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

**COCP No.1663 of 2017 (O&M)
Date of Decision: 25.09.2019**

Ramesh Mittal

Petitioner

Versus

Dr. J. Ganeshan, Chief Administrator, Haryana State Agriculture
Marketing Board, Panchkula

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. K.K. Goel, Advocate
for the petitioner.

Mr. Suvir Sehgal, Advocate
for the respondent.

AVNEESH JHINGAN, J (Oral):

The action of the Haryana State Agriculture Marketing Board for non-considering the petitioner's case for promotion to the post of Executive Engineer, in the meetings held on 12.05.2009 and 09.07.2009 was challenged by filing CWP No.22064 of 2012. The writ petition was allowed on 27.04.2016. The operative part of the order is reproduced below:-

“In view of the above, the petitioner, being eligible, had a right to be considered for promotion against available vacancies. The fact, that no junior of the petitioner has been promoted, would not further the case of the respondent Board. If there were available

vacancies and the petitioner was eligible, he had at least a right to be considered. Since there was no such consideration, the present petition is allowed with a direction to the respondent Board to consider the case of the petitioner for promotion to the post of Executive Engineer with effect from the date when M. S. Chandel and Ramesh Garg were ordered to be promoted, in accordance with law and in case, the petitioner is ordered to be promoted, he would be entitled to all consequential benefits.”

The stand of the respondent was rejected that no junior to the petitioner was promoted, by stating that if there were available vacancies, petitioner being eligible had atleast a right to be considered for promotion. The direction was given to the respondent-Board to consider the case of the petitioner for promotion to the post of Executive Engineer w.e.f. the date when Sh. M.S. Chandel and Sh. Ramesh Garg were ordered to be promoted. It was further stated that in case the petitioner is ordered to be promoted, he would be entitled to all consequential benefits.

The present contempt petition has been filed pleading that directions of this Court have not been complied with.

Pursuant to notice of motion, affidavit dated 17.11.2017 was filed annexing minutes of the meeting dated 10.04.2017 of Administrative Committee and order dated 16.11.2017, whereby claim of the petitioner for promotion to the post of Executive Engineer was rejected after consideration and affording opportunity

of hearing.

The grounds for rejecting claim of the petitioner were that no post was available in the promotion quota at the time of consideration rather there were excess promotions. It was also taken into consideration that there were three charge-sheets against the petitioner, though in one of the charge-sheet he was exonerated. The Chief Administrator, Haryana State Agriculture Marketing Board considered the fact that date of promotion of the petitioner to the post of Sub-Divisional Engineer i.e. 05.03.2001 was also changed to 19.04.2006 as a result of outcome of certain litigation.

Learned counsel for the petitioner contends that directions of this Court have not been complied with as there were vacant posts available at that time i.e. in the year 2009. His grievance is that no charge-sheet was pending at relevant time. He argues that while rejecting the claim of the petitioner, new facts have been taken into consideration which were not part of the pleading in the writ petition, in other words, which were not taken in the reply by the respondents.

Learned counsel for the respondents contends that no posts were available in promotion quota in the year 2009. He states that claim for promotion has been rejected as petitioner was charge-sheeted thrice in the years 2010 and 2012. He submits that in one of the charge-sheet, petitioner has been punished and in another charge sheet, he has been warned to be careful in future. It is argued that as the date of promotion of the petitioner to the post of Sub-

Divisional Engineer itself has changed, it would also affect his promotion to the post of Executive Engineer. During the course of hearing learned counsel for the respondents candidly submits that the said order has been challenged by the petitioner and there is interim protection in his favour. Learned counsel for the respondents draws support from the fact that petitioner has already filed CWP No.12690 of 2018 placing reliance on the judgment of this Court dated 27.04.2016 passed in CWP No.22064 of 2012 seeking further promotion to the post of Superintending Engineer.

It would be pertinent to note here that the Writ Court while allowing the writ petition had only issued directions to the respondent-Board to consider the case of the petitioner for promotion w.e.f. the date when Sh. M.S. Chandel and Sh. Ramesh Garg were ordered to be promoted.

There were no positive directions that he should be promoted. The decision is further clarified from concluding lines of the judgment which states that *“in case, the petitioner is ordered to be promoted, he would be entitled to all consequential benefits”*.

The contention of learned counsel for the petitioner that posts were available under the promotion quota in the year 2009, would not fall within the scope of present contempt petition as no finding was recorded in the writ petition that posts were available.

In contempt proceedings, this Court cannot travel beyond four corners of order alleged to have been flouted. The Supreme Court in ***Er. K. Arumugam v. Vs. Balakrishnan & Ors.***

2019 AIR(SC) 818 held as under:-

*“17. In the contempt jurisdiction, the court has to confine itself to the four corners of the order alleged to have been disobeyed. Observing that in the contempt jurisdiction, the court cannot travel beyond the four corners of the order which is alleged to have been floated, in **Sudhir Vasudeva, Chairman and Managing Director, Oil and Natural Gas Corporation Limited and others v. M. George Ravishekaran and others** 2014(2) S.C.T. 163 : (2014) 3 SCC 373, speaking for the Bench, Justice Ranjan Gogoi held as under:-*

“19. The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self-determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. The Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self-evident ought to be taken into account for the

*purpose of consideration as to whether there has been any disobedience or wilful violation of the same. Decided issues cannot be reopened; nor can the plea of equities be considered. The Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above. The above principles would appear to be the cumulative outcome of the precedents cited at the Bar, namely, **Jhareswar Prasad Paul v. Tarak Nath Ganguly 2002(2) R.C.R.(Criminal) 835 : (2002) 5 SCC 352, V.M. Manohar Prasad v. N. Ratnam Raju (2004) 13 SCC 610, Bihar Finance Service House Construction Coop. Society Ltd. v. Gautam Goswami 2008(3) R.C.R.(Civil) 177 : (2008) 5 SCC 339 and Union of India v. Subedar Devassy PV 2006(1) R.C.R. (Criminal) 702 : (2006) 1 SCC 613.**"*

The merits of consideration for promotion can neither be challenged in the contempt petition nor looked into. The effect of subsequent charge-sheets has to be seen by the competent authority who is considering the case for promotion. The fact cannot loss sight that date of initial promotion of the petitioner to the post of

Sub Divisional Engineer was also changed. The petitioner had liberty to challenge order dated 16.11.2017 but as per advice, he has not chosen to do so, rather writ petition has been filed relying upon the judgment dated 27.04.2016 passed in CWP No.22064 of 2012 for further promotion to the post of Superintending Engineer.

The case of petitioner for promotion has been considered and reasoned order has been passed. No case is made for wilful disobedience of order of this Court.

The contempt petition is dismissed.

Rule issued against the respondents stands discharged.

[AVNEESH JHINGAN]
JUDGE

September 25, 2019

pankaj baweja

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |