

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

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COCP-1625-2020

Date of Decision : 21.08.2020

Sunil Kumar

.....Petitioner

V/s

Anurag Aggarwal and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present: Mr. Parveen Kumar Garg, Advocate for the petitioner.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed the present Contempt of Court Petition under Sections 12 and 14 of the Contempt of Courts Act, 1971 for punishing the respondents for not complying with the directions issued by this Court vide order dated 09.09.2019 (Annexure P-1) passed in CWP No.3046 of 2018 titled as 'Sunil Kumar Vs State of Punjab and others'.

Briefly stated the petition has been filed on the averments that vide above referred order while quashing the second charge sheet dated 23.08.2017 (Annexure P-3) this Court was pleased to allow the said writ petition filed by the petitioner with a direction to the respondents to proceed on the basis of order dated 06.06.2016 (Annexure P-2) and to take decision with regard to request for extension of service in accordance with law within a period of three months. Although in partial compliance of the said order passed by this

Court, respondents passed an order dated 11.12.2019 (Annexure P-6) but refused to consider the case of the petitioner regarding extension period in complete violation of the directions issued by this Court.

Learned Counsel for the petitioner has argued that the respondents did not deliberately comply with the directions given by this Court vide order dated 09.09.2019 (Annexure P-1) passed in CWP No.3046 of 2018 titled as 'Sunil Kumar Vs State of Punjab and others' for taking appropriate decision with regard to the petitioner's request for extension of service, in accordance with law and vide order dated 11.12.2019 illegally rejected the same and thereby committed Civil Contempt punishable under Section 12 of the Contempt of Courts Act, 1971 and proceedings may be taken for punishing them.

On consideration of the submissions made by learned Counsel for the petitioner and perusal of the relevant record, I am of the considered view that the respondents cannot be said to have willfully disobeyed the order passed dated 09.09.2019 passed by this Court and to have thereby committed civil contempt of this Court.

CWP No.3046 of 2018 titled as 'Sunil Kumar Vs State of Punjab and others' filed by the petitioner was allowed by the Coordinate Bench of this Court vide order dated 09.09.2019 relevant part of which reads as under:-

“3. Having gone through the charges contained in charge-sheet dated 17.04.2012 (Annexure P-1) vis-a-vis the charges contained in chargesheet dated 23.08.2017 (Annexure P-3), I am in agreement with the argument of learned counsel for the petitioner that the petitioner has been charge-sheeted twice over for the same charges.

4. In the premise, the writ petition is allowed to the extent that the subsequent charge-sheet dated 23.08.2017 (Annexure P-3) is quashed with liberty to the respondents

to proceed on the basis of order dated 06.06.2016 (Annexure P-2) and **take appropriate decision with regard to the petitioner's request for extension of service, in accordance with law.**

5. Let needful be done within a period of three months.”
(emphasis supplied.)

In compliance with order dated 09.09.2019, respondent no.2-Director, Health and Family Welfare, Punjab passed order dated 11.12.2019 relevant part of which reads as under:-

“10. Sh.Sunil Kumar has instituted court case before the Hon'ble Punjab and Haryana High Court due to again issuance of charge sheet, non-grant of extension and non-release of 4, 9 years ACP benefits, in which, while giving the decision in favour of the employee, Hon'ble Punjab and Haryana High Court quashed the charge sheet issued by this office vide letter dated 23.08.2017 and issued order for taking appropriate decision regarding the extension of service of the petitioner and to take further action on the basis of this office order dated 06.06.2016.

11. Rule 3.26 of Punjab Civil Services, Part I, Vol. I, following provisions have been made regarding extension in service of the government employee:-

“Rule 3.26(a) Except as otherwise provided in this rule, the date of retirement of a government employee shall be as follows, namely:-

i) Fifty eight years in case of Group 'A', 'B' and 'C' employees;

and

ii) Sixty years in the case of group 'D' employees;

a) Provided that if the state government is of the opinion that it is necessary and expedient so to do in public interest, the service of a government employee, or a class of Government employees may be extended for a period of two years on yearly basis, subject, however, to giving an option within a period of three months before the date of retirement by the government employee, who seeks extension.

