

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

COCP-337-2008 (O&M)

Date of Decision : May 05, 2023

Lt. Col. K.B.L. Sharma (Retd.)

.....Petitioner

Vs.

Lt. Gen. J.S. Sandhu

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sanjeev Sharma, Senior Advocate with
Mr. Vikram Vir Sharda, Advocate
Mr. Sandeep Singh, Advocate
for the petitioner.

Mr. Shivoy Dhir, Senior Panel Counsel
for the respondent-UOI.

ARVIND SINGH SANGWAN, J.

This petition is pending since 2008.

The petitioner alleges the non-compliance of the order dated 10.5.2007 passed by the writ Court in CWP-6955-2007 titled "Lt. Col. K.B.L. Sharma (Retd.) Vs. Union of India and others'.

The order dated 10.5.2007 reads as under :-

"The relief claimed in this writ petition by the petitioner has also been claimed by him by serving a legal notice (Annexure P-4) which has not been decided till date.

Notice of motion.

On the asking of the Court, Ms. Renu Bala, Advocate accepts notice on behalf of the respondents-Union of India.

After hearing learned counsel for the petitioner, we dispose of this writ with a direction to respondent No.4 to decide the legal notice (Annexure P-4) within a period of 6 months from the date of receipt of certified copy of this order."

A perusal of the order would show that only a direction was given to decide the legal notice submitted by the petitioner.

Learned Senior Counsel submits that even on previous occasion, the petitioner had filed CWP-8490-1991, which was allowed on 9.1.1992 and the recovery order was quashed. LPA-497-1992, filed against the said order, was dismissed on 13.7.2005. Thereafter, the petitioner filed COCP-497-1992 which was dismissed on 21.4.2006.

It is stated that the SLP(C)-1634-2015 was filed by the petitioner against the judgment dated 11.7.2014 passed in CWP-13245 of 2014, in which the Hon'ble Supreme Court has passed the following order :-

"The petitioner had filed a contempt petition in the High Court being COCP No.337 of 2008. This contempt petition was disposed of on 7th March, 2012 with the following order:-

"The respondent, however, insists that the direction to decide the legal notice, issued by this

Court, has been complied with vide communication dated 24.12.2007 though the said communication nowhere deals with the claim of the petitioner regarding promotion after the adverse material comprising severe displeasure was quashed by this Court. Similarly, the aforesaid communication nowhere discloses as to when and how the petitioner's claim for promotion was reviewed as per Regulation 69 of the Rules referred to in the legal notice. I, therefore, deem it appropriate to clarify that let the above- stated communication dated 24.12.2007 be treated as an 'order' rejecting the petitioner's statutory complaint but at the risk and responsibility of the respondent, with further liberty to the petitioner to impugn the same before an appropriate forum, if so advised. Since this contempt petition is disposed of today, the respondent shall not take the plea of limitation, delay or laches against challenge to the aforementioned communication dated 24.12.2007."

Subsequently, the petitioner approached the Armed Forces Tribunal (for short "the Tribunal"), but by an order dated 13th November, 2013, the original application filed by the petitioner was rejected on the ground that it had been filed beyond the period of limitation. The view expressed by the Tribunal was affirmed by the High Court which held that the Original Application was barred by limitation and, therefore, the Tribunal was correct in not entertaining it.

It is submitted by learned counsel for the petitioner that under these circumstances, he is left without any remedy in the sense that the contempt petition was disposed of and the Original Application filed before the Tribunal was not entertained. It is further submitted that effectively the last portion of the order passed in the contempt petition that the respondent shall not take the plea of limitation, delay or laches against the challenge to the aforesaid communication dated 24th December, 2007 has been rendered meaningless.

Under these circumstances, learned counsel for the petitioner seeks leave to revive the contempt petition before the High Court for whatever it is worth. We permit the petitioner to move an application before the High Court to revive the contempt petition.

We note the contentions of learned Additional Solicitor General that no contempt has been made out since the representation given by the petitioner was decided on 24th December, 2007 and the order passed requires no interference. We make no comment on this submission.

The petitioner may approach the High Court and raise whatever contentions are available to him in the contempt petition. Similarly, the respondents may also raise whatever contentions available to them in the contempt petition.

The special leave is disposed of leaving the question of law open.”

Learned Senior Counsel submits that the petitioner can approach the High Court and raise the contention available to him in the contempt petition.

Learned Senior Counsel for the petitioner could not make any new ground as the only direction in the order dated 10.7.2007 was to decide the legal notice, which has already been decided by passing an order by the respondent. Since the scope of the Contempt Court is limited to the extent that to found out whether any willful violation of the order of the writ Court is made out and not to look into the merits of a case, finding that no willful disobedience is made out, this petition is rendered infructuous and the same is dismissed.

However, liberty is granted to the petitioner to assail the order passed by the respondent-authority, in accordance with law, if any.

Since this petition remained pending since 2008 and a long period has since been elapsed, if the petitioner approaches the Armed Forces Tribunal within a period of one month from today, the same will be decided on merits without raising any objection regarding the limitation in view of the provisions of Section 14 of the Limitation Act.

(ARVIND SINGH SANGWAN)
JUDGE

May 05, 2023
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Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO