result, the delinquent/petitioner was imposed with a punishment of annual increment cut for one year without cumulative effect and the period of suspension which was earlier regularized as duty period came to be treated not as duty in view of the Ruling in the FR as he has not been exonerated fully, however, the period of suspension held to be treated as duty for the specific purpose of calculation of eligible DCRG and Leave salary in terms of Ruling 7 of FR 54-B. It is further observed that the petitioner is not eligible for any back-wages for the suspension period from 08.05.1990 to 28.11.1993 ie., for about 3 ½ years. According to the learned counsel for the petitioner, the above proceedings, dated 16.04.2010, passed by the respondent in Contempt Petition No.494 of 2010 is violative of this Court's Order, dated 26.10.2009, passed in the WP. Though this Court has already passed a detailed order, giving specific direction as referred to above to both the respondents so that the petitioner could receive the pension and other attendant benefits accrued to him, by reason of the proceedings in question, the petitioner could not get those benefits so far. It was forcibly contended by the learned counsel for the petitioner that an order passed by this court is required to be implemented in letter and spirit, but, in the present case, the respondents herein have taken the court

proceedings as a game of chess. Every order of the court is required to be interpreted in a fair and reasonable manner keeping in view the entire background of a particular case and no litigant should be allowed to take advantage of some loophole. If the said respondents found that the order of this Court is wrong having regard to any provision in the Fundamental Rules or in Pension Rules, they would have filed an appeal before higher court. Without doing so, resorting to pass the proceedings dated 16.04.2010 restricting the benefits granted by this Court would amount to sitting on Appeal against this Court's order which exercise is undoubtedly a gross violation of the Order dated 26.10.2009. Therefore, for disobedience of the order passed by the respondents/contemnors, they should be punished suitably.

4. The learned counsel appearing for the 4th respondent in Contempt Petition No.494 of 2010, by filing counter for the first time in the contempt proceedings, admitted that they could not file counter affidavit in the main writ petition due to certain extraordinary circumstances, but at the same time, denied the allegation that the order of this Court was violated, by citing FR-54B. It was further contended that the period of suspension was treated as duty for the specific purpose of calculation of eligible DCRG and leave salary. Referring to FR-54B which provides that when a Government servant, who was suspended, is fully

exonerated of the charges on appeal, the period of suspension shall be treated as duty, it was again submitted that in the case on hand, the petitioner was not fully exonerated and since he was imposed with a punishment of stoppage of increment without cumulative effect for one year, it was ordered that he was not eligible for back-wages for the suspension period. Therefore, it cannot be said that the order of this Court was in any way violated by the respondents.

5. Straight away, it can be said that the argument and stand made/taken by the respondents does not merit acceptance in view of their own decision taken in the 75th Board Meeting held on 28th December, 1998, wherein, the Board, while discussing the findings of the Enquiry Officer as well as charge Nos.1 to 4 and 8, came to the conclusion that the Board resolved to regularize the period of suspension as on duty. The Board has specifically dealt with the case of the petitioner, resolving that the Enquiry Officer Thiru.R.Ramalingam, Additional Director of Industries & Commerce had held charge Nos.1 to 4 and 8 which are grave in nature pertaining to misuse of official position resulting in shortage of stock to the tune of Rs.55 lakhs etc, as not proved and also regarding charge Nos.5, 6 and 7 dealing with failure to verify the stock in the stores, furnishing of incorrect stock statement to the Bank

and similar procedural lapses. With regard to the charge relating to filing of incorrect stock statement, the Board felt that sometimes this resorted to safeguard drawing power in the best interest of the corporation and this does not enrich any individual though it is technically speaking not proper. Though the nature of the lapses proved are procedural in nature, the Board resolved to inflict a punishment of stoppage of increment for one year without cumulative effect. The Board further resolved to regularize the period of suspension as on duty. However, since the above resolution was not given effect to due to the fact that the subsequent Chairman and Managing Director of TALCO took a decision to re-open the entire issue by framing fresh charges and to proceed further, a decision to that effect was placed in the 83rd and 84th Board Meeting held on 12.06.2000 and 13.09.2000 respectively. Subsequently, the petitioner was permanently absorbed in the Khadi Board with effect from 01.12.2000 consequent on the winding up of TALCO by virtue of G.O. Ms. No.54, dated 30.10.2000. In the meanwhile, the petitioner also attained the age of superannuation on 30.04.2009. Therefore, he was permitted to retire in the afternoon of 30.04.2009 without prejudice to the disciplinary proceedings pending against him.

