

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30 -01-2017

CORAM :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Contempt Petition No. 2737 of 2016

K. Mohanraj

.. Petitioner

Versus

1. S.K. Prabakaran, I.A.S.,
The Principal Secretary to Government
Public Works Department
Secretariat, Chennai - 600 009

2. V. Balasubramani
The Chief Engineer (General)
Public Works Department
Kamarajar Salai
Chennai

.. Respondents

Petition filed under Section 10 of The Contempt of Courts Act praying to punish the respondents for wilful disobedience of the order passed in WP No. 18032 of 2016 dated 04.08.2016.

For Petitioner : Mr. R. Krishnamoorthy, Senior Advocate
for Mr. S Wilson

For Respondents : Mr. K. Venkataramani,
Additional Advocate General
assisted by Mr.O.R. Maheswaran
Government Advocate

ORDER

By order dated 04.08.2016 passed in WP No. 18032 of 2016, this Court made the following observations:-

18. In the present case also, the petitioner was eligible for consideration for promotion to the post of regular Chief Engineer when the panel was drawn on 06.01.2016. The respondents never explored the possibility of accommodating the petitioner in other departments on deputation. In fact, on 04.05.2016, the petitioner has submitted a representation seeking to consider his claim for holding the post of regular Chief Engineer, but it

was not considered and orders passed thereon. Therefore, this Court only feels that though there were vacancies in the Public Works Department in which the petitioner could not be accommodated, he could have at least been considered for being accommodated in similar vacancies that arose in other departments. It is also not out of place to mention that the practice of sending eligible employees on deputation to hold the post of regular Chief Engineer was very much prevalent in the Public Works Department and therefore whenever there was a need, the respondents also ought to have resorted to confer promotion by transfer or deputation as the case may be. At the same time it is also to be mentioned that until March 2016, the claim of the petitioner could not be considered inasmuch as there were seniors in the panel who have to be considered by the respondents and such a course of action adopted by the respondents cannot be faulted with. Therefore, suffice to state that the first respondent shall consider accommodating the petitioner on deputation in other departments where there are vacancies exist on the basis of the representation submitted by the petitioner.

19. Before concluding, it is necessary to clarify that this Court has not concluded that the claim of the petitioner for promotion has to be considered from the date of preparation of panel. As mentioned above, it is clarified and reiterated that the eligibility for claiming promotion will arise only if the eligible person has got service of not less than one year on the date of his or her actual promotion and not from the date of preparation of panel. But only in so far as the petitioner is concerned, since he ought to have been considered by the respondents for promotion as regular Chief Engineer at least on deputation in other departments at the relevant date, for which vacancies were available, this Court is of the view that he could have been considered for promotion on deputation in other departments.

20. In the result, the writ petition is disposed of by directing the first respondent to consider the representation dated 04.05.2016 of the petitioner in the light of the above observations made by this Court and orders shall be passed within a period of two weeks from the date of receipt of a copy of this order inasmuch as the petitioner has got few months of left over service.

<https://hcservices.ecourts.gov.in/hcservices>. No costs. Consequently, WMP No. 15824 of 2016 is closed."

2. Complaining non-compliance of the above said order dated 04.08.2016 passed by this Court in WP No. 18032 of 2016 the petitioner has come forward with this Contempt Petition praying to punish the respondents for having disobeyed with the said order passed by this Court.

3. The contempt petition has been filed by the petitioner mainly on the ground that the direction issued by this Court to fill up the existing vacancy of the regular Chief Engineer on the basis of his representation dated 05.06.2016 has not been considered by the respondents in the light of the observations made by this Court in the order dated 04.08.2016 and it amounts to violation of the said order passed by this Court. According to the petitioner, in the order dated 04.08.2016, this Court specifically directed the respondents to explore the possibility of accommodating the petitioner in any other department on deputation basis. In fact, there were vacancies in other departments and even now there are vacancies available however, the respondents failed and neglected to appoint the petitioner in the post of regular Chief Engineer. Further, it is contended that posting the petitioner as Special Chief Engineer is an automatic one. When the petitioner became eligible for being appointed to the post of regular Chief Engineer even before the prescribed one year period prior to his retirement on 28.02.2017, the delay on the part of the respondents in not appointing the petitioner at the relevant period is illegal and that was also considered by

this Court in the order dated 04.08.2016. In any event, the non-compliance of the order dated 04.08.2016 passed by this Court by the respondents is deliberate and intentional for which the respondents have to be punished by invoking the provisions of the Contempt of Courts Act.

