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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

COCp-1314-2018 (O&M)
Date of Decision: 02.11.2023

Parshotam Das

. . . . Petitioner

Vs.

Sushil Kumar and others

. . . . Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. S.S. Hira, Advocate
for the petitioner.

Mr. Vikas Singh, Advocate
for the respondents.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. The petitioner has preferred this contempt petition alleging non-compliance of the order passed by the Court dated 10.01.2018 whereby this Court passed the following order:

“Thus, there is violation of principle of natural justice in passing the order dated 30.1.2013 (Annexure P-7), the same is hereby set aside. The petitioner is entitled to benefit of Annexure P-6 till further action is taken by the respondent by issuing show cause notice. The respondents are hereby directed to specify under which provision or executive order or office order that there is proposal to modify the basic pay of the petitioner as on 1.1.1997 from Rs.10,061/- to Rs.9032/- in the show cause notice so that petitioner can reply effectively”

2. The said judgment passed by the Single Judge was taken up in LPA by the respondents in LPA No.731 of 2018 wherein the Division Bench has passed an order on 26.05.2022 as under:

“Perusal of the file would show that the learned Single Judge noticed that the benefits of stepping up of the pay of the petitioner, which was done on 24.7.2012 (Annexure P-6), was not given effect since he has already retired on 16.6.2012. The impugned order dated 30.1.2013 (Annexure P-7), which was subject matter of consideration before the learned Single Judge, withdrew the benefits granted, which has now been quashed, even if the effect as such for stepping up had not been granted and directions have been issued that the fresh order may be passed, but the difference of pay be released within a period of 3 months.

Learned counsel for the appellant has argued that it would amount to duplicating as, firstly, granting the benefit by the appellant and then asking for the refund from the employee who is a pensioner and it would lead to multiplicity of litigation.

Keeping in view the above, the appellants are directed to pass the order by hearing the writ petitioner and considering his case as to whether the benefits of stepping up of pay granted on 24.7.2012 was permissible. Since he has settled within the territorial jurisdiction of this Court and the appellants are based at Dhanbad (Jharkhand), steps be taken for hearing by way of video conferencing, before passing the said order.

The necessary affidavit and the order which shall give the details of the benefits, which were liable to be paid to him vide Annexure P-6 and what is sought to be withdrawn, in case so, which shall be depicted in the affidavit.”

3. Learned counsel for the respondents/contemnors informs that in terms of the order passed by the Division Bench, the respondents have considered the written representation of the petitioner, and have passed a detailed order which has been placed on record before the Division bench. The said order has been passed on 17.09.2022.
4. Learned counsel submits that the appeal has been already admitted. In view of the order dated 17.09.2022, the respondents have denied the petitioner the effect of SLU/SLI on completion of ten years of service.

5. Learned counsel for the petitioner submits that the petitioner has already attained superannuation and the LPA will take long time, and since there is no stay on the order passed by the Single Judge, the contempt proceedings too are maintainable, and the respondents are in contempt.
6. I have considered the submissions.
7. This Court finds that the order passed by this Court has merged with the order passed by the Division Bench, and in compliance of the order of the Division Bench, which is interim in nature, the respondents have passed a speaking order denying the benefit to the petitioner.
8. In view of above, no deliberate or willful contempt can be said to have been committed by the respondents, and no purpose would be served in continuing with the contempt proceedings.
9. My view is also supported by the recent larger Bench judgment passed by the Supreme Court in ***Future Coupons Pvt. Ltd. vs. Amazon.com NV Investment Holdings LLC, 2022 (2) RCR (Civil) 353***, wherein the Supreme Court has held as under:

*“41. Viewed differently, contempt of a civil nature can be made out under Order XXXIX Rule 2A CPC not when there has been mere "disobedience", but only when there has been "wilful disobedience". The allegation of wilful disobedience being in the nature of criminal liability, the same has to be proved to the satisfaction of the court that the disobedience was not mere "disobedience" but "wilful" and "conscious". This Court in the case of **Ram Kishan v. Tarun Bajaj, (2014) 16 SCC 204**, considering the implication of exercise of contempt jurisdiction, held that the power must be exercised with caution rather than on mere probabilities. While delineating the conduct*

which can be held to be "wilful disobedience this Court held that:

"12. Thus, in order to punish a contemnor it has an be established that disobedience of the order is "wilful". The word "wilful" introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions which is an indication of one's state of mind. "Wilful" means knowingly intentional, conscious calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a "bad purpose or without justifiable excuse or stubbornly, obstinately or perversely Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. "Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct."

10. Accordingly, the contempt proceedings are dropped.

11. Notices are discharged.

(SANJEEV PRAKASH SHARMA)
JUDGE

November 02, 2023

Mohit goyal

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