

**(2014) 02 AHC CK 0188**

**Allahabad High Court (Lucknow Bench)**

**Case No:** Special Appeal (Defective) No. 77 of 2014

Arvind Narain Misra

APPELLANT

Vs

Dilip Singh Rana

RESPONDENT

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**Date of Decision:** Feb. 17, 2014

**Citation:** (2014) 5 AWC 5019

**Hon'ble Judges:** Dr. Dhananjaya Yeshwant Chandrachud, C.J; Dr. Devendra Kumar Arora, J

**Bench:** Division Bench

**Advocate:** Upendra Nath Misra, Advocate for the Appellant; Dilip Singh Rana, Advocate for the Respondent

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### **Judgement**

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Dr. Dhananjaya Yeshwant Chandrachud, C.J. and Dr. Devendra Kumar Arora, J.

This special appeal has been filed against two judgments of the learned single Judge. The first judgment is dated 22 March, 2013, disposing of the contempt petition and the second judgment is dated 16 December, 2013, which was passed on a clarification application moved by the respondent.

2. The respondent was the petitioner before the writ court in a petition that was filed to challenge an order dated 19 July, 2002, imposing upon him a punishment of deduction of 1/3rd of the total amount of pension, after a disciplinary enquiry. By a judgment and order of the Division Bench dated 9 November, 2006, the order of punishment was set aside and a consequential direction was issued to the effect that the respondent would be entitled to pensionary benefits, which shall be paid to him forthwith.

3. The respondent instituted a contempt petition in 2007, alleging non-compliance of the order of the Division Bench. During the pendency of the contempt proceedings, several affidavits were filed on behalf of the State by the Principal

Secretary in the Secretariat Administration Department for explaining that the orders of the Division Bench have been complied with. In an affidavit dated 31 March, 2008, the Secretary explained that the following payments have been released including pension, gratuity, leave encashment, suspension allowance and arrears of salary:

4. In a subsequent affidavit dated 18 August, 2010, it was further stated that all the pensionary benefits were revised in accordance with the grant of two notional promotions. Moreover, it was stated that the interest amounting to Rs. 2,30,379 on the delayed payment of gratuity had also been computed and paid.

5. The contention of the respondent was that interest on delayed payment of gratuity was liable to be paid at the same rate as was applicable for the General Provident Fund (G.P.F.) at the relevant time. The respondent in an affidavit dated 9 November, 2010 claimed payment of compound interest on the delayed payment of gratuity. This request was opposed on behalf of the State and reliance was placed inter alia on the Government order dated 13 October, 2002 which states that though interest on the amount of gratuity would be paid at the same rate as applicable to G.P.F., no compound interest would be admissible on the payment of gratuity.

6. In this background, the learned single Judge passed the first order in the contempt proceedings on 22 March, 2013 and held that the State has shown fairness in making payment on delayed payment of gratuity, consequent upon which, it was not subjected to any order of Contempt. However, the learned single Judge noted that reliance has been placed by the respondent on some pay-slips in regard to the payment of the amount of provident fund to certain other employees and on this basis a direction was issued that compound interest should be paid to the respondent on the delayed payment of gratuity within a period of three months. The petition was disposed of.

7. The respondent thereafter filed a restoration application before the learned single Judge on 19th July, 2013 on which the appellants filed three affidavits dated 3rd September, 2013, 9th October, 2013 and 2nd December, 2013. In those affidavits, reliance was, inter alia, placed on the relevant Government Orders governing the payment of interest on gratuity. By an order dated 16th December, 2013, the learned single Judge has clarified the earlier order and instead of using the expression "compound interest", the court has directed the State to calculate the amount of interest in the same manner as applicable to the G.P.F. The learned single Judge has furnished an elaboration in regard to the G.P.F., stating that on completion of every financial year, the interest calculated on the total amount of G.P.F. is included in the amount of G.P.F. which is shown as the opening balance for the next year.

