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Cont.P.No.2669 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	040124
Pronounced on	28.03.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Cont.P. No. 2669 of 2022

P.Neelaveni

... Petitioner

Vs

1. Tmt.Kakarla Usha, I.A.S.,
Secretary to Government,
School Education Department,
Secretariat,
Chennai – 600 009.

2. Thiru.S.Sethurama Varma,
Director of Government Examinations,
College Road,
Chennai – 600 006.

3. Thiru.R.Sathish Kumar,
Assistant Director of Government Examinations,
Coimbatore,
Coimbatore District.

... Respondents

Prayer: Petition filed under Section 11 of Contempt of Courts Act, to punish the Respondents for wilful disobedience of the order of this Court dated 27.10.2021 in W.P.No.22942 of 2021.



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For Petitioner : Mr.Singaravelan
Senior Counsel

For Respondents : Mr.S.Silambanan
Additional Advocate General – II
Assisted by Mr.Venkatesh
Special Government Pleader

ORDER

The petitioner has filed this contempt petition against the respondents for non-compliance of the Order passed by this Court in W.P.No.22942 of 2021 dated 27.10.2021.

2. The said writ petition was filed by the writ petitioner for the following relief:-

“For issuance of writ of Mandamus directing the respondents to extend the benefits of G.O.(1D).No.286, School Education (GE.1) Department dated 19.07.2016 and G.O.(1D).No.238, School Education (Nee.Va.4(2)) Department dated 07.04.2017, and G.O.(Pa).No.72, School Education (G.E.) Department dated 28.02.2019 to the petitioner also for regularization in the post of Record Clerk from the date of proposal (i.e.,) 03.11.1998 onwards on par with junior for the purpose of pension based on the writ appeal Order dated 05.12.2017 in W.A.No.1292 of 2017 and grant pension to the petitioner from the date of retirement with effect from 31.03.2012.”



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3. After hearing both sides, the following Order was passed, relevant portion of which is extracted below:-

“Considering the same, the respondents are directed to pass appropriate Orders on the representation dated 06.06.2020 of the petitioner after duly considering the Orders passed by the Hon'ble Division Bench of this Court in W.A.No.1292 of 2017 vide Order dated 05.12.2017 and in W.A.No.774 of 2020 vide Order dated 21.09.2020. This exercise shall be carried out by the respondents within a period of sixteen weeks from the date of receipt of a copy of this Order in accordance with law and on merits.”

4. The above Order was the subject matter of an appeal before the Hon'ble Division Bench. The Hon'ble Division Bench disposed W.A.No.2220 of 2023 vide Order dated 24.08.2023 with the following observations:-

“5.Today, when the matter was taken up for consideration, the learned counsel for the respondent submitted that without properly examining the claim of the respondent / writ petitioner in the light of the Order of the learned Judge, an incompetent authority has passed an Order on 28.09.2022, rejecting the same.

6.On the other hand, the learned Additional Advocate General appearing for the appellants submitted that the Deputy Director (Administration)



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*of Government Examinations, Chennai, has inadvertently, passed the aforesaid Order dated 28.09.2022 and the appellants are now inclined to rectify the same by passing the Order afresh by the competent authority, **for which, the learned counsel for the respondent has no serious objection.***

7.Considering the facts and circumstances of the case and as agreed to by both the parties, we direct the competent authority to pass appropriate Orders, on merits and as per law, that too, after hearing the parties concerned and also in the light of the Order of the learned Judge, which is impugned herein, within a period of four weeks from the date of receipt of a copy of this judgment.

8.The writ appeal is disposed of accordingly. No costs. Consequently, connected C.M.P. is closed.”

5. Subsequently, the respondents moved C.M.P.No.26962 of 2023 for clarification of the Order dated 24.08.2023 in W.A.No.2220 of 2023. Thereafter, Order dated 29.09.2023 bearing reference: ந.க.எண்.000001/அ1/2023 has been passed by the respondent /Administration of Government Examinations, Coimbatore District.



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6. Therefore, it is a clear case for contempt and therefore, the respondent is directed to comply with the Order dated 27.10.2021 in W.P.No.22942 of 2021, failing which Court will be constrained to issue a Statutory Notice to the respondent for wilful disobedience of the Court Order dated 27.10.2021 in W.P.No.22942 of 2021.

7. The application for clarification under C.M.P.No.26962 of 2023 was closed vide order dated 07.12.2023 in view of the subsequent development.

8. Mr.R.Singanavelan, learned Senior Counsel for the petitioner would submit that the Order passed by this Court on 27.10.2021 is categorical in nature and has not been complied till date.

9. It is submitted that the respondents were directed to pass Orders on the representation dated 06.06.2020 of the petitioner in light of the Order passed by the Hon'ble Division Bench in W.A.No.1292 of 2017 dated 05.12.2017 and Order dated 23.03.2022 in W.A.Nos.714 to 716 of 2014.



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10. It is submitted that earlier Order which was passed by the Deputy Director (Administration) of Government Examinations, Chennai on 28.09.2022 was not passed by the Competent Officer. The subsequent Order which has been passed now by is a carbon copy of the same Order except that it has been passed by the competent authority.

