

NOOR SABA

v.

ANOOP MISHRA & ANR.

CONTEMPT PETITION NO.3 OF 2012

IN

CONTEMPT PETITION NO.6 & 7 OF 2009

IN

WRIT PETITION (CIVIL) NO. 503 of 2007

SEPTEMBER 2, 2013.

[P. SATHASIVAM, CJI, RANJANA PRAKASH DESAI
AND RANJAN GOGOI, JJ.]

Contempt of court:

Contempt petition alleging non-compliance of Court's order – Held: The exercise of contempt jurisdiction is summary in nature and an adjudication of the liability of the alleged contemnor for wilful disobedience of the Court is normally made on admitted and undisputed facts – In the instant case, the respondents have filed affidavits stating that the order of the Court has been complied with and the revised family pension as due to the petitioner is being regularly paid to her and arrears have also been deposited in her bank account – Further, the dispute raised by the petitioner with regard to the last pay drawn by her husband is a disputed question of fact – Accordingly, the Court holds that no case for omission of any contempt of its order is made out.

The petitioner's husband passed away on 5.4.1980 while he was holding the post of Headmaster in the Government Public School. With regard to her claim for revised family pension, she ultimately filed Writ Petition (C) No. 503/2007, which was disposed of by the Supreme Court, on 29.7.2008 with a direction that the family pension of the petitioner should be determined in terms

A of Government Order dated 24.2.1989 and other orders
issued from time to time revising the family pension. The
petitioner subsequently filed Contempt Petitions (C) Nos.
6 and 7 of 2009 alleging that the directions issued by the
Court on 29.7.2008 were not implemented and certain
B forged and fabricated documents were placed by the
official respondents before the Court. The Court by order
dated 1.9.2010 directed the Accountant General, U.P. to
consider the claim of the petitioner in terms of the order
passed by the Court on 29.7.2008 and determine the
C amount payable to her and report to the Court. The
petitioner filed Contempt Petition (C) No. 3 of 2012
alleging that the directions dated 1.9.2010 were also not
complied with.

D Since the order dated 1.9.2010 passed in Contempt
Petitions Nos. 6 and 7 of 2009 was the subject matter of
Contempt Petition No. 3/2012, the Court closed Contempt
Petitions Nos. 6/2009 and 7/2009.

Dismissing the contempt petition, the Court

E HELD: 1.1. To hold the respondents or anyone of
them liable, a conclusion has to be arrived at that they
have wilfully disobeyed the order of the Court. The
exercise of contempt jurisdiction is summary in nature
and an adjudication of the liability of the alleged
F contemnor for wilful disobedience of the Court is normally
made on admitted and undisputed facts. [para 12] [687-
B-C]

G 1.2. In the instant case, respondent No. 1, namely, the
Chief Secretary of the State of Uttar Pradesh has filed an
affidavit stating that revised pension at the rate of Rs.
3058/- per month is being paid to the petitioner on a
regular basis; that the amount of pension has been
calculated on the basis of Rs. 620/- as the last pay drawn
H by the petitioner's husband and that the difference in

pension and the arrears accruing on account of revision of pension following the 6th Pay Commission Report has also been deposited in her bank account. Respondent No. 2 namely, the Accountant General, U.P. has also filed an affidavit categorically stating that the order dated 1.9.2010 passed by this Court has been complied with by him, and there is no apparent error in the calculation with regard to the pensionary entitlements of the petitioner. The dispute raised by the petitioner at this stage with regard to the last pay drawn by her husband is a disputed question of fact. Thus, not only there has been a shift in the stand of the petitioner with regard to the basic facts on which commission of contempt has been alleged, even the said new/altered facts do not permit an adjudication in consonance with the established principles of exercise of contempt jurisdiction so as to enable the Court to come to a conclusion that any of the respondents have wilfully disobeyed the order of this Court dated 1.9.2010. This Court, accordingly, holds that no case of commission of any contempt of this Court's order dated 1.9.2010 is made out. [Para 8, 9, 11 and 12] [685-C-E, F-G; 686-H; 687-A, C-E]

CIVIL ORIGINAL JURISDICTION : Contempt Petition No.3 of 2012

IN

Contempt Petition No. 6 & 7 of 2009

In

Writ Petition (Civil) No. 503 of 2007

Under Article 32 of the Constitution of India

R.K. Khanna, ASG, Shobha Dixit, Sumeet Sharma, Prashant Bhushan, M.R. Shamshad, Malvika Trivedi, C.D. Singh, Sunita Sharma, Seema Rao, D.S. Mahra, Priyanka Sinha, Sushma Suri for the appearing parties.

