

Central Administrative Tribunal
Principal Bench: New Delhi

CP No.502/2011
In
OA No.2255/1999

Reserved on: 17.08.2016
Pronounced on: 11.11.2016

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)

Ms. Sunita w/o Sanjay Nagpal,
R/o 3H-37,
NIT Faridabad (HR). ...Petitioner/applicant

(By Advocate: Sh. Ajesh Luthra)

Versus

1. Sh. J.P. Singh,
Secretary,
Health & Family Welfare,
GNCT of Delhi, 9th Level, A Wing,
Delhi Sachivalaya,
New Delhi.
2. Dr. Charan Singh,
Joint Director,
School Health Scheme,
Directorate of Health Service,
Karkardooma, Delhi. ...Contemnors/respondents

(By Advocate: Shri Amit Anand)

O R D E R

By Dr. B.K. Sinha, Member (A)

The instant contempt petition has been filed seeking action against the respondents for disobeying the directions of this Tribunal contained in order dated 16.02.2000 passed in OA No.2255/1999 & Ors., and order dated 29.10.2010 passed in CP No.512/2010.

2. The facts of the case, in brief, are that the applicant was a Pharmacist working on contract basis with the respondent-organization. She came to the Tribunal along with other similarly situated employees vide OA No.2255/1999 and others alleging non-regularization of their services and non-payment of salaries since March, 1999. This Tribunal vide order dated 16.02.2000 ordered that they should be considered for appointment to regular post. While doing so, their experience should be taken into account and proper weightage should be given to them and their services could not be terminated till regular appointments were made. The Tribunal further ordered as under:-

“5. In the circumstances, we direct the respondents to make payments of the salary due to the applicants within a period of two weeks from the date of receipt of a copy of this order. The applicants will be entitled to future pay on the principle of equal pay for equal work at par with regular employees with effect from March, 2000.”

3. The applicant came before this Tribunal vide CP No.350/2000 alleging disobedience to the order dated 16.02.2000 in OA No.2255/1999 and the Tribunal vide order dated 27.02.2001 dismissed the CP observing that the order dated 16.02.2000 passed in the OA had been substantially complied with. For the sake of clarity, we reproduce the order as under:-

“3. Having regard to the above, in our view the directions contained in order dated 16.2.2000 in OA-

2255/909 have substantially been implemented by the respondents. C.P. stands dismissed. Notices to the respondents under Contempt of Courts At are discharged. No costs."

4. It is seen that after a gap of more than 9 years, another CP No.512/2010 came to be filed by the applicant before this Tribunal wherein the petitioner was aggrieved for not being paid salary since May, 2009 despite having worked regularly and that the respondents vide order dated 13.08.2009 had fixed the pay following implementation of 6th CPC at the minimum of the scale without calculating the annual increment. The said CP came to be decided by this Tribunal, vide order dated 29.10.2010, the operative portion of which reads as under:-

"8. In view of the foregoing, considering the factual matrix of the case and the law on the subject, the CP is disposed setting aside the impugned order of pay fixation dated 13.08.2009. The respondents are directed to pass a fresh order in accordance with the directions of the Tribunal vide its order dated 16.2.2000 in the OA 2255/1999 in respect of the applicant before us. Further, as it is averred that the applicant has not been paid salary since May, 2009 onwards, the same would also be paid. These directions are to be complied within a period of three months from the date of passing of this order. No costs."

In the instant CP, the petitioner is aggrieved with the fact that the respondents had paid an amount of Rs.3,46,000/- towards arrears of salary from May, 2009 to March, 2011 but had denied the annual increment in blatantly violation of the order dated 16.02.2000 passed in OA No. 2255/1999.

5. Learned counsels for the parties proffered lengthy arguments. The claim of the applicant is that the order of the Tribunal was passed in consideration of the principle of equal pay for equal work. The term 'wages' has also been decided and conceded by the respondents in their communication dated 19.11.2012 in the following terms:-

"Approval of the competent authority is hereby conveyed for payment of the following remuneration to the paramedical staff engaged on contract basis by the Health & Family Welfare Department, Government of NCT of Delhi, with immediate effect:-

- (i) Basic Pay
- (ii) Grade pay
- (iii) Dearness Allowance
- (iv) Nursing Allowance (for Nurses)
- (v) Patient Care Allowance (for other than nurses)
- (vi) Uniform Allowance
- (vii) Washing Allowance
- (viii) House Rent Allowance
- (ix) Transport Allowance

Paramedical staff engaged on contract basis will get pay at the minimum of the pay band of the respective/corresponding post. They will not be entitled to increment in pay or promotion or regularization in service."

