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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CONT.CAS(C) 230/2011, CM APPL. 40033/2017, CM APPL. 8953/2020, CM APPL. 21965/2020 & CM APPL. 22675/2020

ALL INDIA CPWD EMPLOYEES UNION Petitioner

Through: Mr. R.K. Kapoor, Adv.

versus

CS PRASAD DG CPWD Respondent

Through: Mr. Rajesh Gogna, CGSC with Ms. Bhawna Sharma, Adv for UOI (CPWD).

+ CONT.CAS(C) 260/2017

JOGINDER KUMAR SHARMA Petitioner

Through: Mr. Deepak Khadaria, Adv.

versus

ABHAY SINHA & ANR Respondents

Through: Mr. Rajesh Gogna, CGSC with Ms. Bhawna Sharma, Adv for UOI (CPWD).

+ CONT.CAS(C) 413/2017, CM APPL. 20455/2020, CM APPL. 20456/2020 & CM APPL. 20457/2020

VIRENDER SINGH & ORS Petitioners

Through: Mr. Deepak Khadaria, Adv.

versus

ABHAY SINHA & ANR Respondents

Through: Mr. Rajesh Gogna, CGSC with Ms.



Bhawna Sharma, Adv for UOI
(CPWD).

+ CONT.CAS(C) 641/2020

ALL INDIA CPWD EMPLOYEE UNION Petitioner

Through: Mr. R.K. Kapoor, Adv.

versus

SHRI VIVEK BANSAL DEPUTY DIRECTOR GENERAL CPWD
..... Respondent

Through: Mr. Rajesh Gogna, CGSC with Ms.
Bhawna Sharma, Adv for UOI
(CPWD).

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **24.02.2021**

The hearing was conducted through video conferencing.

1. The respondents are alleged to have not complied with the orders of this court. On 13.09.2017 and 07.11.2017, the following orders were passed:

“13.09.2017

Affidavit dated 16.7.2011 filed on behalf of the respondents is in the nature of the contentions to construe the award dated 31.1.1988 and the judgment dated 28.1.1992, whereby, the award was modified, as provided for in para 9 thereof. In CCP 306/93, the Division Bench of this Court disposing off the contempt petition on 19.11.1996, made observations relevant to the subject, as under:

“.....In view of the foregoing discussion we have no hesitation in coming to the conclusion that there was no justification for the respondent in not implementing the award given by the Umpire



in entirety, as modified by this court vide judgment dated 28 January 1992, particularly when a specific direction was issued to it on 25 August 1993 to implement the said judgment and make payment by 30 September 1993 and technically there has been violation of the directions. However, since the respondents so called doubts are all now set at rest, we grant to it three month more time to implement the award given more than eight years ago. Respondent's failure to comply with this order will be at its own risk and may expose it to the revival of these contempt proceedings for non compliance of this order as well as order dated 25 August 1993."

Later, on 29.5.2001, in another CCP 66/1999, Id. Single Judge of this Court made observations relevant to the subject, as under:

".....Having accepted the said order, it is now too late in the day for the CPWD to raise the plea that the paragraph in question came to be mentioned in the award of the arbitrator by mistake. No steps, if any, open to have paragraph(n) deleted from the award made by Shri H.S. Vats or by the Umpire at the appropriate time and forum were taken. The said paragraph thus, forms part of the award, enforceable as such. As noticed above, earlier the difficulty falling in the way of enforcement of the award was stated to be the time required for gathering requisite information from various places, which is not insurmountable. At this stage, it would equally be impermissible for this court, or for any other forum, to try to interpret the award in order to cull out as to what was the reason or intention of the Umpire to include paragraph (n) his final recommendations. In my view, therefore, the CPWD has no option but to implement the entire award in letter and spirit, as modified by the order of this court dated 28 January 1992. "

By the instant petition, the petitioners have again approached this Court alleging that a part of the award dated



31.1.1988 has not yet been implemented and the non-compliance is to the effect, as is reflected in Annexure CP-2 of the contempt petition. Let a precise compliance affidavit as for full implementation of the award in terms of clause 'q' & 'r', taking note of the deficiency/shortfall, as has come to be pointed out in Annexure CP-2 to the contempt petition, be filed within four weeks from today. Response affidavit, if any, may be filed a week before the date fixed.

List on 7th November, 2017 at 3.00 p.m.

07.11.2017

On 13.9.2017. this Court had directed the respondent to file a precise compliance affidavit as for full implementation of the award in terms of clause 'q' & 'r', taking note of the deficiency/shortfall, as has come to be pointed out in Annexure CP-2 to the contempt petition. As against such specific directions, an affidavit running into almost twenty pages referring to affidavits and judgments etc. has come to be filed. Affidavit so filed, is not in consonance with the directions given and therefore, cannot be taken on record. Affidavit be filed in terms of the last order within fifteen days, failing which, Director General, CPWD may be required to be present in the Court. Response affidavit, if any, may be filed a week before the adjourned date.

List on 9th January, 2018."