8. Before we deal with the affidavits in the present case, it would be necessary, at the outset, to reiterate the fundamental principles of law governing the exercise of

the contempt jurisdiction. The principles which we now formulate herein below, would be supported by precedent on the subject:

(i) In the exercise of the contempt jurisdiction, it is not open to the court to travel beyond the order of which a breach is alleged. The jurisdiction in contempt has to be exercised with a view to determine as to whether the order of which a breach has been alleged, has been complied with or not.

In [Jhaheswar Prasad Paul and Another Vs. Tarak Nath Ganguly and Others,](#) , this principle was formulated as follows:

".....The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained..... If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order."

The same principle was reiterated in the judgment in the case of [Director of Education, Uttaranchal and Others Vs. Ved Prakash Joshi and Others,](#) , by the following observation:

"The court exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the court 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 directions 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 a recent judgment of the Supreme Court, [Sudhir Vasudeva, Chairman and Md. ONGC and Others Vs. M. George Ravishekar and Others,](#) delivered on 4th February, 2014 in Civil Appeal No. 1816 of 2014 the Supreme Court held as follows :

"The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very

nature of the power casts a sacred duty in the courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or willful violation of the same. Decided issues cannot be reopened; nor the plea of equities can be considered. Courts must also ensure that while considering a contempt plea the power available to the court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to what has been already expressed should be issued by the court while exercising jurisdiction in the domain of the contempt law : such an exercise is more appropriate in other jurisdictions vested in the court, as noticed above. The above principles would appear to be the cumulative outcome of the precedents cited at the bar, namely, Jhareswar Prasad Paul and another v. Tarak Nath Ganguly and others; V.M. Manohar Prasad v. N. Ratnam Raju and another; Bihar Finance Service House Construction Cooperative Society Ltd. v. Gautam Goswami and others and Union of India and others v. Subedar Devassy P.V."

(ii) In exercise of the contempt jurisdiction, the order of the court of which a breach is complained of, has to be read and interpreted as it is and not as it should be. The court cannot take a different view in exercise of the contempt jurisdiction on the merits of the case. For that matter, the court cannot make either an addition or deletion from the original order of the court.

In [Bihar Finance Service H.C. Coop. Soc. Ltd. Vs. Gautam Goswami and Others,](#) the principle was stated as follows:

30. Parameters of the jurisdiction of this Court under the Contempt of Courts Act, 1970 are well-settled, (See Maruti Udyog Ltd. v. Mahinder C. Mehta.

31. While dealing with such an application, the court is concerned primarily with:

(I) Whether the order passed by it has attained finality or not;

(II) Whether the same is complied with or not.

32. While exercising the said jurisdiction this Court does not intend to reopen the issues which could have been raised in the original proceeding nor shall it embark upon other questions including the plea of equities which could fall for consideration only in the original proceedings. The court is not concerned with as to whether the original order was right or wrong. The court must not take a different view of traverse beyond the same. It cannot ordinarily give an additional direction or

delete a direction issued. In short, it will not do anything which would amount to exercise of its review jurisdiction. (See Director of Education v. Ved Prakash Joshi and K.G. Derasari v. Union of India).

(The same principle has been reiterated in [K.G. Derasari and Another Vs. Union of India \(UOI\) and Others](#), .

In the judgment in the case of [Union of India \(UOI\) and Others Vs. Subedar Devassy PV](#),, the Supreme Court observed as follows:

"While dealing with an application for contempt, the court cannot traverse beyond the order, non-compliance with 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 the 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."

(iii) Before a court punishes a contemner for non-compliance of a direction, the court must be satisfied that disobedience of the judgment, decree, direction or writ was wilful or intentional. In [Niaz Mohammad and others, etc. etc. Vs. State of Haryana and others](#),, the Bench of three learned Judges held thus:

"Before a contemner is punished for non-compliance of the direction of a court, the court must not only be satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was wilful and intentional. The civil court while executing a decree against the judgment debtor is not concerned and bothered whether the disobedience to any judgment, or decree, was wilful. Once a decree has been passed it is the duty of the court to execute the decree whatever may be consequence thereof. But while examining the grievance of the person who has invoked the jurisdiction of the court to initiate the proceeding for contempt for disobedience of its order, before any such contemner is held guilty and punished, the court has to record a finding that such disobedience was wilful and intentional. If from the circumstances of a particular case, brought to the notice of the court, the court is satisfied that although there has been a disobedience but such disobedience is the result of some compelling circumstances under which it was not possible for the contemner to comply with the order, the court may not punish the alleged contemner."

