

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

COCP No.2630 of 2018 (O&M))

Date of Decision: 21.2.2019

Kamlesh Kumar Yadav

.....Petitioner

Versus

Maj Gen R.S. Thakur and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Ashok Bhardwaj, Mr. Dinesh Mahto, Mr. S.S. Pathania,
Advocates, for the petitioner(s).

Mr. Sandeep Bansal, Advocate, for the respondents.

NIRMALJIT KAUR, J. (ORAL)

CM No.2156-CII of 2019

Annexures R-3 to R-5 are taken on record.

CM stands disposed of.

CM No.3374-CII of 2019

Annexure P-7 is taken on record.

CM stands disposed of.

COCP No.2630 of 2018

This order shall dispose of five contempt petitions bearing COCP Nos.2630, 2661, 2662, 2072 and 2631 of 2018 as common questions of law and facts are involved therein. However, the facts have been extracted from COCP No.2630 of 2018.

The present contempt petition has been filed for non-compliance of the order dated 13.1.2014, vide which the writ petition filed by the respondents against the award was dismissed. Thereafter, the respondents filed LPA. In the LPA, the order was modified only to the extent that the respondents would be entitled to 50% back wages.

Reply has been filed. As per the said reply, the order has been complied with and 50% back wages have also been granted. Detailed calculation has been placed on record.

Learned counsel for the petitioner(s) have filed their rejoinder

giving their calculations. As per the said calculations, there is a difference of substantial amount.

After hearing learned counsel for the parties, it transpires that the respondents have calculated the amount on the basis of their terms and conditions as contained in Annexure R-3/1 in view of the order and judgment dated 15.1.2018 passed by another Bench of this Court in subsequent similar writ petition placed on record as Annexure P-1, vide which, the writ petition was allowed with the following observations:-

“Undisputedly, respondents have suffered orders before the Labour Court, before Single Bench and LPA Bench to the extent of reinstatement of the petitioner with continuity of service. Only to the extent of back wages, LPA bench interfered and restricted to 50 per cent back wages. Having regard to the nature of appointment and conditions imposed in the initial appointment order, respondent no.3 cannot go beyond the terms and conditions imposed vide Annexure R-3/1 to the extent that each of the petitioner is on probation etc. Therefore, impugned action of the respondent would be contrary to award passed by the Labour Court read with decision of LPA. Accordingly, Annexure P/11 – order of termination is set aside. Respondent no.3 is hereby directed to extend all consequential benefits including monetary benefits i.e., from the date of termination till reinstatement. If any payment is made to the petitioner, the same shall be adjusted by the respondent after due notice to the petitioner. If respondents have not disbursed 50% back wages as ordered by the LPA Bench, respondents are hereby directed to calculate and disburse to the petitioner within a period of three months from today.”

Learned counsel for the petitioner(s) on the other hand have relied on the observations in the award, wherein, their contentions that they

were being paid a particular pay scale, has been mentioned. It is evident from the perusal of the award, the order of the learned Single Bench and the order passed by the learned Division Bench in LPA that there is no finding on the pay scale being paid to the petitioner(s) or the last pay drawn by them. In these circumstances, this Court cannot say that there is willful contempt or order has not been fully complied with.

Accordingly, the present contempt petitions are dismissed.

Rule issued against the respondents stands discharged.

However, in case, the petitioner(s), is still aggrieved in any manner, they are at liberty to file representation to the respondents within four weeks from today placing on record the proof of the wages or the pay scale which was being granted to them. The respondents shall consider the same and pass a fair order within one month of the receipt of the said representation after hearing the petitioner(s). In case, the petitioner(s) is found entitled to the pay scale as claimed by them, necessary balance amount shall be paid to them forthwith and in case, the respondents come to the conclusion that the pay scale as claimed by the petitioner(s) is incorrect, a speaking order shall be passed, which the petitioner(s) will be at liberty to challenge in accordance with law.

21.2.2019
sharmila

(NIRMALJIT KAUR)
JUDGE

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