

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

**COCN No.1620 of 2012 (O&M)
Date of decision: 01.05.2017**

Kesar Chand

..Petitioner

Versus

Rajan Nanda and another

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Shailendra Sharma, Advocate
for the petitioner.

Mr. Manu K. Bhandari, Advocate
for the respondents.

Daya Chaudhary, J.

Petitioner-Kesar Chand has filed the present contempt petition under Section 12 of the Contempt of Courts Act for initiating contempt proceedings against the respondents for deliberate non-compliance of order/judgment dated 23.09.2008 passed by this Court in CWP No.2422 of 1983.

The services of the petitioner were terminated by the management in the year 1980. Against said termination order, he approached the Labour Court, Faridabad. Vide award dated 14.10.1982, the reference was accepted and termination of services of the petitioner were held illegal and reinstatement with continuity of service was ordered along with back wages. Against said award, the management filed CWP No.2422 of 1983 before this Court, which was admitted and operation of award was stayed subject to compliance of Section 17-B of the Industrial Disputes Act,

1947 (for short 'the Act, 1947'). However, the petitioner was not taken back in service as payment of monthly wages was opted. However, after some time, the wages were also stopped on the pretext that the petitioner was gainfully employed somewhere else. Thereafter, vide order dated 23.09.2008, the writ petition was disposed of with direction and the petitioner was held entitled for 20% of the back wages from the date of discontinuance of his services till reinstatement except the period when the petitioner remained gainfully employed.

Against said judgment dated 23.09.2008, the petitioner filed LPA No.133 of 2009, which was dismissed by this Court on 14.12.2009. During this period, the petitioner had already retired from service and he approached the management for grant of entire claim and for release of amount of gratuity, provident fund etc. When no action was taken, the petitioner filed the present contempt petition on the ground that the respondent-management has deliberately not complied with the directions issued by this Court vide order dated 23.09.2008 passed in CWP No.2422 of 1983 and the contempt proceedings be initiated against the management.

Notice of motion was issued in the contempt petition on 24.05.2012.

In response to notice of motion, reply was filed, which is on record.

Learned counsel for the petitioner submits that the petitioner was held entitled for continuity in service along with back wages and other consequential benefits but in spite of making representations and repeated reminders neither the arrears of pay and other retiral benefits have been

released nor the directions issued by this Court in CWP No.2422 of 1983 have been complied with and as such, the respondents are liable to be punished under the Contempt of Courts Act.

Learned counsel for the respondents submits that the respondents have not violated the orders passed by this Court and have not committed any contempt of orders. The petitioner stood retired on 16.10.2006 by considering his date of birth and he could not be reinstated in service. It was informed to the petitioner regarding calculation of back wages as he has been working as an Insurance Surveyor and Loss Assessor since the year 1983. Even the petitioner himself has filled and declared his profession and occupation as Insurer Surveyor and Engineer in proposal form dated 29.06.1990. The petitioner did not send any reply to letter dated 24.11.2008 written to him by the answering respondent-company whereas it was duly delivered to him. Learned counsel further submits that the petitioner filed an application under Section 33C(1) of the Act, 1947 before the Labour-cum-Conciliation Officer, Circle-4, Faridabad. Reply to the said application was filed and thereafter, the petitioner filed rejoinder and after hearing arguments, the Labour-cum-Conciliation Officer, Circle-4, Faridabad passed order dated 06.04.2011. Learned counsel also submits that all these facts have not been mentioned in the contempt petition and the same is liable to be dismissed on the ground of concealment of facts. The petitioner remained gainfully employed and he is not entitled for back wages. Learned counsel for the respondents also submits that the controversy in the present case is squarely covered by the decision rendered by this Court in ***Mrs. Annamma Jose vs. Mr. Kenichi Ayukawa and***

another, COCP No.262 of 2015 decided on ***20.11.2015***.

Heard arguments of learned counsel for the parties and have also perused the order passed in the writ petition as well as other documents available on the file.