2. On 16.01.2020, the following order was passed:

" Mr. Gogna, Id. counsel for respondent taking the Court through the affidavit dated 22.11.2017 strenuously contends that no case for any contempt is made out. In his submissions, the petitioner(s) seek to agitate an issue of non-compliance of the terms of Clauses (q) and (r) of the Award, in respect whereof, the pleas of the parties were considered in the diverse substantive proceedings by way of writ petitions and then in the contempt petitions that came to be filed and therefore, the instant petition for contempt is unmerited. Unscrupulously however, he fails to



advert to the observations and the directions given by the Court on 13.09.2017 and then on 07.11.2017. The affidavit that came to be filed in pursuance of the directions given by the Court on 07.11.2017 is only culling out the facts and the pleas, which were raked up when an affidavit running into almost 20 pages adverting to the judgments etc. had come to be filed on behalf of the respondent. The respondent has however not placed on record the affidavit of compliance, as yet, assuming, the compliance is already met with. In other words, in the event, the repeated directions of the Court have been fully complied with, why the respondents are finding it difficult to put it on record in a sentence or two. Saying so is quite a simple manner. Failure to file such an affidavit had to result in the appearance of the Director General, CPWD. Instead thereof, an affidavit dated 22.11.2017, which runs into four pages and again adverts to the diverse proceedings and the contentions of the parties, has come to be filed and that too of are Smt. Nisha Gaur, who is only the Deputy Director (Admn.).

Taking note of the facts and circumstances, it is directed that the compliance affidavit be filed under the hand of the Deputy Director General, CPWD within four weeks from today. Such affidavit shall be as precise as has come to be observed by the Court today.

List on 28.07.2020.”

3. On 15.09.2020, the following order was passed:

“1. The hearing was conducted through video conferencing.

2. The Precise affidavit dated 29.02.2020 inter-alia refers to judgment dated 28.01.1992, 19.01.1995 and 25.09.1998, however, copies of the same are not on record.

3. Learned counsel appearing for the respondent submits that they were filed as a bunch of documents in the year 2017.

4. Let the counsel check up with the Registry and have the



same placed on record. In case said documents are not traceable, fresh copies of the documents be filed in the Registry within one week.

5. Learned counsel appearing for the petitioners prays for time to file response to the precise affidavit dated 29.02.2020. Let the same be filed within two weeks.

6. List on 16.10.2020.

7. Learned counsels for the parties submit that CCP 260/2017 is also arising out of the same order.

8. With the consent of the parties, it is directed that CCP No.260/2017 be also listed by the Registry on the said date.

9. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.”

4. The learned CGSC for the respondent-CPWD submits that the said respondent has filed a precise affidavit showing that the order has been complied with. The affidavit reads as under:

“I, Sh. Vivek Bansal S/o Late Dr. M.P. Bansal, age about 52 presently working as Deputy Director General (CPWD) under Ministry of Housing & Urban Affairs do hereby solemnly affirm and declare as under:

1. That I am the above named Deponent and am authorized and well conversant with the facts and circumstances of the present case and thus competent to swear the present Affidavit in response the contempt petition preferred by the Petitioner.

2. It is submitted that the award Dated 31.01.1988 as modified by the Hon'ble Court vide its Judgement dated 28.01.1992 has been implemented in its entirety



and the Clause (q) and (r) were not required to be implemented.

- 3. That the contention of the Petitioner is that (a) the other clauses of award including clause (q) and (r) are required to be implemented as the same was not set aside by the order of the Hon'ble High Court vide judgment dated 28.01.1992 and have not been implemented by CPWD (b) the category mentioned in Annexure CP-2 have not be implemented the contempt should be initiated against the Respondent.*
- 4. That Annexure CP-2 refers to clause (q) and (r) only which was
not required to be implemented in view of the Judgment dated 28.01.1992 as explained in subsequent Judgment dated 19.01.1995 and 25.09.1998.*
- 5. That as per the directions contained in the judgment dated 19.11.1996 of the Hon'ble Court regarding merger of Asst. categories with the respective full categories in accordance with the Award dated 1.01.1988, an O.M. N0.22/9/93-EC.X dated 07.5.1997 was issued. O.M. No.22/9/93 Ex.X dated 09.09.1999 reclassifying some categories from unskilled to semi skilled was also issued.*
- 6. In accordance with para (n) of the award an Order to grant
selection grade after 8 years of service to the six skilled categories viz Lift Operators, Sewerman, Mates, Cook, Meter Reader, Gauge Reader was also issued vide O.M. No. 20/30/2007-E.C.V dated 19.02.2009. Later on, another O.M. N0.19/117/2001-EC-X dated 09.06.2011 granting Selection Grade to 24 left over Skilled Categories has also been issued.*
- 7. That Hon'ble Court in its judgement dated 28.01.1992*



and 19.11.1996 did not approve in principle an automatic upgradation of a workman from one category to another merely because a workman had completed regular continuous service of certain number of years and held that the requirement of trade test wherever prescribed for promotion from one category to another could not be given a go by and in fact had to be adhered to. The Hon'ble High Court has also clarified this fact again in its judgment dated 25.09.1998 and held that the category of unskilled, semi skilled or highly skilled has more relevance to the type of job or the work that is handled and therefore mere work experience of five years in a particular category does not automatically qualify a person to go to the higher ladder.

- 8. That even in the prayer clause the Petitioner is not alleging the contempt of the order dated 28.01.1992 or 19.11.1996. The Petitioner is alleging the violation of judgment dated 25.09.2008 which is incorrect and irrelevant to the subject matter of the present petition and the Award has been fully implemented.*
- 9. The Petitioner has intentionally and deliberately tried to create confusion by concealing the relevant information and judgment from the knowledge of this High Court which has resulted in the wastage of the precious time of this Hon'ble Court and the contempt petition may be dismissed with heavy exemplary cost.*

PRAYER

In view of the above, it is most humbly submitted that this Hon'ble Court may graciously be pleased to dismiss the present contempt petition with heavy exemplary cost in the interest and furtherance of justice."

- 5. At this stage the learned Central Government Standing Counsel*



cannot be heard clearly.

6. Renotify on 24.08.2021.

7. The order be uploaded on the website forthwith.

NAJMI WAZIRI, J

FEBRUARY 24, 2021

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