

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2015

CORAM

THE HONOURABLE MR. **JUSTICE V.RAMASUBRAMANIAN**
and
THE HONOURABLE MR. **JUSTICE T.MATHIVANAN**

Cont.P. No.1366 of 2015

K.Dinakaran ... Petitioner

Vs.

1.Dr.J.Radhakrishnan, I.A.S.,
Commissioner and Secretary
to Government,
Health and Family Welfare Department,
Fort St. George, Chennai - 9.

2.S.Abdul Khader,
Director of Drugs Control i/c
State Drugs Control Administration,
Directorate of Medical Services Campus,
Teynampet, Chennai - 8. ... Respondents

Contempt Petition filed under Section 11 of Contempt
of Courts Act to punish the respondents for wilful
disobedience of the order dated 21.11.2008 in W.P.No.26567
of 2003.

For Petitioner : Ms.AL.Ganthimathi
For Respondents : Ms.A.Srijayanthi,
Spl. Govt. Pleader

ORDER

(Order of the Court was made by **V.RAMASUBRAMANIAN, J.**)

<https://hcservices.ecourts.gov.in/hcservices/> This contempt petition arises out of an order passed
in a writ petition filed by the petitioner.

2. Heard Ms.AL.Ganthimathi, learned counsel for the petitioner and Ms.A.Srijayanthi, learned Special Government Pleader for the respondents.

3. The petitioner filed an application in O.A. No.7346 of 2001 on the file of the Tamil Nadu Administrative Tribunal. The application was taken up along with a batch of applications, where a question relating to the appointment of Junior Analysts to the posts of Drug Inspectors was raised. The Tribunal, by a common order dated 23.08.2003, dismissed all the applications except one Transferred Application.

4. As against the dismissal of his application, the petitioner filed a writ petition in W.P.No.26567 of 2003 on the file of this Court. The prayer in the writ petition was as follows:

"For the reasons stated above, it is prayed that this Hon'ble Court may be pleased to issue a Writ of Certiorarified Mandamus or any other Writ, Order or Direction in the nature of Writ of Certiorarified mandamus calling for the records relating to the order dated 28.08.2003 in O.A.No.7346/2001 and quash the same and direct the respondents to issue the notification under Section 21 of the Drugs and Cosmetics Control Act, notifying the petitioner as Drug Inspector so as to enable him to exercise the power under

the Act pass such further or other orders as deemed fit in the circumstances of the case and thus render justice."

5.The aforesaid writ petition was disposed of by a Division Bench of this Court by an order dated 21.11.2008. The operative portion of the order of this Court reads as follows:

"8.....In such view of the matter, the order passed by the Tribunal is set aside and the present petitioners shall be deemed to be continuing as Drug Inspectors. However, since they had not worked for so many years, they are not entitled to get the backwages for the relevant period, but the said period shall be counted towards their seniority and continuity of service.

9.These writ petitions are disposed of, on the above terms. No costs. Consequently, the connected MPs are closed."

6.The Special Leave Petition filed by the State of Tamil Nadu as against the order of the Division Bench was dismissed on 07.09.2009. A review application filed before the Supreme Court was also dismissed later.

7.Thereafter, the petitioner filed a contempt petition in Contempt Petition No.599 of 2011. When the contempt petition came up for hearing, the learned Additional

Advocate General produced a copy of the order appointing the petitioner as a Drug Inspector under Rule 39(a)(i) of the General Rules for Tamil Nadu State and Subordinate Services. On the basis of the said order, the contempt petition was closed, however with an observation that once orders are passed under Rule 39(a)(i) of the General Rules, the Notification would normally follow. Paragraphs 4 and 5 of the order passed in the first contempt petition on 06.07.2011 read as follows:

"4.Learned counsel for the petitioner submitted that as per the procedure, the appointment has to be notified but no such notification has been issued till date.

5.It is needless to mention that once orders have been passed, it is for the authorities to notify the same.

In view of the above, this Contempt Petition is closed."

8.Contending that the Notification under Section 21 of the Drugs and Cosmetics Act was not issued, the petitioner filed a second contempt petition in Contempt Petition No.1501 of 2013. The said contempt petition was also closed by an order dated 07.10.2013, on production of a copy of a similar order issued under Rule 39(a)(i) of the General Rules for Tamil Nadu State and Subordinate Services. The operative portion of the order dated 07.10.2013 passed in

the second contempt petition reads as follows:

"3.Today, the learned Additional Government Pleader appearing for the respondents has produced the Notification dated 24.09.2013, which was published in the Tamil Nadu Government Gazette notifying the appointment of the petitioner as Drug Inspector in the Tamil Nadu Medical Service under Rule 39(a)(i) of the General Rules of Tamil Nadu State and Subordinate Services Rules in the intelligence wing at the office of the Director of Drugs Control, Chennai - 6 along with two others.

4.In view of the above notification dated 24.09.2013, no further adjudication is necessary in the contempt petition. The contempt petition is closed."

9.Thereafter, the petitioner has come up with this third contempt petition on the ground that so far, Notification under Section 21 of the Drugs and Cosmetics Act has not been issued.

10.However, we are of the considered view that the petitioner should take it up only as a separate issue in an appropriate proceeding. This is for the reason that in the second contempt petition, the very same grievance could have been projected or was actually projected and the contempt petition was closed on the basis of the order

under Rule 39(a)(i) of the General Rules for for Tamil Nadu State and Subordinate Services. Therefore, we cannot hold the respondents guilty of any wilful disobedience. Hence leaving it open to the petitioner to agitate the issue separately, this contempt petition is closed.

Mmi

SD/-
DEPUTY REGISTRAR (CLAA)

//Certified to be true copy//

Dated at Madras this the day of 2015.

COURT OFFICER (O.S.)

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SS/CO/31/08/2015

One CC to The Government Pleader, SR.9367.

One CC to Mr.AL,Ganthimathi, Advocate, SR.9202.

To

1. Dr.J.Radhakrishnan, I.A.S.,
State of Tamil Nadu,
Commissioner and Secretary
to Government,
Health and Family Welfare Department,
Fort St. George, Chennai - 9.
2. S.Abdul Khader,
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