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

Date of Decision : 17.07.2013

\+ **W.P.(C) 2285-93/2013 and C.M. Appln. Nos.4327/2013, 4329/2013, 4331/2013, 4333/2013, 4335/2013, 4338/2013, 4340/2013, 4342/2013 & 4344/2013**

THE HONG KONG AND SHANGHAI BANKING CORP LTD ..... Petitioner

Through: Mr. Sumit Bansal, Mr. Ateev Mathur, Mr. Rajnish Gaur, Ms. Sumi Anand and Ms. Richa Oberoi, Advocates

versus

ANJU BALA GUPTA & OTHERS ..... Respondents

Through: Mr. Om Prakash Sharma, Advocate

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

JUDGMENT

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred the present writ petition to assail the order dated 14.03.2013 passed by the Presiding Officer Dr. R.K. Yadav of the Central Government Industrial Tribunal cum Labour Court I, New Delhi (CGIT/Tribunal).

2. A little background of the relevant facts is necessary. The respondent was employed with the petitioner on 01.11.1978. The petitioner came out with a Voluntary Retirement Scheme (VRS) on 01.07.2003. The respondent opted for voluntary retirement under the said scheme and was relieved from

service on 31.08.2003.

3. The lump sum amounts payable to the respondent was paid by the petitioner bank. She has also been receiving her pension from the petitioner. Much after the respondent had severed her relationship with the petitioner bank, the management of the petitioner bank entered into a Bipartite Settlement with the employees on 02.06.2005. However, the same was applicable w.e.f. 01.11.2002. Accordingly, the petitioner bank paid the arrears of the difference between the salary already received by the respondent and the revised salary, as well as the component of gratuity and provident fund on the basis of the revised salary. However, the respondent was not granted any revision of pension, or arrears on that account which is what lead her to prefer her petition under Section 33-C (2) of the Industrial Disputes Act, 1947 (The Act) before the CGIT.

4. The petitioner raised the preliminary objection to the maintainability of the said petition on the ground that there was no pre-existing right on the basis of which the said petition had been preferred. It was claimed that for a petition to be maintainable under Section 33-C(2) of the Act, it was necessary that there existed a prior adjudication or settlement of a claim. The CGIT does not function as an Adjudicating Authority while dealing with a petition under Section 33C(2). Rather, it functions like an Executing Court. The preliminary objection raised by the petitioner before the CGIT was that the respondent was seeking to re-write the terms of the VRS offered by the petitioner bank in the year 2003 under which the respondent had derived the benefits. It was submitted that the CGIT, in any case, could not have adjudicated upon the said claim under Section 33C(2).

5. The CGIT framed the issues on 14.11.2011. After framing three issues, the CGIT observed as follows:

> *"On the written statement, objections are taken that claims under various heads are not based on existing rights. Those objections are incidental to issue No.1 and would be adjudicated while answering that issue. The management may raise those propositions at the time of arguments and no issue is required to be settled on those objections."*

Thereafter the matter was adjourned for evidence being led by the parties.

6. It appears that the petitioner also moved an application on 02.12.2011 before the CGIT for the issue with regard to maintainability of the respondent's petition being decided. While dealing with this application on 23.12.2011, the CGIT made the following observation:

> *"It is a settled proposition of law that the claimant is not entitled to get his disputed claims settled, by way of petition under section 33-C(2) of the Industrial Disputes Act, 1947 (in short the Act). It is pointed out to Shri Gupta that disputed claims are beyond the purview of Section 33-C(2) of the Act and would be discarded at the time of final adjudication. The management is also assured that the claims which are not maintainable would not and cannot be taken for adjudication."*

7. From the above it appears that the CGIT recognised the position that, at least a part of the grievances raised in the respondent's petition were beyond the scope of enquiry permissible in proceedings under Section 33-C(2) of the Act. An assurance was also given to the petitioner that such of the claims which are beyond the pale of Section 33-C(2), shall not be taken up for adjudication.

