

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CJ Court

Case: CCP(D) No. 71/2022

Kunzes Dolma.

.....Appellant/Petitioner(s)

Through :- Mr. J A Hamal, Advocate.

v/s

Alok Kumar and ors.

.....Respondent(s)

Through :- Mr. Raman Sharma, AAG.
Mr. Vishal Sharma, DSGI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MOHAN LAL, JUDGE

ORDER(ORAL)

18.11.2023

N. KOTISWAR SINGH-CJ

01. Heard Mr. J A Hamal, learned counsel for the petitioner as also Mr. Raman Sharma, learned Additional Advocate General and Mr. Vishal Sharma, learned Deputy Solicitor General of India, appearing for the respondents.

02. The present contempt petition has been filed alleging non-compliance of the order dated 09.08.2019 passed by the Division Bench of this Court in LPASW No. 58/2019 wherein *inter alia* following direction has been passed.

“20. The present appeal is accordingly dismissed being totally misconceived. The Commission is directed to proceed further in the matter for selection of the respondent No.1 /the writ petitioner after treating her eligible for the post. The needful shall be done within a period of two month from the date of receipt of the copy of the order. To avoid any further litigation, it is further directed that the petitioner shall be entitled to all the benefits from the date,

she joins service, if appointed. However, if for any reason more time is required for compliance of the order, extension from the Court will be required.”

03. According to the petitioner, though the petitioner has been appointed as Lecturer vide order dated 25th March 2021, the petitioner had not been given the benefit of notional seniority which she is entitled to, inasmuch as, she was unfairly denied of the appointment in 2011 and, as such, once she has been given appointment on 25.02.2021, she should also have been given the notional seniority on the same analogy as has been given to the other candidates who have been recruited under the same advertisement. It has been further submitted that since in the compliance order dated 25.03.2021, notional seniority has not been given, it can be said that the respondents have not complied with the directions passed by this Court on 09.08.2019 in its true letter and spirit.

04. Learned counsel for the respondents on the other hand has submitted that there is no specific direction in the order passed by the Division Bench for granting notional seniority. The expression used in the order is that the petitioner is entitled to the benefit from the date she joins the service.

05. Learned counsel for the petitioner, however, submits that this should be read into the direction of the Division Bench inasmuch as the Division Bench has clearly mentioned that to avoid any further litigation, the petitioner shall be entitled to all benefits accruing therein which would also include the notional seniority, otherwise, she would be compelled to file another petition seeking the notional seniority.

06. While the submission of the petitioner is a plausible interpretation of the directions issued by the Division Bench, the submission of the respondents that

in absence of the specific directions of the Court to grant notional seniority, it cannot be granted, is also a plausible interpretation, and, hence, it can not be said that the respondents have committed any contempt. Thus, we are confronted with two interpretations of the directions passed by the Division Bench on 09.08.2019. While we also feel that the interpretation made by the petitioner cannot be said to be unwarranted, at the same time, the interpretation of the State respondents also cannot be brushed aside as not permissible and it cannot be said that they had deliberately misinterpreted the order. Contempt is made out when there is willful violation of the Court's order. Every violation, of a Court's order does not amount of contempt, unless it is willful.

06. In the present case, considering the interpretation made by the respondents, it cannot be said to be a willful violation, though, the respondents could have given the notional seniority to the petitioner. Hence, we feel that the contempt does not lie. However, this will not prevent the petitioner from seeking a separate relief of notional seniority and, accordingly, the present contempt petition is closed with liberty to the petitioner to seek specific direction from the appropriate Forum as far as the entitlement of notional seniority is concerned.

07. Contempt notices shall stand discharged and file be consigned to record.

(MOHAN LAL)
JUDGE

(N. KOTISWAR SINGH)
CHIEF JUSTICE

JAMMU
18.11.2023
SUNITA/PS