



CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH
KOLKATA

CPC No. 350/00002/2015
OA No.1156 of 2013

Date of hearing: 13/07/2016
Date of order : 21. 7. 2016

Present :

Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Ms Jaya Das Gupta, Administrative Member

1. Bimal Chandra Paul, son of Late Debendra Chandra Paul, aged about 58 years, residing at Sehoraphuli, Jagadhatri Para, Post Office Sheoraphuli, District Hooghly, Pin-712223.
2. Ajoy Kumar Roy, son of Late Provash Chandra Roy, aged about 52 years, residing at Central Government Quarter, Tollygunge Type I Block 3, Flat No. 37, Graham Road, Kolkata-700040.
3. Salil De, son of Late Sudarshan De aged about 49 years, residing at 31, Ashutosh Pally, post office Garia Kolkata-700084.
4. Gopal Chatterjee, son of Shri Kanai Lal Chatterjee, aged about 55 years, residing at Flat No.2, 3/71, Azadgarh post office Regent Park, Police Station, Jadavpur, Kolkata-700040.
5. Surajit Rouith, son of Late N.N.Routh, aged about 50 years, residing at 43/2, Babu Para Road, Purba Putiaj Police Station, Regent Park, Kolkata-700093.
6. Rumku Bhattacharjee, wife of Sri L.N.Bhattacharjee, aged about 57 years, residing at 3/10, Surya Nagar, Post Office Regent Park, Kolkata-700040.
7. Narayan Chandra Dey, son of late Suren Chandra Dey aged about 49 years, residing at Central Government Quarter, Tollygunge, Type 1, Block 1, Flat No. 1/6, Graham Road, Kolkata-700040.
8. Harihar Ram son of Late B.L.Ram, aged about 50 years, residing at Central Government Quarter, Tollygunge, Type 1, Block-3, Flat No. 35, Graham Road, Kolkata-700040.

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9. Swapnil Pal, son of late Akshay Chandra Paul, aged about 49 years, residing at 01/79, Sree Colony, Post Office Regent Estate, Kolkata-700092.
10. Ashis Guha, son of Shri Chittaranjan Guha, aged about 54 years, residing at 35/A, M.N.Bose Lane, Masterpara, Post Office Konnagar, District-Hooghly, Pin-712235.
11. Dulal Dey, son of Late Suren Chandra Dey aged about 45 years, residing at C 81/A, New Rajpur Road, Garia, Kolkata-700084.
12. Mridul Sengupta, son of Late Sushil Kumar Sengupta, aged about 52 years, residing at Madhya Nirachal, Post Office Birati, Kolkata-700139.
13. Sk. Md. Akram, son of Sk. Wahidullah, aged about 45 years, residing at Village Dighirpar, Post Office Kulakash, District Hooghly, Pin-712404.
14. Krishna Majumdar, wife of Shri Pritam Majumdar, aged about 51 years, residing at Phulpukur Road, Chinsurah, District-Hooghly.
15. Pranab Dey son of late Nakshatra Dey aged about 51 years, residing at 10, Ashutosh Pally, Garia, Kolkata-700084.

All the Applicants No. 1 to 15 are working as Examination Work Attendant in the office of Staff Selection Commission under Regional Director, Staff Selection Commission (Eastern Region), Kolkata on temporary basis more than 20 years.

..... Applicants

FOR THE APPLICANTS : MR.P.C.DAS, ADVOCATE
-VERSUS-

1. Union of India service through the Secretary, Ministry of Personnel, Public Grievance and Personnel, Government of India, Department of Personnel & Training, North Block, New Delhi-110001.
2. The Chairman, Staff Selection Commission, Government of India, Block No. 12, CGO Complex, Lodhi Road, New Delhi-110054.
3. The Regional Director (ER), Staff Selection Commission, Government of India, Department of Personnel and Training, 1st MSO Building, Nizam Palace, 8th floor, 234/4, A.J.C.Bose Road, Kolkata-700020.

..... Respondents

FOR THE RESPONDENTS : MR.S.SANYAL & MR.P.MUKHERJEE, ADV

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ORDER

MS JAYA DAS GUPTA, AM:

This case has a chequered career of its own. The Petitioners, in this CPC approached before this Tribunal in OA No. 1156 of 2013, alleging inter alia that though they were the temporary status holder casual labour working in the Department since 1986 or thereabout yet the Respondents regularized the services of such of the casual labourers who were not only junior to them but also working under the Department only from 1989. Hence, they had sought direction to the Respondents to regularize them in the service with grant of all consequential benefits. The matter was contested by the Respondents.

