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OFFICE OF THE ASSAM ADMINISTRATIVE TRIBUNAL ::::GUWAHATI-1

Case No. 11 ATA (cont.) 2011
52 ATA/2008

Mrs. Sabita Das ----- Petitioner

-Vs-

Shri R.C. Jain, Commissioner and Secretary to the Govt. of Assam,
Education (Secondary) Department, Dispur and 3 others.

----- Contemners.

Advocate for the Petitioner : Shri B.Prasad

Advocate for the Contemners : Shri K.K.Das

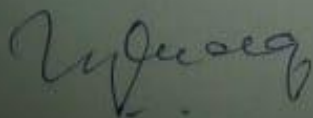
Present : Md. A. Haque
Member (Law)

Date of hearing : Shri M.K. Pathak
Member (Technical)
18/11/2017

Date of Judgment : 30/12/2017

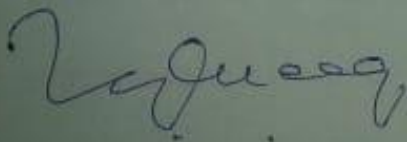
J U D G M E N T

The petitioner by filing this contempt petition under section 11 and 12 of the Contempt of Courts Act, 1971, read with Art. 215 of the Constitution of India, prays for a direction to punish the respondents/contemners for wilful disobedience and deliberate violation of the Judgment and order dated 19/02/2011 passed by this Tribunal in Appeal Case No. 52 ATA/2008 wherein it



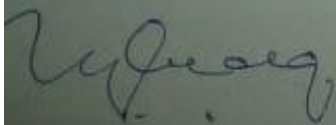
was directed to the respondent authorities to workout and calculate the pay and allowances and other services benefits entitled to the petitioner and it should be released to her within six months from the date of the order. The petitioner alleges that the aforesaid direction passed by the Tribunal in its order dated 19/02/2011 has not been complied with by the respondent authorities even after lapse of six months. The petitioner further alleges that the respondents have failed to release the pay, allowances and other service benefits to the petitioner violating the express direction issued by this Tribunal and hence she submitted that the Respondents have wilfully and deliberately violated the order of the Tribunal dated 19/02/2011 and therefore should be punished for their wilful disobedience and non-compliance of the order.

1. Petitioner was initially appointed as Asstt. Teacher in the intermediate Cadre in Balika Vidyamandir High School, on 10/05/1978. Thereafter on 04/05/1979 she was allowed to continue in a regular post and continue to discharge her duties. The petitioner then facing some family problems went on leave w.e.f 13/03/1990 to 12/04/1992 with due intimation to the concerned authority. On completion of her leave when she proceeded to join her service she was not allowed to join by the Head Master of the School. Being aggrieved she approached the Assam Administrative Tribunal by filing Case no 24 ATA/2002. In that case the Tribunal was pleased to direct the respondent authorities to allow her to join her duties



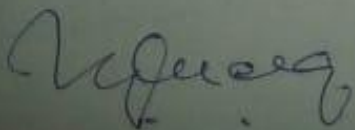
and treating her services to be continuous, her pay and allowances to be fixed and to be paid to her. However, even after judgment and order was passed on 06/09/2003, it was not implemented by the concerned authority and she was not allowed to join although the post held by her was lying vacant. Finally the petitioner filed a contempt petition and as a result of the contempt petition she was allowed to rejoin her service. After rejoining her service she prayed for her seniority and payment of her allowances and other service benefits in terms of directives passed by the Tribunal on 06/09/2003. She also prayed for passing necessary order for up-gradation of her service w.e.f 1991 when her junior was granted graduate scale of pay. Although she joined her service as ordered by the Tribunal dated 06/09/2003, pay allowances and other service benefits were not released to her. As prayed by her she was not allowed to grant graduate scale of pay w.e.f 1991 when her junior was granted graduate scale of pay. Being aggrieved she referred an appeal before the Tribunal being numbered as case No. 52 ATA /2008. The Tribunal in the said case after hearing both the parties and going through the records passed a direction and order dated 19/02/2011 which is reproduced as below:-

" For the reasons aforesaid we direct that the pay of the appellant should be first fixed in the intermediate scale as of 13/03/1990 i.e., the date from which she proceeded on leave and thereafter her pay shall be fixed in the graduate scale of pay w.e.f. 01/02/1992. Accordingly her pay, allowances and other service benefits should be worked out and calculated by the concerned respondent authorities and it should be released to her within six months from the receipt of



this order. While calculating the pay and other service benefits payable to the appellant as directed by this Tribunal in 24 ATA/2002 no pay and allowances should be given to her for the period she did not render her service physically and this period may be treated from the date her leave expired up to the date when the aforesaid appeal was admitted by the Tribunal. It is further directed that if on 01/02/1992 no post of Graduate teacher was available in the Balika Vidya Mandir High School, Digboi a supernumerary post of graduate teacher may be created from 01/02/1992 to grant all consequential service benefits to the appellant arising from this order".

