
(2014) 12 DEL CK 0319
In the Delhi High Court
Case No : Cont. Cas (C) 605/2012

N.M. Goel

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 05-12-2014

Acts Referred:

Contempt of Courts Act, 1971 — Section 2

Citation : (2014) 12 DEL CK 0319

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Vikas Arora, Akshat and Dhiraj Manchanda, Advocate for the Appellant; M.K. Bhardwaj, Advocate for the Respondent

Judgement

V.K. Shali, J.—The present contempt petition has been filed by the petitioner on account of the alleged wilful disobedience of the order passed by the Division Bench of this court vide order dated 23.02.2012.

2. I have heard the learned counsel for the petitioner and I have also gone through the reply affidavit filed by the respondents including the surrejoinder. The direction passed by the Division Bench are contained in para Nos. 5 & 6 of the order dated 23.02.2012. These were as under:

5. In so far as the other plea with regard to the computation of the Cost of Living Allowance is concerned, we feel that the Tribunal has cursorily decided this issue against the petitioner, without going into the correctness of the computation on the part of the respondents. It is an agreed position that the Cost of Living Allowance of the petitioner is to be computed on the basis of the letter dated 16.09.1993 issued by the Ministry of External Affairs, New Delhi (Annexure P-5 of the writ petition). This method of computation was, however, superseded by another method of computation which is indicated by another letter dated 06.06.2008 issued by the Ministry of External Affairs, New Delhi (Annexure P-7 of the writ petition). It is, therefore, clear that the computation of Cost of Living Allowance in so far as the petitioner is concerned has to be computed on the

basis of the said letter dated 16.09.1993 up to the period ending on 05.06.2008 whereafter the computation is to be based on the letter dated 06.06.2008.

6. Without going into the actual calculation in this writ petition itself, we direct that the respondent shall re-compute the Cost of Living Allowance payable to the petitioner in terms of the said two letters for the said two respective periods. The computation shall be done within eight weeks. The details of the computation shall be conveyed to the petitioner immediately thereafter. If any amount is payable on such re-computation, the said amount shall be paid within two weeks thereafter. The bonus shall also be paid for the year 2008-09 as indicated above within eight weeks.

With these directions, the writ petition stands disposed of.

Sd/-"

3. In response to the notice having been issued, the respondents have filed their reply affidavit and stated in the preliminary objections:-

"At the outset, it is humbly submitted that the respondents have highest regard for the order passed by this Hon"ble Court and cannot even think to disobey the same either directly or indirectly. So far as order dated 23.02.2012 is concerned, it is humbly submitted that the same has already been complied with by the respondents. However, the petitioner has not disclosed the same before this court. It is relevant to notice that the aforesaid order was received by the respondents through petitioner. Immediately on receipt of the said order, the respondents initiated process to recompute the cost of living allowance (COLA) on the basis of letter dated 16.09.2013 upto the period ending on 05.06.2008 and thereafter on the basis of letter dated 06.06.2008. In fact, when the petitioner was not satisfied with the calculations given to him first time, more detail computation was done and the same was communicated to the petitioner. However, the petitioner has not disclosed the aforesaid facts in the petition.

Secondly, the Ministry humbly submits the following facts for being placed on record before the Hon"ble High Court:

(Fact I) The appeal filed by the petitioner in the Hon"ble High Court in March, 2011, was defended by the designated government counsel based on the Ministry's position and explanations provided in response to the original petition filed in Central Administrative Tribunal, Principal Bench, New Delhi without being provided an opportunity of offering additional facts/arguments. Similarly, the decision of the Hon"ble High Court in the appeal was not communicated directly to the Ministry in Delhi but was forwarded to the Ministry by the petitioner through the High Commission of India in London.

(Fact-II) The aforesaid contempt petition was received on 31.01.2013 from the designated government counsel informing that two earlier dates i.e. 10.09.2012 and 11.01.2013 had already passed as he could not establish contact with the concerned office in the MEA and deliver the necessary documents.

(Fact-III) The fact that the petitioner is based in UK and principal respondent being HCI London and the case being defended through the Ministry of External Affairs, New Delhi, have been the cause of undue delay. Under these extraordinary circumstances, the Ministry of External Affairs would urge for an opportunity for explaining the situation and its position in the matter.

(Fact-IV) The Hon''ble Court may kindly be informed that a copy of their order dated 11 Jan, 2013 has also been received in the Ministry through HCI London only on 27 Feb 2013. It is therefore humbly prayed that the cost imposed vide Hon''ble High Court's order dated 11.01.2013 may kindly be waived."