8. On or about 19.06.2012, the respondent moved two applications – one for leading additional evidence and the other for production of additional documents by the petitioner. These applications were opposed by the petitioner and were disposed of, by the two orders of the same date, i.e., 19.07.2012. In the operative part of the order dated 19.07.2012 passed on the respondent's application for production of documents by the petitioner, the CGIT directed as follows:

> *"16. In view of reasons detailed above, it is ordered that claimant is not entitled for details of break up of amount paid in 2005 to other similarly placed employees as well as Gratuity Rules. His request for supply of these documents cannot be granted. However, request for production of the documents, other than break up amount paid to similarly placed employees for the year 2005 and Gratuity Rules, is to be accepted. Bank, therefore, is called upon to produce those documents on the next date of hearing positively. With these observations, application stands disposed off. Announced in open court on 19.07.2012."*

9. At that stage, the petitioner approached this court by filing W.P.(C.) No.5832/2012. The grievance of the petitioner was that the respondents application under section 33C(2) was, itself, not maintainable and, therefore, the petitioner could not be directed to produce documents and furnish information as sought by the respondent. Detailed submissions were made by the parties with regard to the scope of the proceedings under section 33C(2) of the Act. The claims made by the respondent under that provision before the CGIT were also examined-claim by claim. The grievances raised by the respondent were also examined one by one.

10. After considering the scope of the proceedings under section 33C(2) of the Act, in the light of the judgment of the ***Central Inland Water Transport Corporation Limited Vs. The Workmen and Another****, (1974) 4 SCC 696*, this Court held as follows:

> *"26. .... As to whether or not the mere revision of pay scale and payment of arrears of pay, gratuity and provident fund would also call for revision of pension – particularly in the face of Clause 13 and Clause 3 of the General Terms & Conditions as extracted above, is an issue which would need adjudication. Similarly, whether there is discrimination and, if so, whether it is actionable, are issues which require adjudication. So as not to prejudice the case of either of the parties, this Court is refraining from making any comment on the same at this stage. However, there can be no doubt that the relief sought by the respondent is premised on the annulment of Clause 13 and Clause 3, as aforesaid. In the teeth of these clauses, the relief of revision of pension certainly cannot be granted. The said dispute raised by the respondent would require independent adjudication. The respondent has itself stated in her petition that Clause 3 has become redundant in view of her submissions made in the petition. This clearly shows that the respondent is seeking to justify her claim not on the terms & conditions of the settlement, but de hors and, rather contrary to the said terms & conditions. The aforesaid issues raised by the respondent can certainly not be said to be incidental to the VRS/settlement between the parties. It cannot be said that the respondent is merely seeking to execute or enforce the settlement through the process under Section 33-C(2) of the Act. The respondent is, in fact, seeking to establish her right to relief by raising the aforesaid issues and is also seeking the determination of the issue of the petitioner's corresponding liability. These are well beyond the scope of an incidental enquiry that may be undertaken in enforcement or execution proceedings in respect of a pre-determined right in a settlement or adjudication.*

27. Pertinently, the CGIT has appreciated this aspect – as is evident from the order dated 23.12.2011 extracted above. However, the CGIT has not separated the claims/issues which fall within the scope of an enquiry under Section 33-C(2) and those which fall beyond it. In my view, this is a fallacious approach because, by not doing so, further enquiry/proceedings for leading additional evidence/production of documents would unnecessarily be undertaken even in respect of issues/claims which fall beyond the scope of enquiry under Section 33-C(2) of the Act. The approach of the CGIT could not be to gather evidence/information even beyond the scope of the enquiry before it, and then to discard a part of it later. The CGIT should not have postponed the segregation of the issues/claims beyond its jurisdiction under Section 33-C(2) but dealt with the said objection at the earliest to limit the scope of its enquiry to cover those aspects which fall within its jurisdiction. Of course, if there is an aspect on which a firm view cannot be taken, i.e., whether, or not, it falls within the scope of enquiry under Section 33-C(2) of the Act, without evidence being recorded, the CGIT should observe so and in that eventuality, it may postpone the determination of the issue of jurisdiction till after the evidence is recorded. However, this aspect should receive consideration from the Tribunal at the earliest so as to curtail unnecessary proceedings, expense of time and expense.