2. Contemner no. 2 and 3 by filing the affidavit have submitted that after the Judgment and order passed dated 19/02/2011 in ATA 52/2008 they have taken all necessary steps to implement the Tribunal's order. It is submitted that in compliance of the Tribunal's order the petitioner was allowed to draw Graduate Scale of pay. To that effect as directed by the Tribunal in its order a supernumerary post of Graduate Teacher was created by the Govt. in Balika Vidyamandir High School, Digboi w.e.f 01/02/1992 to regularise her pay in the Graduate scale. Regarding payment of her arrear pay and other allowances it was stated by the said contemnors that it was discovered while implementing the order of the Tribunal dated 19/02/2011 that the Service Book of the petitioner was not traceable in the school. Then immediately they have instructed the Headmistress of the School to submit a Police Verification Report regarding the loss of the Service Book. Headmistress submitted the Police Verification report in the month of September, 2011. Thereafter it was directed to the Headmistress to



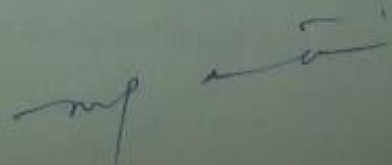
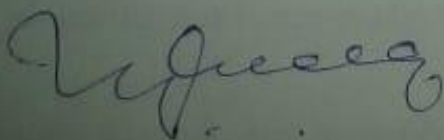
reconstruct the Service Book within 15 days so that the payment of petitioner could be made at the earliest. The contemnors submitted that due to non-availability of the Service Book arrear pay and other allowances of the petitioner could not be paid till date. However, they have stated that there has been no deliberate or intentional delay on their part in complying with the order passed by the Tribunal and hence they offered unconditional apology for non-compliance of the order of the order till date.

Heard Shri. B. Prasad, learned Counsel for the petitioner and Shri K.K. Das, learned Sr. Govt. Advocate appearing for the contemnors and perused the Affidavits and other relevant documents on record.

3. Learned Advocate for the petitioner vehemently argued that although the order of the Tribunal was passed on 19/02/2011 the contemnors did not make payment of her pay, allowances and other Service benefits within the period of six months as directed by the Tribunal. The contemnors made an abnormal delay in making the payment, thereby violated the Tribunal's order. He pointed out that the Contemnors submitted a letter dated 25/05/2016 before the Tribunal wherein the petitioner's entitled amount was calculated and worked out and calculating the period for which she actually physically rendered service it was shown that she was entitled to Rs. 4,13,075/- and thereafter the mount was sanctioned and on 19/1/2017 she received an amount of Rs. 3,96,045/- after deducting tax payable on the sanctioned amount. Learned counsel submitted that calculation of the pay

and allowances etc. of the petitioner in the letter of Director dated 25 /05/2016 was not done as per order and direction of the Tribunal dated 19/2/2011. The calculation was not correct and proper. Learned counsel contented that since the contemnners have not made the payment within six months of the order and since they have not worked out and calculated the pay allowances etc. as per direction of the Tribunal the contemnners are guilty of willful disobedience and deliberate violation of the order of the Tribunal dated 19/2/2011 and should be punished for contempt of the Courts. In this respect he cited an Apex Court decision in T.R. Dhananjaya Vs J. Vasudevan --reported in (1995) 5 Supreme Court Cases 619.

Learned Senior Govt. Advocate on the other hand submitted that as directed by the Tribunal by its order dated 19/2/2011 to grant Graduate Scale of pay to the Petitioner w.e.f 01/02/1992 she was allowed Graduate scale of pay by the Inspector of schools. Thereafter vide order dated 01/10/2012 Govt. had created a supernumerary post of Graduate Teacher in Balika Vidyamandir High School, Digboi w.e.f 01/02/1992 to 20/12/2012 for compliance of the Tribunal's order and regularising the pay. Learned counsel argued that although there was some delay in complying the Tribunal's order but he submitted that due to non-availability of the Service Book of the petitioner the pay, and allowances could not be calculated and fixed. However, the contemnners have all along taken urgent necessary steps to reconstruct the Service Book and finally they could complete the process and vide letter dated 25/5/2016 they calculated and fixed the pay and allowances payable to the petitioner and finally the amount of Rs. 4,13075/



