

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Cont.P.No.741 of 2015

1. A.M.Khan
2. R.Samueal William Thangaraj
3. K.K.Narasimhan
4. V.Balakrishnan
5. M.Dharmarajan
6. M.Maheswaran
7. V.Natesan
8. J.Rajan
9. K.Palaniyandi
10. C.Santhirasekaran .. Petitioners

Versus

1. Mr.Veerashanmugamony, IAS
Secretary to Government,
Labour and Employment Department,
Fort St. George, Chennai.
2. Mrs.Amudha IAS
Commissioner of Labour,
DME Compound, Teynampet,
Chennai - 600 006 .. Respondents

Prayer: This Contempt Petition filed under Section 11 of the Contempt of Court Act, 70/71 to punish the respondents for having committed contempt of Court for disobeying the order dated 06.06.2014 and made in W.A.No.458 of 2012.

For Petitioners : Mr.S.Thirumavalavan

For Respondents : Mr.K.V.Dhanapalan
Spl. Govt. Pleader

ORDER

(Order of the Court was made by **S.MANIKUMAR, J.**)

Alleging disobedience of the order made in W.A.No.458 of 2012 dated 06.06.2014, contempt application is filed.

2. Earlier, the petitioners have filed W.P.No.36829 of 2007, challenging G.O.(D)No.928, Labour and Employment (E2) Department, dated 18.12.2006, by which, the Government have refused to refix their seniority in the post of Assistant Inspector of Labour. This Court, vide order, dated 21.09.2011, quashed the abovesaid Government Order and further directed the respondents to fix the seniority of the petitioners, in the light of the decision of the Division Bench of this Court in W.P.No.41427 of 2002, dated 23.01.2004 and grant them all consequential monetary and attendant benefits, with retrospective effect, within a period of eight weeks, from the date of passing of the order.

3. Aggrieved by the same, the respondents have filed W.A.No.458 of 2012 and a Division Bench of this Court, vide order, dated 06.06.2014, dismissed the appeal, confirming the order of the writ Court, dated 21.09.2011, subject to the modification that the petitioners are not

entitled to arrears of salary, but they are entitled to notional fixation of seniority and all other consequential and attendant benefits, for the purpose of fixation of pension. The respondents were directed to complete the abovesaid exercise and revise pension, from the date of their retirement and pay arrears of differential pension, within a period of eight weeks, from the date of passing of the order. According to the petitioners, so far, the above directions were not complied with, by the respondents and hence, the petitioners have filed this Contempt Petition.

4. The petitioners have further submitted that in Labour Department, the number of substantive posts, at the time of their appointment were 179 and direct recruitment was made only against those substantive vacancies and therefore, the seniority of the petitioners should have been fixed in the substantive vacancies, following the quota rule, as per the order of this Court, dated 23.01.2004 in W.P.No.41427 of 2002 and batch cases.

5. The Commissioner of Labour, Chennai, 2nd respondent herein, has filed a detailed counter affidavit and contended that the petitioners were appointed during the years 1973-74. As the records, pertaining to the estimate of vacancy, appointment, details of substantive vacancies for the years from 1967 to 1973, were not

traceable, there was some delay in arriving substantive vacancies for fitting the seniority of the petitioners, at the appropriate place, as ordered by this Court. She has further submitted that in order to avoid further delay and in order to implement the orders of this Court, substantive vacancies have been arrived based on the orders issued by the Commissioner of Labour in Proceedings No.E4/31932/1979, dated 25.01.1982, confirming certain officers in the permanent vacancies. Based on the same, report has been sent to Government on 25.08.2015 for revision of seniority of the petitioners.

6. The 2nd respondent has further submitted that the Government in G.O.(D)No.660, Labour and Employment (E1) Department, dated 30.11.2015, have issued orders, quashing the earlier Government Orders and instructed the Commissioner of Labour to revise and issue orders, revising the inter-se seniority of the Assistant Inspectors of Labour, as ordered this Court. She further contended that during 1973-74, as per the proviso to Rule 3 of the Special Rules for the Tamil Nadu Labour Sub-ordinate Service, issued in G.O(Ms) No.1475, Labour Department, dated 05.10.1970, direct recruitment should be made against non-substantive vacancies also. While refixing the seniority of the petitioners in the cadre of Assistant Inspector of Labour, in the substantive

vacancies, by following quota rule, the following facts have been considered,

a) The ratio for appointment by direct recruitment and recruitment by transfer in the cadre of Assistant Inspector of Labour was first introduced in G.O(Ms) No.2947, ILH, dated: 13.7.1966. Hence the substantive vacancies arose during the period from 1967 to 1974 was taken for computation of substantive vacancies.

