has been reference to Employment Exchange or there has been advertisement as we have held earlier, the petitioner does not get any vested right to continue on the post.

(11) For the foregoing reasons, we find no merit in this writ petition, which is hereby dismissed.

J.S.T.

Before Swatanter Kumar, J.

SATDEV SINGH,—*Petitioner.*

versus

SATWANT REDDY & OTHERS,—*Respondents.*

C.O.C.P. 338 *of* 1996.

The 12th September, 1996.

Contempt of Courts Act, 1971—*S.* 10—*Wilful disobedience—Proof of intentional disobedience is not to be beyond every possible reasonable doubt—Must be inferred from facts of case taken in its entirety.*

Held, that the wilful disobedience of an order of the Court necessarily does not mean that it must in all cases be designed, deliberate act. This has to be inferred from the facts and circumstances of each case. Every person ought to be aware of law and consequences of default to comply with the order of the Court. A civil contempt has to be finely distinguished from a criminal trial. The proof of wilful or intentional disobedience is not to be beyond every possible reasonable doubt. This must and has to be inferred from the facts of the case taken in their entirety.

(Para 9)

Contempt of Courts Act, 1971—*"Apology"—explained.*

Held, that the expression "apology" occurring in this Act was explained by Shri Jaspal Singh, J. in the case of Court of its own *motion* v. *Mr. B. D. Kaushik and others* in the following manner :—

> "Apology is a speech of the heart. Remorse is its seed. It is nourished by atonement and sustained by some spiritual

essence. It is a state of grace. Was it then, an apology ? The sequence of events and the proceedings lay bare the truth. And the truth is that it was not an apology but a force. It stemmed not from the heart but from the teeth."

At this stage it may also be appropriate to refer to the following observations of the Supreme Court in the case of *M. Y. Shareef and another* v. *The Hon'ble Judges of the High Court of Nagpur and others,* (1955) (1) S.C.R. 757 at page 764 :—

"With regard to apology in proceedings for contempt of Court, it is well settled that an apology is not a weapon of defence to purge the guilty of their offence ; nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness."

(Para 14)

Present :

Sarwan Singh, Sr. Advocate assisted with H. L. Bhatia, Advocate, *for the Petitioner.*

M. L. Sarin, A.G. Punjab with Vikas Cuccria, AAG Punjab, *for the Respondent.*

JUDGMENT

Swatanter Kumar, J.

(1) It is the repeated non-compliance of the orders passed by the High Court that has compelled the petitioner to file this petition under Sections 10/12 of the Contempt of Courts Act, 1971 (hereinafter referred to as the Act).

(2) An F.I.R. No. 130 dated 24th April, 1986 was registered at Police Station Nawan Shahr, District Jalandhar against one Mohinder Kumar Dua. Said Mohinder Kumar Dua had fled away from the country and ultimately the police had closed the file as untraced on 25th December, 1986.

(3) The petitioner who was working as Block Primary Education Officer was served with the charge-sheet dated 20th June, 1989 regarding the alleged embezzlement. According to the petitioner, the amount was embezzled by Mohinder Kumar Dua and he had forged the signatures of the petitioner. Mohinder Kumar Dua was working as clerk-cum-cashier in the same office. This charge-sheet was challenged by the petitioner by filing a writ petition and as the petitioner was retired on 31st October, 1992, he had also prayed that his retiral benefits be released to him. This writ petition, being

Civil Writ Petition No. 11361 of 1993 titled as *Satdev Singh* v. *State of Punjab* came up for hearing before the Division Bench of this Court and the Division Bench disposed of the writ petition,—*vide* its order dated 3rd May, 1994. The said order reads as under :—

> "After hearing learned counsel for the parties and perusing the record, this writ petition is disposed of at this stage with a direction to the respondents to get the inquiry against the petitioner completed within a period of three months from the date the petitioner appears before the Inquiry Officer. Learned counsel for the petitioner has assured us that his client shall associate and co-operate in the completion of inquiry. If the petitioner does not co-operate or associate in the inquiry proceedings, the Inquiry Officer shall be at liberty to pass appropriate orders in his absence in accordance with law. The petitioner is further directed to appear before the Inquiry Officer on 16th May, 1994 in his office during working hours."

(4) The petitioner appeared before the Inquiry Officer and the inquiry was concluded and inquiry report was submitted somewhere in June/July, 1994 to the Director, Public Instructions (Primary) Punjab. However, as no final order was passed in spite of the fact that the petitioner had served the notice upon the respondents.