28. There are a couple of aspects which appear to fall within the scope of the enquiry permissible under Section 33-C(2) of the Act. I now proceed to deal with them.

29. The first grievance of the respondent stems out of the settlement inasmuch, as, the respondent is seeking information with regard to the detailed break up of the amounts computed and paid by the petitioner at the time when she was granted VRS. There can be no doubt that the respondent is entitled to the said information.

30. Similarly, her grievance number six, as aforesaid, in relation to the manner in which TDS has been deducted from the amount already been paid to her or being paid to her,

appears to be justified and the petitioner cannot deny the said information.

31. As noticed above, the seventh grievance is a general grievance in relation to which there can be no general direction. However, all the other grievances raised by the respondent stem out of her primary submission that Clauses 13 & 3 of the VRS/settlement do not bind her. As aforesaid, these are grievances which cannot be remedied under Section 33-C(2) of the Act and the respondent would have to, if she is so advised, seek a reference of the said disputes under Section 10 of the Act.

32. Accordingly, I dispose of this petition in the aforesaid terms with the direction that the CGIT shall examine the claim for production of documents by the petitioner in the light thereof."

11. The aforesaid judgment dated 01.02.2013 in W.P.(C.) No.5832/2012 was placed before the CGIT on 07.02.2013. Thereafter, the impugned order has come to be passed. I consider it appropriate to reproduce the impugned order in its entirety. The same reads as follows:

"*Information is furnished by the management to the claimant, in pursuance of order dated 01.02.2013 passed by High Court of Delhi. Shri Gupta presents that on supply of the above information, nothing remains to be computed in terms of money in favour of the claimant. Shri Sharma dispels the submissions. I have gone through the petition, moved under section 33-C(2) of the Industrial Disputes Act, 1947 (in short the Act), written statement filed by the management and order dated 01.02.2013 passed by High Court of Delhi. In the claim statement in grievance No. 4 a claim is made for revision of pension, on enhancement of pay in terms of clause (5) of 7th Bipartite Settlement. Enhancement of pay of the claimant, with retrospective effect, is not a matter of dispute. Arrears have already been paid. But her pension was not enhanced. In its*

written statement, the management claims that such a claim requires adjudication, which is not permissible under the provisions of section 33-C (2) of the Act.

In its order dated 1.2.2013 High Court of Delhi considered the issue as to what information is to be furnished by the management to the claimant. The High Court was hearing a writ petition against the order dated 19.07.2012, on the strength of which this Tribunal commanded the management to produce documents, detailed in that order. During the hearing of that petition, the High Court considered the petition under section 33-C (2) of the Act and written statement filed by the management. Scope of powers of this Tribunal, while dealing with a petition under section 33-C (2) of the Act was also noted by the High Court. There is no two opinion that a workman cannot put forward a claim in a petition under section 33-C (2) of the Act, which is not based on an existing right, that is to say already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between an industrial workman and his employer.

While adjudicating the writ petition, the High Court noted that since claim for revision of pension was disputed one it cannot be adjudicated in the present petition, moved under section 33-C (2) of the Act. For reaching that conclusion, the High Court noted the facts projected before it by the management. Wrong facts were placed before the High Court by the management with a view to mislead the Court. In para 18 of the petition, the claimant gives the list of the persons, whose pension was revised by the management despite the fact that they also took VRS under the very scheme, which was opted by the petitioner/claimant. In its written statement, the management adopted an eerie silence on those facts. The management opted not to speak about the case of those seven employees who sought VRS under the scheme and subsequently their pension was revised. By its stand taken, the management is deemed to have admitted those facts. When these facts are taken into consideration, it emerges that

the claim of "revision of pension" was already provided for. The High Court was misled when it recorded facts, in the above order, to the effect that claim for revision of pension was disputed one. In order, referred above, reasoning detailed was based on wrong facts, placed by the management. Therefore, it is apparent that claim of "revision of pension" is already provided for and falls within the ambit of section 33-C (2) of the Act. Hence submissions of Shri Gupta, that nothing remains to be adjudicated in the matter, are uncalled for." (emphasis supplied)

12. The submission of Mr. Bansal, learned counsel for the petitioner is that the impugned order flies in face of the inter partes judgment of this court dated 01.02.2013, which has attained finality as the parties have accepted the same. He submits that the impugned order is completely contrary to the judgment of this court, whereby this court had allowed the tribunal to proceed only in respect of two aspects of the respondents grievances, which stemmed out of the settlement between the parties. The first was with regard to the respondent seeking information about the detailed breakup of the amount paid by the petitioner at the time when she was granted VRS, and the second was in relation to the manner in which TDS had been deducted from the amount already paid to the respondent, or being paid to her. It is only in respect of these two aspects that the court had held that the proceedings under section 33C(2) of the Act were maintainable. In respect of all other grievances and claims, this court had concluded that those grievances and claims could not be raised in proceedings under section 33C(2) of the Act, since the said grievances and claims required adjudication, whereas the proceedings under section 33C(2) of the Act are in the nature of execution proceedings.

13. Mr. Bansal submits that, with a view to overreach the judgment of this court, the CGIT has observed that "*wrong facts were placed before the High Court by the management with a view to mislead the court*". The CGIT further observed that in para 18 of the claim petition preferred by the respondent under section 33C(2) of the Act, the claimant has given the list of persons whose pension was revised by the management despite the fact that they also took VRS under the very same scheme which was opted for by the respondent/claimant. Learned counsel submits that it was not for the CGIT to conclude that any wrong facts were placed before this court or accepted by this court, while rendering its decision on 01.02.2013 in W.P.(C.) No.5832/2012. The said judgment was passed after hearing the counsel for both sides, and the parties had accepted the decision of this Court. The respondent had not assailed the decision dated 01.02.2013 either in review or in appeal, much less on the ground that this Court had been "misled" by the Petitioner into giving the said decision.

14. Mr. Bansal submits that assuming that the respondent was not satisfied with the judgment dated 01.02.2013 in W.P.(C.) No.5832/2012, it was for the respondent to assail the said judgment in appeal. The respondent accepted the said decision, and did not assail the same. Learned counsel points out that this court has specifically dealt with the grievance of the respondent of her being discriminated in para 26 of the judgment dated 01.02.2013, by observing:

> "*Having heard learned counsel for the parties, I am of the view that the grievance of the petitioner with regard to the maintainability of the respondent's petition under Section 33-C(2) largely is well-founded. What the respondent is seeking by*

filing the said petition, primarily, is to seek the annulment of the terms & conditions of the VRS/settlement – particularly Clause 13 and Clause 3 of the General Terms & Conditions, as set out hereinabove. The respondent is seeking the said annulment, inter alia, on the basis of subsequent Bipartite Settlement, whereby the pay scales were revised retrospectively from the date when the respondent was still in service. As to whether or not the mere revision of pay scale and payment of arrears of pay, gratuity and provident fund would also call for revision of pension – particularly in the face of Clause 13 and Clause 3 of the General Terms & Conditions as extracted above, is an issue which would need adjudication. Similarly, whether there is discrimination and, if so, whether it is actionable, are issues which require adjudication. So as not to prejudice the case of either of the parties, this Court is refraining from making any comment on the same at this stage. However, there can be no doubt that the relief sought by the respondent is premised on the annulment of Clause 13 and Clause 3, as aforesaid. In the teeth of these clauses, the relief of revision of pension certainly cannot be granted. The said dispute raised by the respondent would require independent adjudication. The respondent has itself stated in her petition that Clause 3 has become redundant in view of her submissions made in the petition. This clearly shows that the respondent is seeking to justify her claim not on the terms & conditions of the settlement, but de hors and, rather contrary to the said terms & conditions. The aforesaid issues raised by the respondent can certainly not be said to be incidental to the VRS/settlement between the parties. It cannot be said that the respondent is merely seeking to execute or enforce the settlement through the process under Section 33-C(2) of the Act. The respondent is, in fact, seeking to establish her right to relief by raising the aforesaid issues and is also seeking the determination of the issue of the petitioner's corresponding liability. These are well beyond the scope of an incidental enquiry that may be undertaken in enforcement or execution proceedings in respect of a pre-determined right in a settlement or adjudication."