2. The learned counsel for the Applicants referred to the decisions relied on earlier by the learned counsel for the applicants, on similar issues, of the Hon'ble High Court of rendered in the case of O.P.Tiwari v Union of India and Others in WPCT No. 16760 of 2004 relevant paras of which are mentioned herein below:

"5. After protracted litigation the petitioner was granted temporary status on September 29, 2000. Since the petitioner was still not regularised he filed a further OA No. 1456/2003 primarily on the ground that 14 juniors have marched over him to the Group D post and he has been overlooked. The said Original Application was ultimately decided by the impugned order dated October 14, 2003 wherein the Tribunal in para 9 and 10 holds as under:

'In OA 324/1997 applicants' name though figured in the list of non eligible daily wagers for regularisation was struck off and it had been directed to consider the entire service of the applicant,

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ignoring the provision that he was not in position on the date of promulgation of the Scheme. Keeping in view the aforesaid, applicant was conferred upon temporary status, but the fact remains that those who were subsequently re engaged have rendered more service than applicant he cannot be treated senior to them. These persons continued from 1989 till regularisation on casual basis, whereas applicant was disengaged. However, keeping in view his number of days service rendered by him and length of service, ignoring the cut off date, he has been placed in the list and would be considered on availability of Group D post for regularisation/absorption on permanent basis in regular establishment. The contention of applicant that 19 persons who have been accorded regularisation are juniors to him cannot be countenanced. Although no formula for assigning seniority is laid down by the Government, yet the criteria adopted by the respondents does not suffer from any illegality or is discriminatory in violation of Articles 14 and 16 of the Constitution of India.

In the result for the foregoing reasons, OA is disposed of with a direction to the respondents to consider claim of applicant in the light of the decision of the Tribunal in OA 324/97 as per his seniority subject to his suitability and availability of posts in Group D.

6. The Petitioner's challenge in this writ petition is to the conclusion of the Tribunal that persons who have been regularised except Smt. Ram Pyari were senior to the petitioner as they have rendered more service on November 25, 1995. The respondents in their counter reply have defended the Tribunal's order and stated that "the seniority of casual worker is formulated on the criteria of number of days rendered by him in service on casual basis and the seniority cannot be reckoned from the initial date of his engagement."

3. This Tribunal finally disposed of the OA No. 1156 of 2013

on 26.8.2014 relying on the decision taken in the case of OP Tiwari

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(supra), the operative part of the order is quoted herein below for ready reference:

"The respondent No.3 shall consider the case of the applicants in terms of the aforesaid judgment and number of days they served as well as availability of vacancies as on this date under suitable Group D category against which the applicants can be regularised, and shall pass appropriate reasoned and speaking order within three months from the date of communication of this order. In case it is found that the said three/four incumbents already regularised, had lesser number of days of engagement than the present applicants, the present applicants shall be deemed to be regularised w.e.f. the date the said juniors have been regularised but with no financial benefits. They shall however, be entitled to counting of the service for all purpose except the arrears of pay for which appropriate orders shall be passed by the competent authority within the said three months."

4. The Respondents considered the case of the Applicants, in compliance of the order of this Tribunal, cited supra, and, intimated the result of such consideration to the applicants in order No. C-18012/53/2013-Admn. dated 26.02.2015. The relevant portion of the order is extracted hereunder for ready reference:

"5. The Hon'ble Tribunal in its order dated 26.08.2014 has taken cognizance of the combined eligibility list of casual labourers with temporary status working in Staff Selection Commission Headquarters and its 9 Regional/Sub Regional Offices. The Commission prepared combined eligibility list of casual labourers in the year 2003. However, during preparation of such combined eligibility list the question arose as to whether the seniority was to be prepared with reference to the dates of initial engagement of the casual workers irrespective of the dates on which they acquired the requisite experience of two years or the list may follow the chronological order in which the casual

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workers completed the requisite two years service. In this regard, DOPT's OM No. 49014/19/84-Estt.(C) dated 26th October, 1984 was taken into consideration wherein one of the conditions laid down by the Government of India for regularisation of casual workers against Group D posts is that the persons concerned should have worked as casual worker for at least two consecutive years with at least 240 days (206 days in the offices observing 5 days week) in each year. Therefore, it was decided by the Commission that seniority is to be determined from the date on which the eligibility conditions for regularisation are fulfilled as per the instructions contained in the aforesaid DOPT OM 26th October, 1984. It was further decided that the list should be prepared on the basis of their attaining eligibility which in effect be the seniority list for consideration for appointment on regular basis. The date of eligibility for regularisation as per the combined seniority list in respect of Shri Rajbir Singh, Suresh Chand and Daya Kishan was 31.12.1992 based on the criterion adopted above vis-a-vis dates of eligibility of Shri M.Sengupta (Applicant No.12), S.K.Pal (Applicant No.9), A.K.Roy (Applicant No.2), S.Dey (Applicant No.3, G.Chatterjee (Applicant No.4), B.Paul (Applicant No.1) N.C.Dey (Applicant No.7), H.H.Ram (Applicant No.8), A.Guha (Applicant No.10), D.Dey (Applicant No.11), Md. Akram (Applicant No.13) being 31.12.1995 whereas the date of eligibility of Shri S.Routh (Applicant No.5) being 31.12.1996 and Krishna Mjumdar (Applicant No.14) being 31.12.1998 and R.Bhattacharyya (Applicant No.6) and Pranab Dey (Applicant No.15) being 31.12.2000. If more than one casual workers acquired the eligibility in the same year, their names have been placed in order of their initial engagement."