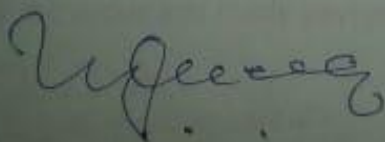
so fixed had been paid to the petitioner. Learned Counsel thus argued that since the contemners had all along taken active and sincere steps to comply the order of the Tribunal and since finally in- obedience and compliance of the Tribunal's order the period for which she actually rendered service was worked out and calculated and accordingly the arrear pay was paid to the petitioner and hence he contented that the contemners have not at all willfully and deliberately violated the Tribunal's order. In fact with all respect and regard to the Tribunal the contemners have complied the order. Therefore the contemners are not guilty of violation of the Tribunals order and the contempt petition should be dismissed.

4. It appears from record that as directed by the Tribunal in its order dated 19/02/2011 the Contemner no-2 , Director of Secretary Education, Assam, by its letter dated 05/04/2011 (Annexure A, Affidavit) instructed the Inspector of School, Tinsukia (Contemner no-3) to take necessary steps for fixation of the petitioner's pay in the Graduate scale of pay within the stipulated time fixed by the Tribunal. It is evident from record that Inspector of Schools immediately allowed her to draw Graduate Scale as ordered by the Tribunal. It is also seen that Contemner no-2 has written a letter dated 29/10/2011 to Govt. to create a supernumerary post of Graduate Teacher in the Balika Vidyamandir, High School w.e.f. 01/02/1992 to 20/12/2012 for granting all consequential benefits to the petitioner. It is seen that Govt. created a supernumerary post of Graduate Teacher in Balika Vidyamandir High School , Digbloi w. e.f. 1/2/1992 to 20/12/2012 in compliance of the Tribunal's order.

It is true that there was delay in making payment by the contemners. But we see that due to non-availability of the Service Book in the School they could

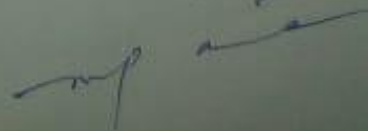
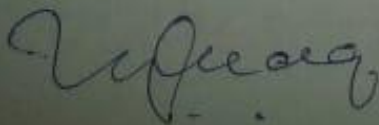
not fix the pay etc. in time. We notice that the contemnners did not sit down on the Judgment and order. They have taken all immediately necessary steps to reconstruct the Service Book and make payment. It further appears that during continuation of the resent contempt petition they completed the process of calculation and working out of the pay and other allowance and other service benefits and finally in compliance of the Tribunal's order the Contemner no-2 vide its letter dated 25/5/2016 has filed a detailed order wherein it was to stated that from the year 1989 to February, 2010 the period for which the petitioner did not actually render her service has been worked and calculated and accordingly calculating the period for which she actually worked it was shown that she was entitled to Rs. 4,13075/- (Rupees four lakh thirteen thousand and seventy five only). Thereafter, immediately this amount was sanctioned and paid to her. From the record it also appears that she has also accepted and received the amount,

From the foregoing facts and discussion it is abundantly clear that after judgment and order was passed on 19/02/2011 the Contemnners did not intentionally sit over on the order. They were all along taking necessary steps to comply the Tribunal's order. As a result of their persistent action first they granted her Graduate scale of pay w.e.f 01/02/1992 and finally they were able to work out and calculate the amount payable to the petitioner by observing all formalities. They have made payment of the amount to her. In the circumstances we are unable to accept the contention of the Learned



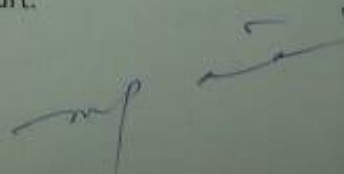
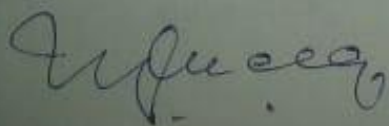
Counsel of the petitioner that the contemnors have willfully and deliberately disobeyed the order of the Tribunal. In fact, we notice that with all regard and respect to the order of the Tribunal the contemnors undertook all active and necessary steps to comply the order and finally complied it after making payment of the entitled amount to the petitioner. Therefore we are of considered opinion that the contemnors have not willfully and deliberately disobeyed the Tribunal's order.

