

COCN No.2306 of 2018

Date of Decision: 26.03.2019

Neeta Kabotra

.....Petitioner

Versus

Bhupinder Pal Singh and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAURPresent: Mr. Rahul Sharma-I, Advocate
for the petitioner.

Mr. Kanisth, Ganeriwala, AAG, Punjab.

NIRMALJIT KAUR, J. (ORAL)

The facts, which have necessitated the filing of the present contempt petition are that the present petitioner had challenged her order of termination by way of petition bearing No.84 of 2016, before the Education Tribunal, Punjab, SAS Nagar, Mohali. The termination order was set aside by the learned Tribunal vide order dated 01.03.2018, holding the said termination order as retrenchment under Section 7 of the Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974 (for short, the Act) on the ground that order of termination required the approval of the Director and as the approval had not been obtained, the impugned order of termination was held to be rendered as null and void. Accordingly, the matter was remanded back to the Director.

Thus, the only question that remained was as to whether the petitioner was entitled to any relief regarding the retirement and salary in the absence of prior approval by the DPI (C). Hence, without recording any opinion on the same, the learned Tribunal remanded the matter back to the Director to consider and decide the question of approval as also the consequential relief to be granted to the petitioner.

In pursuant to said order, the Director passed an order dated 30.05.2018, holding that the prior approval of the Director Public Instruction (Colleges), Punjab before terminating the service of the petitioner was not required.

The present contempt petition was, therefore, filed stating therein that the said order was contemptuous. The DPI had no basis to hold that the approval was not necessary when the learned Tribunal had specifically held otherwise.

Short reply by way of affidavit is filed by Harjeet Singh, Commissioner, Faridkot Division, Faridkot, who was previously working as Director, Higher Education Department, Punjab and was responsible for passing the order. As per the reply, he was required to analyse the position regarding the entitlement of consequential benefits of the petitioner by examination of facts in detail and therefore, a fresh conscious decision was required to be passed only with respect to the entitlement of the consequential reliefs to the petitioner and that he after considering all the material aspects, rightly came to the conclusion that the petitioner was not entitled to any consequential relief. He had passed the said order in good faith and as per his understanding. Further, he was entitled to protection under Section 9 of the Act.

The question, therefore, before this Court is as to whether there is willful disobedience on the part of the respondent. A perusal of the order dated 30.05.2018, which is stated to be contemptuous shows that the petitioner was not held entitled to the consequential relief regarding retirement and salary inter-alia on the ground that the petitioner was paid

the subjects, which the petitioner was teaching. Secondly, the petitioner was bound by the terms and conditions of the agreement, which were inconsonance in the University Calendar. No doubt, order dated 30.05.2018 is not a happily worded order especially taking into account the last line mentioned in the said order that prior approval of the Director Public Instructions (Colleges), Punjab is not necessary, which was definitely contrary to the observations made by the learned Tribunal. However, it cannot be said that the said order is in any case or in any manner intentional or mala fide. Therefore, it may not be possible for this Court to actually conclude that the respondents have committed the contempt of the Court. The speaking order dated 30.05.2018 stood passed. In case the petitioner was not happy with the said speaking order dated 30.05.2018, he was always at liberty to challenge the same, in accordance with law, which he has not done till date. The said order can only be set aside by an appropriate Court of jurisdiction.

In view of the same, the present contempt petition is dismissed.

Rule issued against the respondents stands discharged.

However, the petitioner is at liberty to challenge the speaking order dated 30.05.2018, in accordance with law.

26.03.2019
sandeep

(NIRMALJIT KAUR)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No