

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CACP : 6 of 2015
Date of Decision : November 30, 2015**

Dr. Himmat Singh Ratnoo	Vs.	Appellant
Kaptan Singh Solanki and others		Respondents

**CORAM : HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE GURMIT RAM**

Present : Mr. Naveen Kumar, Advocate
for the appellant.

T.P.S.MANN, J.

By way of the present appeal filed under Section 19(1)(a) of the Contempt of Courts Act, 1971, the appellant has challenged the order dated 31.8.2015 (Annexure P1) passed by learned Single Judge, whereby the contempt petition (COCP No. 2216 of 2015) filed by him for summoning and punishing the respondents for willful disobedience of order dated 31.10.2013 read with order dated 18.2.2014 was disposed of by holding that there was no ground to proceed against the respondents.

The appellant had filed suit for declaration and mandatory injunction against the action of the Maharishi Dayanand University (for short 'the MDU'), Rohtak, to pay increments and other admissible allowances to him for the period from September 28, 1990 to August 12, 1994 as he had been

awarded Commonwealth Academic Staff Scholarship, for which, he was deputed in U.K. The suit was dismissed, *inter alia*, on the ground that the request (appeal) of the appellant was pending before the Chancellor of the University against the decision of the MDU. Accordingly, the appellant sought directions to the Chancellor of the MDU to decide his appeal dated October 1, 2010 within some stipulated period. The said writ petition was disposed of by the learned Single Judge on 31.10.2013 with a direction to the Chancellor of the MDU to decide the appeal within a period of three months after the receipt of a certified copy of the order by passing a speaking order. Order dated 31.10.2013 was, subsequently, modified by the learned Single Judge on 18.2.2014 by observing that any observation made in the order dated 31.10.2013, will not, in any manner, prejudice his rights to claim adjudication of the pleas taken up in the appeal.

In the contempt petition filed before the learned Single Judge, the appellant pleaded that the writ Court had directed the Chancellor to decide his appeal within a period of three months from the receipt of a certified copy of the order by passing a speaking order but the respondents deliberately delayed the disposal of his appeal by breaching the time limit of three months and also in not passing a speaking order. Accordingly, he sought initiation of contempt proceedings against the respondents.

The said contempt petition came up for preliminary hearing before learned Single Judge on 31.10.2015, when after hearing learned counsel for the appellant, the Bench disposed of the contempt petition by observing that the appeal filed by the appellant already stood decided by passing a speaking order and against the said order he would have a remedy in law.

When the appellant filed the present appeal, the Registry objected to its maintainability as vide order dated 31.8.2015 passed by the learned Single Judge while disposing of the contempt petition, no punishment had been awarded and under Section 19(1) of the Contempt of Courts Act, 1971, appeal would lie only against the order of punishment in contempt proceedings passed by the learned Single Judge. The said objection was sought to be removed by the appellant by giving a note that appeal under Section 19(1) is maintainable, even if, the contemner is not punished for contempt. The appellant asked the Office to put up the matter before the Bench as it is.

It is settled law that once the High Court declines to initiate proceedings for contempt, the order passed in that regard is not appealable under Section 19(1) of the Contempt of Courts Act, 1971 as of right and only the Hon'ble Supreme Court in suitable cases could exercise its powers under Article 136 of the Constitution of India to go into the question as to whether the

High Court was justified in not initiating contempt proceedings or not punishing the contemner. Reliance in this regard can be placed upon the judgments of Hon'ble Supreme Court in **Baradakanta Mishra Vs. Mr. Justice Gatikrushna Misra, C.J. of the Orissa H.C.** AIR 1974 SC 2255; **B.N.Taneja (IFS) Vs. Bhajan Lal** (1988) 3 SCC 26; **M/s Modi Telefibres Ltd. Vs. Sujit Kumar Choudhary and others** (2005) 7 SCC 40; and **Midnapore Peoples Co-op. Bank Ltd. and others Vs. Chunilal Nanda and others** AIR 2006 SC 2190.

Learned counsel for the appellant has submitted that the order passed by the learned Single Judge in not initiating contempt proceedings against the respondents is appealable under Section 19(1) of the Contempt of Courts Act, 1971. In support of his submissions, he has referred to the judgment of the Hon'ble Supreme Court passed in **Barada Kanta Mishra Vs. Orissa High Court** AIR 1976 SC 1206.

In the said judgment, it was held that any *interlocutory* order pertaining purely to procedure of the Court was not appealable whereas the orders or decisions in which the same point is decided or finding given in contempt jurisdiction by High Court are appealable. The Hon'ble Supreme Court was seized of an *interlocutory* order which pertained purely to the procedure of the Court and not to the final order passed by the High Court on

the contempt petition. The proceedings before the Hon'ble Supreme Court were not against the final order passed by the High Court on the contempt petition and, therefore, the said judgment is not applicable to the facts and circumstances of the present case.

Despite the above, this Court has proceeded to hear the appellant on merits.

On perusal of order dated 14.8.2015, passed by respondent No. 1 in his capacity as Chancellor of the MDU, Rohtak, copy of which is appended as Annexure P3, which was also before the learned Single Judge at the time of disposal of the contempt petition, it is made out that there was no appeal dated 1.10.2010 pending in his office. Instead, it was only a memorial alongwith other representations submitted by the appellant on 27.1.2000 and 7.3.2001. The said memorial/representations were filed by the then Chancellor on 2.7.2001. The matter was again considered and filed by the then Governor on 30.3.2006. Further, in order to impart justice to the appellant, he was again granted personal hearing on 16.4.2014, 19.5.2014 and 26.9.2014 but due to unavoidable circumstances and other administrative schedule, the hearing had to be postponed. Finally, the appellant was heard on 13.11.2014 and during personal hearing he stated that his case was covered under Rule 29 of the Leave Regulations of the

MDU but he had been denied study leave with pay under Rule 30. He further submitted that similar benefits had already been extended to Dr. Surinder Kumar. The appellant submitted representation on this ground on 15.11.2014 and subsequently another representation on 3.3.2015. Comments of the MDU, Rohtak, were obtained on these representations. After taking into consideration all the relevant record and the averments made by the appellant, the Chancellor found no merit in the request of the appellant and, accordingly, rejected the same. In coming to such a conclusion, the Chancellor noticed that as per Clause 30 of the Study Leave Rules, five years of service was required for Study Leave with pay whereas the appellant had merely two years service at his credit at that time. Further, the appellant on his own proceeded on the study leave after giving an undertaking on 27.9.1990 that he would not claim study leave with pay as a matter of right and his claim may be considered on merit. The case of the appellant was also not found to be same to that of Dr. Surinder Kumar as he was granted academic leave under a different programme with different terms and conditions. Further, the University had already resolved in its meeting held on 26.9.1991 to partly convert the study leave of the appellant for two years from without pay to with pay although, he had less than five years of service at his credit. The said relief has enormously

benefited the appellant, both academically as well as monetarily as the University had facilitated him in going for higher studies, although, he did not have the minimum requisite service of five years at his credit, and instead, the University used its discretionary power and granted him related benefits in service as are associated with a doctoral degree holder.

Once the Chancellor of MDU, Rohtak, has already considered and disposed of memorial dated 1.10.2000 by passing a speaking order, it cannot be said that the respondents have wilfully disobeyed the orders of the writ Court.

For the aforesaid reasons, the appeal is dismissed on the ground of maintainability and also on merits.

**(T.P.S. MANN)
JUDGE**

November 30, 2015
amit rana

**(GURMIT RAM)
JUDGE**