6. Therefore, in the light of the fact that the Board

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resolved to regularize the period of suspension as 'on duty'

and also in view of the fact that the petitioner already attained the age of superannuation on 30.04.2009, this Court allowed the Writ Petition with a direction to respondent No.4 therein to pass suitable orders enabling the petitioner to get monthly pension by complying with the minor formalities within a period of six weeks from the date of receipt of copy of the order while directing the 3rd respondent to process the entire pension proposal and other proposals for the purpose of enabling the petitioner getting retirement benefits including the monthly pension. Under this background, when this Court on the basis of the decision taken by the Board allowed the Writ Petition on 26.10.2009 to regularize the period of suspension as on duty, subsequent thereto passing an order, dated 16.04.2010, by the 4th respondent once again recalling the decision of the Board in the 75th Meeting, thereby deciding not to regularize the period of suspension as on duty by citing FR-54-B that the petitioner having not fully exonerated, the period of suspension will not be treated as duty and therefore, he is not eligible for back-wages for the period of suspension, is nothing but sitting on appeal against the order passed by this Court. Because, the 75th Board Meeting had already considered the entire issue including the operation of FR-54B in the case of the petitioner, however, the resolution passed in the said meeting was not given effect to because the subsequent Chairman and Managing

Director of TALCO took a decision to re-open the entire issue by framing fresh charges and to proceed further. The decision to that effect was placed in the 83rd and 84th Board Meeting held on 12.06.2000 and 13.09.2000 respectively. But, in the meanwhile, since the petitioner retired from service, he was allowed to retire and thereafter, he filed the Writ Petition. Till passing of orders in question by this Court in the writ petition, the 2nd respondent herein had not taken any action to re-open the entire issue by framing fresh charges so as to proceed further. Therefore the second respondent was bound by the decision taken by the 75th Board Meeting held on 28th December, 1998, resolving to regularize the suspension period as on duty. Though the counter affidavit filed by the second respondent in the Contempt proceedings states that, in obedience to the orders of this Court, the period of suspension was treated as duty for the specific purpose of calculation of eligible DCRG and leave salary, it is not open for them to restrict the resolution passed in the 75th Board Meeting to say that he was not eligible for back-wages for the period of suspension on the ground that he was not fully exonerated in view of imposition of punishment of annual increment cut for one year without cumulative effect.

It is pertinent to keep in mind that the Board, in its 75th Board Meeting, only after taking note of the aspect that the petitioner suffered the punishment of annual increment cut

for one year without cumulative effect, decided to regularize the period of suspension as 'on duty'. While having not taken any further decision till the order dated 26.10.2007 came to be passed by this Court in the writ petition, directing the second respondent herein to give benefits of the resolution passed in the 75th Board Meeting, it is neither open for him to deny the said decision taken by the 75th Board Meeting, regularizing the period of suspension as 'on duty' nor to pass subsequent proceedings like the one dated 16.04.2010, refusing to regularize the services stating that the petitioner is not eligible for any back-wages for the suspension period from 08.05.1990 to 26.11.1993.

7. At last at one point of time, right or wrong any dispute is bound to be resolved and finally settled once and for all in accordance with law. After waiting endlessly all the litigants as a last resort approached the Court of law to bring down the curtains to a final end.

8. In the case on hand, the petitioner suffered disciplinary proceedings from 08.05.1990 to 26.11.1993. The petitioner was issued with three charge memos dated 15.5.1994, 21.3.1996 and 2.11.1996. The Government thought it fit to deal with the first charge memo dated 15.4.1994, therefore appointed an I.A.S. Officer as an enquiry officer

who after completing the enquiry submitted his report holding that the charges are not proved. Thereupon, the charges were also dropped. Further, the Khadi Board-the first respondent herein passed a resolution to drop the proceedings and also sent the same seeking concurrence therefor from the Government. The Government being the competent authority, after receiving the resolution, directed the Khadi Board-the first respondent to take its decision thereon. Therefore, the issue in respect of the first charge memo is finally concluded.

9. In respect of second charge memo dated 21.03.1996, the enquiry officer found that only minor lapses against the petitioner found proved and thereupon the petitioner was also imposed with the punishment of stoppage of increment for one year without cumulative effect. The Khadi Board in its 75th meeting held on 28.12.1998, accepting such finding passed the resolution by forwarding the same to the Government for concurrence.

10. In regard to the 3rd charge memo dated 02.11.1996, on enquiry finding that there were only technical lapses on the part of the petitioner, the enquiry officer recommended that no punishment to be taken against the petitioner. Therefore, the issue in respect of the 3rd charge memo also became final.

