

Lt. Col. K. D. Gupta

Vs

Union of India and Another

Contempt Petition No. 16 of 1989 in Civil Appeal No. 1702 of 1987

(M. M. Dutt, Ranganath Misra JJ)

03.08.1989

ORDER

1. This Court by its order dated March 31, 1989 (1989 Supp 1 SCC 416, 422), directed :

We direct that the amount of Rs. 4 lakhs be paid to the petitioner within two months and the petitioner may be released from the defence service in accordance with any decision that may be taken on his request for such release.

2. On the allegation that instead of Rs. 4 lakhs, payment of Rs. 2,80,000 has been made and that too not within the time fixed, the present application for initiating contempt action has been filed.

3. Notice was issued and we have heard petitioner in person and Mr. Ramaswamy, learned Additional Solicitor General for the respondents. No serious notice need be taken of the allegation of non-compliance within the time. It appears that the notified bank of the petitioner was credited with the money (Rs. 2,80,000) and its intimation was given to the petitioner, as he maintains, late.

4. We see no justification to initiate any contempt proceeding against the respondents for withholding a sum of Rs. 1,20,000 but of the sum of Rs. 4 lakhs directed to be paid to the petitioner. Rs. 1,20,000 has been withheld on the plea that under Chapter XVII of the Income Tax Act of 1961, the Union of India has the obligation to deduct income-tax at source. The intention of the payer in the facts of the case for withholding the amount cannot be held to be either mala fide nor is there any scope to impute that the respondents intended to violate the direction of this Court.

5. The order of March 31, 1989 indicated (SCC p. 421, para 11)

The defence personnel have peculiar incidence of service. Life's course does not run smoothly for everyone. In the present proceeding which is for contempt, we do not think that we can award compensation under every head of claim. Some of factors relevant for such purpose are the duration of time for which the petitioner was subjected to various medical checks and hospitalisation, and the consequent suffering which he underwent, the loss of promotional prospects and the fact that he would now be obliged to request to be released from service prematurely This judgment should serve the petitioner in vindication of his stand and to dispel clouds cast on his physical and mental health by the purported lower medical categorisation and obviously in the event of his being considered for reemployment after retirement his suitability would be considered on the basis of his service records and the judgment of this Court.

The extracted portion of the judgment clearly indicates that the payment of Rs. 4 lakhs was not in

consideration of shortening of the duration of service nor was any part of Rs. 4 lakhs intended to be towards salary. We, however, express no final opinion on this aspect of the matter and we would leave it to the Taxing Officer to decide the question as and when it would arise. The petitioner contended in the course of the hearing that the legal position is well-settled that if the payment is not related to salary and does not represent a sum in lieu of wages it should be taken as a capital receipt not constituting income and, therefore, would not be liable to tax. The view indicated by the author in the book entitled The Law and Practice of Income Tax (Kanga and Palkhivala) was placed before us in support of the petitioner's stand. He also referred to some decisions but as we do not want to conclude this question and are leaving it for the Income Tax Officer to taken his own view, it is not necessary to refer to them.

6. In the facts of the case, however, we would like to direct the respondents to release the sum of Rs. 1,20,000 to the petitioner and the petitioner is directed to put the said amount into a fixed deposit with a nationalised bank for a minimum period of two years from the date of its receipt, though he is free a keep the amount for a longer time. The petitioner shall make a return to the Income Tax Officer for the assessment year 1989-90 as and when due and within six months of the return being filed, the Income Tax Officer concerned shall complete the assessment. He shall be free to examine the question as to whether the amount of Rs. 4 lakhs paid to the petitioner under order dated March 31, 1989 made by this Court constituted income as to make the petitioner liable to tax. In case the said amount is assessed the Income Tax Officer shall be free to collect the money out of the fixed deposit amount. Payment made under order of this Court shall, in the circumstances indicated above, not constitute a violation of the mandatory requirement of Chapter XVII of the Income Tax Act, 1961.

7. We hope and trust that with the disposal of this application, petitioner's appearance before the court would abate.

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