

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

COCP No. 3977 of 2019

Date of Decision: 19.12.2019

Rajesh Kumar and others

.....Petitioners

Versus

Dr. Balkar Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sanchit Punia, Advocate
for the petitioners.

Mr. Sandeep S. Mann, Sr. DAG Haryana.

AVNEESH JHINGAN, J.(oral)

The petitioner filed a writ petition for quashing order dated 14.8.2019 to the extent it excludes the post of PGT (Psychology and Home Science) from ongoing Transfer drive/schedule by prescribing that the subjects in which the sanction strength of posts is below three hundred will be taken after on going transfer drive.

Learned counsel for the petitioner while arguing the writ petition restricted the prayer that let direction be issued to Director Secondary Education Haryana, to consider representation dated 19.8.2019. The writ petition was disposed of on 30.9.2019 directing the respondent to consider the representation within a period of one month from receipt of certified copy of the order. It was further ordered that in case the respondents fails to do so in the time prescribed, they shall be liable to pay costs of Rs.25,000/-. The costs were only to prevent petitioner from running pillar to post and to avoid availing remedy of contempt in case of non-compliance of directions issued by this Court.

The present petition is filed pleading that needful has not been done.

Affidavit of Mr. Pardeep Kumar, Director Secondary Education, Haryana, filed today in Court, is taken on record and copy supplied to counsel for the petitioners. Along with affidavit an order dated 17.12.2019 is annexed whereby the claim of the petitioners is rejected.

Learned counsel for the petitioners states that there is delay in compliance, hence, the petitioners are entitled to receive Rs.25,000/- as costs.

Learned State counsel submits that certified copy of order was received on 11.10.2019, thereafter record pertaining to petitioner was collected from concerned branch of field office. Petitioners were granted personal hearing on 28.11.2019 and on 2.12.2019 and the order was passed on 17.12.2019. It was for this reason that delay of approximately one month occurred.

Learned counsel for the petitioners raises a grievance that the explanation put forth for delay should not be accepted firstly for the reason that there was no direction given by this Court to grant personal hearing. It is submitted that notice issued for 28.11.2019 was served one day before and the petitioner could not remain present on the said date.

The contentions raised by learned counsel for the petitioner is not well founded. The compliance of Principle of Natural Justice is essential. It is better to comply with Principles rather than to violate, even if it results in little delay. The second contention that the notice was served one day prior to 28.11.2019 rather fortify the stand of the respondent that due opportunity of hearing was provided to the petitioner. More over, no dispute is raised by learned counsel for the petitioner that notice for personal hearing was also

issued for 2.12.2019.

At this stage, learned counsel for the petitioner vehemently argues that the matter should be adjourned as a matter of routine for petitioner to exercise the right to file rejoinder. The arguments raised cannot be accepted. Filing of rejoinder is not a matter of course.

Reliance in this regard is placed upon **Order VIII Rule 9** of Code of Civil Procedure, 1908 which reads as under:-

“9. Subsequent pleadings:-No pleadings subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.”

Written statement can be filed as a matter of right but same is not the case for filing rejoinder. Rejoinder cannot be filed as a matter of right except in cases when the defendant sets up a case for set off or has made a counter claim but, it is to be filed only with the permission of the Court which can grant in its discretion.

As discussed above, the issue in the present case is only with regard to explanation for delay of 30 odd days in passing the order for compliance of direction of this Court.

There is another aspect of the matter. The proceedings in the Contempt of Courts Act are summary in nature. The Supreme Court in **Noor Saba Vs. Anoop Mishra, 2013 (4) S.C.T. 492: (2013) 10 SCC 248** wherein the scope of the contempt power in case of a breach of a Court's order has been dealt with in the following manner:

*"To hold the respondents or anyone of them liable for contempt this Court has to arrive at a conclusion that the respondents have wilfully disobeyed the order of the Court. **The exercise of contempt jurisdiction is summary in nature and an adjudication of the liability of the alleged contemnor for wilful disobedience of the Court is normally made on admitted and undisputed facts.** In the present case not only there has been a shift in the stand of the petitioner with regard to the basis facts on which commission of contempt has been alleged even the said new/altered facts do not permit an adjudication in consonance with the established principles of exercise of contempt jurisdiction so as to enable the Court to come to a conclusion that any of the respondents have wilfully disobeyed the order of this Court...."*

There is no quibble on the proposition that the contempt jurisdiction is not to be invoked as a matter of routine and for every violation.

In the present case, there is substantial compliance of direction of this Court. The explanation put forth duly explains the delay, in such circumstances, no further punitive order is necessitated.

Dismissed.

(AVNEESH JHINGAN)
JUDGE

19.12.2019

reema

Whether speaking/reasoned	Yes
Whether Reportable:	No