

(2011) 01 DEL CK 0256

In the Delhi High Court

Case No : Writ Petition (C) No. 7098 of 2007

Union of India (UOI) and Another

APPELLANT

Vs

Shri Satish Nandan

RESPONDENT

Date of Decision : 06-01-2011

Acts Referred:

Citation : (2011) 176 DLT 406 : (2012) 1 SLJ 273

Hon'ble Judges : Veena Birbal, J;Anil Kumar, J

Bench : Division Bench

Advocate : H.K. Gangwani, for the Appellant; R.K. Shukla, for the Respondent

Judgement

Anil Kumar, J.—The Petitioner has challenged the order dated 17th August, 2007 passed in CP No. 220/2007 in OA 2611/2005 titled as Sh. Satish Nandan v. Secretary and Anr., Ministry of Finance, Department of Expenditure, holding that a prima facie case is made out for initiating action for contempt of the Court against the Petitioner and listing the matter for further orders on 18th September, 2007.

2. Aggrieved by the said order, the Petitioner filed the present petition and the order dated 17th August, 2007 was stayed by this Court in CM No. 13490/2007 by order dated 26th September, 2007 which order was made absolute by order dated 5th December, 2008 and Rule D.B. was also issued on that date.

3. Brief facts to comprehend the controversies between the parties are that the Respondent had made a request for voluntary retirement which was accepted and he was permitted to resign waiving the notice period. Later on, the Respondent sought withdrawal of voluntary retirement and the matter was referred to DOPT. The said department granted relaxation and Respondent was permitted to rejoin the service on 8th May, 2003. While issuing the order for reinstatement, it was clarified that the period from 4th January, 2003 to 8th May, 2003 be treated as dies-non.

4. The Respondent filed an original application bearing No. OA 2266/2003, before

the Central Administrative Tribunal (Principal Bench), New Delhi and assailed the order dated 9th May, 2003 seeking that the period from 4th January, 2003 to 8th May, 2003 be treated as "on duty". The said original application was disposed of by the Tribunal by order dated 18th March, 2005 with directions to the Petitioner to consider the leave application of the Respondent for the interregnum period of 4th January, 2003 to 8th May, 2003 and to pass appropriate speaking orders as per law. The leave application of the Respondent filed pursuant to the order of the Tribunal, wherein he had sought half pay leave for the period 4th January, 2003 to 8th May, 2003, was however, rejected by order dated 4th October, 2005.

5. Aggrieved by the order dated 4th October, 2005 rejecting the application for half pay leave, the Respondent filed another original application bearing OA No. 2611/2005 assailing the order dated 9th May, 2003 treating the period from 4th January, 2003 to 8th May, 2003 as dies-non and order dated 4th October, 2005 rejecting the application of the Respondent to grant half pay leave for the period from 4th January, 2003 to 8th May, 2003.

6. The original application of the Respondent being OA No. 2611/2005 was disposed of by order dated 1st September, 2006 holding that the period (4th January, 2003 to 8th May, 2003) which has been ordered to be treated as dies-non would be reckoned towards qualifying service for the purpose of pension and other retiral benefits, however, the Petitioner be not paid any emoluments for the said period.

7. A review application was filed by the Petitioner being review application No. 178/2006 which was, however, dismissed by order dated 16th November, 2006.

8. As for order dated 1st September, 2006 passed in OA No. 2611/2005 it was held that the period would be reckoned towards qualifying service of the applicant for the purpose of pension and other retiral benefits, the Respondent claimed retiral benefits. However, the retiral benefits were not granted to the Respondent according to the order dated 1st September, 2006. The Respondent, therefore, filed a contempt petition being CP No. 21/2007, which was disposed of by order dated 22nd February, 2007. While disposing of the contempt petition of the Respondent, the Tribunal took note of the Office Order No. 85/2006 dated 20th February, 2007 which is as under:

In pursuance of CGA's letter No. F.339/2006-LC dated 19.2.2007 the Competent Authority has decided to reckon the period from 4.1.2003 to 8.5.2003 for qualifying service (provisionally) for the purpose of pension and retirement benefits under Government of India decision (1) embodied with Rule 28 of CCS Pension Rules 1972 in respect of Shri. Satish Nandan, Ex. P.S., subject to the outcome of the writ/appeal being filed against the Tribunal's order dated 1.9.2006 & 16.11.2006 in OA No. 2611 of 2006 & RA No. 178/06, respectively, in the Hon'ble Delhi High Court.

