

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**CP-630/2015 in
OA-1039/2014
MA-459/2016**

Reserved on : 05.02.2016

Pronounced on : 10.02.2016.

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)**

Usha Rani Singh
W/o Sh. Krishna Mohan Singh,
Aged about 63 years,
Presently residing at G-8A,
Gali No.20,
Rajapuri, Uttam Nagar,
New Delhi-110059.
(Retired as Vice-Principal,
KV No.1, Delhi Cantt,
New Delhi-110010).

..... Petitioner

(through Sh. M.K. Bhardwaj, Advocate)

Versus

Sh. Santosh Kumar Mal,
Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.

..... Respondent

(through Sh. S. Rajappa, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

O.A. No. 1039/2014 was disposed of by us on 25.03.2014. The operative part of the order reads as under:-

"5. In our view, considering the submissions made by the learned counsel for the applicant and the documents available on record, these cases can be disposed of at the admission stage itself. Accordingly, we direct the respondents to consider the cases of the applicants in these OAs in the light of the aforesaid order of Ernakulam Bench of the Tribunal as upheld by the Hon'ble High Court of Kerala at Ernakulam. They shall

also convey the decision taken in the matter to the applicants within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs."

2. CP No. 646/2014 filed for alleged non-compliance of the aforesaid order was closed on 22.04.2015 when the respondents filed their order dated 12.03.2015 as well as their affidavit dated 26.03.2015. However, finding the order dated 12.03.2015 passed by his predecessor to be erroneous, the present Commissioner of KVS Sh. Santosh Kumar Mal, the alleged contemnor in the present CP issued a show cause notice on 16.10.2015 to the petitioner Smt. Usha Rani Singh asking her to show cause why the benefit of GPF-cum-Pension Scheme granted to her vide this Order may not be withdrawn. Finding this action of the present Commissioner to be contumacious, the petitioner has approached this Tribunal by filing the present C.P. On 03.11.2015, we had passed an order in this petition, the relevant part of which reads as follows:-

"5. It is difficult to appreciate the change in the stand of the KVS owing to the change in the incumbent of the post of its Commissioner, especially, when the earlier contempt proceedings were closed keeping in view the position then taken by the KVS. If the new Commissioner felt that the earlier decision of the KVS was erroneous and the mistake was needed to be corrected, he should have approached this Tribunal through an appropriate application seeking, *inter alia*, the Tribunal's permission before issuing the aforesaid show cause notice. The respondent, not having though it proper to do so, *prima facie*, appears to have scant regard for court's orders.

6. The Hon'ble Supreme Court in ***Union of India and Ors. Vs. Subedar Devassy PV*** [2006 (1) SCALE 334] observed as under:-

"If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach the court that passed the order or invoke jurisdiction of the appellate court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong, the order has to be obeyed. Flouting an order of the court would render the party liable for contempt."

7. In the circumstances of this case, we feel it advisable to first direct the respondent to file within two weeks an affidavit specifically explaining his conduct in ignoring this Tribunal's orders, in order to help us determine as to whether or not he is guilty of contumacy. It must be kept in view that

this Tribunal's order of 22.04.2015 was passed after taking into account the KVS' order of 12.03.2015, which is sought to be overturned.

8. List the CP for further consideration on 18.12.2015."

2.1 In compliance of our directions, the present Commissioner filed an affidavit on 17.12.2015, which is available at pages 53 to 57 of this CP.

3. We have heard learned counsel for the petitioner Sh. M.K. Bhardwaj and learned counsel for the alleged contemnor Sh. S. Rajappa. Sh. Bhardwaj stated that earlier CP No. 646/2014 was closed when by passing order dated 12.03.2015 the respondents assured this Tribunal that they were complying with the Tribunal's order passed in OA-1039/2014. However, now by seeking to withdraw the same, the respondents have gone back on their commitment and were guilty of contempt. He argued that once the order dated 12.03.2015 had become subject matter of the Court proceedings, the respondents had no authority to withdraw the same. He further submitted that pursuant to the directions of this Tribunal, the petitioner had deposited an amount of Rs. 7,25,759/- along with interest i.e. total amount of Rs. 9,07,843/-. The respondents have, however, not issued PPO till date, which is gross violation of the Tribunal's order.

3.1 On the other hand, Sh. Rajappa, learned counsel for the alleged contemnor argued that the present Commissioner had found earlier order dated 12.03.2015 passed by his predecessor to be erroneous both in law as well as facts and had, therefore, issued show cause notice to the petitioner for withdrawing the same. He stated that the alleged contemnor had highest regard for the court orders and was tendering his unconditional apology should the Tribunal come to the conclusion that any inadvertent mistake has been committed by him. He further stated that the alleged contemnor was willing to

abide by any order passed by this Tribunal should this Tribunal come to a different conclusion. He also stated that in a similar case of Sh. S.K. Verma, which was disposed of by a common order dated 25.03.2014 this Tribunal had closed the CP. This was disputed by learned counsel for the petitioner, who stated that S.K. Verma's case was different inasmuch as in Verma's case contempt proceedings had never been initiated whereas in this case contempt proceedings had not only been initiated but had been closed when the respondents assured this Tribunal that they were complying with the orders dated 25.03.2014.

