

THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

CONTEMPT APPLICATION NO. 101 OF 2014
IN
ORIGINAL APPLICATION NO.476 OF 2012

District: Mumbai

Shri Vivek Vishwanath Rane)
Occ.- Nil, Retired as Director,)
Institute of Science, Mumbai)..... Applicant

Versus

Shri Sanjay Kumar,)
Principal Secretary,)
Higher and Technical Education Dept.,)
Having office at Mantralaya, Mumbai 400 032.)..... Respondent

Shri V.V. Rane, Applicant in person.

Shri K.B. Bhise, Presenting Officer for the Respondents.

CORAM : Shri Justice A.H. Joshi, Chairman
: Shri Rajiv Agarwal, Vice-Chairman

**DATE OF CLOSING
FOR ORDERS** : 8th December, 2016.

DATE OF JUDGEMENT : 10th January, 2017.

JUDGEMENT

1. Heard Shri V.V. Rane, Applicant in Person, and Shri K.B. Bhise, the learned Presenting Officer for the Respondent.
2. Applicant's O.A. No. 476/2012 was allowed by judgement and order dated 13.08.2013 and this Tribunal gave certain directions.
3. According to the applicant the directions given in operative part of the order passed in the O.A. 476 of 2012 were not obeyed by the respondents, and therefore the applicant had filed present application for action for contempt.



4. Applicant has placed reliance on para 9 of order passed in O.A. 476/2012 and has urged that various amounts payable to the Applicant were not paid. This contempt case was required to be heard on various dates because applicant agitated various demands urging that the order passed in the O.A. presupposed payment of all dues whatsoever. During oral submissions, various demands were raised by the applicant from time to time. Some demands raised by the applicant were accepted by the respondents and remaining were disputed. Therefore during one of the hearings, this Tribunal directed the Applicant to enlist and specify the claims which ought to have been honoured and paid by the Respondents.
5. Thereafter, the Applicant has filed an affidavit narrating in details his unfulfilled demands. This affidavit is at Page 192 of paper book. After filing of this affidavit the case was heard, by treating the affidavit at Pg. 192 as basis of applicant's claims.
6. Demands incorporated in the affidavit at page 192, were examined by this Tribunal on various dates, and various orders were passed and number of affidavits have been filed by respective parties.
7. Today the case was once again examined to find out as to whether and which of Applicant's claim have remained to be complied, and as to whether cognizance of contempt is required to be taken.
8. The demands raised orally and in the affidavits, and Compliance or objection by the respondents to various points of demands, are summarized as narrated and dealt with in paras to follow.
9. **Demand of the Applicant:-**
The Applicant's pay must be fixed as per the recommendations of the Sixth Pay Commission and he must be paid all his dues accordingly **(as described in para 8 of the order passed in the O.A.)**
- Compliance:-**
The Respondent State has submitted that this demand of the applicant is partly fulfilled as far as fixation of pay is concerned and the payment of arrears to all beneficiaries has been phased, and the same is being made to as beneficiaries.

10. **Oral Demand of the Applicant:-**

Applicant has claimed that he be given right to exercise option to choose 01.08.2000, as the date of accrual of increment, upon promotion to the post of Director.

Compliance:-

Principal Secretary of Higher Education Department had initially opposed this claim of the Applicant. Later, the Principal Secretary of the department has conceded that applicant would be entitled to the choice of date, and now applicant has been granted the right to opt for 01.08.2000 as date on which the increment be given to him after promotion to the post of Director. Dr. Annasaheb Khemnar, Director, Institute of Science, Mumbai, who was present at the time of hearing, has made a statement before this Tribunal that, he being competent officer, appropriate order required for fixation of applicant's pay upon postponing date of increment to 01.08.2008, is being passed/issued. This demand of the Applicant is thus fulfilled.

11. **Oral Demand of the Applicant:-**

Applicant wants four increment after earning one increment on earlier post on 01-08-2000, by enforcement of Rule 11 (1) (अ) of Maharashtra Civil Services (Pay) Rules 1981, due to applicant's promotion as Director.

Compliance / Objection:-

Respondents have raised a dispute as to entitlement of applicant for four increments asked for by him. The dispute is raised by the Respondents on the point as to what is the exact interpretation of Rule 11(1) (अ) of Maharashtra Civil Services (Pay) Rules 1981. Therefore this demand of the Applicant is contested and hence it has remained unfulfilled.

