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

**COC P No.3324 of 2017
Date of Decision: 11.07.2019**

Kasturi Lal Khanna

Petitioner

Versus

Anurag Rastogi, IAS, Principal Secretary to Government of Haryana,
Irrigation Department and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Petitioner in person.

Mr. Pritam S. Saini, Advocate
for the respondents.

AVNEESH JHINGAN, J (Oral):

The present contempt petition has been filed pleading wilful disobedience of order dated 18.01.2017 passed by this Court in CWP No.18720 of 1995.

Brief facts of the case are summarized below:-

Petitioner was working as an Assistant Statistician (Grade-II Officer). He acquired qualification of Company Secretary in the year 1990 and was ordered to look after the work of Company Secretary as a stop-gap arrangement. A writ petition was filed raising grievance that the petitioner should be given promotion to the post of Secretary w.e.f. 26.06.1995 i.e. date of decision of Board of Directors. The writ petition was allowed with the direction that

petitioner be treated as having been promoted to the post of Secretary w.e.f. 26.06.1995. Considering that petitioner had retired, the direction was to pay consequential benefits alongwith interest @ 6% per annum from the date payment became due. It was further ordered that in case payment is not made within three months of receipt of certified copy of order, the rate of interest would be 12% per annum. In compliance with directions of this Court, order dated 05.06.2017 was passed by the Managing Director of Haryana State Minor Irrigation and Tubewell Corporation [hereinafter referred to as 'Corporation']. It was found that the petitioner had already got excess payment of leave encashment and an amount of ₹1,51,158/- is recoverable. Vide order dated 29.12.2017, calculations were also provided to the petitioner. Instead of challenging the order, present contempt petition has been filed.

The petitioner appearing in person, submits that recovery is being made after pronouncement of judgment of this Court whereas there was no specific direction by this Court to make any recovery. The argument is that act is contemptuous as instead of making payment, the respondents are making recovery. The submission is that no modification of order of this High Court was asked for. The grievance is that calculation made by the respondents with regard to interest is wrong, as after three months of receipt of order, interest @ 12% should have been awarded but the same has not been calculated properly. The contention raised is that leave encashment has wrongly been reduced to 30 days which is against

the bye-laws of the Corporation.

Learned counsel for the respondents argues that petitioner had availed gratuity benefits under the bye-laws of the Corporation, later on, he moved a claim that he is entitled to gratuity under the Payment of Gratuity Act, 1972 [for brevity 'the Act']. The claim was allowed and he got gratuity under the Act. As per the Act, he was entitled to leave encashment of 30 days only and not of 300 days as under the bye-laws of the Corporation.

The first contention of the petitioner that only payment was to be made and no adjustment/recovery is to be effected, until and unless order of this Court is modified, is not well founded. While calculating the monetary benefit as per direction of this Court, respondent had to consider the amount payable and adjustment of any excess amount paid earlier would be consequential.

At this stage, petitioner submits that only payment should be made and in case of recovery, Civil Suit should have been filed.

The contention raised by the petitioner is not tenable. As the emoluments were being re-calculated and that time it was noted that gratuity benefits were availed under the Act, hence adjustment was made. In any case, if aggrieved of order, the petitioner had opportunity to avail remedy which he has not availed till date in spite of the fact that order was passed on 05.06.2017.

The submission that interest has wrongly been calculated and leave encashment has wrongly been reduced is not an issue in present proceedings in view of the nature of direction issued by this

Court. Moreover, the grievance can be agitated by availing remedies available in accordance with law.

The requirement of civil contempt under the Contempt of Courts Act, 1971 is 'wilful disobedience'. The onus to prove wilful disobedience is on the person alleging it. There is nothing on record to prove wilful disobedience of order dated 18.01.2017 passed by this Court.

The Supreme Court in **Chhotu Ram v. Urvashi Gulati & Anr., 2002(1) RCR (Criminal) 179 : 2001(3) SCT 1142 : [(2001) 7 SCC 530]**, held as under:-

“2. As regards, the burden and standard of proof, the common legal phraseology "he who asserts must prove" has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the 'standard of proof', be it noted that a proceeding under the extraordinary jurisdiction of the Court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond all reasonable doubt.”

It would be fair to deal with the authorities relied upon by the petitioner. The petitioner places reliance on decision of the Supreme Court in **E.T. Sunup Vs. C.A.N.S.S. Employees Assn., (2004) 8 SCC 683**. The Supreme Court held as under:-

“It has become a tendency with the Government Officer to somehow or the other circumvent the orders of

Court and try to take recourse to one justification or other. This shows complete lack of grace in accepting the orders of the Court. This tendency of undermining the court's order cannot be countenanced. This Court time and again has emphasized that in democracy the role of the Court cannot be subservient to the administrative fait. The executive & legislature has to work within Constitutional frame work. and the judiciary has been given a role of watch dog to keep the legislature & executive within check. In the present case, we fail to understand the counter filed by the appellant before the Court. On one hand they say that all the cases of GPF have been processed and on the other hand they are not prepared to revoke the administrative order. This only shows a deliberate attempt on the part of the bureaucracy to circumvent the order of the Court and stick to their stand. This is clear violation of Court's Order and appellant is guilty of flouting the Courts Order.”

This case is of no help to the petitioner. The order of this Court has been complied with rather the endeavour of the petitioner is to get payment without there being any adjustment on account of excess payment of leave encashment received by him earlier.

Further reliance is placed upon by the petitioner on decision of the Supreme Court in ***T.M.A. Pai Foundation Vs. State of Karnataka, (1995) 4 JT 624***. The reliance does not enhance case of the petitioner. There is no question of deliberate distorted interpretation of order by the respondents.

In the writ petition, the petitioner had got the relief of

promotion to the post of Secretary w.e.f. 26.06.1995 with consequential benefits. It does not entitle the petitioner that he will retain the excess amount, if any and still press the contempt petition on the ground that order was only to make payment to the petitioner.

The contempt petition is dismissed. The rule issued against the respondents is discharged.

[AVNEESH JHINGAN]
JUDGE

July 11, 2019
pankaj baweja

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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |