

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20-02-2018

Pronounced on : 26.02.2018

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

C.M.P. No. 906 of 2018
in
L.P.A. SR No. 2432 of 2018
in
Contempt Petition No. 1496 of 2017

Dr. (Lt). K. Rajkumar

.. Petitioner

Versus

1. Tamil Nadu Arasu Pothu Noolaga Thurai
Paniyalar Kazhagam (C&D)
No.737, L.L.A. Building, Anna Salai
Chennai – 600 002
represented by its State President
M. Rajesh Kumar
Son of Muthusamy

2. The State of Tamil Nadu
represented by its Principal Secretary to Government
School Education Department
Secretariat, Chennai – 600 009

3. The Director of Public Libraries (in charge)
No.737/1, Anna Salai
Chennai – 600 002010

.. Respondents

Petition filed under Section 151 of the Code of Civil Procedure seeking to grant leave to file an appeal as against the order dated 13.10.2017 passed by this Court in Contempt Petition No. 1496 of 2017.

For Petitioner : Mr. N.G.R. Prasad
for M/s. Row and Reddy

For Respondents : Mr. C. Munusamy
Special Government Pleader (Education)
assisted by Mr. K. Karthikeyan
Government Advocate for RR2 and 3

ORDER**R. Subbiah, J**

The petitioner has come forward with this Civil Miscellaneous Petition seeking to grant leave to enable him to file a Letters Patent Appeal against the order dated 13.10.2017 passed by this Court in Contempt Petition No. 1496 of 2017.

2. For the purpose of disposal of this petition, certain facts, which are germane and necessary are detailed hereunder.

3. The first respondent herein namely Tamil Nadu Arasu Pothu Noolaga Thurai Paniyalar Kalagam, through it's State President has filed WP No. 1952 of 2017 seeking for issuing a Writ of Mandamus directing the Second respondent herein to fill up the post of Director of Public Libraries with qualified persons on regular basis as per Service Rules notified in G.O. Ms. No.102, School Education (PL.1) Department dated 01.07.2013 in compliance with the orders passed by this Court in WP No. 3272 of 2012 dated 11.04.2012 and the subsequent orders passed in WP No. 33888 of 2016 dated 28.09.2016 within a time limit to be specified by this Court. When WP No. 1952 of 2017 was listed for hearing before this Court on 06.04.2017, this Court passed the following order:-

“3. Pursuant to the above said order, when the matter is taken up today, learned Additional Advocate General produced the relevant files before this Court. A mere perusal of the files would show that through Director of College Education, they have received two applications namely from Dr. R. Rajkumar and Dr. M. Ravichandran, besides, they have received third application from Dr. S.K. Ashok Kumar, through the Government.

4. In view of the above, it is submitted by the learned Additional Advocate General that since three departments, namely Personnel and Administrative Reforms Department, Higher

Education Department and Tamil Nadu Public Service Commission, are to be consulted for filling up of the said post, minimum four months time required to finalise the said process. However, this Court is not inclined to grant such time as sought for, inasmuch as this Court had already in WP No. 33888 of 2016 dated 28.09.2016, given a direction to the respondents to consider the representation dated 04.07.2016, within a period of six weeks, with regard to the same prayer cited above. Thus, this Court, by declining to grant such time, is inclined to grant only three months time from today.

5. Accordingly, this Court, by recording the submissions of the learned Additional Advocate General, directs the first respondent to fill up the post of Director of Public Libraries in accordance with law, within a period of three months from today. Although three departments namely Personnel and Administrative Reforms Department, Higher Education Department and Tamil Nadu Public Service Commission are not parties to this writ petition, they are directed to cooperate with the respondents to fill up the said post within such time.

