

COCP-1734-2018

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

COCP-1734-2018

Date of Decision: 27th July, 2018

Jaswinder Singh & others

...Petitioners

Versus

Gurpreet Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. G.P.S. Bal, Senior Advocate with
Ms. Lovender Kaur, Advocate
for the petitioners.

AUGUSTINE GEORGE MASIH, J.

Petitioners, working in Water Supply and Sanitation Department, Punjab, as Pump Operators, Fitters, Mali-cum-Chowkidars, Beldar etc., have approached this Court under Section 12 of the Contempt of Courts Act, 1971, for initiating proceedings against the respondents for non-compliance of the judgment dated 26.10.2016 (Annexure P-1) passed by the Supreme Court in Civil Appeal No.213 of 2013, titled as 'State of Punjab & others Vs. Jagjit Singh & others', along with other connected civil appeals.

2. Briefly, the facts are that the petitioners filed CWP No.7853 of 1999, titled as 'Jaswinder Singh & others Vs. State of Punjab & others', in this Court, wherein, petitioners, who were initially appointed on daily wage basis and were being given salary at the rates fixed by the Deputy Commissioner, were seeking minimum of the pay-scale of the post on which

they were working, which was being given to the counter-parts in the Department, on the principle of equal pay for equal work, which was allowed along with a bunch of writ petitions vide judgment dated 09.07.2009 (Annexure P-2). State of Punjab filed an appeal before the Division Bench of this Court i.e. LPA No.1024 of 2009, titled as 'State of Punjab & others Vs. Rajinder Kumar & others', which was dismissed vide order dated 30.08.2010 (Annexure P-3). Dismissal of the said LPA led to the filing of Special Leave Petitions by the State of Punjab. The Hon'ble Supreme Court in Civil Appeal No.213 of 2013 and other connected appeals vide judgment dated 26.10.2016 (Annexure P-1), modified the judgment dated 09.07.2009 passed by this Court by restricting the entitlement of the petitioners of wages at the minimum of the pay-scale (at the lowest grade, in the regular pay-scale), drawn by the regular employees holding the same post. It was further held that the petitioners would not be entitled to allowance attached to the post held by them.

3. Petitioners assert that although they have by now been regularized on their respective posts and are getting the allowances also but they are entitled to the minimum of the pay-scale along with dearness allowance attached to the said pay-scale, which dearness allowance has not been granted to the petitioners as they have only been given minimum of the pay-scale i.e. at the lowest grade in the regular pay-scale minus the dearness allowance, which strictly speaking is not the allowance like house rent allowance, medical allowance, conveyance allowance, travelling allowance etc., but is a part of basic pay. It has further been asserted that the dearness

allowance has always been merged when pay-scales were revised from time to time. On the basis of these assertions, petitioners have approached this Court alleging non-compliance of the order passed by the Supreme Court, dated 26.10.2016 (Annexure P-1).

4. When this case came up for hearing on 05.07.2018, learned senior counsel for the petitioners had sought time to cite law in support of his contention that for violation of the directions issued by the Supreme Court, contempt petition would be maintainable before this Court.

5. Today, it is the contention of the learned senior counsel for the petitioners with reference to the judgment of the Supreme Court in **Dineshan K.K. Vs. R.K. Singh & another** (2014) 2 R.C.R. (Civil) 477, that despite the fact that the orders passed by the lower Courts would merge with the judgment and the order passed by the Supreme Court, when the Civil Appeals and the Special Leave Petitions are dismissed or allowed partly with reasons, still a contempt petition would lie before the High Court. Reliance has also been placed upon the judgment of this Court in **Tarlok Singh Vs. B.N. Mathur, General Manager & another** 2008 (3) R.C.R. (Civil) 248, where it is asserted by the counsel that it has been held that although the High Court as well as the Central Administrative Tribunal have jurisdiction to entertain the contempt petitions and therefore, have parallel jurisdiction to entertain a matter, still it is the inferior Court whose jurisdiction should be enforced first and thus, in the light of the spirit of this judgment, petitioners have approached this Court by filing the present contempt petition. Reliance has also been placed upon the Full Bench

judgment of this Court in Sub Inspector Ram Phool & others Vs. State of Haryana & others 1993 (2) R.S.J. 252, to assert that for violation of an order passed on a particular issue, violation whereof is found by the Court, would render the contemner liable for action under the Contempt of Courts Act, 1971.

6. I have given my thoughtful consideration to the submissions made by the learned senior counsel for the petitioners but do not find myself in agreement with his assertions and submissions.

7. Sections 10 and 11 of the Contempt of Courts Act, 1971, which confers the powers upon the High Court, read as follows:-

“10. Power of High Court to punish contempts of subordinate courts.- Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt of courts subordinate to it as it has and exercises in respect of contempts of itself:

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code

11. Power of High Court to try offences committed or offenders found outside jurisdiction. - A High Court shall have jurisdiction to inquire into or try a contempt of itself or of any court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction, and whether the person alleged to be guilty of contempt is within or outside such limits.”

8. Perusal of the above sections would leave no manner of doubt with regard to the powers of this Court while exercising its contempt jurisdiction under Section 12 of the Contempt of Courts Act, 1971. Jurisdiction of this Court, therefore, is limited to punish contempt of its order/direction and that of the Courts subordinate to it. This Court does not have the power to punish for contempt(s) of the Supreme Court, which is not subordinate to the High Court.