6. The applicant's counsel further contended that in view of the above, there was no justification for the respondents to deny annual increment to the applicant and this act on their part constitutes a blatant violation of the Tribunal's order dated 16.02.2000 passed in OA No.2255/1999. He further submits that it has also been confirmed in the CP No.512/2010, which has already been referred to above. The applicant has also relied upon the Tribunal's orders passed in the case of *Mrs. Victoria Massey & Ors. versus National*

Capital Territory of Delhi & Ors.[OA No.1330/2007 decided on 23.07.2008] and of decision of Hon'ble High Court of Andhra Pradesh in *G. Om Prakash vs. V.R. Karanna* [1998 (3) ALD 421] wherein it has been held that unless the order passed by the court is set aside, it has to be obeyed by the parties being directed and disobedience thereof would definitely amount to contempt of courts.

7. Per contra, the respondents have submitted that there has been no intentional disobedience on their part. The applicant had been appointed on contract basis till regular incumbent joined the post. The term of the contract states that the applicant would be given minimum grade of the post and dearness allowances, which is also in consonance with the judgment of the Tribunal in *Mrs. Victoria Massey's* case (supra). It has been further pointed out by the respondents that there is no mention in the first judgment of the Tribunal that the applicants therein would be entitled for annual increment. The respondents have also submitted that there is a vast difference between the regular employee and the one appointed on contract basis as that of the applicant. The respondents have also relied upon the decision of the Hon'ble Supreme Court in *Secretary, State of Karnataka and Others versus Umadevi and Others* [2006 (4) SCC 1] to differentiate between employees of the two categories. The

respondents further state [in para 5 & 6 of their affidavit of compliance at page 45 & 46 of the paper book] as under:-

“That it is submitted the applicant has been appointed on the basis of contract which has also clearly stated their condition of service that they will be entitled to minimum of the scale, thus with due respect, it is submitted that the applicant cannot be granted increment which was also not stated in the very first judgment in case of applicant. It is submitted that at present no contractual pharmacist is being given increments.

6. That it is submitted as per the new contracts, which are in consonance with the Hon'ble High Court's order, the applicants cannot be granted the increments. Copies of the contracts in pursuance of which office orders dated 25.10.2013 and 28.05.2012 are annexed herewith as Annexure AA-3.”

8. The parties have filed a number of affidavits, counter affidavits and additional affidavits etc. which all have been taken care while carefully going through the pleadings of the parties as also the documents so adduced by them. We have also gone through the law citations relied upon by the parties and patiently heard the oral arguments advanced by the learned counsel for the respective parties.

9. The first question that strikes our mind is that the order in the OA was pronounced on 16.02.2000 and the first CP i.e. CP No.350/2000 came to be dismissed on 27.02.2001. Subsequently, another CP No.512/2010 came to be filed and the same was disposed of by the Tribunal vide order dated 29.10.2010 vide which order dated 13.08.2009

pertaining to pay fixation after implementation of 9th CPC was set aside and fresh directions were issued in the CP.

10. The power of the contempt has been vested into the Tribunal under Section 17 of the Administrative Tribunals Act, 1985. The substantive part of the law of contempt is governed by the Contempt of Courts Act, 1971. Nowhere does it provide for filing of a fresh contempt where it does not involve a right bestowed under the original judgment. Once a contempt petition has been decided and the contemnor is discharged, there is no provision for filing a second contempt against the same order/direction. It is to be further noted that the contempt is between the court and the contemnor for disobedience of the order. There is absolutely no scope for passing fresh directions in the CP that too when earlier CP had been dismissed noting that the order under contempt had substantially been complied with. We are further swayed by the fact that the OA was decided in the year 2000 i.e. much earlier than the 6th CPC came into being. Therefore, it is beyond the competence of the contempt petition to press for implementation of the order dated 13.08.2009 issued consequent upon the 6th CPC as has been done in the CP No.512/2010. Therefore, it was not governed by the scope of the Tribunal's order dated 16.02.2000 passed in OA. Therefore, we feel that the present

CP is not supported by legal provisions and, hence, the same is dismissed as such.

(Dr. B.K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

/Ahuja/