Further we are also unable to accept the contention of the Learned Counsel of the petitioner that the Contemnors have not worked out and calculated the amount paid to the petitioner as per the direction of the Tribunal and hence they have violated the order and should be punished. From a perusal of the letter of the Director, Secondary Education, Assam (Contemner no-2) it appears that he has worked out and calculated the entitled amount payable for the period she actually rendered service. We also notice that the petitioner has received the amount paid to her. After receiving the amount she came out with a statement that the contemnors have wrongly calculated the amount and they should be punished. Since the petitioner have accepted and received the mount paid to her, for any wrong done by them in calculating the payment amount they cannot be punished as because the petitioner could not establish that the contemnors willfully and deliberately calculated the amount wrongly, violating the Tribunal's order. In the circumstances we are of view that since the Contemnors with regard and obedience to the Tribunal's order took all steps to comply the order and made payment for any error occurred in calculating the

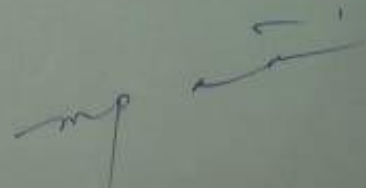
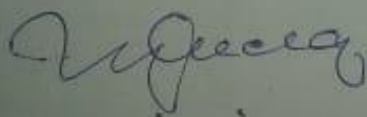


amount they should not be punished for this fault. Since they have not done it intentionally and deliberately we feel that if the petitioner feels aggrieved on the payment she may file a fresh appeal challenging the calculation and working out of the pay, allowances etc. done by the Contemners.

In this respect we have gone through the decision of the Hon'ble Supreme Court in T.R. Dhananjaya -Vs- J. Vasudevan reported in (1995) 5 Supreme Court Cases 619 referred to by the Learned Counsel of the petitioner in his favour. In this case the Supreme Court has directed that if necessary the employer, i.e, the Bangalore Municipal Corporation could create a supernumerary post of Chief Engineer for the period in question to give benefit to the incumbent. The Supreme Court further directed the State Govt. to issue necessary orders in that regard. However, instead of implementing the order, an attempt has been made to circumvent the same and deny the benefits to the petitioner. Subsequently the State Govt. directed the Bangalore Municipal Corporation to grant the petitioner merely the benefits of the post of a supernumerary post of Superintending Engineer. Hence it was held by the Hon'ble Supreme Court that the State Govt. had committed a deliberate and willful disobedience of the order of the Supreme Court and hence one month simple imprisonment awarded to the Contemners officer. In the aforesaid Supreme Court case we see that the State Govt. has completely denied the order of the Supreme Court by granting benefit of the post of a supernumerary post of superintending Engineer, not awarding the post of Chief Engineer as ordered by the Hon'ble Supreme Court.



But we observe that in the instant case the contemnors have not completely denied the orders of the Tribunal. As ordered by the Tribunal they have created a Supernumerary post of Graduate Teacher w.e.f 01/02/1992. The petitioner was granted Graduate scale of pay accordingly and thus it appears that the contemnors have fully obeyed the Tribunal's order on this aspect. Moreover, it appears that as directed by the Tribunal the Contemnors have worked out and calculated the arrear pay etc. payable to the petitioner and finally amount was sanctioned and paid to her. The petitioner has also accepted the amount granted to her. In the circumstances we feel that that the contemnors have not willfully circumvent the order of the Tribunal to deny the claim. Hence, according to us the aforesaid Supreme Court decision is not applicable in the present case. We feel that simply because on the allegation of the petitioner that calculation of the arrear pay and allowances etc. was not correctly done by the contemnors we cannot come to the conclusion that they have totally denied that claim of the petitioner. As we have already noted herein before that an amount of Rs. 4,13075/- had been paid to her as her arrear pay as ordered by the Tribunal and she had received the amount, in the circumstances we are inclined to hold the view that the contemnors have not willfully and deliberately disobeyed the order of the Tribunal. However, considering her allegation that the calculation was wrongly done we think that for this the petitioner may file a fresh appeal challenging that the calculation of the pay allowances etc. as ordered by the Tribunal.



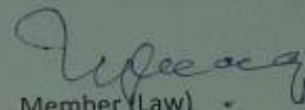
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For the reasons aforesaid we are of considered view the contemnners have not committed any willful and deliberate disobedience of the order of the Tribunal dated 19/02/2011. Contempt petitioner is therefore dismissed. However, we order that the petitioner is at liberty to file a fresh appeal challenging the order of the Govt. respondent that the calculation of the pay allowances etc. as ordered by the Tribunal dated 19/02/2011 was not correctly done and it should be done correctly and properly and the due amount should be paid to her.

There will be no order as to costs.



Member (Technical)
AAT



Member (Law)
AAT