4. It has been contended by the learned counsel for the respondents that the direction of the court was to recalculate the amount payable to the petitioner in terms of the two circulars/letters dated 16.09.1993 and 06.06.2008.

5. The respondents in the reply affidavit have categorically stated that the recalculation has been done by them for the two periods for which the grievance was raised by the petitioner and in this regard the circulars/letters dated 16.09.1993 and 06.06.2008 were also taken into consideration and no amount whatsoever has been found due and payable to the petitioner.

6. However, the respondents have also stated that an amount of 2314.50 pounds was released to the petitioner for the entire period of 2008-09.

7. The learned counsel for the petitioner does not feel satisfied with the aforesaid calculation/recalculation done by the respondents inasmuch as it has been contended that the recalculation has been done by the respondents on the basis of basic pay payable to the petitioner for the purpose of payment of Cost of Living Allowance (COLA) while as according to the petitioner it has to be paid on the basis of progressive pay payable to the petitioner and, if done so, the petitioner would be entitled to some arrears of allowance. This fact was urged by the petitioner in the rejoinder to which surrejoinder was filed by the petitioner wherein it has been stated as under:

"With regard to COLA calculations for the period (i) 01.08.2004 to 30.09.2007 (ii) 01.05.1998 to 31.01.1999 and (iii) 01.03.1999 to 30.06.1999 HCI London has added the omission in the calculation sheet being submitted with the surrejoinder (Annexure RJ-4). However, it has been reiterated that no payment is due to be made as the payments for the aforementioned periods have already been made and indicated in the calculation sheet. With regard to the period 01.08.2004 to 30.09.2007, it is stated that the pay scales of the local employees of the Mission were earlier revised w.e.f. 01.06.1993. Thereafter COLA was periodically released as per rules. A proposal for revision of pay-scales of the local staff of the mission was forwarded to the Ministry in 2004. The pay revision was made effective w.e.f. 01.10.2007. The increase in COLA during the intervening period was suitably taken care of by the Ministry while according its approval to the revision of pay scales of the local staff of HCI London. At the time of revising the pay-scales of locally recruited employees in 1993 Ministry of

External Affairs had categorically indicated to add 9% increase over existing pay plus 50% COLA. Accordingly the pay-scales of all the local regular employees was revised in the same manner. However, during the pay revision of October, 2007 Ministry did not approve any such increase. Alternatively, Ministry gave the benefit of length of service to all local regular employees in the following manner:

- a) Employees upto 15 years of service - 1 increment each for every five years of service rendered in the pre revised scale subject to maximum of three increments;
- b) Employees with 15-20 years of service - to get minimum benefit of GBP 100.
- c) Employees with 20-25 years of service - to get minimum benefit of 125 and,
- d) Employees with over 25 years of service - to get minimum benefit of GBP 150."

8. The definition of the word "contempt" given under Section 2 of the Contempt of Courts Act, 1971 is that the party concerned must show that not only there is disobedience of the order of the court, but that the same must be gross and wilful. In the instant case, the grievance of the petitioner essentially pertains to calculation of an amount permissible to the petitioner under the heading of Cost of Living Allowance in terms of circulars/letters dated 16.09.1993 and 06.06.2008 as is urged by the learned counsel for the petitioner.

9. The respondents having filed an affidavit to the effect that the entire exercise has been redone in terms of the judgment of this court and nothing has been found to be due and payable to the petitioner, only shows that there is no disobedience of the order of the court much less the same can be said to be wilful disobedience.

10. No doubt the petitioner may still have a case to contend that the formula which has been followed by the respondents may not be correct by urging that the petitioner was entitled to calculation of Cost of Living Index progressively in terms of the two circulars/letters dated 16.09.1993 and 06.06.2008 while as the exercise has been done by the respondents on the basis of basic pay, but that raises a disputed question of fact which certainly cannot be dealt with in a contempt petition.

11. The petitioner will be at liberty to get the same adjudicated in an appropriate forum by showing that he is entitled to allowances on the basis of progressive pay and not on the basic pay as has been done by the respondents.

12. For the aforesaid reasons, I feel that by calling upon this court to go into the question of calculation of the amount due and payable to the petitioner, would amount to going into the arena of an accountant which cannot be done.

13. The present contempt petition is accordingly dismissed and the contempt notice is discharged with liberty to the petitioner to approach the appropriate forum and urge all the disputed questions of fact in order to show his entitlement

with respect to any amount payable to him in terms of two circulars/letters dated 16.09.1993 and 06.06.2008, which have been referred to in the order of the Division Bench dated 23.02.2012.