

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
BENCH AT AURANGABAD**

CONTEMPT PETITION NO.42 OF 2019

IN

ORIGINAL APPLICATION NO.343 OF 2019

(Subject :- Contempt of order dtd.02.07.2019)

DISTRICT : AURANGABAD

Smt. Sangita d/o. Prataprao Darekar,)
Age:49 years Occu: Dy. Commissioner for Excise,)
Aurangabad Division, Aurangabad, (deemed to be in)
service w.e.f. 01.08.2019))
R/o. Sai Krupa, Shrihari Park, Ulka Nagari,)
Garkheda Area, Aurangabad,)
Tq. and District Aurangabad.)...**Applicant**

V E R S U S

Mrs. Valsa Nair Singh,)
The Principal Secretary,)
State Excise, Home Department,)
Mantralaya, Mumbai-400032.)...**Respondent**

**Shri S.B. Talekar, learned Advocate holding for Shri V.B. Wagh,
learned Advocate for the Applicant.**

**Shri M.S. Mahajan, learned Chief Presenting Officer for the
Respondents.**

CORAM : B.P. PATIL, ACTING CHAIRMAN

RESERVED ON : 09.10.2019.

PRONOUNCED ON : 11.10.2019.

ORDER

1. The present Contempt Petition is heard by consent of both the parties.

2. The Applicant has filed present Contempt Petition claiming with following prayers:-

(B) Hold and declare that the respondent has committed Contempt within meaning of Section 17 of the Administrative Tribunals Act, of the judgment dated 02.07.2019 to the extent of clause No. iv) of Paragraph No.8 passed by the Hon'ble Tribunal in Original Application No.343 of 2019 and they be ordered according to law.

(C) To direct the respondents to implement the judgment dated 02.07.2019 to the extent of clause No. iv) of Paragraph No.8 passed in Original Application No.343 of 2019 by this Hon'ble Tribunal, in respect of monthly salary w.e.f. from 01.08.2019, and posting of the present petitioner on one vacant post of the Deputy Commissioner of Excise, Mumbai, Headquarter, forthwith.

(quoted from page no.17 of the O.A.)

3. Learned Advocate for Applicant has submitted that this Tribunal has decided Original Application No.343 of 2019 filed by the Applicant on 02.07.2019 and passed the following order:-

“8. In view of foregoing discussion, I pass the following order:-

(i) The present Original Application is disposed of without any order as to costs.

- (ii) The concerned respondents are directed to take a conscious decision as regards continuation or revocation of suspension of the applicant within 30 days from today.
- (iii) In case respondents fail to take conscious decision as regards continuation of suspension of the applicant, the applicant would be deemed to be revoked and its formal compliance be done within the period of 2 weeks thereafter i.e. 6 weeks from today.
- (iv) Respondents shall be free to give posting to the applicant after reinstatement in the event he get the benefit of deemed revocation.
- (v) If decision to continue the suspension is taken by the respondents, the applicant is free to avail remedies available to him.”

4. He has argued that the in para no.8 (ii) of the order dated 02.07.2019 passed by this Tribunal in O.A.No.343 of 2019, the Respondent was directed to take a conscious decision as regards continuation or revocation of suspension of the Applicant within 30 days from today i.e. from the date of order. But the Respondent had not taken decision in time and therefore, it amounts contempt of the direction given by this Tribunal. He has submitted that 30 days time has to be counted from the date of order of this Tribunal i.e. from 2.7.2019 and 30 days expired on 31.07.2019. But till that date the Respondent had not taken

conscious decision and therefore, the Respondent has committed contempt of the directions given by this Tribunal.

5. He has submitted that in view of the provision of Bombay General Clauses Act, 1904, for computation of period of time of order, the last date of prescribed period can be excluded if it falls on holiday. He has submitted that the last day of direction given by this Tribunal falls on 31.07.2019. On that day, it was working day for all Government Offices. But the Respondent had not taken decision till that date and therefore, the said date can be considered for computation of period prescribed in the order. He has submitted that any decision taken by the Respondents after 31.7.2019 amounts breach or disobedience of the direction given by this Tribunal and therefore, the Respondent is liable to face Contempt Petition.

6. He has further submitted that this Tribunal is not empowered to consider the legality of its earlier order as it has reached finality and therefore, the earlier order can be executed in true spirit. In support of his claim he has placed reliance on the judgment of Hon'ble Supreme Court in case of **K.G. Derasari and Another Vs. Union of India and Others, (2001) 10 S.C. cases**

496, decided on 10.12.1999. In the said decision the Hon'ble Supreme Court has observed as follows:-

“7. Having considered the rival submissions at the Bar, we have no hesitation to come to the conclusion that the Tribunal was not entitled in a contempt proceeding, to consider the legality of its earlier order which has reached finality not being assailed or annulled by a competent forum. If the Tribunal has not looked into any previous decision of this Court which is the law of the land and by which it was bound, the remedy available to the aggrieved person was to file an application for review. Admittedly, no review application was filed before the Tribunal. In an application for contempt, the Tribunal was only concerned with the question whether the earlier decision has reached its finality and whether the same has been complied with or not. It would not be permissible for a tribunal or court to examine the correctness of the earlier decision which has not been assailed, and reverse its earlier decision. In that view of the matter, the impugned order cannot be sustained, the same being beyond the powers and jurisdiction of the Tribunal in a contempt proceedings.