11. The learned Senior Counsel for the petitioner would further submit that the prayer in W.P.No.22942 of 2021 dated 27.10.2021 was to consider the representation of the petitioner, so that the petitioner could be treated at par with the others whose services were regularized and who joined the services after the petitioner joined the services.

12. It is submitted that the petitioner is entitled to pension in the light of the clarification issued by the larger Bench in its decision dated 03.12.2019.

13. It is submitted that in any event the matter has been referred to a larger Bench in W.A.Nos.714 to 716 of 2014 vide Order dated 23.03.2022 in the light of the decision of **Prem Singh vs. State of Uttar Pradesh and Ors.**, reported in (2019) 10 SCC.



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14. It is submitted that there cannot be discrimination between the petitioner who joined the services as early as on 02.08.1985 and those who joined services much after the petitioner joined service. It is submitted that if the service of junior of the petitioner who joined service after the petitioner were regularized before, then the petitioner is entitled for similar treatment, if not a better treatment than her junior.

15. The learned Additional Advocate General for the respondents on the other hand would submit that the Order passed by this Court on 27.10.2021 has been complied on merits by the competent authority and therefore, it is open for the petitioner to challenge the Order in a manner known to law and therefore, submits that this contempt petition is liable to be closed.

16. It is also submitted that the respondents have preferred an appeal as mentioned above in W.A.No.2220 of 2023 and the Court had disposed all the writ appeals in the light of the subsequent development.



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17. In operative portion of the Order dated 29.09.2023 bearing reference: ந.க.எண்.000001/அ1/2023 of the Assistant Director of Government Examinations, Coimbatore has referred to the decision of the Hon'ble Division Bench in W.A.Nos.149 to 156 and 212 of 2020 rendered on 11.02.2020.

18. Therefore, the Education Department was aggrieved by Order dated 12.04.2018 in W.P.No.8852 of 2018. The aforesaid Writ Appeal was purportedly inspired from the decision of the Hon'ble Larger Bench of this Court rendered on 03.12.2019 in Government of Tamil Nadu and Others vs. R.Kaliyamoorthy, 2019 (6) CTC 705.

19. The facts of the case in W.A.Nos.149 to 156 & 212 of 2020 rendered on 11.02.2020 is not discernible from the reading of the Order.

The said Order merely reads as under:-

***“Having heard learned counsel for the parties, it has been pointed out by the appellants that in view of the Full Bench decision in the case of Government of Tamil Nadu and Others vs. R.Kaliyamoorthy, reported in 2019 (6) CTC 705, all these appeals are covered by the said decision, hence, they deserve to be disposed of accordingly.*”**



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2. Learned counsel for the respondents tried to draw a distinction by citing the decision of the Apex Court in the case of Prem Singh vs State of Uttar Pradesh and Others, reported in (2019) 10 SCC 516 contending that the said judgment had been delivered approximately three months prior to the Full Bench judgment and the same has not been taken into consideration, hence, the ratio of the judgment of the Supreme Court should be, accordingly, applied for the disposal of these appeals.

3. Having considered the submissions raised, we find that the judgment of the Apex Court in the case of Prem Singh (supra) was delivered on the facts of that case, whereas, in the present matter, the relevant Government Orders promulgating the Tamil Nadu Pension Rules, 1978 have been specifically considered, whereafter the Full Bench has answered the question referred to it, which, in our opinion, squarely governs the field of law involved herein. The same being a Full Bench decision is binding on us.

4. In view of what has been stated above, there is no reason for us to take a different view by applying the law laid down in the case of Prem Singh (supra).

Accordingly, all these writ appeals are disposed of in terms of paragraph 46 of the Full Bench judgment referred above and shall be applicable as per the respective categories involved in each of these appeals. No costs. Consequently, connected miscellaneous petitions are closed.”



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20. The Order dated 29.09.2020 merely extracts Paragraph 3, 4 and the last paragraph from the above decision of the Hon'ble Division Bench which has been now extracted above.

21. Operative portion of the Order dated 29.09.2023 reads as under:-

“மேற்படி மனுதாரர் திருமதிநீலவேணி சென்னை உயர்நீதிமன்ற W.P.No.22924/2021 தீர்ப்பாணையில் சுட்டிக்காட்டிய வேளாண்மைத் துறையைச் சார்ந்த வழக்கு W.A.No.1292 of 2017ன் தீர்ப்பானது மாண்புமிகு மூவரடங்கிய அமர்வு தீர்ப்பு நாள் 03.12.2019 மற்றும் மாண்புமிகு முதன்மை அமர்வு தீர்ப்பு நாள் 11.02.2020 ஆகிய நகழ்வுகளுக்கு முன்னரே 05.12.2017 அன்று மாண்புமிகு சென்னை உயர்நீதிமன்றத்தால் பிறப்பிக்கப்பட்டதாகும். மாண்புமிகு மூவரடங்கிய அமர்வு மற்றும் மாண்புமிகு முதன்மை அமர்வுகளின் தீர்ப்புகளே தற்போது நடைமுறையில் உள்ளது.