A The Judgment of the Court was delivered by

B **RANJAN GOGOI, J.** 1. The contempt petitioner had filed
C a writ petition under Article 32 of the Constitution [W.P.(C) No.
503 of 2007] raising a plea that after her husband had passed
D away in the year 1980, while serving as the Headmaster in
Government Public School, Rampur under the Uttar Pradesh
Basic Shiksha Parishad, a meagre and inadequate amount of
family pension was being paid to her leaving her in a dire state
of penury and distress. The writ petition in question was filed
before this Court even while a writ proceeding on the same
issue was pending before the Allahabad High Court. Notwithstanding the above, taking into account the peculiar facts
of the case, particularly, the distress that the petitioner claimed
to be suffering from, this Court entertained the writ petition and
disposed of the same by the order dated 29.7.2008 in the
following terms :

E "Keeping in view the facts and circumstances of the case,
we direct that the family pension of the petitioner shall be
determined in terms of Government Order dated 24.2.1989
and other necessary orders issued from time to time
revising the family pension. This exercise shall be done
within a period of three months from today. After the family
pension is determined in terms of the various Government
Orders on the subject and the amount of arrears be
F calculated, the same shall be paid to the petitioner after
deducting the payments already made to her on account
of family pension. With the abovesaid direction, the writ
petition is disposed of. No order as to costs." [Para 12]

G 2. While disposing of the writ petition in the above terms
by order dated 29.7.2008, this Court had recorded certain facts
which being relevant to the present proceedings are being
noticed hereinafter.

H The petitioner's husband late Masood Umer Khan was
initially appointed as an Assistant Teacher in the year 1959 and

he was holding the post of Headmaster in the Government Public School, Rampur when he passed away on 5.4.1980. The petitioner was granted family pension at the rate of Rs. 200/- per month which was later revised to Rs. 425/-. The revised amount was reduced to Rs. 375/- per month and an attempt was made to recover the excess amount allegedly overdrawn by the petitioner. The aforesaid action of the State was challenged by the petitioner in a writ proceeding before the Allahabad High Court which was, however, dismissed on 4.3.2005. Aggrieved, an intra-court appeal was filed against the said order dated 4.3.2005 in which an interim order was passed directing continuance of payment of family pension to the petitioner at the rate of Rs. 425/- per month. While the matter was so situated the writ petition under Article 32 of the Constitution [W.P. (C) No. 503/2007] was filed before this Court which was disposed of in terms of the directions already noticed and extracted above.

3. Alleging that the directions issued by this Court on 29.7.2008 while disposing of W.P. (C) No. 503/2007 had not been implemented Contempt Petition (C) No. 6/2009 was filed. Simultaneously, another contempt petition i.e. Contempt Petition(C) No. 7/2009 was instituted contending that in the proceedings in W.P.(C) No. 503/2007 certain forged and fabricated documents were placed by the official respondents before this Court which amounted to an abuse of the process of the Court for which the respondents in the writ petition are liable in contempt.

4. In the course of hearing of Contempt Petition (C) Nos. 6 and 7/2009 this Court had passed an order dated 1.9.2010 to the following effect :

“It is grievance of the petitioner that in spite of the above order the respondents have not settled the family pension as directed. Though learned counsel representing the State of U.P. states that the eligible pension has been settled and is being paid, in view of the stand taken by the

A petitioner, we direct the Accountant General, U.P. at
 Allahabad to go into the grievance of the petitioner in
 terms of the order passed by this Court vide para 12 which
 we had extracted and determine the amount payable till
 this date and report to this Court within a period of six
 B weeks.

List after the report is received.”

5. Contending that the aforesaid directions dated 1.9.2010
 has not been complied with Contempt Petition (C) No. 3 of
 C 2012 has been instituted by the petitioner.

6. Two significant facts which would render it wholly
 unnecessary to adjudicate Contempt Petitions No. 6 and 7 of
 2009 may be taken note of at this stage. The first is that by virtue
 D of the order dated 1.9.2010 passed in the aforesaid two
 contempt petitions the issues before the Court have become
 crystallized in a somewhat different manner and the
 adjudication that would be necessary now has changed its
 E complexion to one of compliance of the directions contained
 in the order of this Court dated 1.9.2010 by the Accountant
 General of the State of Uttar Pradesh. The second significant
 F fact is that no serious issue has been raised on behalf of the
 petitioner with regard to the necessity of any further adjudication
 of Contempt Petitions No. 6/2009 and 7/2009 and the entire
 of the arguments advanced on behalf of the petitioner has
 G centred around the issues arising in Contempt Petition No. 3/
 2012. We, therefore, proceed to consider Contempt Petition
 No. 3/2012 and deem it appropriate to close Contempt Petition
 Nos. 6/2009 and 7/2009 as not requiring any further orders of
 the Court.

