

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

DATED: 17.02.2017

CORAM:

**THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN**

Contempt Petition Nos.2833 and 2834 of 2016

Dr.B.Vasantha
in

.. Petitioner/1st respondent

both petitions

versus

1.Dr.Pawan Goenka,
The Chairman and Board of Governors,
Indian Institute of Technology Madras,
Chennai 600 036.

2.Prof.Bhaskar Ramamurthi, Director,
Indian Institute of Technology Madras,
Chennai 600 036.

3.Ms.V.G.Bhooma, Registrar,
Indian Institute of Technology Madras,
Chennai 600 036.

... Respondent/Plaintiff

PRAYER in both petitions: Contempt petitions filed under Section 11 of the Contempt of Courts Act, 1971 to initiate contempt action against the respondents and punish them for willful and deliberate disobedience in not having promoted the petitioner to the post of Associate Professor from 27.07.1995 and to the post of Professor from 06.01.1997, as per Para 43(ii) of the order passed by the High Court in W.A.No.1917 and 1918 of 2013 respectively on 22.08.2016.

For Appellants : Mr.K.S.Ravikumar

For Respondent : Mr.Vijay Narayanan, senior counsel
for Mr.Menon

COMMON ORDER

(Order of the Court was delivered by **P.KALAIYARASAN, J.**)

These two petitions have been filed, praying to initiate action against the respondents and punish them for wilful disobedience in not having promoted the petitioner, who is the respondent in the writ appeals, to the post of Associate Professor from 27.07.1995 and to the post of Professor from 06.01.1997 as per para 43(ii) of the order passed by this Court in W.A.Nos.1917 and 1918 of 2013 respectively dated 22.08.2016.

2.Two contempt petitions have been filed alleging disobedience of the direction in para 43(ii) of the judgment against same respondents and therefore, common order is passed.

3.The petitioner herein filed two writ petitions viz., W.P.Nos.4256 and 4257 of 1997 for issuance of writ of certiorarified mandamus, by calling for records and quash the selection and also direct the respondents therein to select the petitioner as Associate Professor and similarly for the post of Professor. As against the order passed in the writ petitions by the learned single Judge, the

respondents therein, Indian Institute of Technology Madras, preferred W.A.Nos.1917 and 1918 of 2013. This Court, in its judgment, dated 22.08.2016, passed a common judgment by partly allowing the appeals. The operative portion of the judgment is thus:

"43.For the aforesaid reasons, these writ appeals are partly allowed in the following terms:

(i)The appellant institute is directed to pay the pay and allowance to the post of Associate Professor for the period between 06.01.1997 and her superannuation to the first respondent/writ petitioner.

(ii)The appellant institute is directed to consider the first respondent/writ petitioner for the post of Associate Professor from 27.07.1995 and for the post of Professor from 06.01.1997 or from the relevant dates, in the light of the findings made in these writ appeals.

(iii)The order as to the enquiry into the correctness and legality of the appointments made from 1995 in the appellant institute by the Central Bureau of Investigation is set aside.

The appellant institute is directed to comply the direction within two months from today."

4.The first direction of the above judgment has been admittedly complied with. The petitioner contends that as per the second direction, the petitioner should have been promoted by the respondents herein for the post of Associate Professor from 27.07.1995 and for the post of Professor from 06.01.1997. But, the respondents have not complied with the above said direction. Clause (ii) of the operative portion of the judgment is very specific as to the direction. The respondents therein have been directed to consider the petitioner herein for the post of Associate Professor from 27.07.1995 and for the post of Professor from 06.01.1997 or from the relevant dates in the light of the findings made in the writ appeals.