(iv) The jurisdiction to punish for contempt has to be cautiously exercised and cannot be a substitute for the execution of an order of the court. This principle has been formulated in the judgment of the Supreme Court in [R.N. Dey and Others Vs. Bhagyabati Pramanik and Others](#), . The relevant para is being quoted below:

7. ...."But, at the same time, it is to be noticed that under the coercion of contempt proceeding, appellants cannot be directed to pay the compensation amount which

they are disputing by asserting that claimants were not the owners of the property in question and that decree was obtained by suppressing the material fact and by fraud. Even presuming that the claimants are entitled to recover the amount of compensation as awarded by the trial court as no stay order is granted by the High Court, at the most they are entitled to recovery the same by executing the said award wherein the State can or may contend that the award is a nullity. In such a situation, as there was no willful or deliberate disobedience of the order, the initiation of contempt proceedings was wholly unjustified."

9. Now, in the present case, when the contempt petition came up for hearing, the learned Judge was satisfied that no case was made out for subjecting the appellants to the contempt jurisdiction. Several affidavits have been filed on behalf of the appellants clarifying that in compliance of the order, which was passed by the Division Bench on 9th November, 2006, payments have been made to the respondent of the outstanding dues including pension, gratuity, leave encashment, suspension allowance and arrears of salary.

10. Moreover, an affidavit of compliance was filed before the respondent indicating that the pensionary benefits were revised further on the basis of a grant of two notional promotions. The learned single Judge was also informed about the payment of interest amounting to Rs. 2,30,379 on delayed payment of gratuity. Notwithstanding that, the learned single Judge directed the appellants in exercise of contempt jurisdiction to calculate the interest at the compound rate. Such a direction, in our view, was clearly without jurisdiction. The direction clearly travels beyond the original order of the Division Bench dated 9 November, 2006 of which contempt was alleged. Apart from that, reliance has been placed on behalf of the appellants on a Government order dated 30 October, 2002, which clarifies that while the rate of interest payable on the delayed payment of gratuity would be same as that of G.P.F., there was no question for paying compound interest. The respondent moved a restoration application after the contempt petition was disposed of. On this application, the learned single Judge issued a further order explaining the basis on which the interest would have to be computed and directed that without there being any confusion in regard to the terminology of paying simple or compound interest, interest would have to be calculated in the manner indicated. The illustration contained in the order of the learned single Judge would leave no manner of doubt that the learned single Judge has directed payment of compound interest. The procedure that has been adopted by the court in the present case in the exercise of the contempt jurisdiction, is clearly in excess of jurisdiction. The only question before the court was as to whether the order of the Division Bench dated 9th November, 2006 has been complied with or not. It is no part of the jurisdiction of the court in contempt proceedings to go behind the order and direct the payment of compound interest more particularly despite a clear defence that payment of compound interest on gratuity is not permissible in terms of the Government order dated 30th October, 2002. If the respondent was contesting the issue, the proper

remedy was elsewhere and not in taking recourse to the contempt jurisdiction. Similarly, the second order of the learned single Judge, which is a purported clarification of the first order, equally for the same reason, is beyond jurisdiction.

11. We are of the view that the orders passed by the learned single Judge on 22nd March, 2013 and 16th December, 2013 are unsustainable.

12. In view of the above, the special appeal is allowed and the orders dated 2nd March, 2013 and 16 December, 2013 are set aside. In consequence, the contempt petition which has been filed by the respondent, shall stand disposed of since there is no warrant for invoking the jurisdiction of contempt.

13. There shall be no order as to costs.