5. Being aggrieved by the aforesaid order, the Applicants have filed the present Contempt Petition seeking as under:

"A.....to issue a notice calling upon the respondents/contemnors herein to show cause as to why they should not be sentenced to jail and/or otherwise suitably be punished for gross wilful contempt of court under the

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Contempt of Courts Act, 1971 read with Section 17 of the Administrative Tribunal Act, 1985 for their deliberate and wilful non compliance and disobedience of the order passed by this Hon'ble Tribunal dated 26.08.2014 in OA No. 1156 of 2013 in respect of the respondent No.3 shall consider the case of the applicants in terms of the aforesaid judgment and number of days they served as well as availability of vacancies as on this date under suitable Group D category against which the applicants can be regularised, and shall pass appropriate reasoned and speaking order within three months from the date of communication of this order. In case it is found that the said three/four incumbents already regularized, had lesser number of days of engagement than the present applicants, the present applicants shall be deemed to be regularised with effect from the date the said juniors have been regularized but with no financial benefits. They shall however, be entitled to counting of the service for all purpose except the arrears of pay for which appropriate orders shall be passed by the competent authority within the said three months;

And

B. Your applicants most humbly and respectfully pray before this Hon'ble Tribunal by directing upon the contemnors/respondents to implement the order dated 26.08.2014 in respect of considering the case of the applicants in terms of the aforesaid judgment and number of days they served as well as availability of vacancies as on this date under suitable Group D category against which the applicants can be regularized and shall pass appropriate reasoned and speaking order within three months from the date of communication of this order. In case it is found that the said three/four incumbents already regularised had

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lesser number of days of engagement than the present applicants, shall be deemed to be regularised with effect from the date the said juniors have been regularized but with no financial benefits. They shall however, be entitled to counting of the service for all purpose except the arrears of pay for which appropriate orders shall be passed by the competent authority within the said three months;

C. Costs;

D. Any other order or orders, direction/directions as Your Lordships may deem fit and proper."

6. The Respondents, upon receipt of notice in this CP, filed their reply which would be dealt into at the appropriate infra, while dealing with the arguments advanced by the learned counsel appearing for the Respondents.

7. The learned counsel appearing for the applicants at the first instance submitted that the respondents have intentionally and deliberately flouted and violated the orders of this Tribunal and as such, they are liable to be proceeded with under the Contempt of Court Act and Rules made there under. In this context, the learned counsel for the applicants took us through the provision made in the Contempt of Court Act, 1971 to fortify his stand that partial non compliance also amounts to contempt which is quoted hereunder for ready reference:

"3-15. Order of any court whether interim or final has to be totally complied with and the intention of the court should be carried out in its strict sense. There cannot be variation or violation of any subordinate court, tribunal or individual. Hence direction given to the Commissioner

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(under Workmen's Compensation Act) in an interim order to release a part of the amount paid by the company and to keep the remaining in fixed deposits and the order was partially varied by the Commissioner (Bharati Gold Mine v. Manimala 2003 Lab IC 122).

The above stipulations are not disputed. The Court orders whether right or wrong has to be implemented by the authorities unless it is successfully assailed in higher forum. But we have to see whether there has been deliberate and wilful violation of the order of the Court.

Further the learned counsel for the Applicants has taken us through the decision of the Hon'ble Apex Court rendered in the case of **Director of Education, Uttarakhand and others v. Ved Prakash Joshi and Others**, reported in 2005 Supreme Court Cases (L&S) 812.

