

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

COCP No.1222 of 2015 (O&M)

Date of Decision: 08.01.2018

Purshotam Lal Bindra

....Petitioner

Versus

Shri Pardeep R. Sethi, Chief Commissioner
of Income Tax and another

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. H.C. Arora, Advocate
for the petitioner.

Mr. I.P.S. Doabia, Advocate
for the respondents.

DAYA CHAUDHARY, J.

The present petition has been filed under Section 12 of the Contempt of Courts Act, 1971 for initiating the contempt proceedings for not complying with the directions issued by this Court in ***CWP No.3329-CAT of 2004***, whereby, the petitioner was held entitled to the benefits.

Petitioner filed ***CWP No.3329-CAT of 2004***, which was disposed of with a direction to the respondent, on the basis of statement made by counsel for Union of India, to release the necessary consequential benefits, if any, as a consequence of voluntary retirement of the petitioner vide order dated 21.03.2014, within a period of three months. It was a case where the petitioner was compulsorily retired and the said order was challenged by him. Subsequently, during pendency of the petition, the

request of the petitioner for voluntary retirement was accepted but some of the consequential benefits were not released to him. Thereafter, the petitioner approached this Court by way of filing the present contempt petition.

In response to notice of motion, the reply was filed, wherein, it has been mentioned that the petitioner has been released the benefits of revised leave encashment, revised salary with effect from 01.01.1999 to 30.04.1999, HRA, encashment of gratuity and commutation of pension as well.

The present contempt petition has been filed by the petitioner for release of consequential benefits for which he was entitled.

Learned counsel for the petitioner submits that while disposing of the writ petition, the petitioner was held entitled for all benefits by considering the compulsory retirement as voluntary. It includes further promotion after opening of "Sealed Cover", fixation of pay and allowances, enhancement of pension etc. with interest.

Learned counsel for the respondents submits that the order of compulsory retirement was passed and the same was challenged in ***CWP No.3329-CAT of 2004***. Thereafter, the order of compulsory retirement was treated as voluntary retirement after expiry of period of 90 days from the date of application i.e 04.01.1999. All benefits were released to the petitioner for which he was found to be entitled after considering his retirement as voluntary in place of compulsory retirement. Learned counsel also submits that it is not a case of non-compliance of order dated 21.03.2014 and hence, no contempt is made out. All benefits have been released to the petitioner by considering his prayer in the main petition as

well as order passed therein.

Heard the arguments of learned counsel for the parties and have also perused the documents available on the file including the orders passed in the writ petition.

Admittedly, the petitioner filed **CWP No.3329-CAT of 2004** before this Court for quashing of order dated 31.01.2001, whereby, the punishment of compulsory retirement was awarded, order dated 12.12.2002 passed by the Central Administrative Tribunal, whereby, the Original Application No.1323-HP-2001 filed by the petitioner was dismissed. The case came up for hearing before the Division Bench of this Court and the following order was passed on 20.02.2014 :-

“It does appear to us that the petitioner is a victim of circumstances. The petitioner wanted leave to attend to his daughter who was expecting and was based in Australia. It appears that the authorities were not inclined to grant leave. The petitioner took one day leave and thereafter did not rejoin but submitted an application for voluntary retirement. Instead of acceding to that, two fresh charges were put to the petitioner of giving wrong residential address and not reporting back in time.

The cumulative effect of the earlier proceedings where he was censured on being found negligent for permitting penal proceedings of against an assessee to get time barred coupled with these two charges has resulted in imposition of punishment of compulsory retirement.

Really speaking compulsory retirement saves the benefits of retirement of the petitioner. All that the petitioner is desiring now, as submitted by learned counsel for the petitioner is that rather than being

inflicted with the consequences of the compulsory retirement, his application for voluntary retirement be treated as accepted on the expiry of the 90 days from the date of the application (i.e 04.01.1999).

We are of the view that the aforesaid is a fair suggestion and thus call upon the respondents to take a considered view in the matter.”

In pursuance of order dated 20.02.2014, order dated 14.03.2014 converting the compulsory retirement of the petitioner into voluntary was passed. Said petition came up for hearing on 21.03.2014 and the following order was passed :-

“ Mr. Gurpreet has produced a photocopy of the order dated 14.03.2014 whereby request of the petitioner for voluntary retirement on the expiry of 90 days from the date of application i.e 04.01.1999 has been accepted.

In view of the said fact, no further orders are called for in the present writ petition.

Disposed of.

However, as a consequence of voluntary retirement of the petitioner, the respondent shall release the necessary consequential benefits, if any, within a period of three months.”

It is apparent from order dated 21.03.2014 that the request of the petitioner for voluntary retirement on expiry of 90 days from the date of application i.e 04.01.1999 was accepted and accordingly, the writ petition was disposed of with a direction that as a consequence of voluntary retirement of the petitioner, the consequential benefits be released to him. After having the legal opinion, the claim of the petitioner was considered and he was released revised leave encashment, salary, benefits of HRA, encashment of gratuity and commutation of pension. The petitioner is

claiming that he is also entitled for benefits of promotion and other consequential benefits and non-compliance of said order amounts to wilful disobedience of the orders passed by the Writ Court.

Admittedly, the petitioner did not pray for any relief regarding the opening of the “Sealed Cover” and consideration to the higher post. The claim of the petitioner was for setting aside the order of compulsory retirement and his request for conversion from compulsory retirement to voluntary retirement was accepted. On acceptance of said request, the writ petition was disposed of. The petitioner did not raise any objection even at the time of disposal of the writ petition. He is claiming consequential benefits including promotion by stating that it was also a part of consequential benefits. It is a matter of interpretation. It cannot be said to be the contempt of the orders passed by the Writ Court and cannot be termed as an intentional or wilful violation of the orders of the Court. This aspect cannot be adjudicated upon by the Contempt Court. It is to be seen as to whether the order passed by this Court has been implemented or not and as to whether the order passed by the Writ Court has been complied with or not. There was no specific mention in the order passed in the writ petition as to which were the consequential benefits which were to be released. The proceedings for contempt are to be initiated with utmost reservation and after applying due care and caution. The power of the court in imposing punishment for contempt of the court is not an uncontrolled or unlimited as it is to be exercised only when a clear cut case is made out for non-compliance of order passed in favour of the petitioner.

The petitioner was having remedy to move an application for clarification of the order before the Writ Court, in case, there was any

ambiguity but no such clarification has been sought by him. However, in case, the petitioner is still aggrieved by the action of the respondents, he is having remedy but the same has not been availed and contempt petition has been filed.

In view of the above, no ground is made out to initiate contempt proceedings against the respondents as no case is made out to attract the provisions of Contempt of Courts Act. Hence, the petition, being devoid of any merit, is hereby dismissed.

08.01.2018
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No