4. Mr. R. Krishnamoorthy, learned Senior counsel appearing for the petitioner has invited the attention of this Court to the communication dated 30.11.2015 sent by the Managing Director of Tamil Nadu Civil Supplies Corporation to the first respondent in which it was stated that one Sampath Kumar, Chief Engineer (Operation and Maintenance), Water Resources Department, Chennai and who was deputed as Chief Engineer to the Corporation has retired from service on 30.11.2015 and therefore, the first respondent was requested to pass suitable orders to depute a subordinate official in the place of the said Sampath Kumar. Therefore, even on 30.11.2015, there was a vacancy in which the petitioner could have been accommodated by the first respondent in the regular post of Chief Engineer. Further, the panel was prepared on 06.01.2016 for the year 2015-2016 in which the name of the petitioner was included and the petitioner was also eligible for being considered for the post of regular Chief Engineer on the date of preparation of the panel. As the petitioner was not considered for the post of regular Chief Engineer, he has filed the above WP No. 18032 of 2016 before this Court in which this Court passed an order dated 04.08.2016 directing

the respondents to explore the possibility of accommodating the petitioner. However, without considering the specific direction issued by this Court, the first respondent has passed the order of rejection dated 24.08.2016 and it is *per se* contemptuous. The order dated 24.08.2016 has been passed by the first respondent without properly considering the nature of the directions issued by this Court in the order dated 04.08.2016.

5. The petitioner has filed an additional affidavit reiterating the averments made in the affidavit filed in support of the writ petition. In the additional affidavit, the petitioner has brought to the notice of this Court in para-4 the vacancies that exist and the non-filling of the same by the respondents. The petitioner also given a tabular statement indicating the appointment of four regular Chief Engineer who are similarly placed like him.

6. The first respondent also filed a reply affidavit to the additional affidavit filed by the petitioner wherein wherein the first respondent has stated that he is tendering unconditional apology if this Court comes to the conclusion that the respondents have in any manner flouted the order passed by this Court. It is further stated that the Government has promoted ten Superintending Engineers as Chief Engineers and eight Superintending Engineers as Special Chief Engineer vide GO (D) No.317, PW (A1) Department dated 26.11.2016, including the petiitonner herein and he has also

joined the post on 26.11.2016. It is further stated that one post of Chief Engineer (Regular) is kept vacant in compliance with the order dated 08.09.2016 passed by the Madurai Bench of this Court in WP (MD) No. 9316 of 2016 and WMP (MD) Nos. 7386 and 8510 of 2016 filed by one K.A. Abdul Hameed, Superintending Engineer. It is further stated that in the panel approved by the Government for promotion to the post of Chief Engineers/Special Chief Engineers, the name of the petitioner finds place in serial No.11. Even though it was indicated as against the petitioner and some others that they are eligible for appointment to regular Chief Engineer, it was specifically indicated that only those Superintending Engineers who have one year of left over service before retirement at the actual promotion will be considered. Further, there is no retirement of Chief Engineer in the Public Works Department during the month of March 2016 and the vacancy of Chief Engineer Post at the end of 31.03.2016 is "nil". As per the Special Rules for Branch-1, Public Works Department under the Tamil Nadu Engineering Services amended in GO (Ms) No.245, Public Works Department dated 08.08.2007, a Superintending Engineer must have a minimum period of one year left over service before retirement at the time of actual promotion. As the petitioner and one Valarmathi, who were in Serial Nos. 11 and 12 respectively, did not possess such minimum period of one year prior to his retirement, their claim for promotion has not been considered. It is stated in

the reply affidavit that the respondents have not violated the directions issued by this Court on 04.08.2016 in any manner and therefore it is prayed that the contempt petition has to be dismissed.

7. The learned Senior counsel for the petitioner, by placing reliance on the additional affidavit filed by the petitioner would contend that even at the time of passing the order of rejection on 04.08.2016, there were 17 posts of Chief Engineer vacant out of which only 4 persons were given the posting and there were 12 posts remaining vacant. The four persons who were given such posting are holding additional charge and the same was also published in the English Daily Times of India on 07.11.2016. Therefore, according to the learned Senior counsel for the petitioner, instead of passing the order of rejection dated 24.08.2016, the first respondent could have very well accommodated the petitioner in the available vacancy in the light of the directions issued by this Court in the order dated 04.08.2016. The learned senior counsel for the petitioner also would contend that there are cases in which the mandatory period of one year was relaxed in favour of certain persons and they were accommodated in the post of regular Chief Engineer but the same yardstick has not been adopted in the case of the petitioner. Further, in the order of rejection dated 24.08.2016, the first respondent has stated that there was no request made by other departments to fill up the post of regular Chief Engineer on deputation

basis, which is incorrect. Therefore, the learned Senior counsel for the petitioner would contend that the order of rejection dated 24.08.2016 has been passed without properly considering the nature of directions issued by this Court and it was passed by the first respondent with a malafide intention to deny the petitioner the post of regular Chief Engineer before his retirement. The learned Senior counsel for the petitioner would further contend that as per the directions of this Court, the respondents ought to have explored the possibility of accommodating the petitioner in other departments. Further, before one year prior to the retirement of the petitioner, there were vacancies but such vacancies were not filled up in time. The delay caused in non-filling of the post by the respondents is a ruse adopted by the respondents to deny the legitimate claim of the petitioner and it calls for interference by this Court.