The petitioner has approached this Court by way of filing the present contempt petition for initiating contempt proceedings against the respondents for non-compliance of order/judgment dated 23.09.2008 passed by this Court in CWP No.2422 of 1983. The relevant portion of said judgment is reproduced as under: -

*“To my mind, no fault can be found with these observations being based upon the documentary evidence. The facts of the instant case bear semblance with **Shammi Bhan and another's case (supra)**. In that case, 50% back-wages from the date of termination till reinstatement were allowed. Here, in this case, the workman has not been reinstated in compliance with the award, operation of which was stayed by this Court vide order dated 13.5.1983 passed by the Division Bench of this Court. As revealed by the order dated 20.1.1986 passed by this Court in C.M. No.3045 of 1985 in C.W.P. No.2422 of 1983 (the present petition) on behalf of the petitioner- Company, it was stated that during the pendency of the writ petition all amounts payable as salary to the workman shall be deposited in the*

Labour Court, Faridabad on or before 15th day of each month and the workman shall be entitled to withdraw this amount too on furnishing security to the satisfaction of the Labour Court. Admittedly, the respondent was a permanent workman of the petitioner. In view of Clause 22 of the Standing Orders, even if the respondent is assumed to be guilty of misconduct, though it is not so, yet he was to be given full opportunity to defend himself in a domestic inquiry. In awarding punishment, the Management was to take into account the gravity of the misconduct, the previous record, if any of the respondent and a copy of the order passed by the Management was to be supplied to the respondent. Herein, this clause was given to go by. The doctrine of the proportionality contemplates that the punishment must commensurate with the gravity of guilt. In the instant case, if it is presumed that the respondent violated in terms of clause 37, nevertheless, the punishment was disproportionate. The doctrine of 'Audi Alteram Partem' too envisages that no one should be condemned unheard. A period of about 26 years has gone by from the date of passing of the impugned award. He being a confirmed hand, a mere compensation in lieu of

reinstatement will not meet the ends of justice. On consideration of the entire matter, it is found that it will sub-serve the ends of justice if the impugned award while maintaining reinstatement of the respondent with continuity of service is modified to the extent that the respondent shall be paid 20% of the back-wages from the date of discontinuance of his services till his reinstatement except the period, if any, during which he remained gainfully employed. He will be reinstated and paid back wages within two months from today.”

A perusal of the aforesaid order shows that it was found that it would sub-serve the ends of justice if the impugned award while maintaining reinstatement of the respondent with continuity of service is modified to the extent that the respondent-workman shall be paid 20% of the back wages from the date of discontinuance of his services till his reinstatement except the period, if any, during which he remained gainfully employed and he was to be reinstated with back wages within a period of two months from the date of passing of order.

It has come on record that the petitioner remained gainfully employed during that period as he filled up proposal form (Annexure R-2/3), which clearly shows that the petitioner has been working with the Insurance Company. It is also not disputed that he stood retired on attaining the age of superannuation and the question of reinstatement into service did not arise.

Now the question for consideration before this Court is as to whether the respondent-management has violated the orders passed in the writ petitions or not.

No doubt the proceedings of contempt are quasi criminal in nature and standard of proof required in these proceedings is beyond all reasonable doubt and it would be rather hazardous to impose sentence for contempt on the authorities in exercise of contempt jurisdiction on mere probabilities. The word used in Section 2(b) of the Contempt Act is “willful disobedience”, which means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom and it excludes casual, accidental, *bonafide* or unintentional acts or genuine inability. This view has been held by Hon'ble the Apex Court in ***Ram Kishan vs. Sh. Tarun Bajaj and others, 2014(3) PLR 765.***

Hon'ble the Apex Court in another judgment in case of ***Sudhir Vasudeva, Chairman and MD, ONGC and others vs. M. George Ravishekaran and others, AIR 2014 Supreme Court 950*** has held that the Court should not go beyond the four corners of order alleged to be flouted or enter in questions not dealt in order or to reopen the decided issues or to pass order supplemental to what has been expressed in order alleged to be flouted.

In the present case also, the benefit of back wages has been granted to the petitioner and in lieu of reinstatement, he has been paid money. The petitioner was not entitled for reinstatement as he had already attained the age of superannuation. The petitioner also approached the Labour-cum-Conciliation Officer, Faridabad by way of filing an application

under Section 33C(1) of the Act but this fact has not been mentioned in the contempt petition.

Accordingly, no case is made out to attract the provisions of the Contempt of Courts Act and as such, the contempt petition is dismissed.

However, in case, the petitioner has any grievance regarding the amount which has not been paid against some other head(s) or there is any difference in calculation or amount of interest on the payment, which has been received by the petitioner, he has remedy to file appropriate application to Government in terms of Section 33C(2) of the Act.

Accordingly, I am of the view that the act of the respondents is not of any deliberate disobedience and they have not committed any contempt of the orders passed in the writ petition and as such, the contempt petition is dismissed and respondents are discharged.

01.05.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

√
Yes/No

Whether Reportable

√
Yes/No