9. Before the Tribunal, in the contempt petition, the Petitioner contended that the order had been complied with subject to the right of the Petitioner to challenge

the order dated 1st September, 2006. The Respondent in CP No. 21/2007 had contended that the Office Order No. 85/2006 was not fully complied, as the Respondent had also become entitled to the benefit of increment during the said period which had not been taken into consideration while computing the retiral benefits of the Respondents. Without going into these final details, as it was represented by the Petitioners that whatever is legally admissible to the Respondent consequent to the directions of the Tribunal, will be made applicable to him, the contempt petition was disposed of. While disposing of the contempt application being CP No. 21/2007 by order dated 22nd February, 2007, it was further observed that if any grievance will survive to the Respondent, he would be free to pursue the matter further.

10. The Petitioners thereafter, challenged the order dated 1st September, 2006 in OA No. 2611/2005 whereby the Tribunal had held that the period 4th January, 2003 to 8th May, 2003 would be reckoned towards qualifying service for the purpose of pension and other retiral benefits by filing the writ petition being WP(C) No. 4888/2007. The said writ petition was disposed of by order dated 9th July, 2007. On behalf of the Petitioner, it was contended that the directions of the Tribunal is in violation of Rule 14 and Rule 26(1) of the CCS (Pension) Rules, 1969 and that it would create a bad precedent.

11. This Court while hearing the writ petition at the time of admission, disposed of the writ petition filed by the Petitioner against the order dated 1st September, 2006 in OA No. 2611/2005 by order dated 9th July, 2007 holding that the writ petition is not a fit case for interference by the Court in exercise of its writ jurisdiction and confirmed the order of the Tribunal dated 1st September, 2006 holding that the period 4th January, 2003 to 8th May, 2003 would be reckoned towards qualifying service for the purpose of pension and other retiral benefits of the Respondent. This Court further observed that the order of the Tribunal and the High Court shall not be taken as a precedent. The relevant order passed by this Court in WP(C) No. 4888/2007 is as under:

Mr. Gangwani, on behalf of UOI, submits that the above is in violation of Rule 14 and Rule 26 (1) of the CCS (Pension) Rules, 1969 and the same would create a bad precedent. The Petitioner has already given effect to the aforesaid order as Contempt proceedings had been initiated.

We have enquired from the learned Counsel for the Petitioner who candidly stated that the Respondent has to his credit the maximum period of service required for qualifying for the pension and this period being reckoned for the purpose of pension and other retiral benefits, does not make any financial or other impact on this case.

In view of the foregoing, this would not be a fit case for interference in the writ jurisdiction. However, we record that the above order shall not be taken as precedent. The present writ petition is disposed of.

12. Though the office order No. 85/2006 dated 20th February, 2007 was passed

by the Petitioner granting retiral benefits and pension to the Respondent, however, the increment to which the Petitioner had become entitled during this period had not been taken into consideration while disposing of the earlier contempt petition being CP No. 21/2007 by order dated 22nd February, 2007, and liberty was granted to the Respondent to pursue the matter further, if the order dated 1st September, 2006 is not complied with as the Tribunal had not gone into details of compliance of the said order by Office Order No. 85 of 2006. Since the order was not complied with, the Respondent filed CP No. 220/2007 in OA No. 2611/2005 contending that though the writ petition against the order dated 1st September, 2006 in OA No. 2611/2005, holding that the period 4th January, 2003 to 8th May, 2003 be reckoned towards the qualifying service for the purpose of pension and other retiral benefits, the Petitioners have not revised the pension in compliance with the said order against which WP(C) No. 4888/2007 was filed by the Petitioner which was also dismissed by order dated 9th July, 2007.

13. The Respondent, therefore, gave notice to the Petitioner calling upon the Petitioner to give all the benefits for the period 4th January, 2003 to 8th May, 2003 which had to be reckoned towards qualifying service for the purpose of pension and other retiral benefits. Despite the order dated 1st September, 2006 in OA 2611/2005 attaining finality, according to the Respondent, the Petitioner did not comply with the order necessitating the Respondent to file the CP No. 220/2007 wherein after considering the facts, the Tribunal has held that a prima facie case is made out for initiating action for contempt of Court against the Petitioner.