b) As per the directions of this Court, the seniority of the petitioners should be fixed in the year of appointment, in the prescribed ratio, apportioning permanent vacancies for direct recruits and transferees in the prescribed ratio.

c) The excess transferees who occupied the slots meant for the direct recruits were pushed down to ensure that they do not exceed the quota fixed for them.

d) As per the Special Rules prevailed at the time of appointment of the petitioners direct recruitment are to be made for non-substantive vacancies also. However, this Court has ordered to re-fix the seniority of the petitioners in the substantive vacancies, as per quota rule, for the purpose of notional promotion and revision of pension.

e) Hence, the seniority of the petitioners in the cadre of Assistant Inspector of Labour was re-fixed, based on the substantive vacancies, following the quota rule in proceedings No.E4/223/2008, dated 27.01.2016

submitted below:

Sl.No .	Name of the Petitioner	Old Seniority No. (in the cadre of Assistant Inspector of Labour)	Revised seniority No. assigned based on the orders of this Court (in the cadre of Assistant Inspector of Labour)
1	M.Dharmarajan	218	201
2	C.Santhirasekaran	219	202
3	J.Thambirajan @ Rajan	231	206
4	V.Balakrishnan	236	207
5	K.K.Narasimhan	242	209
6	P.Samuel William Thangaraj	243	210
7	K.Palaniyandi	248	211
8	V.Natesan	249	212
9	M.Maheswaran	254	213
10	A.M.Khan	260	215

7. She further submitted that consequent to the revision of seniority in the cadre of Assistant Inspector of labour, orders were issued in Proceedings No.E4/223/2008, dated 24.05.2016, promoting the petitioners notionally in the cadre of Deputy Inspector of Labour, on par with their juniors and their seniority was revised and re-fixed in the cadre of Deputy Inspector of Labour, as follows:-

Sl.No .	Name of the Petitioner	Old Seniority No. (in the cadre of Deputy Inspector of Labour)	Revised seniority No. assigned based on the orders of this Court (in the cadre of Deputy Inspector of Labour)
1	M.Dharmarajan	195	181(a)
2	C.Santhirasekaran	196	181(b)
3	J.Thambirajan @ Rajan	197(b)	181(c)
4	V.Balakrishnan	200(a)	181(d)
5	K.K.Narasimhan	208	181(e)
6	P.Samuel William Thangaraj	209	181(f)
7	K.Palaniyandi	212(a)	181(g)
8	V.Natesan	213	181(h)
9	M.Maheswaran	216	181(i)
10	A.M.Khan	214(a)	181(j)

8. It is the further case of the Commissioner of Labour, Chennai, 2nd respondent herein that consequent on the revision of seniority in the cadre of Deputy Inspector of Labour, the petitioners have to be promoted as Labour Officers and Assistant Commissioner of Labours, on par with their juniors and therefore, a proposal has been sent to Government in Letter No.E4/223/2008, dated 16.06.2016 of the Commissioner of Labour, Chennai and the same is under consideration of the Government. She also submitted that once the Government issues orders, revising the seniority of the petitioners in the cadre of Labour Officer and Assistant Commissioner of Labour, a

proposal would be sent to the office of the Accountant General (A&E), Chennai, for revision and re-fixation of the pensionary benefits of the petitioners.

9. She further submitted that in compliance of the orders of this Court, the seniority of the petitioners have been revised and re-fixed in the cadre of Assistant Inspector of Labour, following the quota rule and based on the substantive vacancies, which arose during those periods and also, further revision of seniority in the next cadre of Deputy Inspector of Labour have also been issued.

10. Mr.S.Thirumavalavan, learned counsel for the petitioners made submissions, reiterating the averments made in the affidavit, filed in support of the petition and drew the attention of this Court to the seniority list, in the cadre of Assistant Inspector of Labour, vide Annexure to the proceedings of the Commissioner of Labour, Chennai, 2nd respondent herein, dated 27.01.2016 and submitted that the respondents have committed contempt.

11. Mr.K.V.Dhanapalan, learned Special Government Pleader appearing for the respondents submitted that earlier, seniority of the petitioners were

between 218 to 261 and now, upon the revised inter-se seniority, their positions have been changed from 201 to 216. He further submitted that many of the transferees promoted in the year 1972 and 1973, as Assistant Inspectors of Labour, have been pushed down in the seniority list.

12. Learned Special Government Pleader further submitted that the petitioners are entitled to seniority, following quota rule, only from the date of joining and therefore, the revised seniority is proper and in terms of the orders of this Court in W.A.No.458 of 2012, dated 06.06.2014.