7. He has further placed reliance on the judgment of Hon'ble Apex Court in case of **Daya Ram Singh Vs. R.K. Takkar and Others reported in 1999 Supreme Court Cases (L&S) 1076, decided on 19.11.1998,** wherein it is observed as follows:-

“7. In our opinion, the Tribunal had no jurisdiction to go into the question whether any vacancy existed in the year 1982 to which the appellant could have been promoted on regular basis as Assistant Manager. All these questions were gone into by the Tribunal when it decided in favour of

the appellant vide its order dated 25.11.1993. All that the Tribunal was then required to do was to see whether this order had been complied with or not. The letter dated 25-8-1995 while purporting to implement the judgment of 25-11-1993 was really not in consonance with the said judgment. As already noticed, the relief which was granted to the appellant vide order dated 25-11-1993 was that he should be appointed as Assistant Manager (Factories) on regular basis with effect from 4-9-1982 and he should get all consequential benefits in accordance with the rules. This order, to our mind, set at rest the question as to with effect from which date the appellant had to be regularized. What the Tribunal has done by the impugned order is really to reverse the decision contained in its order of 25-11-1993. This the Tribunal could not do.”

8. He has further submitted that the Respondents had taken decision regarding continuation of the suspension of the Applicant on 1.8.2019 i.e. after expiry of the time granted by this Tribunal. He has submitted that the decision has been taken by the Minister concerned. But the Minister is not empowered to take decision in that regard. He has argued that the Applicant is getting pay in the pay band of Rs.15,600-39,100 with grade pay of Rs.6,600. He has submitted that in view of the G.R. dated 4.3.2017, the Hon'ble Chief Minister is empowered to take decision regarding initiation of Disciplinary Enquiry and imposition of punishment in disciplinary enquiry in case group 'A' officer,

drawing pay in the pay band of Rs.15,600-39,100 (grade pay of Rs.6,600/-). He has submitted that in case of Applicant the Hon'ble Chief Minister is Competent Authority to take decision regarding continuation or revocation of suspension of the Applicant. Therefore, the decision taken by the Minister concerned in that regard does not amount the decision taken by the Competent Authority and therefore, the same cannot be considered as the compliance of the direction given by this Tribunal. As no decision has been taken by the competent authority as regards continuation or revocation of suspension of the Applicant as directed by this Tribunal, there was no decision taken by the Competent Authority and therefore, it amount contempt of the direction given by this Tribunal.

9. He has submitted that the General Administrative Department in the Government of Maharashtra has not taken decision in the matter of the Applicant and therefore, on that ground also it amounts contempt of the order of this Tribunal passed in O.A.No.343 of 2019. Therefore, he prayed to take cognizance of the Contempt Petition and issue contempt notice to the Respondent for breach/disobedience of the direction given by this Tribunal.

10. Learned C.P.O. for the Respondents has submitted that this Tribunal while deciding the Original Application No.343 of 2019 issued directions to the Respondent to take appropriate decision regarding continuation or revocation of suspension of the Applicant and the Respondent has passed the order in that regard on 2.7.2019. He has submitted that the 30 days time as mentioned in the order has to be counted from the next day of the order i.e. from 3.7.2019 and the period of 30 days expired on 1.8.2019. He has submitted that the date of the order has to be excluded while counting the time prescribed in the order. He has argued that the concerned department has prepared proposal in that regard and took conscious decision regarding continuation of the suspension of the Applicant accordingly on 1.8.2019. He has submitted that the proposal was prepared on 31.7.2019 and it was placed before the Competent Authority i.e. concerned Minister. The concerned Minister passed the order on 1.8.2019 by recording reasons and decided to continue the suspension of the Applicant considering nature and seriousness of the allegation. He has submitted that thereafter charge sheet in the disciplinary enquiry has also been issued and served on the Applicant. He has argued that the said order came to be passed within 30 days from the date of order passed by this Tribunal in O.A.No.343 of 2019 and therefore there

is no contempt or disobedience of the direction given by this Tribunal. He has argued that the direction/order issued by the Tribunal has been complied with within 30 days and therefore, the cognizance of Contempt Petition cannot be taken and therefore, he has prayed to reject the Contempt Petition.

11. I have heard Shri S.B. Talekar, learned Advocate holding for Shri V.B. Wagh, learned Advocate for the Applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the Respondent. I have gone through the documents on record. I have also gone through the judgment produced by the learned Advocate for the Applicant. I have no dispute about the settled legal principles laid down in the above said decisions. Keeping in the mind above said principles, I have to decide the present Contempt Petition.