(5) Thereafter the petitioner filed contempt petition before this Court which was registered as COCP 515 of 1995 and that contempt petition was disposed of,—*vide* order dated 7th July, 1995, which reads as under :—

> "Enquiry Officer has completed the enquiry already. The grievance of the petitioner is that no final order is being passed by the Disciplinary Authority in spite of the fact that notice had been served upon the said authority. I find that no violation of the order dated 3rd May, 1994 has been committed by the respondents. It would be desirable that the Disciplinary Authority in this case should pass an order on the basis of notice dated 5th December, 1994 and report of the Enquiry Officer. The respondents are hereby directed to do the needful within a period of three months from the date of the receipt of this order. With these observations, this petition is disposed of."

The petitioner states that the said order dated 7th July, 1995 was served upon the respondents on 11th July, 1995. The respondents did not comply with the direction issued by the Court in the said order. Thus the petitioner was compelled to file the present contempt petition. Notice of the petition was issued to respondent No. 2 i.e. Director Public Instructions (Primary), Punjab Chandigarh,—*vide* a detailed order dated 3rd May, 1996 passed by Shri K. K. Srivastava, J. The respondent filed reply and it is stated in the reply that the petitioner had embezzled a sum of Rs. 63,922 and after submission of enquiry report by the enquiry officer and after passing of the order dated 7th July, 1995 which was served upon them on 20th November, 1995, they passed the order dated 6th June, 1996 directing that as Mohinder Kumar Dua has deposited embezzled amount, the interest thereupon shall be shared by the petitioner and Mr. Mohinder Kumar Dua.

(6) This Court in contempt jurisdiction is not concerned with the merits or demerits of the order dated 6th June, 1996. Even if the Court assumes that the respondents were not served with the copy of the order dated 7th July, 1995 on 11th July, 1995 as stated by the petitioner, but they were served on 20th November, 1995, even then it is an admitted case of violation of the order dated 7th July, 1995. The copy of the order was sent by the High Court and was addressed to the said respondent on 11th July, 1995, independent of the steps taken by the petitioner. The petitioner also served all the respondents in the petition by registered A.D.,—*vide* postal receipts No. 575, 576 and 577. In spite of the fact that all these authorities were duly served with the copies of the order passed by the Division Bench as well as the copy of the order dated 7th July, 1995, the respondents utterly failed to comply with the directions of the Court.

(7) The disobedience to the order of the Court in the present case apparently is intentional and wilful. The respondents have tried to justify the delay by giving an explanation which is quite unsatisfactory and reads as under :—

> "The Procedure for imposing a cut of pension of a retiree is lengthy. Certain formalities have to be completed for imposing a cut of pension of retiree as a punitive measure. After thoroughly consideration in the matter the Punjab Government has decided,—*vide* its Memo No. 10/16/95-4 Edu. 7/11417, dated 28th May, 1995 to recover the interest of the embezzled amount from petitioner and the then clerk of the office of petitioner equally."

Further it has been stated in the affidavit that the dealing assistant of the office did not put up the file to respondent No. 2 and the said official has been charged for his negligence by the competent authority. This explanation itself is not of much help to the respondent. The respondent in his affidavit has not furnished even the name of the said Assistant, copy of the charge-sheet has not been placed on record and the time when it was detected and what steps were taken even thereafter to comply with the direction of the Court. Nothing of this kind has been brought on record. In a petition for contempt, specially when the respondent admits the violation of the order, which is apparently intentional and wilful, onus to prove that there was no intentional and wilful disobedience by the respondent lies upon the respondent and such burden is heavier burden to discharge. The reply is not only inadequate but even lacks the essential facts which ought to have been brought to the notice of the Court with supporting evidence. The respondents had admittedly received the enquiry report somewhere in June/July, 1994 and direction issued in the order dated 3rd May, 1994 of the Division Bench of this Court clearly indicated the completion of proceedings, though no specific direction for passing the final order was issued by the Bench, but obviously the order was sufficiently indicative of the fact that the respondents were expected to act expeditiously as there was specific prayer for release of retiral benefits by the petitioner in the writ petition. The inquiry officer completed the enquiry within two months of the passing of the order of the Division Bench, but respondent No. 2 has taken more than two years to pass an order on the basis of the said enquiry report.

(8) The petitioner was compelled to approach this Court by filing contempt petition earlier and direction was necessitated to the respondents because the order of the Division Bench had not specifically included the direction with regard to passing of the final order. This matter is of common understanding that the Disciplinary Authority even under the rules had to act expeditiously on the basis of enquiry report and have to pass final order in that behalf. The respondents not only failed to act at their own, but also failed to act for a period of 10 months even after the order dated 7th July, 1995 was admittedly served upon them i.e. on 20th November, 1995.