The relevant portion of the decision is at paragraph 7 which is quoted hereunder for ready reference:

"7. While dealing with an application for contempt, the Court is really concerned with the question whether the earlier decision which has received its finality had been complied with or not. It would not be permissible for a Court to examine the correctness of the earlier decision which had not been assailed and to take the view different than what was taken in the earlier decision. A similar view was taken in K.G. Derasari and Anr. v. Union of India and Ors. (2001 (10) SCC 496). The Court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order. If there was no ambiguity or indefiniteness in the order, it is for the concerned party to approach the higher Court if according to him the same is not legally tenable. Such a question has necessarily to be agitated before the higher Court. The Court exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the Court

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passing the judgment or order. Right or wrong the order has to be obeyed. Flouting an order of the Court would render the party liable for contempt. While dealing with an application for contempt the Court cannot traverse beyond the order, non-compliance of which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible. In that view of the matter, the order of the High Court is set aside."

Further in order to strengthen and buttress his claim that the order passed by the Respondents is no order, being not in accordance with the order of this Tribunal, the learned counsel for the applicant put emphasis on the decision of the Hon'ble High Court of Delhi in the case of O.P.Tiwari based on which the OA filed by the applicants was disposed of. Accordingly, the learned counsel for the Applicants has prayed for proceedings against the Respondents under the contempt of Court Act and the Rules made there under.

On the other hand, the learned counsel for the Respondents strongly and strenuously opposed the stand taken by the applicants and has submitted that the Respondents have highest regards to the order of this Tribunal. As per the order of this Tribunal, the Respondents considered the case of the Applicants with reference to the factual matrix of the matter and the Rules/law and intimated the result thereof in a well reasoned order and, as such, it cannot be said that there was intentional and deliberate violation of the orders of this

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Tribunal. Hence, it has been contended that as there is no intentional and deliberate violation of the orders of this Tribunal there is no contempt and, if at all according to the applicants the order passed by the Respondents, is no compliance, at best the applicants can agitate the same by filing fresh OA but certainly, contempt does not lie. In this connection. The learned counsel for the Respondents took us through a decision of the Hon'ble Apex Court in the case of **J.S.Parihar v Ganpat Duggar and others** reported in AIR 1997 Supreme Court 113 (paragraph 5) which is extracted hereunder for ready reference:

"5. The question then is: whether the Division Bench was right in setting aside the direction issued by the learned single Judge to redraw the seniority list. It is contended by Mr.S.K. Jain, learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision take by the Government in preparation of the seniority list in the light of the law laid down by three benches, the learned Judge cannot come to a conclusion whether or not the respondent had wilfully or deliberately disobeyed the orders of the Court as defined under Section 2 (b) of the Act. Therefore, the learned single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2.7.1991. Subsequently promotions came to be made. The question is: whether seniority list is open to review in the contempt proceedings to find out, whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, a

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fresh direction by the learned single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the single Judge, the Division Bench corrected the mistake committed by the learned single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned single Judge when the matter was already seized of the Division Bench."

In order to justify that in the circumstances of the case it cannot be said that there was deliberate and wilful violation of the order so as to proceed against the Respondents under the Contempt of Court Act and Rules, the learned counsel for the Respondents has also, taken us through the decision of the Hon'ble Apex Court rendered in the case of **Ashok Kumar Singh and others v State of Bihar and others**, reported in AIR 1992 SC 407 (paragraphs 1, 5, 8, 10, 11) which is quoted hereunder for ready reference:

"1. Shorn of details the circumstances giving rise to the filing of these petitions seeking certain directions and initiation of contempt proceedings against the respondents are as follows:

The petitioners were at the relevant time working as primary school teachers in the State of Bihar. Services of some of the teachers were terminated. The orders of termination were questioned before the High Court of Patna and a Division Bench of that Court vide judgment dated 11.8.1989 accepted the position that the services of the teachers had been terminated on account of improper and illegal recruitment by the State. The High Court was, however, of the opinion that the petitioners were not in any way responsible for the improper recruitment. The Division Bench gave a direction to the State to screen appropriately the cases of the petitioners and to recruit those who satisfy the requirements. The Division Bench noticed as follows:

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"On the facts of this case, we observe that persons who are qualified for appointments deserve a consideration and appointment, accordingly on such posts for which they are qualified in preference to other candidates who may be qualified. We, accordingly, direct the respondents to proceed to take up the appointments of the teachers in the Elementary Schools of Sānthal Pargāna and Deoghar by inviting applications from the petitioners and other persons who have been removed because they were illegally recruited by the District Superintendent of education and selected if they satisfy the eligibility conditions and appoint them. In doing so the Respondent State must relax the age limit in case of any of the petitioners found to have become over age during the period of service on stipend and removal. The petitioners and/or any other candidate who may be appointed in the vacancy so created on account of removal of the petitioners and other persons appointed by the District Superintendent of Education shall however not claim any benefit of the appointment illegally given to them by the District Superintendent of Education but shall receive emoluments and other benefits by dint of their selection and appointment in accordance with law."