5.As rightly pointed out by the learned senior counsel for the respondents, this Court must not travel beyond the four corners of the order, while dealing of contempt. The learned senior counsel also cited the judgment of the Hon'ble Supreme Court in ***Sudhir Vasudeva V. M.George Ravidhekaran reported in (2014) 3 Supreme Court Cases 373***. In the judgment, it has been held as follows:

“19.The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the [Contempt of Courts Act](#),

1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or willful violation of the same. Decided issues cannot be reopened; nor the plea of equities can be considered. Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above. The above principles would appear to be the cumulative outcome of the precedents cited at the bar, namely, [Jhareswar](#)

Prasad Paul and Another vs. Tarak Nath Ganguly and Others[3], V.M.Manohar Prasad vs. N. Ratnam Raju and Another[4], Bihar Finance Service House Construction Cooperative Society Ltd. vs. Gautam Goswami and Others[5] and Union of India and Others vs. Subedar Devassy PV[6].

6. Therefore, as per the settled position, it is to be seen whether the respondents committed any wilful disobedience to the direction issued by this Court in the above said judgment.

7. The learned counsel for the petitioner argued that this Court having not quashed the selection proceedings, the respondents are bound to promote the petitioner as per the order. Further, he tries to interpret by saying judiciary itself can promote when the selection is not proper. Through the first limb of argument, the petitioner interprets the order to her convenience. This Court, after analysing the entire facts and circumstances of the case, issued directions. This Court rendered a finding that selection committee was not properly constituted. Para 26 and 27 of the judgment in the writ appeal read thus:

“26. Here applying the irregular procedure, the selection was made to the higher post of the faculty namely, Professor and Associate Professor. Denying the rights of certain persons will no doubt affect the merits of the case. Therefore, the appellant institute cannot take shelter under

section 36 of the Indian Institute of Technology Act and the argument of the appellant in this regard is not acceptable.

27.The contention of the learned senior counsel for the appellants is that the first respondent/writ petitioner having subjected herself for the interview cannot raise any objection as to the constitution of committee. The constitution of committee for interview was not made public and the first respondent/writ petitioner came to know of the committee only when she attended the interview. No doubt she has not raised objections immediately. That cannot preclude the first respondent/writ petitioner to raise her contention about the constitution of the committee in the writ petition. Immediately on knowing about non-acceptance of her joining report, she filed writ petition in W.P.No.4257 of 1997.”

Therefore, considering all factual aspects, including that the selection committee was not properly constituted, the above second direction has been given by this Court.

8.The respondents have contended that they have taken action to consider the petitioner's candidature in accordance with rules, pursuant to the findings of this Court in the writ appeal. As per Section 12 of the Statute of IIT Madras, a selection committee was constituted and the petitioner was called upon to present herself before the committee for an interview and for presenting a

lecture on any desire topic for considering the post of Associate Professor. But, the petitioner chose not to appear before the committee. Regarding the post of Professor, there was a delay in nominating visitors nominee. Therefore, the respondents filed a petition and took time from this Court and after nomination of the visitors nominee, a communication was sent to the petitioner dated 26.12.2016 to appear before the selection committee on 09.01.2017 for the purpose of considering her candidature for the post of Professor. Thus, the respondents have taken steps to comply with the directions of this Court by constituting the selection committee and called upon the petitioner to present herself before the committee for an interview. Therefore, this Court does not see any wilful disobedience of the direction issued by this Court in the writ appeals.

9. Another limb of argument of the learned counsel for the petitioner that the judiciary itself can direct the respondents to promote the petitioner to the post of Associate Professor as well as for the post of Professor is nothing but trenching the jurisdiction of review of the order, which is not permissible in this contempt petition. In contempt jurisdiction, this Court is primarily concerned with the question of contemptuous conduct of the party, who is alleged to have committed default in complying with the directions of this Court.

10.For the aforesaid reasons, these contempt petitions fail.

Accordingly, these contempt petitions are dismissed.

Index : Yes/No
Internet : Yes/No
Arul

(A.S.,J.) (P.K.,J.)
17.02.2017

To

- 1.The Chairman and Board of Governors,
Indian Institute of Technology Madras,
Chennai 600 036.
- 2.The Director,
Indian Institute of Technology Madras,
Chennai 600 036.
- 3.The Registrar,
Indian Institute of Technology Madras,
Chennai 600 036.

A.SELVAM,J.

And

P.KALAIYARASAN, J

Arul

Pre-Delivery order made in

**Contempt Petition Nos.2833 and
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