

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 18.01.2016

Orders Pronounced on : 02.02.2016.

CORAM

THE HON'BLE MR.JUSTICE SATISH K.AGNIHOTRI

AND

THE HON'BLE DR.JUSTICE P.DEVADASS

Contempt Petition No.2203 of 2015

M.D.Thirukkumaran .. petitioner

..Vs..

Dr.N.Rajasekar
Registrar
Madurai Kamaraj University
Palkalai Nagar, Madurai - 625 021. .. respondent

Contempt Petition is filed under Section 11 of the Contempt of Court Act, 1971 for wilful disobedience to the order passed by this Court in WA.No.157 of 2013 dated 06.12.2013 and punish him accordingly.

For Petitioner : Mr.Sathia Chandran.

For Respondent : Mr.T.Sakthi Kumaran.

(ORDER OF THE COURT WAS MADE BY DR.P.DEVADASS, J.)

The appellant, in WA.No.157 of 2013, seeks to punish the respondent, namely, Registrar, Madurai Kamaraj University, Madurai under Section 11 of the Contempt of Courts Act, 1971 for his wilful disobedience to this Court's order dated 06.12.2013.

disabilities more particularly 'Cerebral palsy'. He passed B.A.(English), M.A.(English) and also certain Diploma exams. He made representations to the Hon'ble Chief Minister for employment. It was forwarded to the Vice-Chancellors of Madras and Madurai Kamaraj Universities. On 15.07.1998, he was appointed on consolidated pay of Rs.2,500/- per month in Madurai Kamaraj University. Subsequently, he sought for regular appointment in the light of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995. He also sent several representations.

3.In the said circumstances, he filed writ petition in WP.No.20900 of 2003 before this Court. On 24.08.2011, the writ Court passed the following order :

"4. Be that as it may, taking note of the fact that the petitioner was appointed in 1998 and he possesses all the required educational qualifications, Diploma and Higher Diploma in French, M.Phil in English and Comparative Literature in 1992-93, Post Graduate Diploma in Special Education for persons with Multiple Disabilities (Physical and Neurological) in 1999 and he has been awarded the Professional Registration Certificate as a Special Educator (Multiple Handicapped), I am of the opinion that the second respondent should consider the petitioner's various representations dated 17.11.2001, 26.11.2001, 25.02.2002, 15.03.2002 and 24.06.2002 for regularisation and pass orders as expeditiously as possible, preferably within a

period of three months from the date of receipt of a copy of this order."

4. Dissatisfied with the above order, petitioner preferred writ appeal in WA.No.157 of 2013 before this Court. While disposing of his appeal on 06.12.2013 this Court passed the following order :

"4. We are of the view that the order does not require interference except a clarification.

5. It is clarified that in case, the appellant is entitled to the benefit under the provisions of the Persons with Disabilities (Equal opportunities, Protection of Right and Full Participation) Act 1995, necessarily the same should be considered by the second respondent while disposing of the matter.

6. The writ appeal is disposed of with the above direction. Since the matter is pending from 01.02.2006, every effort should be taken to dispose of the matter as expeditiously as possible. No costs."

सत्यमेव जयते

5. The learned counsel for the petitioner contended that in spite of the orders of this Court dated 06.12.2013, the petitioner was not given suitable job, there is wilful disobedience to this Court's order. The learned counsel also cited Anil Kumar Shahi (2) and others V. Prof. Ram Sevak Yadav and others (2008) 14 SCC 115 and contended that this Court has powers not only to punish the contemnors but also has the powers to pass consequential orders for enforcement of its order, for the violation of which, contempt proceedings are

initiated.

6.The learned counsel for the respondent contended that there is no wilful disobedience to this Court's order. Already, petitioner was appointed a temporary staff, considering his disability, although he has not completed 10 years of service, as a special case on 25.01.2006, he was appointed a regular staff in a time scale of pay in the Directorate of Distance Education of the University. Thereafter, under time bound promotion scheme, he was appointed an Attender (D) with effect from 01.02.2011.

7.The learned counsel for the respondent further contended that with reference to the orders of this Court dated 06.12.2013 orders have been passed on 08.10.2015. The learned counsel for the respondent also produced a copy of the said order.

8.The learned counsel for the respondent also contended that in contempt jurisdiction, Court is not to pass an order which will materially add to or alter the order which has been complained of, for the alleged disobedience of which contempt jurisdiction has been invoked. He had also referred to Anil Kumar Shahi (supra).

9.We have anxiously considered the rival submissions,

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perused the affidavits of both sides, the order dated

06.12.2013 passed in WA.No.157 of 2013, the materials on record and the decision cited.

10. In contempt jurisdiction, Court cannot again enter into merits of the matter which has been considered by the Court in the order with respect to which disobedience has been complained of. The Court has to consider whether there is any contumacious conduct or wilful disobedience on the part of the contemnor. This jurisdiction is also intended to see that the Court orders are carried out.

11. The aftermath of the orders of this Court in WA.No.157 of 2013 dated 06.12.2013 is the order passed by the respondent on 08.10.2015. The said order dated 08.10.2015 has been passed with reference to this Court's order dated 06.12.2013. The said order has been communicated to the petitioner. It runs as under :-

"Sub : Request received from you for the promotion of clerk from Class-IV - Reply sent - Reg.

Ref : 1. Orders of the Hon'ble High Court of Madras, Madurai Bench dated 06.12.2013.

2. This Office Letter No.Estt.1/Admn.6/2014, dated 05.02.2015.

It is informed that in compliance with the orders of the Hon'ble High Court, Madras, Madurai Bench, the Legal Opinion has been obtained regarding your request for the promotion of Clerk. As per the Legal Opinion received from the Legal Consultant of

this University and as per Section 32 and 33 of the Provision of the Persons with Disabilities (Equal Opportunities, Protection of Right and Full participation) Act 1995, the Clerk post is not reserved for the disabled person as per the existing rules. You are person with disability of 75%. As per the Government of India GO.No.178 dated 30.06.2011, Teaching Post alone reserved for the disabled person. The Finance Officer in his remarks dated 11.07.2012 has stated that you had already availed a Government Concession to become a Permanent S/W/G. Hence there is no provision for consideration second time now. His remarks was approved by the Vice-Chancellor dated 22.07.2012.

Hence, as per the Disability Act and the Orders dated 22.07.2012, your request to promote you from the Attender (D) to Clerk is not complied with."

12.As already stated with reference to the order's of this Court dated 06.12.2013, the said order dated 08.10.2015 has been passed by the University. In the said circumstances, the respondent cannot be held to have committed contempt. The order dated 08.10.2015 gives rise to a separate cause of action.

13.In view of the foregoings, this Contempt Petition is closed, with liberty to the petitioner to challenge the order of the respondent dated 08.10.2015 in a manner known to law, if he is so advised. No costs.

Tsh

SD/-

DEPUTY REGISTRAR(OS)

//Certified to be true copy//

Dated at Madras this the day of 2016.

COURT OFFICER(O.S.)

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SS/CO/27/02/2016

One CC to M/s.S.Sathia Chandran, Advocate, Sr.No.1345

One CC to M/s.T.Sakthi Kumaran, Advocate, Sr.No.1346.

To

Dr.A.Muthumanickam

Registrar,

Madurai Kamaraj University

Palkalai Nagar, Madurai - 625 021.

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