13. Referring to the revision of seniority of Mr.A.M.Khan and Mr.R.Ravindran, learned Special Government Pleader further submitted that earlier, the seniority position of the above officers, were 260 and 261 respectively and now, based on the revised seniority, they have been ranked as 215 and 216 respectively. He also drew the attention of this Court to other cases also. He also reiterated the position of the petitioners, in the proceedings of the Commissioner of Labour, Chennai, dated 27.01.2016, have been revised.

labour department, dated 01.01.1974 and inviting the attention of this Court to the averments to Paragraph 9 of the counter affidavit, learned counsel for the petitioner submitted that the contentions of the respondents that the details of substantive vacancies for the years from 1967 to 1973, were not traceable and there was some delay in arriving substantive vacancies for fitting the seniority of the petitioners, at the appropriate place, as ordered by this Court and that in order to avoid further delay and to implement the orders of this Court, substantive vacancies have been arrived, based on the orders issued by the Commissioner of Labour in Proceedings No.E4/31932/1979, dated 25.01.1982, confirming certain officers in the permanent vacancies, are false averments. In this context, he drew the attention of this Court to the establishment list of the year 1974.

Heard the learned counsel for the parties and perused the materials available on record.

16. We have perused the orders of this Court passed by the Hon'ble Division Bench of this Court. From the pleadings, submissions and upon perusal of the material on record, it could be deduced that a Committee has been constituted for preparation of a Note for compliance of the orders of this Court in W.A.No.458 of 2012, dated 06.06.2014, for fixation of inter-se

seniority between the direct recruitment and promotees and for approval of the said seniority list of the Assistant Inspectors of labour, by the Government, for further revision of the seniority to the petitioners, in the cadre of the Deputy Inspector of Labour and above.

17. Vide G.O.(D)No.660, Labour and Employment (E1) Department, dated 30.11.2015, the Government have quashed the earlier Government Orders in G.O.(Ms)No.194, Labour and Employment Department, dated 22.03.1974 and G.O.(D)No.928, Labour and Employment (E2) Department, dated 18.12.2006. In G.O.(D)No.660, Government have instructed the Commissioner of Labour to revise and issue orders, revising the inter-se seniority of the Assistant Inspectors of Labour, as ordered this Court.

18. Perusal of the seniority list, dated 27.01.2016, shows that many Assistant Labour Inspectors, appointed by transfer, in the year 1972-73, have been placed below the petitioners in the said seniority list. Those, who are in the earlier seniority list at Sl.Nos.201 to 216, have been kept below. There are other transferees placed below in the list.

19. From the averments and details, it could be deduced that the Government have interpreted the implementation of the orders made in W.A.No.458 of 2012, dated 06.06.2014, after getting a note from a Committee.

According to the respondents, orders have been implemented and seniority has been refixed, taking note of the date of joining of the writ petitioners and that therefore, there is no willful or intention violation of the orders, stated supra.

20. From the material on record and after hearing the learned counsel appearing for the parties, we are satisfied that the respondents, while interpreting the orders made in W.A.No.458 of 2012, dated 06.06.2014, have refixed the seniority of Assistant Inspectors of Labour and it cannot be said that there is willful or deliberate violation of the orders of this Court, warranting any further action.

21. In **Jiwani Kumari Parekh v. Satyabrata Chakravorty** reported in **AIR 1991 SC 326 : 1991 Cr1.L.J.471**, the Hon'ble Apex Court held that unless willful or deliberate, disobedience of the order of the Court is committed, charge of contempt cannot be brought home. Even bona fide misinterpretation of the Court judgment/order cannot attract contempt. A party can be held guilty in case disobedience of the judgement or order is willful or deliberate.

22. In **Ashok Kumar Singh v. State of Bihar**

<https://hcservices.ecourts.gov.in/hcservices/responses> **1992 (1) SCC 152 : AIR 1992 SC 407 : 1991 SCR**

Suppl. (2) 415 : 1992 Cr1.L.J. 284, the Hon'ble Apex Court observed as follows:

"From the material on record and after hearing learned counsel for the parties, we are not satisfied that it is a case in which it can conclusively be said that the respondents have wilfully or deliberately or contemptuously flouted or disobeyed the orders of this Court dated 7-2-1991. It appears to us to be a case of misinterpretation of the executive directions and order of this Court dated 7-2-1991 and is, therefore, not a fit case in which contempt proceedings need to proceed any further. We, accordingly, drop the contempt proceedings and discharge the Rule Issued against the respondents."