12. It is material to note here that this Tribunal decided the O.A.No.343 of 2019 on 2.7.2019 and issued direction to the Respondents to take conscious decision as regards continuation or revocation of the suspension of the Applicant within 30 days from that date. For computation of the period of 30 days I have to consider the provision of Bombay General Clauses Act, 1904. The Bombay General Clauses Act, 1904 provides as follows:-

“10 (1) In any Bombay Act [or Maharashtra Act] made after the commencement of this Act it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word “from” and, for the purpose of including the last in a series of days any other period of time, to use the word, “to”.

13. On going through said provision it reveals that the first day has to be excluded while computing of the time prescribed in the order. After excluding the day on which the order has passed i.e. on 2.07.2019, the 30 days expired on 1.8.2019. The Respondent has to comply with the direction given by this Tribunal on or before 1.8.2019. The record produced by the Respondent shows that the concerned department had prepared proposal in that regard on 31.7.2019 and placed before the concerned Minister. The concerned Minister after considering the documents and proposal, decided to continue the suspension of the Applicant as the allegation made against the Applicant are of serious nature. He recorded the reasons and passed the order. It seems that the Respondent had taken conscious decision as per the directions given by this Tribunal and complied with the order dated 2.7.2019 passed in O.A.No.343 of 2019. Therefore, in my view there is no breach or disobedience of direction given to the Respondent in the said order.

14. The Applicant is getting pay in the pay band of Rs.15,600-39,100 with grade pay of Rs.6600/-. Admittedly, she is group 'A' officer. The G.R. dated 4.3.2017 on which the Applicant has placed reliance is applicable to the group 'A' officers drawing pay scale of Rs.15,600-39,100 with grade pay of Rs.7600/-. The Applicant is not getting pay in the pay band of Rs.7600/- Therefore, the provision of said G.R. is not attracted in the present case. Therefore, there is no need to place the matter before the Chief Minister in view of the said G.R. Moreover, the said G.R. shows that the approval of the Chief Minister is necessary to initiate disciplinary enquiry and to impose punishment in Disciplinary Enquiry. But in the instant case this Tribunal has directed to take decision regarding continuation or revocation of the suspension of the Applicant. Therefore, on that ground also the G.R. is not attracted in the present case. Therefore, I do not find substance in the submission advanced by the learned Advocate for the Applicant in that regard.

15. It is also material to note here that the Applicant has sought action against the Respondent for making contempt of order of this Tribunal to the extent of clause no. (iv) of para no.8 passed in O.A.No.343 of 2019 only. The Applicant has no grievance about the clause no.ii and iii of para no.8 of the order passed in

O.A.No.343 of 2019. Not only this but on perusal of documents on record it reveals that the Applicant had filed C.P.ST.No.1660 of 2019 In O.A.No.343 of 2019 for contempt of clause no.ii and iii of para no.8 of the order passed by this Tribunal in the O.A.No.343 of 2019. But she had filed withdrawn pursis in that regard. The copy of the said withdrawal pursis is placed at page no.37. In the withdrawal pursis, she had made following statement:-

“2. I have filed the contempt petition No.St.1660/2019 in Original Application NO.343/2019 for the none compliance of the order dtd.02/07/2019 to the extent of clause No.iv of para 8 in respect of issuance of posting order on the post of Deputy Commissioner State Excise on vacant post. Now pursuant to the order dtd.02/07/2019 my suspension is deemed to be revoke on 1st August 2019 as no decision was taken till 31st July 2019 & deemed to be in service on the post of Deputy Commissioner State Excise. Which was mentioned in clause No.ii & iii of para No.8. Now only to the extent of clause No.iv the compliance is not be done and in respect of posting on the post of Deputy Commissioner State Excise till today pursuant to the order passed by the Hon’ble Tribunal on 02/07/2019 and no communication was receive till today from respondent authority.

3. So I am withdrawing the Contempt Petition and will give the Legal Notice to the office sole respondent for non compliance of the order in para 8 (iv) dtd.02/07/2019. So permission may be granted to withdraw the Contempt Petition with liberty to give the Legal Notice and also file fresh Contempt Petition after the cause arising if there is non compliance of order in respect of Clause No.iv of para 8.

16. The Applicant has no grievance against the Respondent so far as clause no.ii and iii of para no.8 of order passed in

O.A.No.343 of 2019 is concerned. The Respondent has already complied with the order given by this Tribunal within stipulated time and passed the order on 1.8.2019 and continued the suspension of the Applicant and thereby complied with the order/direction given by this Tribunal in O.A.No.343 of 2019. There is no willful disobey of the order dated 2.7.2019 passed in O.A.No.343 of 2019 on the part of the Respondent. Therefore, no cognizance of the Contempt Petition is required to be taken since there is no disobedience of the direction given by this Tribunal by the Respondent. Therefore, the Contempt Petition cannot be entertained. Hence, it requires to be rejected.

17. In view of the discussion in foregoing paragraph, the Contempt Petition stands dismissed. No order as to costs.

(B.P. PATIL)
ACTING CHAIRMAN

Place:- Aurangabad

Date :- 11.10.2019

Sas. C.A.42/2019 In O.A.No.343/2019.