Provided further that a Government employee, who is already on extension, shall also give fresh option within a period of one month from the date of publication of these rules:

Provided further that no Government employee, shall be retained in service after the completion of his extended period of service. However, under exceptional circumstances, if the

state government considers it necessary and expedient so to do in public interest, it may extend the service of a Government employee beyond the aforesaid limit, for the reasons to be recorded, in writing.”

As such, in the above rule provisions have been made for year wise extension upto 2 years on completion of 58 years of age of the government employee. In this case, date of birth of the petitioner is 27.08.1958 and if he had been given extension in the 2nd year then on completion of 60 years of age on 27.08.2018, his date of retirement comes at 31.08.2018. Besides this, employee cannot be given extension in service as per instructions contained in clarifications issued by finance department of the Punjab Govt. vide letter no.22/2/2012-3FP2/82 dt. 30.04.2015 regarding extension in service period:-

“The employees who have not been given extension due to pendency of departmental or criminal proceedings at the time of their retirement, but if, after their retirement, they are exonerated or minor penalty is imposed on completion of departmental or criminal proceedings, then earlier decision of not granting them extension in service will not be considered because in such cases, keeping in view the public interest as per provisions of Rule 3.26 (A) of Punjab Civil Services, Vol. I, Part I, extension is neither necessary nor expedient.”

12. Sh. Sunil Kumar has already been retired as Superintendent from the government service on completion of 59 years of age vide this office letter no. E1(2)-P-2017/10064 dt. 31.08.2017. Now, as per rule mentioned in para no. 11 of the Punjab Government Instructions letter no. 22/2/2012-3FP2/82 dt. 30.04.2015 extension cannot be granted in his service period. As far as pensionary benefits of the petitioner is concerned, as per above, charge sheet issued to the petitioner Sh. Sunil Kumar vide this office letter no. E-1(2)-P-2016/9848 dt. 23.08.2017, has been quashed, as such, sanction is granted for release of pensionary benefits of Sh. Sunil Kumar, Retd. Superintendent Grade-II, office of Civil Surgeon, Sangrur as per rules.”

In ***Dinesh Kumar Gupta Vs. United India Insurance Co.***

Ltd. & Ors. : 2011(1) R.C.R.(Civil) 696 Hon'ble Supreme Court

observed as under:-

“13.contempt of a civil nature can be held to have been made out only if there has been a wilful disobedience

of the order and even though there may be disobedience, yet if the same does not reflect that it has been a conscious and wilful disobedience, a case for contempt cannot be held to have been made out. In fact, if an order is capable of more than one interpretation giving rise to variety of consequences, non-compliance of the same cannot be held to be wilful disobedience of the order so as to make out a case of contempt entailing the serious consequence including imposition of punishment. However, when the Courts are confronted with a question as to whether a given situation could be treated to be a case of wilful disobedience, or a case of a lame excuse, in order to subvert its compliance, howsoever articulate it may be, will obviously depend on the facts and circumstances of a particular case; but while deciding so, it would not be legally correct to be too speculative based on assumption as the Contempt of Courts Act 1971 clearly postulates and emphasizes that the ingredient of wilful disobedience must be there before anyone can be hauled up for the charge of contempt of a civil nature.”

In the present case, order dated 11.12.2019 has been passed within three months from receipt of copy of order dated 09.09.2019. The claim of the petitioner for extension of service was considered by respondent No.2 and rejected for the detailed reasons given in the above-said order the validity of which can be challenged by the petitioner by availing appropriate judicial remedies by appropriate proceedings for appropriate relief, if so desired. Suffices it to observe that there was no direction to grant extension of service to the petitioner and the direction given vide order dated 09.09.2019 was for **“taking appropriate decision with regard to the petitioner's request for extension of service, in accordance with law”** which stands complied with by the above-said order passed by respondent No.2 by rejection of the claim of the petitioner on due consideration. Direction for taking further action on the basis of order dated 06.06.2016 also stands complied with by grant of sanction vide order

dated 11.12.2019 for release of pensionary benefits of the petitioner.
There can not be said to be any wilful non compliance/disobedience of
order dated 09.09.2019 by the respondents who cannot be said to have
committed any civil contempt of the Court.

In follows from the above discussion, that the present
petition is devoid of any merit and is accordingly dismissed.

21.08.2020

Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No