15. Mr. Bansal points out that the observations made by the CGIT that in its written statement the petitioner management had adopted an eerie silence in respect of the allegation of the discrimination are also contrary to the record. Reference has been made to the written statement of the petitioner management filed before the CGIT and in particular para 2 of the preliminary objections and the parawise reply to para 5.4. Para 2 of the preliminary objections reads as follows:

> "*It may further be noted that at the time when VRS Scheme was implemented, some of the employees who opted for VRS were already vested with the right of pension and some of the employees who opted for VRS were not vested with the right of pension. All such employees who were vested with the right of pension at the time of VRS and when granted VRS are enjoying the benefit of revision of pension, as well, but, the employees who were not vested with pension but were still given the pensionary benefits by way of the terms of VRS, will not be entitled for any revision or other benefits. A complete reading of the scheme of VRS will make it abundantly clear that the employees who were not vested with the right of pension should not have claimed the re-computation or revision of the pension at any future date or time.*"

16. The relevant extract from para 5.4 of the parawise reply reads as follows:

> "*The details of the various individuals which have been given vide para 5.4, and the amounts mentioned against them are incorrect and not borne out by records. No such amount, as indicated, was paid to them and moreover, these persons are differently placed than the petitioner. Therefore, the element of discrimination which is being raised is misplaced and without any basis. The amounts mentioned against each one of them are not admitted to be correct*."

17. Mr. Bansal points out that there was no basis for the CGIT to observe that the management did not speak about the case of the seven employees who sought VRS under the scheme and subsequently their pension was revised. There was no basis to conclude that the reasoning was based on wrong facts alleged by the respondent/claimant. In any event, once this court had confined the scope of the enquiry before the CGIT under section 33C(2) of the Act, it was not open to the tribunal to expand the scope on its own. Learned counsel submits that in the second last paragraph of the impugned order, once again the tribunal has observed that *"the High Court was misled when it recorded facts, in the above order, to the effect that claim for revision of pension was disputed one. In order, referred above, reasoning detailed was based on wrong facts, placed by the management."*

18. Mr. Bansal also submits that the conduct of the CGIT in passing the impugned order tantamounts to criminal contempt as defined in section 2(c) of the Contempt of Courts Act, 1971, (CCA in short) which is, inter alia, defined to mean doing of any act whatsoever which interferes or tends to interfere with or obstruct or tends to obstruct, the administration of justice in any manner.

19. Mr. Bansal submits that under section 16 of the CCA, a judge, magistrate or any person acting judicially shall also be liable for contempt of his own court, or any other court in the same manner as any other individual is liable under the provisions of the CCA, as far as applicable.

20. Mr. Bansal submits that the impugned order is a result of blatant and conscious disobedience of the judgment of this court by the CGIT. Despite

a clear direction of this court to limit the scope of enquiry under section 33C(2) of the Act to only two aspects, the CGIT has sought to expand its scope, even though this court had disapproved of the earlier action of the CGIT in undertaking an enquiry into aspects which fell beyond its scope under section 33C(2) of the Act. Learned counsel submits that the conduct of the CGIT is such is to mar the rule of law and the discipline that all subordinate Courts and tribunals are bound to follow by obeying the orders and judgments passed by this court. He submits that under Article 227 of the Constitution, this court exercises superintendence and supervisory jurisdiction over all courts and tribunals which are subordinate to it, which includes the CGIT.

