M/L 1321
25.07.2025
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Ct.5.

IN THE HIGH COURT AT CALCUTTA
SPECIAL CIVIL JURISDICTION
APPELLATE SIDE

CPAN 1532 of 2023
In
WPA 20961 of 2004

Md. Y. Memon
Versus
Munawar Khursheed & Ors.

Ms. Shraboni Sarkar
... For the petitioner

Mr. S. N. Dutta
... For the alleged contemnors/respondents

1. Complaining non-compliance of the direction contained in the judgment and order dated 10th February, 2023, insofar as the same directed payment of consequential benefit to the petitioner, the above contempt application has been filed.

2. On the alleged contemnors being notified, an affidavit of compliance as per the order dated 22nd March, 2024 had been filed wherein the following payments appears to have been made.

Sl. No	Payment Head	Payment paid (in Rs)
i	Back Wages	40,38,543
ii	Pension	23,800/- (per month)
iii	DCRG	8,01,108
iv	CGEIS	48,442/-
v	Provident Fund	671/-
vi	Leave Encashment	4,85,520/-
vii	Notional Seniority	Benefit has been given.

Petitioner received total amount Rs.53,74,284/- (excluding of per month pension and its arrears).

NOTARY ... TOSH KUMAR ... STRAKAR ... (C.G.) ... 17766 ... 2024 ... INDIA

- 2 MAY 2024

3. Insofar as cash compensation is concerned since the explanation provided for denying such benefit was not found to be satisfactory and upon considering the exception filed by the petitioner to such compliance report filed on behalf of the alleged contemnor/respondent no.2, this Court by an order dated 7th February, 2025 had inter alia issued the following direction:-

> *"Having heard the learned advocates appearing for the respective parties and noting the statements made in paragraph 7 of the compliance affidavit, I direct the alleged contemnors to file an affidavit making appropriate disclosure as regards the employer's share of provident fund contributions payable in the petitioner's case for the period between 7th May, 1985 to 31st December, 2016. Similarly, the computation of the ad hoc bonus for the period between 1st January, 1986 to 31st December, 2016 payable to the petitioner should also be disclosed and included in the aforesaid affidavit to be filed by the alleged contemnors on the returnable date with an advance copy thereof to the learned advocate representing the petitioner.*

3. A further affidavit of compliance had been affirmed on 28th February, 2025. The relevant portion of the said affidavit is extracted hereinbelow.

> *3. I say that no employer's share of provident fund is payable in case of employee's having old pension scheme (OPS) and it is only payable in case of New Pension Scheme (NPS). No Employee's having old pension scheme (OPS) have been given employer's share of provident fund. Only interest is provided on*

> *employee's contribution. In this regard letter No.SR.DFM/BSP/Estt. Section/RPF/02/ dated 18.02.2025 issued by Senior Division Finance Manager is annexed hereto and marked with letter –"A".*
>
> *4. In the aforesaid letter it has also been stated that ad hoc bonus does not come under the purview of consequential benefit and only is given to the employees who worked at least 6 months in any financial year for which bonus is calculated. Such policy has been framed by Railway Board and communicated through it letter No.RBE 133/2022 dated 26.10.2022 which is being annexed in my earlier affidavit dated 1st August, 2024, as Annexure – "R".*

4. I find that the petitioner has been denied the Provident Fund benefit having regard to the Master Circular No.62 as applicable to the Railway servants. Incidentally in terms of paragraph 1 of such circular Government contribution and special contribution to Provident Fund shall be credited only to the accounts of subscribers who are not pensionable namely those railway servants who were in service prior to 16th November, 1957 and did not opt for the Pension Scheme or had specifically retained the Provident Fund scheme as a result of pension option given to persons who were in service on 1st January, 1986. The petitioner though was not in service as on 16th November, 1957, however, the facts remains that neither any option was given by the petitioner nor the petitioner could have availed the same by reasons of the petitioner at the relevant point of time being a dismissed employee.

5. Although, the denied of benefit of Provident Fund to the petitioner does not appear to be proper, however, having regard to the fact that substantial compliance has been made

and the aforesaid issue may require a fresh adjudication giving rise to a fresh cause of action, I am of the view that it shall not be prudent to decide the cause in the contempt application.

6. It is made clear that cash compensation can only payable for employees who were in service. Admittedly, the petitioner was not in service. This Court while disposing of the writ petition also did not hold that the petitioner to be in active service. The direction was for payment of consequential benefits. In the light of the above, the petitioner's claim for cash compensation cannot be said to be justified.

7. In view thereof, the contempt proceeding is dropped and the contempt application, being CPAN 1532 of 2023 is disposed of leaving it open to the petitioner to seek appropriate relief, if so advised.

(Raja Basu Chowdhury, J.)