மேலும் மேற்காண் தீர்ப்பாணையில் சுட்டிக்காட்டப்பட்டுள்ள பிறிதொரு வழக்கு W.A.No.774/2022 தீர்ப்பு இத்துறையில் தொழிலாளியாக பணியாற்றிய திரு.A.கிருஷ்ணமூர்த்தி என்பவர் தொடுத்த வழக்காகும். இவ்வழக்கில் பெறப்பட்ட தீர்ப்பாணையினை நடைமுறைப்படுத்தி பார்வை 5ல் காணும் துணை இயக்குநர் (நிர்வாகம்) அவர்களின் செயல்முறைகள் மூலம் நிராகரித்து ஆணை



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பிறப்பிக்கப்பட்டது இவ்வாணை சென்னை
உயர்நீதிமன்றத்தால் ஏற்றுக்கொள்ளப்பட்டு மேற்காண்
வழக்கு மற்றும் அதனைத் தொடர்ந்து
திரு.A.கிருஷ்ணமூர்த்தி என்பார் தொடுத்த நீதிமன்ற
அவமதிப்பு வழக்கு முடித்து வைக்கப்பட்டது.

மனுதாரர் 01.04.2023 பின்னர் பணிநிரந்தரம்
செய்யப்பட்டமையால், புதிய ஓய்வூதிய திட்டத்தில்
சேர்க்கப்பட்டுள்ளார். எனவே, மனுதாரர்
திருமதிP.நீலவேணி என்பாரின் 20.09.2023 நாளிட்ட
கோரிக்கை நன்கு பரிசீலிக்கப்பட்டு சென்னை
உயர்நீதிமன்ற முழு அமர்வு தீர்ப்பின் அடிப்படையில்
பத்தாண்டுகள் பணி முடித்த நாள் முதல்
பணிவரன்முறைபடுத்தி பழைய ஓய்வூதிய திட்டத்தில்
சேர்க்க இயலாது என ஆணை பிறப்பிக்கப்படுகிறது.

22. A reading of the Order dated 29.09.2023 indicates that the request of the petitioner has been rejected on the light of the decision rendered on 03.12.2019 in the case of **Government of Tamil Nadu and Others vs. R.Kaliyamoorthy**, 2019 (6) CTC 705 referred to *supra* and a request made for reference to a Hon'ble Larger Bench by the Hon'ble Division Bench of this Court vide its Order dated 23.03.2022 in W.A.Nos.714 to 716 of 2014 in the light of the ratio of the Hon'ble Supreme Court in the case of **Prem Singh vs. State of Uttar Pradesh and others** reported in (2019) 10 SCC 516.



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23. The said order further makes a reference to the decision of the Hon'ble Division Bench of this Court in the case of **The State of Tamil Nadu vs. A.Krishnamoorthy, Mazdoor** rendered on 21.09.2020 in W.A.No.774 of 2020.

24. The Order passed by this Court on 23.10.2021 which has given rise to the present Contempt Petition is to pass order by considering the decision of the Hon'ble Division Bench in W.A.No.1292 of 2017 vide Order dated 05.12.2017 and W.A.No.774 of 2020 vide Order dated 21.09.2020.

25. The decision of the Hon'ble Full Bench of this Court in **Government of Tamil Nadu and Others vs. R.Kaliyamoorthy, 2019 (6) CTC 705** also makes it clear that those government/employees appointed prior to 01.04.2003 whether on temporary or permanent basis in terms of Rule 10(a) (i) of Tamil Nadu State and Subordinate Service Rules will be entitled to get pension as per the Tamil Nadu Pension Rules, 1978.



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26. The Hon'ble Supreme Court in **Prem Singh vs. State of Uttar**

Pradesh and others in (2019) 10 SCC 516, has held as under:-

“It was unfair and exploitative on the part of the State Government and its officials to take work from the employees on the work-charged basis for long period. Though their services were regularized later on, but the period spent by them in the work-charged establishment has not been counted towards the qualifying service. Thus, they have not only been deprived of their due emoluments during the period they served on less salary in work-charged establishment but have also been deprived of counting of the period for pensionary benefits.”

27. Thus, the Order dated 29.09.2023 passed purportedly in compliance of Order passed by this Court on 27.10.2021 in W.P.No.22942 of 2021 is not only contrary to the letter to spirit of the Orders referred to in W.A.No.1292 of 2017 dated 05.12.2017.



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28. In view of the above, Contempt Petition stands allowed. Respondents are directed to comply with the order within a period of four (4) weeks from today. List this case for “reporting compliance” on 28.06.2024.

28.03.2024

nst/rgm

To

1. Tmt.Kakarla Usha, I.A.S.,
Secretary to Government,
School Education Department,
Secretariat,
Chennai – 600 009.
2. Thiru.S.Sethurama Varma,
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WEB COPY Coimbatore District.

C. SARAVANAN, J.

rgm

Pre-delivery Order in
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