23. In **Indian Airports Employees Union v. Ranjan Chatterjee** reported in **AIR 1991 SC 880 : 1991 Cr1.L.J 1332**, the Hon'ble Supreme Court, at Paragraphs 7 and 11, held as follows:

"7. It is well settled that disobedience of orders of the Court, in order to amount to "civil contempt" under Section 2(b) of the Contempt of Courts Act, 1971, must be "wilful" and proof of mere disobedience is not sufficient (**S.S.Roy v. State of Orissa, AIR 1960 SC 190**). Where there is no deliberate flouting of the orders of the Court but a mere misinterpretation of the executive instructions, it would not be a case of civil

contempt [**Ashok Kumar Singh v. State of Bihar, (1992) 1 SCC 152**].

In our view, these rival contentions involve an interpretation of the order of this Court, the notification and other relevant documents. We are not deciding in this contempt case whether the interpretation put forward by the respondents or the petitioners is correct. The question has to be decided in appropriate proceedings. For the purpose of this contempt case, it is sufficient to say that the non-observation of these six sweepers was bona fide and was based on an interpretation of the above orders and notification, etc., and cannot be said to amount to "wilful disobedience" of the orders of this Court."

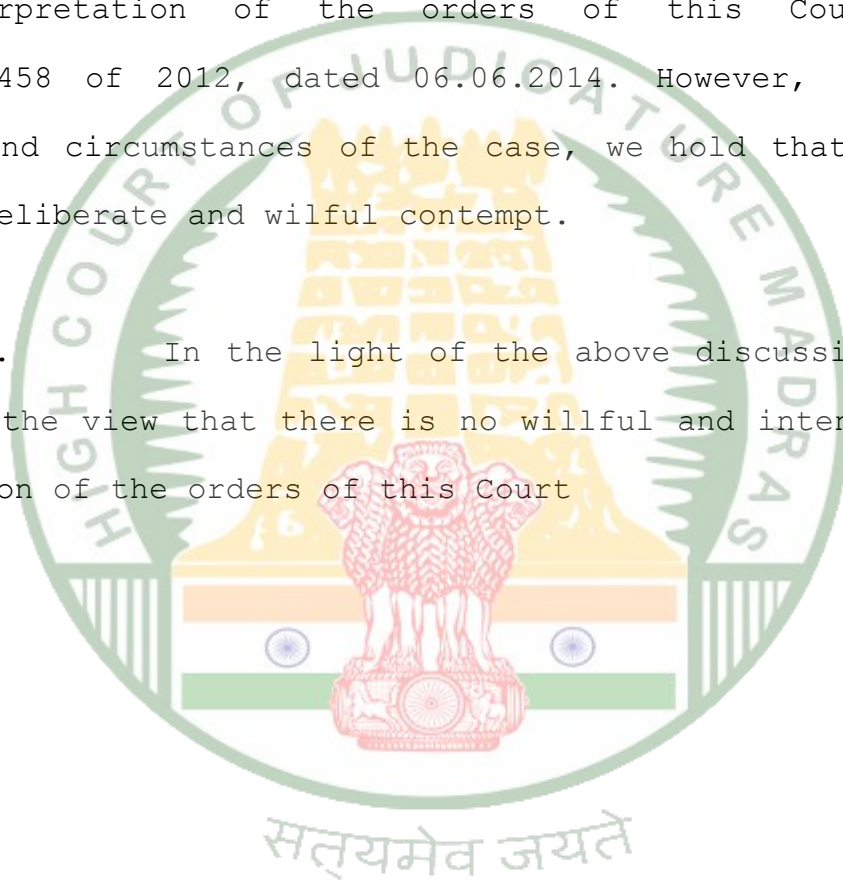
24. In **Anil Ratan Sarkar and others v. Hirak Ghosh and others** reported in **2002 (4) SCC 21**, the Hon'ble Supreme Court, at Paragraph 15, held as follows:

"It may also be noticed at this juncture that mere disobedience of an order may not be sufficient to amount to a "civil contempt" within the meaning of Section 2(b) of the Act of 1971 - the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act and lastly, in the event, two interpretations are possible and the action of the alleged contemnor pertains to one such interpretation - the act or acts cannot be ascribed to be otherwise contumacious in nature. A doubt in the matter as regards the wilful nature of the

conduct if raised, question of success in a contempt petition would not arise."

25. While considering the legal position, we are not expressing any opinion that there is misinterpretation of the orders of this Court in W.A.No.458 of 2012, dated 06.06.2014. However, on the facts and circumstances of the case, we hold that there is no deliberate and wilful contempt.

26. In the light of the above discussion, we are of the view that there is no willful and intentional violation of the orders of this Court



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made in W.A.No.458 of 2012 dated 06.06.2014, warranting any action under the provisions of the Contempt of Courts Act. Hence, the present Contempt Petition is dismissed. No costs.

Sd/-
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//Certified to be true copy//

Dated at Madras this the day of 2017.

COURT OFFICER(O.S.)

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One CC to the Government Pleader , Sr.No.15209/2016.

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