8. Mr. Venkataramani, learned Additional Advocate General appearing for the respondents, by placing reliance on the counter affidavit of the first respondent, would contend that the petitioner is due for retirement on 28.02.2017 and the post of Chief Engineer (Regular) in the Public Works Department arose after 29.02.2016 and therefore the petitioner does not possess the requisite minimum period of one year of left over service before his retirement to accommodate him in the said post. The first respondent, after considering the order dated 04.08.2016 passed by this Court has rejected the

claim of the petitioner in the order dated 24.08.2016. Therefore, it cannot be said that the respondents have disobeyed or violated the order passed by this Court in the above writ petition. According to the learned Additional Advocate General, at the outset, the contempt petition itself is not maintainable inasmuch as an order dated 24.08.2016 has been passed by the first respondent within the time stipulated by this Court in the order dated 04.08.2016. The petitioner, if at all aggrieved by the order dated 24.08.2016, ought to have challenged the same instead of filing the present contempt petition. In the absence of any challenge to the order dated 24.08.2016, the present contempt petition is not maintainable. The learned Additional Advocate General also would contend that the respondents have explored the possibility of accommodating the petitioner in other departments on deputation basis, but the foreign departments have not made any request for filling up the post. In fact, the respondents sought a clarification from the Co-operation, Food and Consumer Protection Department for not making any request to fill the post of Chief Engineer (Regular) from the Public Works Department. In response, the Managing Director of the Tamil Nadu Civil Supplies Corporation, Chennai in his letter dated 09.11.2016 has informed that on the retirement of Thiru. Sampath Kumar on 30.11.2015, they have decided to fill up the vacancies by conferring promotion to the Engineers working in their department. Therefore, it cannot be said

that the respondents have failed to explore the possibility of accommodating the petitioner in other departments, as directed by this Court in the order dated 04.08.2016.

9. In so far as the conferment of promotions given to four persons as Chief Engineer (Regular), they were appointed inasmuch as the post of regular Chief Engineer was available before the one year period of their retirement and therefore, their claim for such promotion was favourably considered by the Government. In the case of the petitioner, when two vacancies arose due to retirement of S. Sampath Kumar and S. Ashokan on 30.04.2016, the petitioner was in serial No.11 of the panel prepared for appointment to the post of Chief Engineer (Regular) besides he was having only 10 months of left over service. As the petitioner did not possess the requisite minimum period of one year of left over service before his retirement, as per Rule 5 under Branch-I (Public Works) of the Special Rules for the Tamil Nadu Engineering Services, the petitioner was not found eligible for promotion as Regular Chief Engineer and he is only eligible for promotion as Special Chief Engineer as per the amendments made to Special Rules issued vide GO (Ms) No.245, PW (A2) Department dated 08.08.2017, in which he was duly accommodated. Therefore, the learned Additional Advocate General appearing for the respondents would contend that the respondents have not violated the order passed by this Court on 04.08.2016 in any manner and he prayed for dismissal of the

contempt petition.

10. I have given my anxious consideration to the rival submissions made. In this contempt petition, this Court has to first consider whether the respondents have in any manner flouted the order dated 04.08.2016 passed by this Court in the above WP No. 18032 of 2016. In the order dated 04.08.2016, this Court directed the respondents to explore the possibility of accommodating the petitioner in other departments inasmuch as the petitioner was eligible for consideration for promotion to the post of regular Chief Engineer when the panel was drawn on 06.01.2016. In compliance with the order dated 04.08.2016, the first respondent has passed an order dated 24.08.2016 rejecting the claim of the petitioner. Unfortunately, the petitioner has not challenged the order dated 24.08.2016 passed by this Court, but has chosen to file the present contempt petition complaining non-compliance of the order dated 04.08.2016 passed by this Court. When the first respondent has passed an order dated 24.08.2016 rejecting the claim of the petitioner, it cannot be said that the respondents have in any manner violated the order passed by this Court and consequently the contempt petition is not maintainable.

11. In my order dated 04.08.2016, I had directed the respondents to take all out efforts that are necessary to see that the petitioner could be accommodated in the post of regular Chief Engineer before his retirement on 28.02.2017.

