THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Contempt Case Nos.1646 of 2015 & 166 of 2016

COMMON ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Both these contempt cases are filed by the respondents in the writ petitions alleging violation of the order passed by this Court in W.P.No.39158 of 2013 and batch dated 29.04.2015.

The aforesaid order of this Court required the respondent-contemnors herein to undertake and complete the exercise of gathering data, and forming their opinion, on the parameters laid down by the Supreme Court in ***M.Nagraj vs. Union of India***[1] within six months from the date of receipt of a copy of the order. The Railways was directed to make in-charge arrangements in the interregnum making it clear to those, who were given charge of the posts, that this arrangement was temporary and would continue only till the exercise of formation of opinion, on the need to provide reservation in promotion, was completed. In the interregnum, i.e after the date on which the aforementioned order was passed and before the exercise as directed to be undertaken was completed, the Railways appointed members of the Scheduled Castes in higher posts on an *ad hoc* basis. After completion of the aforesaid exercise of gathering data, with regards the parameters laid down in ***M.Nagraj***[1], they issued proceedings regularising the earlier appointment of members of the Scheduled Castes to higher posts.

In so far as C.C.No.166 of 2016 is concerned, the Railways issued office order No.220 of 2015 dated 24.06.2015 informing those who were promoted earlier, and whose promotions were later set aside, that their promotions made on 30.12.2010 should be treated purely as on *ad hoc*/in-charge basis until further orders. This, according to Sri K.R.K.V.Prasad, learned counsel for the petitioners, amounts to their being continued to be in-charge of the posts from 2010 onwards, and is in violation of the order passed by this Court.

Both the orders passed by the Railways in so far as the petitioners in C.C.No.1646 of 2015 are concerned, i.e the order promoting the members of the Scheduled Castes on *ad hoc* basis, and the subsequent order regularising their earlier promotion, fall foul of the order passed by this Court in W.P.No.39158 of 2013 and batch dated 29.04.2015. Both these orders could not have been passed as the order of the Tribunal, setting aside the promotions of members of the reserved category, was upheld by this Court. The in-charge arrangements, which the Railways was permitted to make, did not enable them to either effect promotions on an *ad hoc* basis, or to regularise promotions made earlier, as the very need to provide reservation was required to be ascertained only after the data to be gathered in terms of the parameters laid down by the Supreme Court in ***M.Nagraj***[1], and only thereafter could promotions have been effected, that too if, on the basis of the data collected, the Railways were of the opinion that reservation in favour of members of the Scheduled Castes should be provided in promotions also.

Even if, as is now contended before us by Sri L.Ravi Chander, learned Senior Counsel appearing on behalf of the Railways, the data gathered show the need to provide reservation, the Railways could not have regularised the promotions made earlier, and could only have effected promotions afresh after the data, gathered in terms of the judgment of the Supreme Court in ***M.Nagraj***[1]**,** showed the need to provide reservation, for members of the Scheduled Castes, in promotion posts.

After the Contempt Case was filed, and on this error being pointed out, the Railways have now issued corrigenda to the earlier proceedings, and have informed the employees concerned that the *ad hoc* promotions given to them earlier must be treated as an in-charge arrangement; and the earlier order, regularising their services, was being withdrawn. These employees were given promotions afresh i.e from a date after the exercise of gathering data was completed.

While the earlier orders issued by the Railways i.e the order of *ad*

hoc promotions and the order of regularisation are evidently in violation of the order of this Court, the subsequent corrigenda/orders issued by the Railways correcting the erroneous orders issued earlier, in cancelling the orders of regularisation of services, and in issuing orders of promotion only from a date after the exercise of gathering data was completed, is in compliance with the order of this Court, *albeit* belatedly. By issuing corrigenda/fresh orders the officials concerned have sought to purge themselves of contempt.

In so far as the proceedings dated 24.06.2015, on which reliance is placed by the petitioners in C.C.No.166 of 2016, the promotions effected earlier on 30.12.2010 was directed to be treated as purely on an *ad hoc*/in-charge basis. As this Court affirmed the order of the Tribunal setting aside the promotion of members of the Scheduled Castes, the in-charge arrangement would have effect only after the order was passed by this Court. In its order, in W.P.No.39158 of 2013 and batch dated 29.04.2015, this Court did not specify the manner in which in-charge arrangement should be made. The action of the respondent-contemnors, in continuing the very same persons who were earlier promoted to be in-charge of their posts till the exercise of gathering data was completed, would not fall foul of the order of this Court, as the Railways was not directed to follow any particular procedure in making in-charge arrangements.

While the Court should be zealous in guarding the majesty of law, and in ensuring that its orders are not violated, much less wilfully and deliberately, it should also not needlessly exercise its power to punish for contempt, more so in cases where it is satisfied that the contemnors have sought to correct their earlier mistakes, and have made sincere efforts to purge themselves of contempt. By issuing corrigenda correcting the erroneous orders passed by them earlier, and in cancelling the earlier illegal order of regularisation, the Railway Officials (Respondents herein) have purged themselves of contempt. We see no reason, therefore, to proceed against them, much less to punish them, exercising jurisdiction under the Act. Suffice it to place on record the unconditional apology

tendered by the respondents in the counter affidavit filed in the Contempt Case.

While Sri K.R.K.V. Prasad, learned counsel for the petitioners, has raised several grounds, including that the South Central Railways could not have, on its own, undertaken the exercise of gathering data, and it was only the Union of India or the Railway Board which could have undertaken such an exercise; reservation in favour of the Schedule Castes has itself exceeded the 15% limit, and is almost 50%; and the obligation of gathering data, in accordance with the parameters prescribed in ***M.Nagraj***[1], has not been complied with; these are matters, which are extraneous to these contempt proceedings. In the exercise of its jurisdiction, under the Contempt of Courts Act (for short "the Act"), all that this Court would examine is whether the order passed by it earlier has been violated, whether such violation is wilful and deliberate, and, if so, the nature and extent of punishment to be imposed on the contemnors. It must be borne in mind that, while exercising jurisdiction under the Act, this Court would not re-hear the matter on merits. As an exercise has been undertaken by the Railways, and in terms of said exercise they have now effected promotions, all questions, regarding the manner in which the data was gathered, whether such an exercise accords with the law declared by the Supreme Court in ***M.Nagraj***[1] or not, and whether promotions made, after such exercise, in favour of the Scheduled Castes is valid or not, are again matters which can only be examined in independent proceedings, and not in proceedings under the Act. We see no reason, therefore, to proceed any further against the respondents under the Act.

Both the Contempt Cases are, accordingly closed. The miscellaneous petitions pending, if any, shall also stand closed. There shall be no order as to costs.

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RAMESH RANGANATHAN, J

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M. SATYANARAYANA MURTHY, J

Date: 23.03.2016

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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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Date:23.03.2016

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[1] 2006 (8) SCC 212