4. We have heard both sides and have perused the material on record. Sh. Rajappa argued that the respondent has no intentions of flouting this Tribunal's order and has also tendered his unconditional apology for any inadvertent mistake committed by him. To further demonstrate his intention to comply by this Tribunal's order and uphold the majesty of law, MA-459/2016 has been filed by Sh. Rajappa on behalf of the alleged contemnor with the following prayer:-

"(1) Grant permission to the respondent to treat the show cause notice dated 6-10-2015 issued to the petitioner as having been withdrawn and to grant him permission to issue show cause notice to the petitioner afresh calling upon her to reply to the same or in the alternative, treat the show cause notice dated 6-10-2015 issued to the petitioner as having been issued from the date this Hon'ble Tribunal would consider it as having been issued to her in which case, this Hon'ble Tribunal may direct the petitioner to give reply to the same within a time frame and on receipt of the same, permit the respondent to pass orders thereon in accordance with law; and

(2) Pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and render justice."

4.1 Sh. Bhardwaj, on the other hand, has cited several judgments in support of his case. First he has relied on order passed by a Co-ordinate Bench of this Tribunal in CP-799/2011 in OA-3267/2011 (Ex. Sub. Maj. Hari Raj Singh & Ors. Vs.

Sh. Shashi Kant Sharma & Ors.) on 10.05.2013 in which we had directed that undertaking given to this Tribunal must be honoured as a one time measure. The aforesaid order has since been implemented.

He also cited the judgment of Hon'ble High Court of Delhi dated 18.12.2009 in the case of **Lajwanti Vs. Rakesh Mehta and Ors.** **[Contempt Case (C) No. 635/2009 in WP(C) No. 8905/2009]** to say that a plea not taken earlier by the respondents cannot now be taken at the stage of contempt proceedings. Further, he relied on judgment of Hon'ble Supreme Court in the case of **K.G. Derasari & Anr. Vs. UOI**, (2001) 10 SCC 496 to say that in contempt proceedings this Tribunal was not entitled to look into its previous decision as it has become functus officio. He cited the judgment of Hon'ble Supreme Court in the case of **Sunil Kumar Vs. State of Haryana**, (2012) 5 SCC 398 also on the same issue.

Next, he has relied on the judgment of Hon'ble Supreme Court in the case of **Maninder Jeet Singh Bitta Vs. UOI & Ors.**, (2012) 1 SCC 273 to say that it has become a tendency of government officers to somehow circumvent the orders of the Court by taking recourse to one justification or another. He cited the judgment of Hon'ble Supreme Court in the case of **Balbir Singh Vs. State of H.P. & Ors.** (2000) 10 SCC 156 to contend that the respondents cannot take contradictory stand as far as the case of the petitioner was concerned. Lastly, he relied on the judgment of Hon'ble Supreme Court in the case of **All Bengal Excise Licenses Association Vs. Raghabendra Singh**, (2007) 11 SCC 374 to say that the respondents cannot plead misunderstanding of the court orders to escape the consequences of violating the same.

5. We have considered the rival submissions. By our order dated 03.11.2015, we had expressed our disgust at the conduct of the present Commissioner and had opined that he had felt that the decision taken by his predecessor was erroneous and mistake was needed to be corrected then he should have

approached this Tribunal through an appropriate application seeking leave of this Tribunal before issue of the aforesaid show cause notice. We also recall that in similar circumstances in the case of **P.C. Meena Vs. MCD & Ors.** (CP-404/2015 in OA-3551/2010) we had proceeded to take contempt action against the respondents therein and it was only when the respondents withdrew their order cancelling the order by which the Tribunal's directions were complied with did we close the case. However, in the present case through MA-459/2016 the alleged contemnor himself has sought permission of this Tribunal to treat the aforesaid show cause notice dated 06.10.2015 as having been withdrawn. We also notice that the alleged contemnor has tendered his unconditional apology to this Tribunal has expressed his willingness to abide by any orders by this Court. Under these circumstances, considering the fact that only show cause notice for withdrawal of order dated 12.03.2015 has been issued and the order itself has not been withdrawn so far, we close CP-630/2015 with a direction to the alleged contemnor to pass appropriate orders withdrawing the aforesaid show cause notice dated 06.10.2015 immediately. We further direct that the alleged contemnor take urgent steps to fully comply with the order of this Tribunal dated 25.03.2014 in OA-1039/2014. Needless to say that should the respondents encounter any difficulty in implementing the same, it will be open to them to avail of legal remedies available to them under law. Notice issued to the alleged contemnor is discharged.

6. In view of the above order, no further orders are necessary in MA-459/2016, which also stands disposed of as above.

(Shekhar Agarwal)
Member (A)

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(V. Ajay Kumar)
Member(J)