Such a direction was issued by taking note of the fact that the petitioner was eligible for consideration for promotion to the post of regular Chief Engineer even as early as on 06.01.2016 when a panel was drawn for conferring promotion. According to the respondents, in the said panel, the petitioner's name was included in serial No.11 and he cannot be given the promotion to the post of regular Chief Engineer without considering the claim of his seniors who are in serial No.1 to 10 of the panel. Further, the respondents have produced a letter dated 09.11.2016 of the Managing Director of the Tamil Nadu Civil Supplies Corporation, Chennai wherein it was stated that the Corporation, without seeking for deputation of personnel from the Public Works Department for appointment to the post of Chief Engineer (Regular), have decided to fill up the vacancies by conferring promotion to the Engineers working in their department. In such view of the matter, this Court cannot hold that the respondents have violated the order dated 04.08.2016 passed by this Court. This Court can only sympathise with the petitioner for his claim could not be considered at the relevant point of time when he became eligible to get promoted to the post of regular Chief Engineer either due to administrative delay or otherwise. Further, the respondents could have taken swift action at the earliest point of time to accommodate the persons like the petitioner before their retirement so that they could peacefully retire as regular Chief Engineer and

will get more benefit, which are attached to such post. post-retirement. In any event, these aspects cannot be gone into by this Court in this contempt petition. In any event, since the petitioner did not challenge the order dated 24.08.2016 passed by the first respondent rejecting his claim for appointment to the post of regular Chief Engineer, in compliance with the directions issued by this Court in the order dated 04.08.2016 passed in the above writ petition, the prayer sought for in this contempt petition cannot be entertained.

12. In the result, this Court do not find any disobedience on the part of the respondents in complying with the order dated 04.08.2016 in WP No. 18032 of 2016. Accordingly, the contempt petition is dismissed. No costs.

SD/-
JOINT REGISTRAR (OS) (i/c)
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Dated at Madras this the day of 2017.

COURT OFFICER (O.S.)

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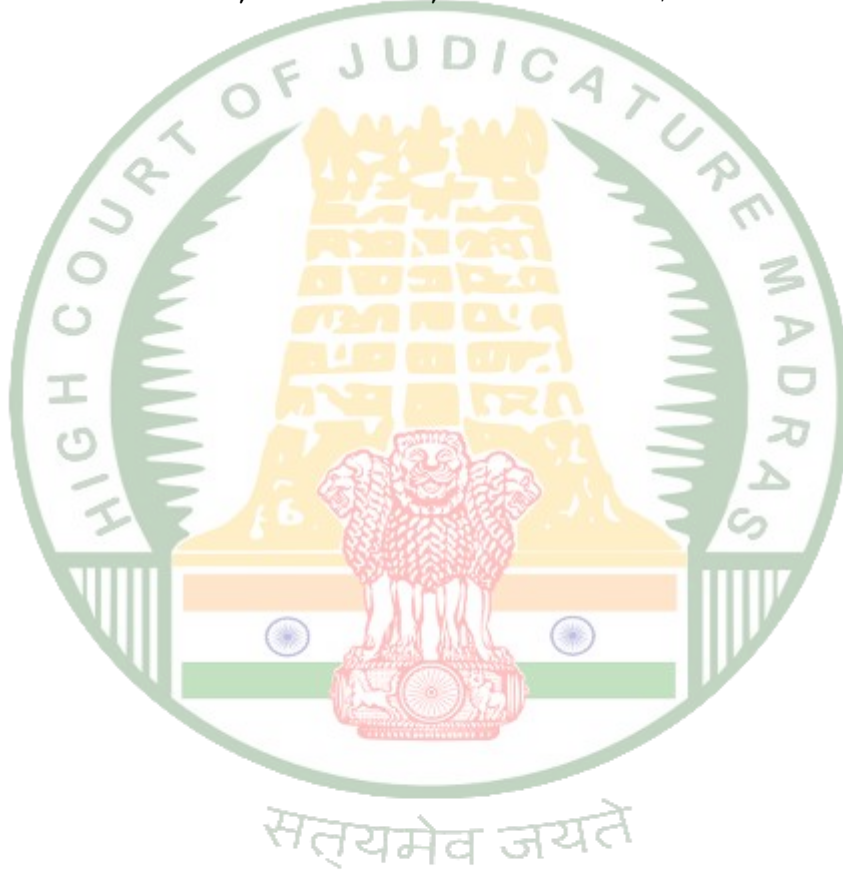
To

1. S.K. Prabakaran, I.A.S.,
The Principal Secretary to Government
Public Works Department
Secretariat, Chennai - 600 009

2. V. Balasubramani
The Chief Engineer (General)
Public Works Department
Kamarajar Salai
Chennai.

one cc to the Govt.Pleader, High Court, sr.No.1508/17

one cc to Mr.S.Wilson, Advocate, sr.No.1518/17



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