7. In Contempt Petition No. 3/2012 the contempt petitioner
 had claimed that the Accountant General, State of Uttar
 Pradesh has not taken any steps to comply with the order/
 H directions dated 1.9.2010 of this Court and has not calculated
 the amount of pension payable to the petitioner. The contempt

petitioner has further alleged that inspite of the repeated reminders the default on the part of the Accountant General, State of Uttar Pradesh, had persisted. Furthermore, it is the case of the contempt petitioner that she is an old lady of 72 years of age who has been unjustly deprived of the pension due to her ever since her husband had passed away on 5.4.1980 while he was still in service.

8. The Respondent No. 1 in the contempt petition, namely, the Chief Secretary of the State of Uttar Pradesh has responded to the allegations made in the contempt petition by filing an affidavit wherein it is stated that the arrears of salary and pension, including revised pension at the rate of Rs. 3058/- per month, has been and is being paid to the petitioner on a regular basis. According to the Chief Secretary, the amount of pension has been calculated on the basis of Rs. 620/- as the last pay drawn by the petitioner's husband. Furthermore, according to the Chief Secretary, the difference in pension and the arrears accruing on account of revision of pension following the 6th Pay Commission Report has also been deposited in the bank account of the petitioner (No. 2622) in the District Cooperative Bank, Rajdwara, Rampur. Alongwith his affidavit, the Chief Secretary of the State has also enclosed the certificate of the last pay drawn by the petitioner's husband which clearly indicates the same to be Rs. 620/- per month.

9. The Respondent No. 2 in the contempt petition, namely, the Accountant General of the State of Uttar Pradesh has also filed an affidavit stating the facts relevant to the case and asserting that the calculations made by the Office of the Basic Shiksha Adhikari, Rampur with regard to family pension due to the petitioner corresponds to the calculation of such pension made by the office of the Accountant General and that there is no apparent error in the calculation with regard to the pensionary entitlements of the petitioner.

10. The order dated 1.9.2010 passed by this Court in Contempt Petition Nos. 6/2009 and 7/2009 required the

A Accountant General of the State to determine the correct amount of family pension payable to the petitioner in accordance with the order dated 29.7.2008 passed by this Court in W.P.(C) No. 503/2007. It is the categorical stand of the Accountant General in the affidavit filed that the said order of this Court has been complied with by him. In this regard the specific statement of the Accountant General which is to the following effect may be taken note of :

C “However as per the calculations obtained by the office of the respondent from the office of the Basic Shiksha Adhikari, Rampur, the amount of the family pension mentioned therein is found to be the same as that of the amount determined by the office of the respondent as per the order of this Hon’ble Court and mentioned in the letter report dt. 4.11.2010. Hence there appears to be no difference in calculations of amount by the office of Respondent and the dept. of petitioner.” *(Para 6 of the Affidavit dated 16.3.2012)*

E 11. Following the above stand taken by the Accountant General in his affidavit there has been a significant alteration in the stand of the petitioner as evident from the additional affidavit/rejoinder affidavit filed by her to the counter affidavit of the respondent No. 2. The petitioner now seeks to raise a dispute with regard to the last pay drawn by her husband which she contends to be Rs. 1620/- and not Rs. 620/-. On the aforesaid basis the claim to a higher amount of pension has been made by the petitioner. Though, the petitioner has brought on record some material in support of the said claim, i.e., another last pay drawn certificate showing the same as Rs. 1620/- and some extracts from the service book of her husband, the fact remains that the aforesaid documents relied upon by the petitioner stand contradicted by the last pay drawn certificate brought on record by the Accountant General in his affidavit as also the statements made by the Chief Secretary to the effect that the last pay drawn by the petitioner’s husband

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was Rs. 620/- per month. Disputed questions of fact therefore confront this Court.

12. To hold the respondents or anyone of them liable for contempt this Court has to arrive at a conclusion that the respondents have wilfully disobeyed the order of the Court. The exercise of contempt jurisdiction is summary in nature and an adjudication of the liability of the alleged contemnor for wilful disobedience of the Court is normally made on admitted and undisputed facts. In the present case not only there has been a shift in the stand of the petitioner with regard to the basic facts on which commission of contempt has been alleged even the said new/altered facts do not permit an adjudication in consonance with the established principles of exercise of contempt jurisdiction so as to enable the Court to come to a conclusion that any of the respondents have wilfully disobeyed the order of this Court dated 1.9.2010. We, accordingly, hold that no case of commission of any contempt of this Court's order dated 1.9.2010 is made out. Consequently, Contempt Petition No. 3/2012 is dismissed. For reasons already recorded, Contempt Petition Nos. 6/2009 and 7/2009 shall also stand closed.

R.P.

Contempt Petition dismissed.