14. The learned Counsel for the Petitioner Mr. Gangwani has contended that the Office Order No. 85/2006 dated 20th February, 2007 has already been passed. Be that as it may, the said order does not take into consideration the benefit of the increment accrued to the Respondent during the period 4th January, 2003 to 8th May, 2003. If the order dated 1st September, 2006 categorically stipulated that the period for dies-non would be reckoned towards qualifying service of the applicant for the purpose of pension and other retiral benefits, any increment during the said period shall also have to be reckoned for computing the retiral benefits which has not been done by the Respondents. If the plea of the Petitioners is that the alleged increment during the said period is not to be taken into consideration for computing of pension or retiral benefits, the Petitioners ought to have challenged the order of the High Court affirming the order of the Tribunal, however, holding that the orders will not be precedents. After the orders have attained finality, the Petitioner cannot contend that while computing the pension and retiral benefits, the increment which the Respondent had become entitled to, would not be considered. In the circumstances, if the Tribunal has held by the order impugned in this petition that prima facie, a case of contempt is made out against the Petitioner, the order cannot be termed illegal or perverse, such that it would require any interference by this Court.

15. If the Petitioners were aggrieved by the order dated 1st September, 2006 in OA 2611/2005 ordering that the period 4th January, 2006 to 8th May, 2006 would be reckoned towards qualifying service of the Respondent for the purpose of pension and other retiral benefits and the dismissal of the writ petition against the said order by the High Court in WP (C) No. 4888/2007 by order dated 9th July, 2007, the Petitioner ought to have challenged the said orders by filing appropriate legal proceedings in the Supreme Court or taking such other legal recourse as were available to them. Once they have not done that, they cannot take shelter under any plea, as the order of the Tribunal and the High Court has become final. As those orders have become final, the order ought to have been complied with and the increment during the period 4th January, 2003 to 8th May, 2003 ought to have been taken into consideration for pension and other retiral benefits which has not been done by the Petitioners despite the notice and the specific representations of the Respondent. The learned Counsel for the Petitioner is also unable to show as to why the increment which had become due to the Petitioner which will impact his pension and retiral benefits is not to be taken into consideration.

16. In the circumstances, the order of the Tribunal impugned before this Court dated 17th August, 2007, holding that prima facie case is made out for initiating action for the contempt of the Court, cannot be held to be illegal or contrary to record or so perverse so as to entail any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. If that be so, there is no ground to interfere with the order of the Tribunal holding that prima facie case is made out for initiating action for contempt of court and listing the matter on 18th September, 2007.

17. In the circumstances, we find no grounds to interfere with the order of the Tribunal and the writ petition is therefore, dismissed. Considering the facts and circumstances, the Petitioner shall also be liable to pay cost of Rs. 10,000/- to the Respondent which be paid within four weeks. At this stage the counsel for the Petitioner seeks to withdraw the writ petition. Since the petition has already been dismissed the prayer for withdrawal of writ petition is declined.

18. Since the order of the Tribunal dated 17th August, 2007 posting the matters for further proceedings on 18th September, 2007 was stayed by this Court by order dated 26th September, 2007 and 5th December, 2008 and the writ petition has been dismissed, the said orders staying the order of the Tribunal dated 17th August, 2007 are vacated. The parties are now directed to appear before the Tribunal on 3rd March, 2011. In the meantime, the Petitioner shall be entitled to comply with the order of the Tribunal dated 1st September, 2006 and take increment of the Respondent which had become due during the period 4th January, 2003 to 8th May, 2003 for computing of pension and other retiral benefits of the Respondent. In case, the Tribunal's order dated 1st September, 2006 in OA 2611/2005 is complied with by the Petitioner before 3rd March, 2011, the Tribunal shall be entitled to pass appropriate orders in CP No.

220/2007 in favor of the Petitioner. In case the Tribunal's order dated 1st September, 2006 is not complied with, the Tribunal shall proceed against the Petitioner in accordance with law in CP No. 220/2007 pending before it. With these directions the writ petition is disposed of.