11. In this context, let me come back to the 75th meeting held by the Khadi Board, the first respondent herein wherein it was concluded that the suspension period underwent by the petitioner between 08.05.1990 and 26.11.1993 sought to be treated as "on duty". But that resolution was not given effect to till 2000. Again, the decision was placed in the 83rd and 84th Board meetings held on 12.6.2000 and 13.9.2000 respectively. After the above Board meetings the petitioner was permanently absorbed in the Khadi Board with effect from 1.12.2000 as resolved by winding up of TALCO by G.O.Ms.No.54, Small Industries (SID) Department, dated 30.10.2000. Later on when the time for retirement of the petitioner came on 30.4.2009, he was also permitted to retire on the afternoon of 30.4.2009, but without prejudice to the disciplinary proceedings pending against him. Since the petitioner suffered delay in receiving the terminal benefits and the monthly pension payable to him, he filed the present Writ Petition- W.P.No.11015/2009 with the prayer to issue a writ of Mandamus directing the respondents to pay the accrued terminal benefits with 12% interest from 01.05.2009 and monthly pension payable to him from 01.06.2009 onwards.

12. The chain of events indicated above goes without saying that the respondent department having seized of the matter from 1994 though after imposing punishment of

stoppage of increment in 1998 kept quite for 11 years without taking any decision. However, when the petitioner reached the age of superannuation on 30.4.2009 again without allowing the petitioner to retire peacefully allowed the petitioner to retire without prejudice to the disciplinary proceedings. At this juncture, when the matter was pending on the file of this Court, though the notices were served on the respondents, the TALCO-4th respondent in the writ petition failed to file their reply in the main Writ Petition. More so, TALCO-the 4th respondent in the writ and the 2nd respondent herein did not even care to file even Vakalatnama by engaging any counsel to defend their case. Therefore, this Court on the basis of the pleadings by perusing the resolution passed by the Khadi Board in its 75th meeting held on 28.12.1989 stating that the Board resolved to inflict the punishment of stoppage of increment for one year without cumulative effect and the same Board further resolved to regularise the period of suspension as on duty by further taking note of the fact that the petitioner already retired from service with the punishment of stoppage of increment for one year without cumulative effect and when the Khadi Board-the third respondent therein had already taken a decision to regularise the period of suspension as on duty, this Court finally allowed the Writ Petition only on the basis of the earlier decision taken by the Khadi Board-third respondent in the Writ Petition.

Thereafter, when this Court has finally given a quietus to the matter, that too, on the strength and the decision taken by the Khadi Board-third respondent, it is no longer open to the respondents to complain that the order is without adverting to any other relevant material documents. The order passed by this Court is required to be implemented in letter and spirit. This is what has been held by this Court in a judgment rendered in **PALANIAMMAL, N. v. ANTONY JAYARAJ** (2006 (5) CTC 224) and the same is extracted hereunder:

"20. A litigant before the Court cannot and should not consider that the Court proceedings is a game of chess. Every order of the Court is required to be interpreted in a fair and reasonable manner keeping in view the entire background of a particular case and no litigant should try to take advantage of some technical loophole. Every decision of a Court can be challenged in a Court of Appeal and the effect of any inconvenient order can be got over by taking recourse to the normal procedure available. Where an order becomes final, either because it is not challenged or even if challenged, not interfered with, it is the duty of the litigant to obey the order in letter and spirit.

21. In the present case, the respondent has clearly overstepped its limit by offering salary to the reinstated employee in the scale applicable in the year 1991, deliberately ignoring the corresponding rise in pay scale

during the subsequent years. The recalcitrant attitude of the respondent is clearly indicative of wilful violation on the part of the respondent. Thus, there is no escape from the conclusion that the respondent is guilty of not implementing the Court's order in letter and spirit and is liable to be punished. Since the respondent has not been heard on the question of appropriate punishment to be imposed, it is directed that this petition shall be listed for the purpose of hearing on the question of punishment on 21.7.2006 at 4.15 p.m. The respondent shall remain present."

13. It is relevant to refer at this juncture the judgment of the Hon'ble Apex Court rendered in PRITHAWI NATH RAM V. STATE OF JHARKHAND AND OTHERS (2004 (7) SCC 261) wherein the Apex Court has held that while dealing with the application for contempt, the Court is really concerned with the question whether the earlier decision which has received its finality had been complied with or not. If any party is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach the Court that passed the order or invoke jurisdiction of the appellate court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong, the order has to be obeyed. Flouting an order of the Court would

render the party liable for contempt. The Court seized of the Contempt Application cannot traverse beyond the order.

14. In the present case, when this Court has already passed an order dated 26.10.2009 in W.P.No.11015/2009, the respondents without fully complying with the said order by restricting the benefit given by this Court in the abovesaid order showing their justification for not complying the order by passing subsequent proceedings dated 16.4.2000 by the respondent is a clear disobedience of the order passed by this Court.

15. The Hon'ble Apex Court while dealing with the Contempt Proceedings in NIAZ MOHAMMAD V. STATE OF HARYANA (1994 (6) SCC 332) in paragraph 9 thereof has held that the party in whose favour an order has been passed, is entitled to the benefit of such order. The court while considering the issue as to whether the alleged contemner should be punished for not having complied with and carried out the direction of the court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the Act while defining civil contempt, have said that it must be wilful disobedience to any judgment, decree, direction, order, writ or other process of a court.