12. **Oral Demand of the Applicant:-**

The Applicant will also be entitled to get his pay refixed in the same scale of pay on promotion to the post of Director.

Compliance:-

This prayer was not allowed in the order passed in the O.A. therefore, applicant is not entitled for any compliance or from the respondents, relief whatsoever.

13. **Demand of the Applicant:-**

The Applicant will be entitled to two advance increments liable to be granted to the Professors who acquire Ph.D degree, in terms of Government decision and on the lines of the judgment of this Tribunal



rendered in O.A. No. 1330/2009 in case of Professor Dr (Mrs.) M.D. Bapat, as confirmed by the judgment of Hon'ble Bombay High Court in Writ Petition No. 1084/2003.

Compliance:-

It is an admitted fact that the State has suffered the order passed by this Tribunal in the O.A. which was filed by Professor Dr. (Mrs.) M.D. Bapat. It is an admitted fact that the order passed in said Professor Dr. (Mrs.) M.D. Bapat's case has attained finality since the order passed in O.A. was upheld by Hon'ble High Court by dismissing the Writ Petition filed by the State Government. The order passed by this Tribunal Applicant's case in O.A.No.476 of 2012 is challenged by the State by filing Writ Petition which is not admitted so far, even the order passed in O.A.No.476 of 2012 is stayed.

In the background that order passed in Dr. (Mrs.) M.D. Bapat's case has attained finality and since the order passed in O.A. 476/2012 is not stayed, this Tribunal had passed an interim order directing the State to calculate the arrears payable under this head, and to deposit the amount in this Tribunal. The state has accordingly made the deposit in view that order passed in O.A. 476/2012 is not stayed since 2012, and the amount deposited by the State is now being disbursed to the Applicant, as per the operative order passed herein below.

14. **Claim / Demand of the Applicant:-**

Higher Grade Pay of Rs. 12,000/- payable under G.R. dated 12.09.2009.

Compliance/ Objection:-

This demand is disputed by the Respondents. It is seen that the Higher Grade Pay is not payable to each or all eligible Teachers. It is evident from the G.R. dated 12.09.2009 that, this claim does not follow automatically. Only 10% Teachers amongst of cadre strength have to be granted this increase. The exercise of identification of 10 % Teachers is required to be undertaken by a committee at the level of University & in absence of the said exercise, and decision to award the said Higher Grade Pay, does not accrue automatically. In case this exercise is not done by competent authority, applicant has to take legal advice and follow the course as may be available for seeking a mandatory relief in regard thereto. If said exercise is done and hence the applicant is not granted the said benefit, applicant shall have to take call on facts and the law, and take decision as to what course of action is required to be adopted. In the result, the claim for Grade Pay of Rs. 12,000/- falls in the category of un-adjudicated claim and hence it cannot be considered as a ground to be adequate to be the foundation of a contempt case.

15. **Claim / Demand of the Applicant:-**

Higher Pension payable under VIth Pay Commission.

Compliance:-

This claim is defended by the State by filing affidavit which is at page 404. Relevant text is at page 408 & 409 and is quoted below:-

"5. With reference to Para 4 of Affidavit, I say that, as regards enhanced pension under VIth Pay commission, the applicant himself agreed that Civil Appeal No. 908/2013 is related to gratuity. Since the said Civil Appeal is exclusively related to Gratuity, the judgment in this appeal does not apply to monthly pension as demanded by the applicant. I further say and submit that the matter regarding enhanced pension rate for the Government employees, the special leave petition is filed by Finance Department, Government of Maharashtra, Mumbai having no. Special Leave to Appeal (c) -----/2015, CC No. (s). 6186 – 6191/2015 is pending in Hon'ble Supreme Court. The resultant decision/ Government Resolution of the Finance Department on the decision of Hon'ble Supreme Court will be made applicable to the applicant."

(Quoted from page 408 & 409 of the O.A. paper book.)

In view of the Respondent's stand which has revealed from the applicant has to wait for the decision of the case which is shown to be pending the foregoing quotation, before Hon'ble Supreme Court. Moreover if applicant is able to make a claim inspire of pendency of the case before Hon'ble Supreme Court, he may raise said claim before appropriate authority including before this Tribunal and it could be considered on its own merits. The issue subject matter is kept open.