6. With the above direction, this writ petition is disposed of. No costs."

4. Since the above said order dated 06.04.2017 passed in WP No. 1952 of 2017 has not been complied with by the respondents 2 and 3 herein, the first respondent herein filed Contempt Petition No. 1496 of 2017 before this Court. When the contempt petition was listed for hearing, this Court passed the order dated 12.10.2017 as follows:- सत्यमेव जयते

"3. At this stage, the learned Additional Advocate General appearing for the respondents submits that till now, there is no one holding the post of Joint Director of Public Libraries, therefore, the question of promoting the candidate from the post of Joint Director of Public Libraries on the basis of following the seniority is ruled out. Secondly, it is not possible for the respondent to exercise second mode i.e., to transfer any class I Officer in the said service.

4. I also agree with the said submission made by the learned Additional Advocate General that when there are no eligible candidates as on today, holding the post of Joint Director of Public Libraries, as rightly intimated, the respondent has to resort to third mode. But the affidavit, filed today shows that the respondent has also exercised the third mode and finally, by taking note of the fact that no one is eligible to hold the said post, permitted the existing incumbent to continue the post.

5. As per the Rules, the last mode, namely, by direct recruitment, if no qualified candidate is available for appointment by any one of the above methods, is also available, hence, this Court,

hereby directs the respondent to issue notification within a period of three weeks from today inviting the suitable candidates all over the State of Tamil Nadu for the post of Director of Public Libraries, fixing only three weeks time to submit their applications i.e., as outer time limit for submission of applications and thereafter, the respondent is directed complete the entire selection process within a period of four weeks.

Registry is directed to list the case 'for reporting compliance' after ten weeks."

5. Mr. N.G.R. Prasad, learned counsel appearing for the petitioner would contend that the petitioner is working as Selection Grade Librarian in Dr. Ambedkar Government Arts College (Autonomous) Chennai – 600 039. Pursuant to the notification issued by the third respondent herein inviting applications for filling up the post of Director of Public Library by promotion, the petitioner has submitted his application for promotion to the post of Director of Public Library. It is the case of the petitioner that as per the amendment brought to the Adhoc Rules, vide G.O. (Ms) No.102, School Education Department dated 01.07.2013, promotion to the post of Director of Public Library shall be made from among the person who is (i) holding the post of Joint Director of Public Libraries or (ii) by transfer from Class I in the said Service. According to the petitioner, he is holding the post of Selection Grade Librarian and therefore he is fully qualified for being promoted to the post of Director of Public Libraries. Therefore, the petitioner submitted his application and he was also called upon to attend an interview on 14.07.2017 before the Selection Committee comprising of (i) Principal Secretary, Higher Education Department (ii) Secretary, School Education (iii) Secretary, P&AR Department (iv) Secretary, Finance (Expenditure) Department (v) Secretary, Law Department and the Director, University Library, Anna University, Chennai. However, in view of the order passed by this Court in the writ petition No. 1952 of 2017 and the consequential filing of the Contempt Petition No. 1496 of 2017, the petitioner was not considered for

selection and appointment to the post of Director of Public Library. According to the learned counsel for the petitioner, when the Contempt Petition came up for hearing on 12.10.2017, it was submitted on behalf of the official respondents that the candidature of the petitioner was evaluated and concluded that he was not suitable for the post of Director of Public Library. According to the learned counsel for the petitioner, he was not made as a party to the writ petition in WP No. 1952 of 2017 filed by the first respondent as also in Contempt Petition No. 1496 of 2017 filed before this Court. It is the specific contention of the counsel for the petitioner that when the petitioner is fully qualified for holding the post of Director of Public Library, the submission made on behalf of the respondents before this Court as though none of the in-service candidates possess the requisite qualification is unsustainable. When the petitioner fulfils all the requisite qualification prescribed for promotion to the post of Director of Public Library, the observation made by this Court in Contempt Petition No. 1496 of 2017 directing the official respondents to resort to direct recruitment to fill up the post of Director of Public Library causes prejudice to the petitioner. In such circumstance, the petitioner seeks leave of this Court to challenge the order dated 12.10.2017 passed in Contempt Petition No. 1496 of 2017 and if the petitioner is not granted leave, he will be gravely prejudiced.