(9) The wilful disobedience of an order of the Court necessarily does not mean that it must in all cases be designed, deliberate act. This has to be inferred from the facts and circumstances of each case. Every person ought to be aware of law and consequences of

default to comply with the order of the Court. A civil Contempt has to be finely distinguished from a criminal trial. The proof of wilful or intentional disobedience is not to be beyond every possible reasonable doubt. This must and has to be inferred from the facts of the case taken in their entirety. The Division Bench of this Court in the case of *Court on its own motion* v. *N. S. Kanswar*, (1), held as under :—

> "If a party who is fully in know of the order of the Court or is conscious and aware of the consequences and implications of the Court's order, ignores it or facts in violation of the Court's order, it must be held that disobedience is wilful. In our view ordinarily it is never practicable to prove the actual intention behind the act or omission. A Court can approach the question only objectively and it may presume the intention from the act done as every man is presumed to intend the probable consequence of his act."

The irresponsible attitude adopted by respondent No. 2 in not even making an effort to comply with the orders of the Court, disentitles respondent No. 2 from any lenient view being taken by this Court. The stand taken by respondent No. 2 that the order of the Court was not brought to his notice, does not inspire much confidence primarily for the reason that the copy of the order was addressed to him by the High Court, was served by the petitioner upon him or his office and even the Secretary to Government of Punjab was served with the copy of the order of the High Court and even notice was issued by the learned counsel on behalf of the petitioner. The notice by registered acknowledgement due was addressed to respondent No. 2 in his official capacity. Thus the order of the High Court ought to have come to the notice of respondent No. 2 not from one source as claimed, but from various sources in the normal course of business of the State. The casual attitude adopted by respondent No. 2 and even other departments of the Punjab Government is clear from the fact that a large number of contempt petitions alleging non-compliance of the orders of the Court are being filed every day in the High Court. These contempt petitions are normally filed by the petitioners after they have served a legal notice through their counsel upon the concerned authority and also annexing thereto or reproducing the order, the non-compliance of which is complained

(1) 1995 (1) R.C.R. 201.

of. It is inact on the part of the Government Departments even thereafter which compels the litigents to approach the Court by filing contempt petitions.

(10) At this stage, I consider it necessary to refer to some earlier orders of this Court passed after contempt petitions. In those petitions though there was apparent violation of orders of Court, still the Court had declined to pass punitive orders. This was primarily for the reason that a definite assurance was given to the Court by the respondents who were present in Court and as well the counsel appearing on their behalf that appropriate steps are being taken to ensure timely compliance of the orders of the Court. But unfortunately default on the part of the respondents still persists. In no contempt till aoday it has been brought to the notice of the Court what steps were taken by various departments of the State in furtherance to the aforesaid assurance given to the Court. The State, its highly placed officers and every employee of the State undoubtedly has a duty to comply with the directions of the Court. The disobedience on their part at some point of time has to be viewed seriously. It will be unfortunate if responsible officers of the State attempt to find ways and means to circumvent the orders of the Court, as it would amount to denial of justice to the petitioner who has been granted relief by the Court. I would like to refer to the following observations of Salmon. L.J. in *Jennison* v. *Baker* (2) :—

> "The power exists to ensure that justice shall be done. And solely to this end it prohibits acts and words tending to obstruct the administration of justice. The public at large, no less than the individual litigent, have an interest, and a very real interest, in justice being effectively administered. Unless it is so administered, the rights and indeed the liberty, of the individual will perish."

In this very judgment Edmud Davies, L.J. also made the following observations reproduction of which would be appropriate :—

> "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."
>
> xx xx xx

(2) 1972 (1 All E.R. 997).

".....and if indeed it be the case that she has to go unpunished for her contumacy, justice vanishes over the horizon and the law is brought into disrepute."

(11) Proper and timely measures must be taken to ment the functioning and making it effective to comply the orders of the Court without fail.

"COCP No. 547 of 1995.

Present :—Petitioner in person.

Mr. Vikas Cuccria, AAG, Punjab.

.....

There is no justification for the respondents not to have complied with the order of the Court dated 31st March, 1995. No reply has been filed on record. Adjournment for this purpose was taken on 16th May, 1995 and 25th May, 1995.

It is a matter of regret that the authorities are taking the order of the Court as a routine office work of their office and do not realise the rights which are vested in a party in whose favour the Courts have passed appropriate orders."

"COCP 472 of 1996

Present :—Mr. Kapil Kakkar, Advocate, Mr. Vikas Cuccria, AAG., Punjab.

Both the respondents-contemner are present in Court. They have filed affidavits in furtherance to the orders of this Court dated 31st July, 1996. They have explained before the Court that there are some practical difficulties with regard to getting sanction from the Finance Department.

.....

In view of the unconditional apology tendered, more so the assurance given by these officers in person in Court today alongwith the affidavits filed, I consider it appropriate that another chance be given to these contemners to improve the working and to comply with the orders of the Court and not impose punishment upon them at this stage."

"COCP No. 602 of 1995.

Rajinder Singh v. *P. Ram and another.*

....

....