16. **Demand of the Applicant:-**

All the dues before retirement and after retirement should be calculated and be paid to the Applicant within a period of three months.

Compliance:-

- (a) (i) Applicant's pay is fixed and arrears are paid/ being paid.
- (ii) In for far as Applicant's demand of four increments under Rule 11(1) (अ) are concerned these matters are already dealt with while dealing with foregoing para No. 11.
- (iii) Two increments due to Ph.D. being paid in the manner similar to all persons entitled to said arrears in similar manner for which observation in foregoing para No. 13, and operative order is adequate to meet applicant's claim.
- (iv) The aspect of higher pension is dealt with in the foregoing paragraph no.15, and explanation and assurance can be relied upon.



(b) The text of para (9) of order passed in O.A. 476/2012 reads as follows:-

"All the dues before retirement and after retirement should be calculated as discussed 'in the preceding paragraph' and paid to the Applicant within a period of three months."

(Quoted from para (9) of order passed in O.A. 476/2012.)

(c) Therefore the words "**All the dues**" is qualified by later part of same sentence quoted herein before, by employing / adding words "**as discussed in the preceding paragraph**", the dues payable to Applicant are qualified and the terms "**all dues**" does not comprehend un-adjudicated demands.

17. In view that a dispute is raised, as regards granting four increments based on the ground of exact interpretation, and since the interpretation being done by respondent is arguable, an action for contempt may not sustain. Interpretation of Rule 11(1) (3) of Maharashtra Civil Services (Pay) Rules 1981 is a contentious issue. Though Applicant claims that his interpretation of said Rule 11 (1) (3) is accepted by Government and other employees have been granted the benefit of increments, as the Government has now disputed, the interpretation, applicant has to make that demand and have a ruling on it from the Respondents. This point cannot be raised off the cuff. Because there is no adjudication on Applicant's claim or demand, for four or any number of increments under Rule 11(1) (3) of Maharashtra Civil Services (Pay) Rules 1981, it turns out to be a claim or a "**demand**" to be made before authorities / or alternatively by filing an O.A. and is required to be adjudicated. Therefore refusal to grant proper fixation due to deficiency of award of increments under Rule 11 (1) (3) aforesaid is not an act of willful disobedience of order of this Tribunal and have said deficiency is not contempt.

18. If applicant wants any money which claims was specifically raised and was adjudicated by this Tribunal but was/is being adamantly and stubbornly and willfully denied by respondents, such conduct could constitute contempt, however such is not the situation in present case.

19. Moreover the delay in payment is attributable either to lack of understanding & also to change of persons who have to take the decision. Therefore delay though highly undesirable, may not be regarded as willful and intentional. Therefore present case does not appear to be a case of an act or omission which prima facie constitutes willful disobedience by any/given individual.

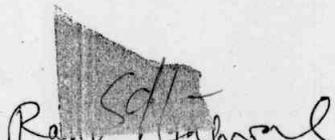
20. Contempt has to be obvious & is not to be based on un-adjudicated demand. Bonafide dispute as regards interpretation would exclude the denial for its being treated and to be treated as contempt.

21. Applicant shall be free to agitate his demand of increments grade pay & dues whatsoever, which he believes to be entitled by making representation &/or by filing an O.A., and get it adjudicated.

22. The Applicant may make a claim for interest on delayed payment, decision on which must be communicated to the Applicant within a further period of three months.

23. **Hence, following order is passed:-**

- (i) Applicant shall furnish an undertaking that in the event order passed in O.A. 476/2012 is reversed and it is eventually held that the applicant shall not be entitled to two increments on account of acquisition of Ph.D degree, he shall refund the arrears, to the Government or the money be deducted from Applicant's pension.
- (ii) The Registrar of this Tribunal shall pay to applicant; the amount deposited by the respondent in this Tribunal along with accruals there on, forthwith, but soon after an undertaking prescribed is furnished by him in terms of clause (i) foregoing.
- (iii) The Respondents shall be bound and shall take into consideration the observations contained in para Nos. 11, 16 and 19 to 21 in regard to applicant's claims which are not satisfied or are not so far adjudicated.
- (iv) It is not necessary to take cognizance of contempt and therefore present application is disposed.
- (v) Parties shall bear own costs.


(Rajiv Agarwal)
Vice-Chairman


(A.H. Joshi, J.)
Chairman

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