IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-11154-2017
Decided on : 22.11.2022

The Commissioner of Income Tax-2, Chandigarh & others

... Petitioners

Versus

Central Administrative Tribunal, Chandigarh Bench & another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Arun Gosain, Advocate,
Senior Panel Counsel for the petitioners-UOI.

None for the respondent.

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G.S. Sandhawalia, J. (Oral)

Challenge in the present writ petition filed under Articles 226/227 of the Constitution of India is to the order dated 17.12.2015 (Annexure P-3) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short 'the Tribunal') whereby the Tribunal held that the petitioner-department could not withhold the promotion of the respondent-employee merely due to the pendency of departmental proceedings and same could be subject to the outcome of the same. The review was also filed which was dismissed on 22.11.2016 (Annexure P-5).

The present petition was filed on 03.05.2017, apparently only on the strength of the fact that a departmental order had been passed in the meantime on 15.02.2017 (Annexure P-8) against the employee withholding the three increments of pay with cumulative effect.

We have been informed that the employee has also voluntary retired on 02.11.2021. The Tribunal had granted the said relief on the ground that an inquiry was pending in which punishment of withholding of three increments of pay with cumulative effect had been imposed and the same had been set aside on 12.11.2010 (Annexure A-6) in OA No.590-PB of 2009 wherein respondents had been given liberty to proceed afresh in the matter. Challenge had been raised before this Court in **CWP No.24300 of 2011 'Union of India and others Vs. Basant Kumar and another'**, which was dismissed on 23.12.2011 (Annexure A-7).

In the meantime, the respondents had conducted DPC for promotion to the post of Senior Tax Assistants for the year 2009-2010, 2010-2011, 2011-2012 on 03.05.2012, vide which the employee had been promoted on 11.05.2012. For the subsequent promotion as Income Tax Inspectors for the recruitment year 2013-2014 junior persons had been promoted while ignoring the respondent-employee. Thereafter, another meeting of DPC was held for promotion to the post of Inspector for the year 2013-2014 and the applicant/respondent was not again considered and juniors were promoted. Resultantly, he had filed OA No.60/01163/2014.

The defence taken was that in view of the liberty granted earlier they had decided to initiate departmental proceedings vide order dated 02.11.2012. It was noticed that the said order had never been communicated to the applicant/respondent, whereby the authorities had appointed the Inquiry Officer and Presenting Officer and resultantly it was held that it was abuse of power of the respondents. In such circumstances, directions were issued that it was only to deprive the applicant of his valuable right of consideration of promotion. It was also held that the order of promotion shall be subject to the outcome of the departmental proceedings.

Apparently, the petitioners have succeeded in their endeavor to deny the respondent-employee the benefits of promotion, as firstly they chose to file the review to prolong the proceedings for almost a period of one year. Thereafter, after the review was dismissed they chose not to file the writ petition for a period of almost six months and only filed the same on 03.05.2017. An argument as such was raised before the Coordinate Bench on which notice motion was issued that a punishment order had been imposed on 15.02.2017 (Annexure P-8).

A perusal of the file would also go on to show that an execution application had also been filed. This fact had also been noticed by the learned Tribunal, which would be clear from the order dated 20.04.2017, which reads as under:-

> "1. Learned counsel for the applicant submitted that O.A was allowed vide order dated 17.12.2015 with a positive direction by this Tribunal to consider his case for promotion pending departmental proceeding within a period of three months from the date of receipt of certified copy of the order. He submitted that the respondents instead of complying with the directions of this court or getting any order from the Hon'ble High Court in their favour, the authorities took almost more than 1 & 1/2 years to decide his case by passing the punishment order dated 15.02.2017. He submitted that the conduct of the respondents in not honouring the direction of this Court as contained in order dated 17.12.2015, is nothing but colourable exercise on their part to deviate from the direction of this Court by not considering his case within the time as granted by this Court, therefore, suo-moto contempt proceeding may be initiated against the faulty officer.
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> 2. Learned counsel for the respondents submitted that since they have passed the order of punishment dated 15.02.2017. therefore, they have complied with the order of this Court, as such the present execution application may be dismissed.

3. I have gone through the averment made in the affidavit filed by Mr. Pragya Singh, working as Deputy Commissioner of Income Tax (HQ) (Vigilance). Instead of giving reasons for not considering the applicant's case within the time, they tried to circumvent the order of this court by giving reasons that they have passed the punishment order dated 15.02.2017 in compliance of the order of this Court. This to my mind is contemptuous action on their part for which they are liable to settle with the proceeding under the Contempt of Court.

4. Before initiating the contempt proceedings against the respondents, they are given another last chance to apprise this court as to whether they had considered the case of the applicant for promotion after the disposal of O.A or not. They are granted one week’s time to do the needful by filing an affidavit and are also directed to bring the relevant record on the next date of hearing.

5. List on 15.05.2017.”

Mr. Gosain is not aware as to whether the case of the employee for promotion had been considered or not.

It is, thus, apparent that the respondent-employee has also lost interest in the litigation as none has put in appearance, as he has taken voluntary retirement.

We are of the considered opinion that the department as such proceed in a manner which is unbecoming of a department and rather the whole litigation has been continued to deprive a person of his right of consideration for promotion. However, the respondent-employee is not present. Thus, we do not wish to further comment upon the fact as to how he has been prejudiced by his own officers. Even otherwise, it is apparent that the order of the Tribunal was an innocuous order and the present writ petition has now been rendered infructuous due to the intervening circumstances.

Resultantly, we do not find any ground to interfere in the order of the Tribunal. The writ petition is, accordingly, dismissed.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

22.11.2022
Naveen

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No