

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(CONTEMPT JURISDICTION)

FRIDAY, THE 7TH DAY OF SEPTEMBER, 2018

THE HON'BLE MR.JUSTICE R.SUBBIAH
SUB APPLICATION NO.7 OF 2018

IN

CONTEMPT PETITION NO.2067 OF 2014

1 S.SARASWATHY,
D/O.T.R.SRINIVASAN , UNDER SECRETARY TO
GOVERNMENT (RETD), HIGHWAYS AND MINOR POPRT
DEPARTMENT, SECRETARIAT, CHENNAI-600 009.
...APPLICANT/PETITIONER/PETITIONER

Vs

1 TMT.S.SWARNA I.A.S. ,
THE SECRETARY TO GOVERNMENT REPRESENTING TO
STATE OF TAMIL NADU PERSONNEL &
ADMINISTRATIVE REFORMS DEPARTMENT,
SECRETARIAT , CHENNAI-600 009.

2 THIRU.K.SHANMUGAM I.A.S. ,
THE SECRETARY TO GOVERNMENT ,REPRESENTING TO
STATE OF TAMIL NADU FINANCE DEPARTMENT
SECRETARIAT ,CHENNAI-600 009.

...RESPONDENTS/RESPONDENTS/RESPONDENTS

Sub Application filed under section 151 of CPC praying
that this Court be pleased to re-open the Contempt Petition
in Cont.P.No.2067 of 2014 and to punish the Respondents for
wilfully disobeying the orders dated 24.08.2017.

The above Contempt Petition coming on this day before
this Court for hearing in the presence of M/s.G.Sankaran
,Advocate for the petitioner herein; and upon reading the

<https://hcservices.ecourts.gov.in/hcservices/>
petition and the affidavit of S.Saraswathy, filed herein;

the Court made the following order:

" This Sub-Application is filed to re-open the Contempt Petition in Cont.P.No.2067 of 2014 and to punish the respondents for wilfully disobeying the order dated 24.08.2017.

2. Brief facts necessary for disposal of this Sub-Application, are as follows:

(a) Earlier, the applicant herein has filed Writ Petition in W.P.No.25556 of 2013 for the following relief:

"Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the first respondent in G.O.Ms.No.112 P & AR Department, dated 13.07.2012 and quash the same insofar as the direction issued for upgradation/stepping up of pay on par with juniors in one unit as stated in para 6 of the order as well as para 14 of the order fixing the cut off date for payment of benefits are concerned and consequently direct the respondents 1 & 3 to pass orders for the post/pay parity of seniors in one unit recruited and appointed as Typist/Personal Clerk to the Tamil Nadu Secretariat Services before 28.01.1994 and promoted as Assistant Section Officer from the combined seniority list of Assistant Section Officer panel on par with their juniors in Finance Department by way of amending para 6 of G.O.Ms.No.112 Personnel and Administrative Reforms (U.Special) Department, dated 13.07.2012, with payment of arrears of salary from 30.10.2009 within a stipulated time."

(b) This Court, by order dated 08.04.2014, has partly allowed the abovesaid Writ Petition observing as follows:

"22. In view of the above, G.O.Ms.No.112, dated 13.07.2012, is quashed insofar as the direction issued for upgradation/stepping up of pay on par with juniors in one unit in paragraph No.6 and consequently the respondents are directed to give

similar benefit to the petitioner as granted to the promotees from the post of Assistant in G.O.Ms.No.154, dated 30.10.2009, by making necessary amendment in G.O.Ms.No.112, dated 13.07.2012. So far as the prayer relating to quashment of paragraph No.14 is concerned, the same is rejected.

23. This writ petition is accordingly partly allowed. No costs. Consequently, connected miscellaneous petitions are closed."

(c) Since the abovesaid order dated 08.04.2014 passed by this Court has not been complied with, the petitioner filed Cont.P.No.2067 of 2014. The abovesaid Contempt Petition in Cont.P.No.2067 of 2014 was disposed of by this Court on 03.03.2015, by observing as follows:

"It is represented by the learned Additional Advocate General that the respondents herein has filed Writ Appeal in W.A.No.971 of 2014 and obtained interim stay and the interim stay was also made absolute.