5. It transpires that consequent upon the order of this Court dated 7.2.1991, the Commissioner-cum-Secretary, Human Resources Department, Government of Bihar, made an order on 28.6.1991 determining the categories out of the dismissed teachers, who were eligible for reappointment. The Commissioner took the view that under the executive directions/regulations only trained teachers were eligible for appointment in both the categories while the untrained teachers, in exceptional circumstances, could be appointed against the reserved categories of Scheduled Castes, Scheduled Tribes, Urdu and Sanskrit only. In other words, the Commissioner concluded that those untrained teachers who did not belong to any of the aforesaid four categories but belonged to the general category were not eligible for appointment. Thus, out of the untrained dismissed teachers numbering about two thousand, only about eighty-one teachers, it is alleged, were found to be qualified and their services were retained. The petitioners allege that the order of the Commissioner is completely contrary to the executive directions and is also in clear contravention of the order of this Court dated 7.2.1991.

8. We have gone through the executive directions/regulations issued in the form of office letters/orders etc. concerning the working of The Bihar Non-Government Primary School (Taking over of control) Ordinance 1976 and, in particular, the directions relating to the "preparation of waiting list and appointment of teachers" (para 1) and "the qualifications of candidate for appointment and waiting- list" (para 2). The directions, inter alia, provide that while appointing the teachers I.Sc. trained will be appointed on the basis of I.Sc. trained and only matric with science trained will be appointed on the basis of matric trained. Where candidates of the aforesaid qualifications are not available in required number, the candidates having qualifications more than those stated above may also be appointed. The names of the candidates, in each category, will be written year wise in the following manner:-

"...first of all matric trained, then I.A, 1. Sc. trained and thereafter graduate trained, on the basis of marks obtained in educational and training courses and their appointments will be made accordingly."

Sub-clause (d) of Para 2, however, provides: "After the names of trained candidates the names of untrained candidates, of each category will be written in sequence of marks obtained and qualification."

Sub-Clause (f) of Para 2 reads thus: "Untrained candidates of different educational qualification may be appointed in reserved category under special circumstances when trained candidates are not available." Sub-Clause (1) of Para 2 reads as follows: "Untrained candidates having the qualification of matric or more than it may be appointed in the preliminary pay scale Matric untrained (Middle-Trained)."

10. The interpretation placed by the Commissioner, therefore, is not correct and if that interpretation is accepted it would efface the very effect of the order of this Court dated 7.2.1991 and defeat the object of that order which was aimed at providing that all the schools must have teachers. The Court had taken note of the situation that there was an acute shortage of teachers in primary schools of Santhal Parganas of Bihar due to which most of the schools had been closed down and therefore to tide over the situation the directions extracted above, were given. The Court had reiterated the directions of the High

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Court that while making fresh selections the bar of age should not be used against the teachers. The order of the Court applied to untrained teachers for all the categories also. The Commissioner has made an order which, in our opinion, is not in conformity with the directions given by this Court and the Division Bench of the High Court. The directions of the Court, in the peculiar facts and circumstances of the case arising out of closure of a number of schools for want of teachers, provided inter alia that even the untrained teachers were entitled to be selected and appointed not only in the reserved categories but also in the other categories, provided trained teachers are not available and the untrained teachers are otherwise qualified, without putting the bar of age against them.

11. From the material on record and after hearing learned counsel for the parties, we are not satisfied that it is a case in which it can conclusively be said that the respondents have wilfully or deliberately or contemptuously flouted or disobeyed the orders of this Court dated 7.2.1991. It appears to us to be a case of misinterpretation of the executive directions and order of this Court dated 7.2.1991 and is, therefore, not a fit case in which contempt proceedings need to proceed any further. We, accordingly, drop the contempt proceedings and discharge the Rule issued against the respondents."

The learned counsel for the Respondents also drew our attention to the decision of the Hon'ble Apex Court rendered in the case of **All India Regional Rural Bank Officers Federation and others v Government of India and others**, reported in (2002) 3 SCC 554 (paragraphs 2 & 4) which are extracted hereunder for ready reference:

2. The main controversy in the Civil Appeal was, whether on acceptance of any bipartite settlement between the management and the employees of the sponsor bank, the employees and officers of the Regional Rural Banks ipso facto would be entitled to the revision of their wages? While the management and the Union of India vehemently

contended that there cannot be an ipso facto revision of wages of the employees of the Regional Rural Banks as and when a settlement is arrived at between the management and employees of the sponsor bank and the appropriate authority of the Central Government would be required to exercise power under Section 17 of the Regional Rural Banks Act, 1976, the employees on the other hand, strongly relied upon the Report of Justice Obul Reddi Tribunal and submitted that in view of the conclusion of the tribunal that parity should be maintained between the employees of the Regional Rural Banks as well as the employees of the sponsor nationalised commercial banks, the so-called decision making power under Section 17(1) of the Act, is in fact a formal and clerical one. Ultimately, this Court accepted the contention of the Union Government as well as the Management of the Bank and came to hold that it would be the power of the Central Government to decide the pay structure of the employees of the Regional Rural Banks under Section 17(1) of the Act and in so doing, the Government would be duty bound to maintain parity between the pay structure of the employees of the nationalised commercial banks and the employees of the Regional Rural Banks in the same sense and spirit as Justice Obul Reddi had decided. This Court ultimately issued this further direction as under:

"In view of the aforesaid conclusions of ours on the different contentions raised and in view of the fact that the Union of India in its Interlocutory Application had already indicated that the employees of the RRBs will be granted the new scales w.e.f. 1.4.2000 in the line with scales granted to commercial bank employees of equivalent level, we direct that the said determination be a determination under the second proviso to sub-section (1) of Section 17 of the RRB Act and as such the salary of the employees of the Regional Rural Banks w.e.f. 1.4.2000 be determined accordingly.

We also further direct that for maintaining the parity between the employees of the commercial banks and the employees of the Regional Rural Banks, the said Union Government shall decide the

question as to what would be the salary of the employees of the RRBs subsequent to the 6th Bipartite Settlement having been given effect to, in case of employees of the commercial banks and with effect from what date and the benefit flowing from such decision be given to the RRB employees. The decision in question shall be taken within a period of six months from today."

It may be stated that the Union of India had filed an interlocutory application, wherein in the larger interest of the employees and depositors of the Regional Rural Banks, it had proposed to give a package, but that package however had not been accepted by the employees of the Regional Rural Banks and, therefore, the Court ultimately heard the matter and delivered the judgment. In implementation of the directions of the Court as aforesaid, the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division) issued a notification dated 11.4.2001, the relevant paragraphs of which are quoted herein-below in extenso:

"(i)The new basic pay of each RRB employees as on 1.4.2000, would be determined by notionally granting the benefit of 6th and 7th bipartite settlement and officers wage revision w.e.f. 1.11.1992 and 1.11.1997 respectively. The formula for fitment of salary in various scales may also remain the same as was adopted for commercial bank employees. Thus as on 1.4.2000, the pay scales of the RRB employees would become equal to that of their counterparts in commercial banks.

(ii)The current payment of increase in the salary due to grant of new pay scales shall be made in such a manner that the cash outflow in a particular year on this account is not more than 50% of the operating profit of the concerned RRB as per the previous year's published balance sheet. The RRBs who have incurred operating losses in the previous year

would not be able to make current payment of increased portion of the revised salary and the amount due on account of increase in salary shall be transferred to the arrear account. Similarly, if anticipated cash out flow on account of the increase in the salary is exceeding 50% of the operating profit in the last year, the current payment may be restricted only to 50% of the operating profit and the rest shall be transferred to arrear account which is to be treated in the manner stated hereunder.

(iii) There shall be a two year moratorium on the payment of arrears i.e. upto 31.3.2002 and during this period no arrear shall be payable by any RRB. After the moratorium period, the arrears may be paid in such a manner that the cash outflow on that account and the increase in wages during the current year on account of implementation of this package do not exceed 50% of the operating profit of the respective RRB for the immediate previous year. Arrears would mean increase in salary i.e. basic pay, DA and CCA due to the RRB employees by notionally granting to them wage revision w.e.f. 1.11.1992 and 1.11.1997 at par with the commercial bank employees and residual amount if any arising out of clause (ii) above.

(iv) The House Rent Allowance (HRA) and City Compensatory Allowance (CCA) would be payable at the same rate as applicable to comparable employees in the sponsor banks and would be given prospective effect i.e. date of issue of these orders as is done in Commercial Banks.

(v) As far as other allowances are concerned, individual sponsor banks shall negotiate the same with the respective RRBs. The revised allowances shall be paid w.e.f. 1.4.2000. The ceiling on the payment shall

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however be as per the formula stated in (iii) above.

The RRBs may issue a comprehensive order based on the above orders indicating the revised pay scales in respect of each category of employees after getting approval of their Board of Directors.

The principles for current payment and payment of arrears speltout in these orders should be strictly adhered to."