21. Mr. Bansal has also drawn my attention to Article 215 of the Constitution which states that every High Court shall be a court of record, and shall have all powers of such court, including powers to punish for contempt of itself. In this regard, reliance is placed on the decision of this court in ***Deepak Khosla v. Union of India & Ors.***, 173 (2010) DLT 41 (DB). He submits that by virtue of section 15 of the CCA, this court can take action on its own motion as well, in the case of criminal contempt. He submits that this court should, while disposing of the writ petition on merits, after taking cognizance of the contempt committed by the Tribunal, refer the criminal contempt committed by the tribunal to a Division Bench of this court.

22. Mr. Bansal has also referred to several decisions in support of his aforesaid submissions. He has drawn my attention to ***Sh. Baradakanta Mishra v. Sh. Bhinsen Sen Dixit***, AIR 1972 SC 2266, where the Supreme

Court quoted the extract from the earlier decision in ***East India Commercial Co. Ltd. v. The Collector of Customs, Calcutta***, AIR 1962 SC 1893. Mr. Bansal has specifically relied upon the following extract from the said quotation:

> *"It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceedings in direct violation of it. If a tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working; otherwise there would be confusion in the administration of law and respect for law would irretrievably suffer."*

23. The Supreme Court proceeded to observe as follows in the said decision:

> "*17. Our view that a deliberate and a mala fide conduct of not following the binding precedent of the High Court is contumacious does not unduly enlarge the domain of contempt. It would not stifle a bona fide act of distinguishing the binding precedent, even though it may turn out to be mistaken*."

24. Mr. Bansal submits that the Supreme Court has held in ***B.K. Brar v. Hon'ble the Chief Justice & his companion Judges of the Orissa High Court & Ors.***, AIR 1961 SC 1367 that to constitute contempt of court, it is necessary to show that the subordinate court intentionally disobeyed the order of the superior court. Mr. Bansal submits that disobedience of the judgment of this court by the CGIT is clearly intentional, since the CGIT

was aware and discusses the said decision in the impugned order. Despite it being clearly directed that the enquiry under section 33C(2) of the Act shall be restricted only to two aspects, the CGIT seeks to enlarge the scope of the said proceedings by labelling the submission of the petitioner before this court as misleading and by observing that this court had been misled. He submits that the present is not a case where the CGIT was not aware of the judgment of this court or that there was any scope for any doubt about the interpretation of the said judgment.

25. Mr. Bansal has also placed reliance on the decision of the Madras High Court in ***B. Ramalingam*** - suo motu contempt petition No.782/2005, 2006 (1) CCC 165 (Mad). After referring to several decisions of the Supreme Court and the High Courts, the Division Bench issued the following directions:

> "*24. The following are the directions:*
>
> *(I) When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate Courts to ignore the settled decisions rendered by High Courts and the Supreme Court and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism should be avoided.*
>
> *(II) Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, the humility of function should be a constant theme of Judges. Judicial restraint in this regard might better be called judicial respect; that is, respect by the judiciary.*
>
> *(III) If subordinate judiciary refuses to carry out the*

directions given to it by the superior judiciary in the exercise of its appellate or revisional powers, the result will be chaos in the administration of justice. The appellate jurisdiction inherently carries with it a power to issue corrective directions binding on the forum below. Failure on the part of latter to carry out the directions or show disrespect to the propriety of such directions would be destructive hierarchical system in administration of justice. The seekers of justice and the society would lose faith in both. The subordinate judiciary must bear in mind for ever.

