

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2017

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Contempt Petition No.2062 of 2016
and
Sub.Applications (OS) No.418 of 2017

U.ThangappanPetitioner
Vs.

T.Abraham
The Commissioner and Director
Animal Husbandry and Veterinary Services
DMS Building, Chennai - 600 006.Respondent

Prayer : Contempt Petition filed under Section 11 of the Contempt of Courts Act, to punish the Respondent for his act of committing Contempt of Court by disobeying the order of this Hon'ble Court dated 19.12.2014 made in W.P.No.34021 of 2014 and pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

For Petitioner : Mr.S.Thirumavalavan

For Respondent : Mr.R.Vijayakumar
Additional Government Pleader

O R D E R

Pursuant to the notice, the respondent/S.Jayandhi,I.A.S, O/o.Director of Animal Husbandry and Veterinary Services, Chennai - 6, appeared in

2.This Contempt Petition is preferred against the order dated 19.12.2014, passed in W.P.No.34021 of 2014.

3.The learned counsel appearing on behalf of the petitioner states that no doubt, this Court passed an order, directing the respondent to consider the petitioner's representation without expressing anything on merits. Accordingly, the 2nd respondent was directed to consider the representation submitted by the petitioner on 22.07.2013 in the light of G.O.Ms.No.49, dated 20.02.2013, and pass orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order.

4.The learned counsel for the petitioner is of the opinion that no doubt, the respondents have passed an order in proceedings dated 30.04.2015. However, they have not complied with the direction. Since this Court has directed to consider the representation in the light of G.O.Ms.No.49, dated 20.02.2013. The learned counsel wants to draw an inference in this regard.

5.The learned Additional Government Pleader appearing on behalf of the respondent states that <https://hcservices.ecourts.gov.in/hcservices/> G.O.Ms.No.49 dated 20.02.2013 was taken note of by the respondents while passing the order dated 30.04.2015, the

reference first cited itself is G.O.Ms.No.49 dated 20.02.2013. Merely because the content of G.O.Ms.No.49, has not been extracted in the order, it does not mean that the authorities have not considered the same. The authorities have considered the Government orders in this regard and finally rejected the claim of the writ petitioner.

6.Now, this Court has to look into G.O.Ms.No.49, dated 20.02.2013. The Government order relates to an individual namely, Thiru.S.Mathiyalagan. One Mr.S.Mathiyalagan, filed the writ petition and an order was passed on 17.08.2011. Pursuant to the order, the Government issued G.O.Ms.No.49 and granted retrospective regularization from the date on which he was initially appointed.

7.The learned counsel for the petitioner states that since the other similarly placed persons were granted retrospective regularization from the date from which they were initially appointed, the petitioner alone cannot be discriminated. Therefore, the direction issued by this Court to consider the representation has been not properly understood by the respondents.

8.This Court is unable to accept this contention in view of the fact that the regularization itself is a concession granted to the writ petitioner. The services of the writ petitioner was regularized from the date of the Government Order in G.O.Ms.No.117, Animal Husbandry, Dairying and Fisheries (AH7) Department dated 28.08.2008.

9.On a perusal of the above said order, the benefit of regularization was granted to the writ petitioner by relaxing the relevant rules.

10.The initial appointment of the writ petitioner was irregular and the writ petitioner was not appointed in accordance with the recruitment rules in force. When the writ petitioner was not appointed in accordance with the recruitment rules, then he is not eligible for regularization itself. However, the Government considering the length of services granted regularization by relaxing the rules. Rule of relaxation is an exception and the power of relaxation can be exercised by the competent authorities only to mitigate the injustice. Even the benefit of relaxation cannot be granted in a routine manner nor the benefit of relaxation granted to a particular individual can be cited as a precedent, so as to continue the error in perpetuity. Even if the retrospective relaxation was granted in one case by the Government, the

same cannot be cited as a precedent so as to continue the same mistake again and again.

11.All appointments ought to be made only in accordance with the recruitment rules in force. Equal opportunity in public employment is a constitutional mandate and the equal opportunity to participate in the open competitive process to be provided to all the eligible youth of this great nation. The authorities indulging in appointing persons contrary to the service rules also to be prosecuted in accordance with the Discipline and Appeal Rules. It is brought to the notice of the Court that large number of irregular and illegal appointments are made by the competent authorities of the State. It is the duty of the State Government to identify all such irregular and illegal appointments and initiate action even against the authority, who had indulged in such activities of appointing persons in violation of the recruitment rules in force.

12.This Court is of the opinion that equal opportunity to be provided to all qualified and all eligible citizen of this great nation and the rule of reservation also to be followed in accordance with the

rules. By encouraging the backdoor appointments, they are diluting the rule of reservation as per the Constitution.

Thus, it is to be emphasized that such appointments made in violation of recruitment rules or in violation of the Constitutional principles and the State should take action in this regard without showing any leniency or displaced sympathy against the authorities.

13. In the case on hand, the learned counsel for the petitioner citing the earlier order claiming retrospective regularization to the writ petitioner. The mistake or errors committed by the authorities cannot be cited as precedent so as to continue the same. The Constitutional Bench of the Hon'ble Supreme Court of India also emphasized that the regularization granted earlier cannot be cited and a one time relief was granted in paragraph 52 of the Judgment rendered in the case of ***The State of Karnataka Vs Umadevi, reported in 2006 4 SCC Page No.1.***

14. By this time, the period granted by the Hon'ble Supreme Court of India also expired and hereafter no such retrospective regularization or regularization or permanent absorption can be granted in violation of the service rules in force. This being the principle to be adopted, this Court is of the opinion that the order passed by the respondents in proceedings dated 30.04.2014 is in compliance of the orders passed by this Court on 19.12.2014

in W.P.No.34021 of 2014. Thus, the respondents have not committed any contempt as alleged by the petitioner.

15.Accordingly, this Contempt Petition stands closed. However, there shall be no order as to costs.

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SD/-
ASSISTANT REGISTRAR (OS-I)

//Certified to be true copy//

Dated at Madras this the day of 2017.

COURT OFFICER (O.S.)

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SPN/CO/28/12/2017

सत्यमेव जयते

To

T.Abraham
The Commissioner and Director
Animal Husbandry and Veterinary Services
DMS Building, Chennai - 600 006.

one cc to the Mr.S.Thirumavalavan,SR.No.14431.

one cc to the Government Pleader,SR.No.14716.