Paragraph (i) of this Notification, making the pay-scales of the employees of Regional Rural Banks equal to their counterparts in commercial banks on 1.4.2000 is in consonance with the directions of this Court and there is no grievance on that score from any quarter. But paragraphs (ii) and (iii) of the aforesaid circular are the identical paragraphs of the package, which the Union of India had submitted in course of hearing and which had not been accepted by the employees of the Regional Rural Banks. Even the current payment of increase in salary, after determination being made became dependant upon the cash outflow in a particular year and then there was a moratorium on the payment of the arrears for a period of two years i.e. upto 31.3.2002. The aforesaid period however is coming to an end.

4. Mr. Mukul Rohtagi, the learned Additional Solicitor General, however tried to impress upon us the circumstances under which the notification had been issued, the same being severe financial crisis and the learned Additional Solicitor General further urged that the monetary benefits of the employees of the bank will have to be so modulated so that the banks should not ultimately be closed down by merely paying the salary of the employees. Even though the financial position of the banks may not be disputed, but having regard to the directions issued by this Court, while disposing of the civil appeal and having regard to the circumstances under which such directions had been given, it would be difficult for us to sustain the plea of the Union Government that the

Notification is in compliance with the judgment and directions of this Court. The financial capacity of the Government cannot be pleaded as a ground for non-implementation of the directions of the Court inasmuch as even in the matter of determination of the pay-scale of the employees of the Regional Rural Banks and maintenance of parity with their counterparts, serving under the sponsorer commercial banks, Justice Obul Reddi had not accepted the said plea and that award reached its finality. Since the financial capacity of the employer cannot be held to be a germane consideration for determination of the wage structure of the employees and the Parliament enacted the Act for bringing into existence these regional rural banks with the idea of helping the rural mass of the country, the employees of such rural banks cannot suffer on account of financial incapacity of the employer. We have no hesitation in coming to the conclusion that the issuance of notification dated 1.4.2001, by the Government of India cannot be held to be in compliance with the judgment and directions of this Court in Civil Appeal No. 2218 of 1999. But at the same time, we are of the opinion that the appropriate authority need not be punished under the provisions of the Contempt of Courts Act, even if the notification is in direct contravention of the judgment of this Court, as we do not find a case of deliberate violation. While, therefore, we do not propose to take any action against the alleged contemnors, we direct that the employees of the Regional Rural Banks should be paid their current salaries on the basis of determination made under the notification dated 11.4.2001, the new basic pay having arrived at, as on 1.4.2000 forthwith Paragraph (i) of the aforesaid notification dated 11.4.2001 should be immediately implemented and the employees should be paid accordingly. Paragraphs (ii) and (iii) of the notification are quashed and the Central Government is directed to issue a fresh notification for proper implementation of the Judgment of this Court. We make it clear that the period of moratorium with regard to the payment of arrears, since is going to be over on 31.3.2002, the arrear salary accruing to the employees be paid to them in three equal annual installments, the first being on 30th of April, 2002, the second on 30th of April, 2003 and the third on 30th April, 2004. This payment has to be made as

aforesaid without being any way dependant upon any other considerations and there cannot be any distinction between the regional rural banks incurring loss and the regional rural banks, making profit. Further, the question of anticipated cash out-flow on account of increase in salary if exceeds 50% of the operating profit, then the current payment would be restricted only upto 50% is absolutely of no relevance, which was indicated in the impugned notification dated 11.4.2001. Having regard to the financial condition of the Government as well as these banks, the instalment to be paid on 30.4.2002, pursuant to this order of ours, the same may be deposited in the employees' provident fund account. But all other instalments will have to be paid in cash."

8. The learned Counsel for the Respondents accordingly submitted that this Court has to decide whether there was any wilful and deliberate violation of the order of this Bench in this case.

On 13.07.2016, letter No. C-18012/53/2013-Admn. dated 12.07.2016 has been brought to our notice at the Bar, by the authority copy of which has been kept on record, in which it has been stated as under:

"Sub: CP (C) No. 350/00002/2015-(arising out of OA No. 1156 of 2013 filed by Bimal Chandra Paul & Ors v UOI & Ors) – Bimal Chandra Paul & Ors v Sanjay Kothari & Ors – regarding.

.....Out of 15 applicants, in the subject mentioned CP (C), **11 applicants** were found to be senior than that of 3 incumbents viz. S/Shri Rajbir Singh, Suresh Chand and Daya Kishan regularized with effect from 07.09.2005 who had to be considered for regularization in the erstwhile Group D posts as per order dated 26.08.2014 passed by the Hon'ble Tribunal, Calcutta Bench.....

.....
In the instant case, cut off date for regularization in respect of applicants who are senior to the said 3

incumbents regularised on 07.09.2005 is 07.09.2005 and that of other applicants is 15.02.2016.....

.....Out of the 11 applicants who are senior to the said 3 incumbents, 5 applicants are ineligible due to over age and **6 applicants were regularized** being eligible. The remaining 4 applicants who are junior to the said incumbents, 2 applicants are ineligible due to over age and **2 applicants were regularized** being eligible....."