Before a contemner is punished for non-compliance of the direction of a court, the court must not only be satisfied

about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was wilful and intentional. The civil court while executing a decree against the judgment-debtor is not concerned and bothered whether the disobedience to any judgment, or decree, was wilful. Once a decree has been passed it is the duty of the court to execute the decree whatever may be consequence thereof. But while examining the grievance of the person who has invoked the jurisdiction of the court to initiate the proceeding for contempt for disobedience of its order, before any such contemner is held guilty and punished, the court has to record a finding that such disobedience was wilful and intentional. If from the circumstances of a particular case, brought to the notice of the court, the court is satisfied that although there has been a disobedience but such disobedience is the result of some compelling circumstances under which it was not possible for the contemner to comply with the order, the court may not punish the alleged contemner. (emphasis added)

16. In the present case though the 75th Board meeting held on 28.12.1998 while considering the disciplinary case of the petitioner-D.Gurusamy resolved to inflict a punishment of stoppage of increment for one year with cumulative effect. In the said Board meeting it was further resolved to regularise the period of suspension as on duty.

However, the above resolution was not given effect to due to the fact that subsequent Chairman and Managing Director, TALCO has taken a decision to reopen the entire issue and by framing a fresh charge and to proceed further. A decision to that effect was placed in the 83rd and 84th Board meetings held on 12.6.2000 and 13.9.2000 respectively. Thereafter, the petitioner was permanently absorbed in Khadi and Village Industries Board with effect from 1.12.2000. Consequently on the winding up of TALCO in G.O.Ms.No.54, dated 30.10.2000, in the meantime, he attained the age of superannuation on 30.5.2009. Therefore, he was permitted to retire on the afternoon of 30.4.2009. While he was in the Khadi and Village Industries Board, he filed W.P.No.11015/2009 seeking issuance of a writ of Mandamus against the respondents to pay the accrued terminal benefits with 12% interest from 01.05.2009 and the monthly pension payable to the petitioner from 1.6.2009.

17. This Court while dealing with the grievance of the petitioner allowed the said writ petition. After receipt of the order considering the Government letter No.14/SIA/99-4 dated 3.9.99 which states that since the Board is the competent disciplinary authority, TALCO itself may take appropriate action in the matter, the respondent proposed to give finality to the pending disciplinary case. By taking into account the overall position of this case by

modifying the decision taken in 75th Board meeting it is decided not to count the period of suspension. In view of the ruling under the FR as he has not been exonerated fully, the period of suspension will be treated as duty for the specific purpose for the calculation of eligible DCRG and Leave salary in terms of Ruling 7 of FR 54 B.

18. As a result, the petitioner was found not eligible for backwages for the suspension period from 08.05.1990 to 26.11.1992. Such an order after the direction given by this Court though is amounting to clear disobedience of the order of this Court, but such disobedience as held by the Apex Court in 1994 (6) SCC 322 is the result of some compelling circumstances mentioned above, hence, this Court does not wish to punish the alleged contemner. While refraining from doing so, by taking a lenient view of the matter by warning the officers not to indulge in adventurous act and strictly obey the orders passed by the Court of Law and by accepting the unconditional apology I say no costs.

19. However, the order dated 26.10.2009 is directed to be complied with, within a period of two weeks from today failing which the respondents are liable to pay accrued terminal benefits with 12% interest from 1.5.2009 and the monthly pension payable to the petitioner from 1.6.2009 onwards.

20. In view of the above reasons, both Contempt Petitions are disposed of. No costs. Consequently, Sub.ApplicationNo.280/2010 is also disposed of.

Witness the Hon'ble Thiru M.YUSUF EQBAL, The Chief Justice of High Court at Madras, as aforesaid, this the 31st day of August, 2010.

SD/-
DEPUTY REGISTRAR (OS)

//Certified to be true copy//

Dated at Madras this the day of 2010.

COURT OFFICER (O.S.)

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CONTEMPT PETITION No.740/2010

AND

SUB APPLICATION NO.280/2010

AND

CONTEMPT PETITIN NO.494/2010

THE HON'BLE MR.JUSTICE

T.RAJA

ORDER

DATED : 31/08/2010

FOR APPROVAL :13/09/2010

APPROVED ON :13/09/2010

Copy to :

1. Dr.Shanthini Kapoor IAS.,
The Chief Executive Officer
(CEO),
Tamil Nadu Khadi and Village
Industries (Khadi Board),
Kuralagam, Chennai 600 108.
2. G.Sundaramurthy, IAS,
The Commissioner,
Director of Industries and
Commerce - Holding additional
Charge of Chairman and
Managing Director, Tamil Nadu
Leather Development Corporation
Limited (TALCO), Chepauk,
Chennai 600 005.