

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

101

Date of decision: 04.08.2015

COCP No. 1439 of 2014

Pardeep Kumar and others

...PETITIONERS

VS.

Suresh Kumar and another

...RESPONDENTS

COCP No. 3410 of 2014

Raj Kumar and others

...PETITIONERS

VS.

Suresh Kumar and another

...RESPONDENTS

COCP No. 3411 of 2014

Gurnam Singh and others

...PETITIONERS

VS.

Suresh Kumar and another

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Shalender Mohan, Advocate,
for the petitioners.

Mr. Alok Jain, Additional Advocate General, Punjab,
for the respondents.

AUGUSTINE GEORGE MASIH, J.

By this order, I propose to decide three contempt petitions i.e. COCP Nos. 1439, 3410 and 3411 of 2014 as the petitioners herein have approached this Court alleging violation/non-compliance of the order passed by this Court in CWP No. 10194 of 1999 titled as Jaspal Singh and others vs. The State of Punjab and another dated 20.12.2001 (Annexure P-1). For convenience, facts are being taken from COCP No. 1439 of 2014

where the pleadings are complete and in the other two contempt petitions, notice has yet not been issued to the respondents.

Counsel for the petitioners submits that the respondents were directed by this Court by judgment and order dated 20.12.2001 (Annexure P-1) to grant the petitioners the minimum of the pay scales with dearness allowance from the date of the judgment/date of filing of the writ petition, as the case may be, but the said benefit has not been granted to them despite the Expert Committee constituted by the respondents having recommended in favour of the petitioners although they have been regularized in service as per the policy of the Government of Punjab dated 18.03.2011. He contends that the petitioners are entitled to the arrears for the period prior to the date of regularization by granting them the minimum of the pay scales along with dearness allowance. He contends that the final decision, which has been taken by the respondents while passing the order dated 08.08.2014 (Annexure R-1), is in violation of the order passed by this Court and the Supreme Court especially in the light of the fact that the Expert Committee had opined in favour of the petitioners, which was constituted in compliance with the directions issued by the Supreme Court. He thus, contends that the respondents deserve to be proceeded against under the Contempt of Courts Act, 1971.

Counsel for the respondents, on the other hand, submits that these contempt petitions are not maintainable as the order dated 20.12.2001 (Annexure P-1) passed by this Court in CWP No. 10194 of 1999 does not survive as the Supreme Court had allowed the appeal preferred by the State of Punjab i.e. Civil Appeal No. 1976 of 2003 by judgment dated 04.08.2009 (Annexure-2). He contends that the Division Bench judgment of this Court

merged with the judgment passed by the Supreme Court which holds the field. Petitioners had approached the Supreme Court by filing the contempt petition, which was treated as interlocutory application and dismissed by order dated 04.11.2011 (Annexure P-4) by opining that the order dated 04.08.2009 passed by the Supreme Court had been substantially complied with and nothing survived in the contempt petition. He further submits that even the present claim, as has been made with regard to the arrears, is not sustainable as the petitioners had filed an application before the Supreme Court being I.A. No. 3 of 2014 for the same benefit, which was dismissed by order dated 17.01.2014 (Annexure P-5) with liberty to the applicants to approach the appropriate forum. This order clearly reflects that the Supreme Court had not approved the judgment passed by this Court in CWP No. 10194 of 1999 and these contempt petitions claiming the same relief, which has been declined by the Supreme Court, are not maintainable. That apart, he states that the final decision with regard to the entitlement of the petitioners was left to be taken by the State, which, in exercise of its discretion, has proceeded to consider the claim of the petitioners and passed a speaking order dated 08.08.2014 (Annexure R-1) rejecting their claim. He, thus, contends that these contempt petitions deserve to be dismissed.

I have heard the counsel for the parties and with their assistance, have gone through the records of the case.

Briefly, the facts of the case are that the petitioners have approached this Court by filing the above referred writ petition praying for a writ of mandamus directing the respondents to grant the pay scale of the posts held by them on the principle of 'equal pay for equal work' and arrears thereof along with interest. The said writ petition was allowed by this Court

to the extent that the petitioners were granted the minimum of the pay scale with dearness allowance from the date of the judgment to the petitioners, who were employed in the years 1996 and 1997 and had not completed the period fixed by the State on 23.01.2001 while the other petitioners were granted the same relief but from the date of filing of the writ petition. Interest claimed by the petitioners was specifically declined.

The State of Punjab approached the Supreme Court against the judgment passed by the Division Bench of this Court, which was numbered as Civil Appeal No. 1976 of 2003 titled as State of Punjab and another vs. Surjit Singh and others. The said appeal was allowed by the Supreme Court by order dated 04.08.2009 (Annexure-2) and a direction was issued to the State to examine the cases of the petitioners by appointing an Expert Committee with regard to the petitioners entitlement of the benefit, as claimed by them, and whether the principles of law laid down in the judgment of the Supreme Court viz., as to whether the petitioners satisfy the factors for invocation of the decision in State of Haryana Vs. Charanjit Singh, (2006) 9 SCC 321 in its entirety including the question of appointment in terms of the recruitment rules have been followed. It was further observed that the above had a positive concept and the equality clause contained in Article 14 should be invoked only where the parties are similarly situated and where the order passed in their favour is legal and not illegal and merely because some juniors have got the benefit, the same by itself would not be a ground for extending the same benefit to the petitioners.

Since the respondents did not comply with the order passed by the Supreme Court, petitioners filed Contempt Petition (C) No. 340 of 2010.

In the said contempt petition, respondent-State filed an affidavit dated 31.07.2011 (Annexure P-2), wherein it was stated that the Expert Committee, which had been constituted, had submitted its report on 29.07.2011 and the same would be considered by the State Government at the level of the Chief Secretary to Government of Punjab and other senior officials. Two months' time was stated to be taken for a suitable decision in this matter after thorough scrutiny of the report of the Expert committee. It was also mentioned therein that the Government of Punjab framed a policy vide its letter dated 18.03.2011 for regularization of the services of all daily wage workers subject to the condition that they are eligible for the posts, against which they were working and have completed 10 years of service as on 31.12.2006. Thereafter, an additional affidavit dated 11.10.2011 (Annexure P-3) was filed in the Supreme Court in which it was stated that the report of the Expert Committee was in favour of the petitioners and even the legal opinion obtained from the Advocate General, Punjab, was on the positive side so far as the petitioners are concerned.

The Hon'ble Supreme Court, while taking into consideration the subsequent affidavit filed by the State, passed an order dated 04.11.2011 (Annexure P-4) dismissing the contempt petition and the Interlocutory Application No. 1 of 2011, wherein it was mentioned that 96 employees have already been regularized out of total 103 petitioners, two do not fulfil the eligibility criteria, one does not have the technical qualification, one has left the job, two are reported to have died and one is untraceable. The Supreme Court was of the opinion that the order dated 04.08.2009 passed in Civil Appeal No. 2032 of 2003 had been substantially complied with and nothing survived in the contempt petition, which was

treated as interlocutory application vide the Court's order dated 17.01.2011.

Thereafter, the petitioner filed Interlocutory Application No. 3 of 2014 in Civil Appeal No. 2032 of 2003, which came up for hearing before the Supreme Court on 17.01.2014. In the said application, one of the prayers was for granting the petitioners the arrears of pay from the date of filing of the writ petition/date of judgment of the High Court. The said application was dismissed on 17.01.2014 (Annexure P-5) with liberty to the applicants to approach the appropriate forum.

Petitioners have now filed these contempt petitions alleging non-compliance of the order passed by the Division Bench of this Court in CWP No. 10194 of 1999 dated 20.12.2001 (Annexure P-1).

First taking up the contention of the counsel for the respondents with regard to the maintainability of these contempt petitions in the light of the judgment passed by the Supreme Court, whereby the appeal of the State was allowed, this Court, in its considered opinion finds itself in agreement with the same. The Division Bench of this Court allowed the writ petition of the petitioners by judgment dated 20.12.2001, against which the State of Punjab approached the Supreme Court. These appeals were allowed by the Supreme Court vide judgment dated 04.08.2009 (Annexure-2). With the acceptance of the appeals, the order passed by this Court merged with that of the Supreme Court and it is the judgment of the Supreme Court, which thereafter holds the field. These contempt petitions, therefore, would not be maintainable in this Court.

There is an another reason for accepting the objection with regard to the maintainability of these contempt petitions. The petitioners have already approached the Supreme Court by filing Contempt Petition (C)

No. 340 of 2010 in Civil Appeal No. 2032 of 2003, which was treated as Interlocutory Application No. 1 vide order dated 17.01.2011 and on the basis of the affidavits, which have been filed in the Supreme Court which have been referred to in the order above, the Supreme Court proceeded to dismiss the same vide order dated 04.11.2011 (Annexure P-4), which reads as follows:-

“ In the light of the subsequent affidavit filed by respondent No. 2 together with the annexure showing therein that 96 employees have already been regularized out of total 103 petitioners, two do not fulfil the eligibility criteria, one does not fulfil the technical qualification, one has already left the job, two are reported to be dead and one is not traceable This makes the figure of 103.

Thus, in our considered opinion, the order dated 4.8.2009 passed in Civil Appeal No. 2032 of 2003 by this Court appears to have been substantially complied with. If that be so, nothing survives in the contempt petition, which has later been treated as interlocutory application vide this Court's order dated 17.1.2011. It is accordingly dismissed.”

Since the contempt petition filed by the petitioners stands already dismissed, these contempt petitions are not maintainable.

Still further, the petitioners again filed an Interlocutory Application No. 3 of 2014 in Civil Appeal No. 2032 of 2003, where the prayer made by the petitioners was as follows:-

“ It is, therefore, most respectfully prayed that Your Lordships may graciously be pleased to allow this application

and grant arrears of pay to the applicant respondents in terms of the directions contained in judgment dated 20.12.2001 passed in CWP No. 10194 of 1999, and to pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

The said interlocutory application of the petitioners came up for hearing before the Hon'ble Supreme Court on 17.01.2014 (Annexure P-5) when the following order was passed:-

“ ORDER

I.A. No. 3 is dismissed with the liberty to the applicants to approach the appropriate forum.”

Counsel for the petitioners has asserted that the contempt of the order passed by this Court to the extent that they have not been granted the minimum of the pay scales along with dearness allowance from the date they were entitled to as per the judgment of the Division Bench of this Court is maintainable, which obviously can only be said to be arrears, as services of the petitioners stand regularized as per the policy of the Government of Punjab dated 18.03.2011, cannot be accepted in the face of the order dated 17.01.2014 of the Hon'ble Supreme Court reproduced above.

In the light of the observations made by the Supreme Court declining the Interlocutory Application No. 3 of the petitioners vide order dated 17.01.2014, reproduced above, as also that the order passed by the Division Bench of this Court stands merged with the judgment of the Supreme Court, as held above, these contempt petitions and the claim made therein are ill founded and not maintainable.

In view of the above, these contempt petitions are dismissed as

not maintainable.

Petitioners may avail of their remedy, if any available to them,
in accordance with law against the order dated 08.08.2014 (Annexure R-1).

August 04, 2015
pj

(AUGUSTINE GEORGE MASH)
JUDGE