(IV) Any discourtesy shown by the subordinate Courts to a superior Court is bound to involve them in proceedings for contempt. No subordinate Court is entitled to demand of the superior Court the law under which the order has been passed before complying with it. They should strictly comply with the order of High Court and Supreme Court both in letter and spirit. It must be understood by all concerned that any discourtesy or disobedience shown to the orders of superior courts will be visited by this Court with the severest penalties.

(V) In the hierarchical judicial system, it is not for any subordinate court to tell a superior court as to how a matter should be decided when an appeal is taken against its decision to that superior court. Such a course would be subversive of judicial discipline on the bedrock of which the judicial system is founded and finality is attached and orders are obeyed.

(VI) Judicial system requires that clear pronouncements by the High Court, about what the law on a matter is, must be treated as binding on all the subordinate courts. Where the High Court has stated that the law laid down in a particular case is the applicable law, it is not open to the subordinate court to consider or rely on any supposedly conflicting decisions from any other High Court, our High Court's decision is binding on all the subordinate judiciary in Tamil Nadu and Pondicherry."

26. Mr. Bansal submits that by passing the impugned order, the CGIT has made a mockery of judicial process, which would have its pernicious influence beyond the parties, and affect the interest of the public in the administration of justice. He places reliance on the following observation made by the Supreme Court in ***Advocate General, State of Bihar v. Madhya Pradesh Khair Industries & Anr.***, (1980) 3 SCC 311:

> *"While we are conscious that every abuse of the process of the court may not necessarily amount to contempt of court, abuse of the process of the court calculated to hamper the due course of a judicial proceeding or the orderly administration of justice, we must say, is a contempt of court. It may be that certain minor abuses of the process of the court may be suitably dealt with as between the parties, by striking out pleadings under the provisions of Order 6 Rule 16 or in some other manner. But, on the other hand, it may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and effects the interest of the public in the administration of justice. The public have an interest, an abiding and a real interest, and a vital stake in the effective and orderly administration of justice, because, unless justice is so administered, there is the peril of all rights and liberties perishing. The court has the duty of protecting the interest of the public in the due administration of justice and, so, it is entrusted with the power to commit for contempt of court, not in order to protect the dignity of the court against insult or injury as the expression "Contempt of Court" may seem to suggest, but, to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with. "It is a mode of vindicating the majesty of law, in its active manifestation against obstruction and outrage." [Per Frankfurter, J. in Offutt v. U.S.(1954) 345 US 11] "The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope."*

27. On the other hand, learned counsel for the respondents has sought to justify the impugned order primarily by seeking to reargue the scope of section 33C(2) of the Act which already stands adjudicated finally *inter se*, the parties vide judgment dated 01.02.2013. The submission of learned counsel for the respondent is that the claim for revision of pension arises out of the eighth bipartite settlement and, therefore, it requires no further adjudication. He has also tendered in court a compilation of judgments of which he has only referred to the first judgment in the case of ***Tata Iron & Steel Co. Ltd. v. CGIT, Dhanbad & Ors.***, 1966 1 LLJ 759, where the High Court had held that on the question, as to whether the tribunal should not have disposed of the application on merits under Rule 22 of the Central Rules was a question of the discretion of the tribunal, and the High Court in exercise of its extraordinary jurisdiction under Article 226 and 227 of the Constitution, does not interfere with the exercise of that discretion by the lower courts or tribunals.

28. Having heard learned counsels for the parties, perused the impugned award and the judgment of this court in WPC No.5838/2012 dated 01.02.2013, it is abundantly clear to me that the impugned order is patently laconic and cannot stand scrutiny even for a moment. I have already extracted herein above the relevant extract from the decision dated 01.02.2013. The said decision shows that the court was conscious of and applied its mind to the aspect whether the claim for revision of pension on account of retrospective revision of pay scale and payment of arrears, gratuity and provident fund could be dealt with in proceedings under section 33C(2) of the Act, or not. The court had observed that the said aspect would

need adjudication, particularly in the face of clauses 13 and 3 of the general terms and conditions. Pertinently, the respondent had claimed in its application under section 33C(2) of the Act that clause 3 had become redundant in view of her submission made in the application/petition. Therefore, this court had come to the conclusion that it could not be said that by raising the claim for revision, the respondent was merely seeking to execute or enforce the settlement through the proceedings under section 33C(2) of the Act. This court had concluded that the respondent was seeking to establish her right to relief by raising, inter alia, the aforesaid aspect of revision of pension and also seeking determination of the issue of petitioners corresponding liability.