.....In various petitions this Court has observed from time to time that the Government or its departments or instrumentality must act expeditiously as per the orders of the Court and if the time is postulated, it must adhere to the schedule. Whenever there are reasonable obstructions or difficulties in complying with the order of the Court, there could be no justification for not approaching the Court in time for extension of time."

Reference to these facts has become necessary in view of the vague reply filed by the respondents even in this petition. The cause for delay is identical to the previous cases that the order of the Court was not brought to their notice. Another factor which has to be considered by the Court is that the respondents inspite of service of order of the Court upon its various departments and through various channels, even failed to move the Court for extension of time for complying with the directions of the Court. This effort was not made by the respondents even after the notice in the present petition was served upon the respondents. It is this attitude of the respondents which forces the litigent to approach the Court time and again with the prayer that orders of the Court be directed to be complied with.

(12) Even before filing the earlier contempt petition, the petitioner through his counsel had served a notice upon respondent No. 2 notiyfing that the order on the basis of enquiry report, should be passed within 15 days and further notified the said rsepondent that contempt petition would be filed against him which resulted in filing of earlier contempt petition No. 515 of 1995. The stand taken by the respondent does not inspire confidence. Once disobedience of an order is committed which is founds to be wilful and intentional in the facts and circumstances of the case, then tendering of an apology and raising of such a plea can at best be of some consideration only in awarding the punishment.

(13) In the reply filed on behalf of the respondent meaningless apology has been tendered in the following words :—

"It is humbly prayed that the answering respondent has always obeyed the orders of this Hon'ble Court. I have on

no occasion disobeyed the orders of this Hon'ble Court and any other Court either knowingly or unknowingly. However, if any, order may not have been understood in its true sense, I tender my unconditional apology for the same. Keeping in view the position above, it is again humbly prayed that the present COCP may kindly be dismissed."

The Court finds that this apology has been offered in the above language more as a measure of avoiding the consequences of violation of the order of the Court, rather than sincere regret and assurance to the Court that such violation would not reoccur. The apology is neither *bona fide* nor honest in its spirit and substance.

(14) The expression "apology" occurring in this Act was explained by Shri Jaspal Singh, J. in the case of *Court of its own motion* v. *Mr. B. D. Kaushik and others* (3), (Full Court) at page 341, in the following manner :—

"Apology is a speech of the heart. Remorse is its seed. It is nourished by atonement and sustained by some spiritual essence. It is a state of grace. Was it then, an apology ? The sequence of events and the proceedings lay bare the truth. And the truth is that it was not an apology but a farce. It stemmed not from the heart but from the teeth."

At this stage it may also be appropriate to refer to the following observations of the Supreme Court in the case of *M.Y. Shareef and another* v. *The Hon'ble Judges of the High Court of Nagpur and others* (2) S.C.R. 757 at page 764:—

"With regard to apology in proceedings for contempt of Court, it is well-settled that an apology is not a weapon of defence to purge the guilty of their offence ; nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness."

(15) Offering of justification on the one hand by shifting the blame to a dealing assistant for not putting up the file for a period of one year and without whispering a word about the fate of the

(3) 1991 (4) Delhi Lawyer 316.
(4) 1955 (1) S.C.R. 757.

orders which obviously were sent to the respondents through various channels by no stretch of imagination can be said to be a *bona fide* and then offering an apology in a routine manner cannot be said to be compatible. The justification and apology can hardly go hand in hand.

(16) In view of the above discussion, I have no hesitation in holding that respondent No. 2 is guilty of contempt of Court. There is wilful and intentional disobedience of the order of the Court dated 7th July, 1995. Such violation has even interferred with the administration of justice. The respondent No. 2 as such is liable to be punished. However, keeping in view the facts and circumstances of this case, I feel that it would serve ends of justice if the respondent No. 2 is directly only to pay a fine of Rs. 2,000 in this petition. Ordered accordingly. This contempt petition is accordingly allowed with costs which are assessed at Rs. 1,500. These costs would be paid initially by the Department but would be ultimately recovered from the erring officer/official and enquiry in this regard shall be completed within six months from the date of this order.

J.S.T.

Before G. S. Singhvi & M. L. Singhal, JJ.

RAJ PAL & OTHERS,—*Petitioners.*

versus

THE STATE OF HARYANA & OTHERS,—*Respondents.*

C.W.P. No. 3080 of 1996.

18th October, 1996.

Constitution of India, 1950—Arts. 14 & 16—Haryana State Minor Irrigation and Tubewell Corporation Limited employees Service Bye-laws, 1980—Part V, para 5.1—Grant of benefit of revised pay scales—Board of Directors of HMITC resolving to implement revised pay scales with effect from 1st May, 1990—Resolution confirmed by Board on 17th March, 1992—Board, however, referring its decision to Standing Committee of Bureau of Public Enterprises for formal approval before implementation—Bureau granting formal