9. What has been asserted by the learned senior counsel for the petitioners is that the judgment of the High Court has merged with the judgment passed by the Supreme Court where the judgment, as a whole, of this Court has not been set aside but it has only been modified to a limited extent and therefore, this Court has jurisdiction to entertain the contempt(s) of Supreme Court.

10. This contention of the learned senior counsel for the petitioners cannot be accepted even in the light of the judgment of the Supreme Court in *Dineshan K.K.'s* case (supra), where the Supreme Court had specifically held that the principle of merger would be applicable where Civil Appeals and Special Leave Petitions are dismissed with reasons, the judgments and orders passed by the Courts below would merge with the judgments and orders passed by the Supreme Court as held by the Supreme Court in **Oil and Natural Gas Corporation Ltd. Vs. S.B.I. Overseas Branch, Bombay** (2006) 6 S.C.C. 385.

11. On the second question whether the petitioner could approach the High Court which has disposed of the writ petition and issued certain

directions to the alleged contemnors for grant of prayers sought for before the Supreme Court is concerned, in *Dineshan K.K.'s* case (supra), the Hon'ble Supreme Court exercising its powers under Articles 129, 136 and 142 of the Constitution of India directed the petitioner therein to approach the High Court especially in the light of the fact that the Supreme Court even after granting a special leave and converting it to a civil appeal passed an order of dismissal of the appeal by observing that it did not find merit in the appeal and therefore, dismissed it. The Supreme Court did not hold that the contempt petition would be maintainable before the High Court where the Special Leave Petitions or Civil Appeals are dismissed with reasons. The said judgment, therefore, cannot be pressed into service by the counsel for the petitioners to confer jurisdiction upon this Court to hold that the present contempt petition would be maintainable.

12. As regards the judgment in *Tarlok Singh's* case (supra), in the said case, this Court had allowed the writ petition preferred by the petitioner against the dismissal of his original application by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh, where this Court, in the light of the special powers conferred under Section 17 read with Section 14 of the Administrative Tribunal Act, 1985, concluded that the petitioner was bound to invoke the jurisdiction of the Tribunal under Section 17 of the said Act prior to approaching this Court and further, the Court had held that the facts of the case did not warrant exercise of contempt jurisdiction of the High Court which falls within the jurisdiction of the Tribunal under the Administrative Tribunal Act, 1985.

13. In the judgment of *Sub Inspector Ram Phool's* case (supra), what has been observed by the Full Bench of this Court is that the law as laid down by this Court if violated would render such a contemner liable under the Contempt of Courts Act, 1971. This proposition cannot be disputed with but it does not in any way further the cause of the petitioners with regard to the issue which arises for consideration relatable to the maintainability of the present contempt petition in this Court for a contempt alleged to have been committed of an order passed by the Supreme Court.

14. The issue with regard to the power of the High Court to initiate proceedings either *suo motu* or otherwise for the contempt of the Supreme Court has been considered in detail with reference to Section 10 of the Contempt of Courts Act, 1971 and Article 215 of the Constitution of India stands settled in **Vitusah Oberoi & others Vs. Court of its own motion** (2017) 2 S.C.C. 314. After reproducing Articles 129 and 215 and then Section 10 of the Contempt of Courts Act, 1971, in para 10, it was observed as follows:-

“There is, from a plain reading of the above, nothing in the Contempt of Courts Act, 1971 or in Article 215 of the Constitution which can be said to empower the High Court to initiate proceedings suo-motu or otherwise for the contempt of a superior Court like the Supreme Court of India. As a matter of fact, the Supreme Court under Article 129 and High Court under Article 215 of the Constitution are both declared to be Courts of Record. One of the recognised attributes of a court of record is the power to punish for its contempt and the contempt of courts subordinate to it. That is precisely why Articles

129 and 215, while declaring the Supreme Court and the High Courts as Courts of Record, recognise the power vested in them to punish for their own contempt. The use of the expression “including” in the said provisions is explanatory in character. It signifies that the Supreme Court and the High Courts shall, as Courts of Records, exercise all such powers as are otherwise available to them including the power to punish for their own contempt.”

15. Thereafter, in para 12 of this judgment, it was held as follows:-

“The power to punish for contempt vested in a Court of Record under Article 215 does not, however, extend to punishing for the contempt of a superior court. Such a power has never been recognised as an attribute of a court of record nor has the same been specifically conferred upon the High Courts under Article 215. A priori if the power to punish under Article 215 is limited to the contempt of the High Court or courts subordinate to the High Court as appears to us to be the position, there was no way the High Court could justify invoking that power to punish for the contempt of a superior court. That is particularly so when the superior court’s power to punish for its contempt has been in no uncertain terms recognised by Article 129 of the Constitution. The availability of the power under Article 129 and its plenitude is yet another reason why Article 215 could never have been intended to empower the High Courts to punish for the contempt of the Supreme Court. The logic is simple. If Supreme Court does not, despite the availability of the power vested in it, invoke the same to punish for its contempt, there is no question of a Court

subordinate to the Supreme Court doing so. Viewed from any angle, the order passed by the High Court appears to us to be without jurisdiction, hence, liable to be set aside.”

16. In the light of the above judgment of the Hon'ble Supreme Court, the contentions of the learned Senior Advocate for the petitioners are not acceptable and are, thus, rejected.

17. In view of the above, the present contempt petition stands dismissed as not maintainable.

(AUGUSTINE GEORGE MASIH)
JUDGE

27th July, 2018
Harish

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