It is to be noted that out of 15 applicants, 8 applicants were regularized following the direction of this Court.

At the risk of repetition, the procedure, right or wrong, followed by the authorities in pursuance of the order of this Bench is given below in a chart.

(a) Reasons for rejection of the cases of seven applicants:

Sl.No	Name/Category S/SHRI	Date of birth	Date of continuous engagement	Cut off date	Total service rendered continuously upto cut off date	Age upto cut off date	Age after conducting continuous service rendered	Upper age limit of UR as per R.R.
1	Gopal Chatterjee (UR)	15.7.59	9.7.86	7.9.05	19Y 1M 28D	46Y 1M 22D	26Y 11M 24D	25 years
2	B.C.Paul (UR)	13.7.56	10.7.86	7.9.05	19Y 1M 27D	49Y 1M 24D	29Y 11M 27D	25 Y
3	Smt.R.Bhattacharya (UR)	27.10.58	11.8.86	7.9.05	19Y0M26D	46Y10M10D	27Y9M14D	25Y
4	M.Sengupta(UR)	5.01.62	1.1.91	7.9.05	14Y8M6D	43Y8M2D	28Y11M26D	25Y
5	A.Guha (UR)	25.6.60	26.5.89	7.9.05	16Y3M11D	45Y2M12D	28Y11M1D	25 Y
6	Smt. K.Majumder (UR)	14.2.63	1.9.89	15.2.16	26Y5M14D	53Y0M1D	26Y6M17D	25Y
7	P.Dey(UR)	14.2.63	1.1.99	15.2.16	17Y1M14D	53Y0M1D	35Y10M17D	25y

The same principle has been followed for regularization of the three incumbents namely S/Shri Rajbir Singh, Suresh Chand and Daya Kishan, referred to in our order. The basis of regularization of the three incumbents can be obtained from the communication dated 27th April, 2016, copy of which was handed over at the bar on 13.07.2016.

The relevant portion of which is quoted under for ready reference:

"Sub: CP (C) No. 350/00002/2015 (arising out of OA No. 1156 of 2013) filed by Bimal Chandra Paul & Ors – regarding.

Sl. No.	Name	Date of Birth	Date of continuous engagement	Total service rendered continuously upto 07.09.2005	Age upto 07.09.2005	Age after deducting continuous service rendered
1	Rajbir Singh	18.02.1968	18.01.1989	16 years 7 months & 19 days	37 years 6 months & 19 days	20 years & 11 months
2	Sursh Chand	05.04.1970	16.03.1989	16 years 5 months & 21 days	35 years 5 months & 2 days	18 years 11 months & 11 days
3	Daya Kishan	02.06.1967	27.6.1989	16 years 2 months & 10 days	38 years 3 months & 5 days	22 years & 25 days

Thus, we see that the same methodology right or wrong which has been applied for regularisation of the three persons namely S/Shri Rajbir Singh, Suresh Chand and Daya Kishan, has been applied to fifteen applicants also out of which eight incumbents have been regularised as per the order of this Court, though *prima facie*, we are not in full agreement with the methodology adopted for consideration of the regularisation.

9. Having heard the learned counsel for both sides we have gone through the records. We have also gone through the decisions of the Hon'ble Apex Court, cited by the respective parties.

10. This is an application of contempt and in contempt petition the first and foremost condition is to establish whether the respondent authorities have intentionally and deliberately violated the orders of the Court. Going through the above factual matrix, the stand of the applicants that there was intentional and deliberate violation of the order cannot be accepted in the eye of law; especially in view of the decision of the Hon'ble Apex Court in the case of **J.S.Parihar v Ganpat Duggar and others (supras)** wherin the Hon'ble Apex

Court have clearly held that once there is an order passed by the Government on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum. The order issued in compliance of the order of the Court may be wrong or may be right or may or may not be in conformity with the directions but that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order as after re-exercising the judicial review in contempt proceedings, a fresh direction cannot be given to pass another order in compliance of the earlier order of this Tribunal.

The Respondents also have followed the same yardstick right or wrong, in deciding the cases of regularisation of three cases namely S/Shri Rajbir Singh, Suresh Chand and Daya Kishan vis-a-vis the 15 Applicants.

10. In view of the discussions made above, while dismissing this Contempt Petition, liberty is granted to the Applicants to agitate their grievance, by filing a fresh OA in the appropriate forum. There shall be no order as to costs.

(Ms.Jaya Das Gupta)
Administrative Member

v.v.a.
(Ms.Bidisha Banerjee)
Judicial Member