2. Since there was an order of interim stay in W.A.No.971 of 2014 and the same was made absolute, the Contempt Petition is closed. However, the petitioner is at liberty to approach this Court in the event the Writ Appeal is dismissed. No costs."

(d) Further, the said order of this Court, dated 08.04.2014 passed in W.P.No.25556 of 2013, had been confirmed by a Division Bench of this Court on 18.03.2016 in Writ Appeal No.971 of 2014, which was dismissed, and the same was also confirmed by the Supreme Court, by order dated 29.07.2016 passed in S.L.P.No.12920 of 2016, which was also dismissed.

(e) In the interregnum, the Government issued orders in G.O.Ms.No.31,

Personnel and Administrative Reforms (U-Special) Department, dated 01.03.2017 for implementing the order passed by this Court in the said Writ Petition and paragraph 11 of the said G.O. reads as follows:

"11. The appendix containing the list of beneficiaries in respect of Typist/Personal Clerk promotee Assistant Section Officers including the petitioner Tmt.S.Saraswathy and consequential rectification of pay anomaly in respect of the Senior Assistant promotee Assistant Section Officers in One Unit and Finance will be issued separately."

(f) Even thereafter, according to the applicant/writ petitioner, since the respondents have not complied with the order of this Court, dated 08.04.2014 passed in W.P.No.25556 of 2013, the applicant/writ petitioner filed Sub.Appln.No.183 of 2016 in Cont.P.No.2067 of 2014, seeking to re-open the Contempt Petition in Cont.P.No.2067 of 2014. When the abovesaid Sub-Application came up for consideration before this Court on 24.08.2017, this Court, by referring to paragraphs 12, 14 and 15 of the counter affidavit filed by the respondents, has directed as follows:

4. Recording the above said statements/undertaking made in the counter, this Sub-Application is ordered to be closed. However, this Court directs the respondents to pass necessary orders with regard to the consequential anomaly, within a period of six weeks from the date of receipt of a copy of the order. The petitioner is at liberty to re-open the contempt petition, if no order is passed by the respondents."

(g) Thereafter, though the order passed by this Court in the abovesaid

Sub-Application, has been communicated to the respondents, the same has not been complied with. The petitioner also sent legal notice to the respondents

seeking to comply with the order passed by this Court by referring the earlier orders.

(h) Even thereafter, according to the applicant/writ petitioner, since no order has been passed by the respondents, the present Sub-Application has been filed seeking to re-open the Contempt Petition, by stating that this Court, by order dated 24.08.2017 passed in the earlier Sub-Application, has directed the respondents to pass necessary orders with regard to the consequential anomaly and since the same has not been complied with, the petitioner has again filed the present Sub-Application to re-open the Contempt Petition in Cont.P.No.2067 of 2014.

3. When the present Sub-Application is taken up for consideration, learned Senior Counsel appearing for the applicant/writ petitioner submitted that though this Court, in the earlier Sub-Application in Sub.A.No.183 of 2016, by order dated 24.08.2017, has directed the respondents to pass necessary orders with regard to the consequential anomaly, no order was passed, even though an undertaking was given in the counter affidavit. In this regard, learned Senior Counsel appearing for the petitioner further submitted that the orders of this Court have been rightly appreciated by the respondents/Government and the Government has consciously taken a policy decision, apart from releasing the list of beneficiaries of Typist promotee ASO including the petitioner-S.Saraswathi and also to rectify the consequential anomaly by releasing the list of beneficiaries of

Assistant promotee ASO, whereas the decision taken by the Government, has been intercepted and not implemented by the officials concerned, which is

evident from the records produced before this Court. Thus, the learned Senior Counsel appearing for the applicant/writ petitioner submitted that the respondents have committed Contempt of Court by violating the order passed by this Court with regard to the petitioner-S.Saraswathi and further violating the order dated 24.08.2017 passed in Sub.A.No.183 of 2016 in Cont.P.No.2067 of 2014.

