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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

COCP-1471-2013 (O&M)
Date of decision: 25.11.2019

PUSHPINDER BRAR

.. PETITIONER

VERSUS

SH. SURESH KUMAR AND ANOTHER

.. RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R.K.Arora, Advocate
for the petitioner.

Ms. Samina Dhir, DAG, Punjab.

AVNEESH JHINGAN, J. (Oral)

The petitioner filed a writ petition seeking directions to the respondent to correct the seniority list released vide order dated 14.08.1989. The grievance raised was that the seniority list was finalized by placing reliance on date of joining.

The petition was allowed on 27.09.2011. The pin pointed issue decided by the writ Court was that *inter se* seniority, in case of single order appointments, would be determined from the date of appointment and not from date of joining. The writ petition was disposed of with a direction for reckoning the seniority as per the issue decided i.e. by taking the date of appointment and not date of joining.

In pursuance to the decision of this Court, order dated 28.11.2011 was passed whereby the seniority list issued vide order dated 14.08.1989 was treated as final, aggrieved of the said action, the present petition was filed.

In the contempt proceedings, the reply dated 10.04.2015 was filed annexing order dated 11.03.2015. The seniority of the petitioner was fixed *inter se*

other employees appointed by same order and it was done considering the age, relying upon Rule 10 of the Punjab Subordinate Agricultural Rules, 1933 (in short '1933 Rules').

Learned counsel for the petitioner relying on the judgment of this Court dated 27.09.2011, argued that in case, the date of appointment was same, the seniority was to be fixed as per the merit determined by the recruiting agency and not by the age.

Learned State counsel defended the order dated 11.03.2015 by stating that the Rule 8 of Punjab Civil Services (General and Common Conditions of Services) Rules, 1994 (in short '1994 Rules') would not be applicable in the case of petitioner as they were serving on *ad hoc* basis.

From the perusal of the judgment dated 27.09.2011, it is evident that the issue involved was only with regard to the fixing up the seniority of employees appointed by one appointment letter and it was held that the date of appointment would be relevant and not date of joining. In para No. 4 of the judgment, it is clarified that the cases do not address the issue of *inter se* seniority for various categories of employees such as *ad hoc* and permanent employees.

The reliance of learned counsel for the petitioner on judgment dated 27.09.2011 to argue that seniority in case of common date of appointment is to be determined as per the merit was decided is not well founded. The Court had not dealt with the said issue.

The reliance of the writ Court on the decision of the Hon'ble Supreme Court in ***P.Srinivas Versus M. Radhakrishna Murthy and others, (2004) 2 (SCC) 459*** was only to the extent that the date of appointment would be relevant and not the date of joining.

The issue raised by the learned counsel for the petitioner will not render

the respondent liable for contempt as the issue raised is a legal issue i.e. whether in the case of the petitioner Rule 8 of 1994 Rules will apply or the case is to be considered under Rule 10 of 1933 Rules. The issue is debatable. In such circumstances, no case is made out for interference in the contempt proceedings. Supreme Court in **Anil Ratan Sarkar and others Versus Hiral Ghosh and others; (2002) (4) SCC 21** held as under:-

“15. It may also be noticed at this juncture that mere disobedience of an order may not be sufficient to amount to a 'civil contempt' within the meaning of Section 2(b) of the Act of 1971 the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act and lastly, in the event two interpretations are possible and the action of the alleged contemnor pertains to one such interpretation the act or acts cannot be ascribed to be otherwise contumacious in nature. A doubt in the matter as regards the wilful nature of the conduct if raised, question of success in a contempt petition would not arise.”

The applicability of the 1994 or 1933 Rules were not dealt by the Writ Court and there are no positive directions to the said effect. The Supreme Court in **Jhaleswar Prasad Paul vs Tarak Nath Ganguly 2002 (5) SCC 352** held as under:-

“The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. Since the respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined. The Contempt of Courts Act, 1971 has been introduced under the statute for the purpose of securing the feeling of confidence of the people in general for true and proper administration of justice in the country. The power to punish for contempt of courts is a special power vested under the Constitution in the courts of record and also under the statute. The power is special and needs to be exercised with care and caution. It should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct. It is to be kept in

mind that the court exercising the jurisdiction to punish for contempt does not function as an original or appellate court for determination of the disputes between the parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order. If this limitation is borne in mind then criticisms which are sometimes leveled against the courts exercising contempt of court jurisdiction "that it has exceeded its powers in granting substantive relief and issuing a direction regarding the same without proper adjudication of the dispute" in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the judgment or order passed in the contempt proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended to maintain the majesty and image of courts.

.....(*emphasis supplied*)

contempt petition is dismissed.

However, the petitioner would be at liberty to avail remedies in accordance with law, if aggrieved of orders dated 11.03.2015 and 28.11.2011 (Annexure P-3).

25th November, 2019
shabha

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned : *Yes*
Whether reportable : *Yes*