29. In the face of the clear findings returned by this court, which have been accepted by the respondent inasmuch, as, the respondent did not chose to challenge the judgment dated 01.02.2013, it did not lie in the mouth of the respondent, much less the tribunal, to claim that the petitioner had misled this court or that this court had been misled into returning the said finding. Whether, or not, this court had been misled or erred in returning its decision could not have been examined by the tribunal, or pronounced upon as done by it. The said issue could have been raised only in an appeal before a higher forum. What the CGIT has done is to sit in judgment over the decision dated 01.02.2013; conclude that the same is a result of the court being misled, and; to blatantly disregard the same.

30. I also find merit in the petitioners submission that the CGIT while passing the impugned award has erred on record since it has been observed that the petitioner has maintained an eerie silence, even though that is not

the position on facts.

31. It is not open to the respondent to seek to reopen the issues concluded by the judgment dated 01.02.2013 in the process of defending the impugned order as sought to be done by her. I, therefore, reject the submission of learned counsel for the respondent that the claim for revision of pension stemmed out of the bipartite agreement, and that it required no further adjudication and it merely required re-computation.

32. Reliance placed on the decision in ***Tata Iron & Steel*** (supra) has no relevance whatsoever. The court, in that case, was primarily dealing with the issue whether the tribunal had the jurisdiction to dismiss the application of the employer under section 33(2)(b) of the Act for non prosecution, if the employer is not present on date on which it is fixed for hearing. The further question examined by the court was; when that where tribunal has exercised such jurisdiction, whether the High Court would be justified in interfering with exercise of such discretion under Article 226 and 227.

33. It is well settled that while exercising its writ jurisdiction, this court does not sit as an appellate forum to undertake judicial review of quasi judicial orders. However, it does not preclude this court from exercising its jurisdiction to interfere with the orders passed by the tribunal and quasi judicial bodies where it appears to the court that the tribunal has, inter alia, acted beyond its jurisdiction.

34. The present is clearly a case where the tribunal has exceeded its jurisdiction and, therefore, interference by this court would not only be justified but is also called for with a view to keep the tribunal in check,

maintain the rule of law and in the interest of justice. Accordingly, the impugned order is quashed and set aside. The writ petitions stand disposed of.

35. The conduct of Dr. R.K. Yadav CGIT who has passed the impugned order, prima facie, appears to be contumacious in the light of several decisions relied upon by the petitioner. Prima Facie, it appears that his conduct not only amounts to civil contempt inasmuch, as, it appears to be wilful disobedience of the judgment of this court aforesaid, but also amount to criminal contempt since his conduct may amount to interference with the administration of justice.

36. I would not like, at this stage, to dwell on this aspect in any greater detail, since I consider it appropriate to issue notice to Dr. R.K. Yadav, Presiding Officer, CGIT, requiring him to show cause as to why proceedings for contempt of the decision dated 01.02.2013 in WP (C) No. 5832/2012 be not initiated against him. The Registry is directed to appropriately open a fresh file with the title "Court of its own Motion V. Dr. R. K. Yadav Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi" and number the same. A copy of the decision dated 01.02.2013 in WP (C) 5832/2012 and the order dated 14.03.2013 passed by Dr. R. K. Yadav be placed in the said file along with this order, and the same be also served upon him. The notice be made returnable on 26.08.2013. The Contempt petition be placed before the appropriate bench as per roster, subject to orders of Hon'ble the Acting Chief Justice.

VIPIN SANGHI, J.

JULY 17, 2013 sr