4. Learned Additional Advocate General appearing for the respondents, by filing counter affidavit, submitted that though the Government issued orders in G.O.(Ms).No.31, Personnel and Administrative Reforms (U-Special) Department, dated 01.03.2017, with appendix, subsequently, in G.O.(Ms).No.98, Environment and Forests (OP.1) Department, dated 09.08.2017, the order of this Court dated 08.04.2014 in W.P.No.25556 of 2013, had been fully complied with insofar as the applicant/writ petitioner is concerned. Learned Additional Advocate General further submitted that under the guise of the Contempt Petition, the applicant/writ petitioner is pressurising the respondents to extend the benefits of the order to those who had retired on the date of the order, but the same is not possible. In fact, the Writ Appeal filed by the retired employees, was dismissed by a Division Bench of this Court on 19.08.2014 on the ground that the appellants therein were not in service at the time of issuance of G.O.(Ms).No.154, Personnel and Administrative Reforms (U-Spl) Department, dated 30.10.2009 and the G.O. is prospective and that the appellants therein, as a matter of right, cannot seek that the benefit given to those existing employees, will also have to be extended to the retirees.

<https://hcservices.ecourts.gov.in/hcservices/>

5. Learned Additional Advocate General further submitted that as on date,

approximately 142 Senior Assistant promotees are available in service and approximately, 15 persons are available in service from the list of Appendix to G.O.(Ms).No.31, dated 01.03.2017, who are yet to be benefited under the said G.O.(Ms).No.31. Hence, there is no pay anomaly among the Assistant promotees and Typist/Personal Clerk promotees, as the two categories of employees had reached the post of Assistant Section Officer from different feeder categories, namely Assistants and Typists/Personal Clerks, respectively. Further, all the Senior Assistant promotees who have entered in the Tamil Nadu Secretariat Service prior to 28.01.1994, have already been benefited under G.O.(Ms).No.154, Personnel and Administrative Reforms (U-Spl) Department, dated 30.10.2009. Learned Additional Advocate General further submitted that the present claim of the Assistant promotees on par with the beneficiary of G.O.(Ms).No.31, Personnel and Administrative Reforms (U-Spl) Department, dated 01.03.2017, is for their second benefit and it is merely 30 times beyond the cadre strength to the post of Joint Secretary in one Unit. Thus, the learned Additional Advocate General submitted that the respondents have complied with the order passed by this Court.

6. Keeping in mind the above submissions made on either side, I have carefully perused the materials available on record.

7. It is seen that this Court has passed the order only insofar as the applicant/writ petitioner is concerned. So far as the applicant/writ petitioner is concerned, the order of this Court has been complied with, which is evident from G.O. (Ms) .No.98, Environment and Forests (OP.1)

Department, dated 09.08.2017. When the order of this Court has been complied with in respect of the applicant/writ petitioner, the submission made by the learned Senior Counsel appearing for the petitioner to extend the benefit to the retired employees, cannot be considered in this Contempt Petition. Absolutely, I do not find that any Contempt is made out against the respondents. Since the order of this Court has been complied with by the respondents, insofar as the applicant/writ petitioner is concerned, the question of re-opening the Contempt Petition does not arise. Accordingly, this Sub-Application is dismissed. "

WITNESS THE HON'BLE SHRIMATI. JUSTICE VIJAYA KAMLESH TAHILRAMANI, THE CHIEF JUSTICE OF HIGH COURT AT MADRAS, AS AFORESAID, THIS THE 7TH DAY OF SEPTEMBER 2018.

सत्यमेव जयते

SD/-
JOINT REGISTRAR(OS)

//Certified to be true copy//

Dated at Madras this the day of 2018.

COURT OFFICER(O.S.)

from 25th day of September 2008 the Registry is issuing Certified copies of the Orders/Judgments/Decrees in this format.

RA/09/10/2018

SUB APPLICATION NO.7/2018

in

CONT.P.NO.2067 of 2014

THE HON'BLE MR.JUSTICE

R.SUBBIAH

ORDER

DATED:07/09/2018

FOR APPROVAL :10/10/2018

APPROVED ON :10 /10/2018

TO.

1.TMT.S.SWARNA I.A.S. ,
THE SECRETARY TO GOVERNMENT
REPRESENTING TO STATE OF TAMIL NADU
PERSONNEL & ADMINISTRATIVE REFORMS
DEPARTMENT, SECRETARIAT ,
CHENNAI-600 009.

2.THIRU.K.SHANMUGAM I.A.S. ,
THE SECRETARY TO
GOVERNMENT, REPRESENTING TO STATE OF
TAMIL NADU FINANCE DEPARTMENT
SECRETARIAT ,CHENNAI-600 009.

WEB COPY