6. Mr. Munusamy, learned Special Government Pleader appearing for the respondents oppose the petition seeking leave to file a Letters Patent Appeal by contending that the official respondents have only responded to the order passed in the writ petition filed by the first respondent herein. In pursuance to the direction issued by this Court in the order dated 06.04.2017 in WP No. 1952 of 2017, the official respondents have scrutinised the applications received for promotion to the post of Director of Public Library and an interview was conducted

by the Selection Committee on 14.07.2017. The petitioner also participated in the interview, but the committee, on scrutiny of the eligibility and suitability of the petitioner, rejected his candidature for appointment to the post of Public Library. The petitioner, having participated in the interview before the selection committee on 14.07.2017 is estopped from filing the present petition. When the petitioner was not a party to the Writ Petition No. 1952 of 2017 filed by the first respondent and the consequent contempt petition No. 1496 of 2017, he cannot be permitted to file the present petition seeking leave. In any event, the petitioner has no *locus standi* to file the present petition and therefore, he prayed for dismissal of the petition seeking leave.

7. We have heard the counsel for both sides and perused the record. Admittedly, the petitioner was not a party to the writ petition filed by the first respondent in WP No. 1952 of 2017. The said writ petition was disposed of by this Court on 06.04.2017 by issuing certain direction to the official respondents to complete the process of selection and to appoint eligible in-service candidates to the post of Director of Public Library. Admittedly, pursuant to such direction issued by this Court, an interview was conducted by the Selection Committee in which the petitioner also participated on 14.07.2017 along with other candidates. According to the official respondents, the selection committee unanimously concluded that all the three candidates who appeared for interview, including the petitioner, were not eligible for appointment to the post of Director of Public Library inasmuch as they did not possess the requisite qualification. Therefore, according to the official respondents the post of Director of Public Library could not be filled up by conferring promotion to the in-service candidates. However, contending that the order dated 06.04.2017 passed by this Court in WP No. 1952 of 2017 has not been

complied with, a contempt petition was filed before this Court by the first respondent Association in which this Court, passed an order dated 12.10.2017 agreeing with the submissions made on behalf of the official respondents that there is no qualified candidate available to fill up the post of Director of Public Library. Consequently, this Court permitted the official respondents to resort to filling up the post of Director of Public Library through direct recruitment by fixing an outer time limit. In such circumstances, when the petitioner was not at all a party to either the writ petition No. 1952 of 2017 or the consequent Contempt Petition No. 1496 of 2017, this Court, at the instance of the petitioner, is not inclined to grant leave to the petitioner to file an appeal as against the order dated 12.10.2017 passed in Contempt Petition No. 1496 of 2017. For the purpose of filing a Letters Patent Appeal, the petitioner cannot be construed as an aggrieved person and consequently, he has no *locus standi* to question or challenge the order dated 12.10.2017 passed by this Court in Contempt Petition No. 1496 of 2017. If the petitioner is aggrieved by any act of the official respondents, his remedy is elsewhere and he could not be permitted to file an appeal as against the order dated 12.10.2017 passed in Contempt Petition No. 1496 of 2017. The scope of the Contempt Petition is to examine as to whether the order or direction issued by this Court has been complied with or not by the official respondents. In fact, in the order dated 12.10.2017 in Contempt Petition No. 1496 of 2017, this Court accepted the reasons assigned by the official respondents for not filling up the post of Director of Public Library and directed them to fill up the post of Director of Public Library by resorting to the third method of recruitment namely by direct recruitment. While so, at the instance of the petitioner, we are not inclined to grant leave to file an appeal questioning the correctness of the order dated 12.10.2017 passed in Contempt Petition No. 1496 of 2017. Accordingly, we dismiss the Civil

Miscellaneous Petition. However, there shall be no order as to costs.

(R.P.S.J.,) (P.D.A.J.,)

26-02-2018

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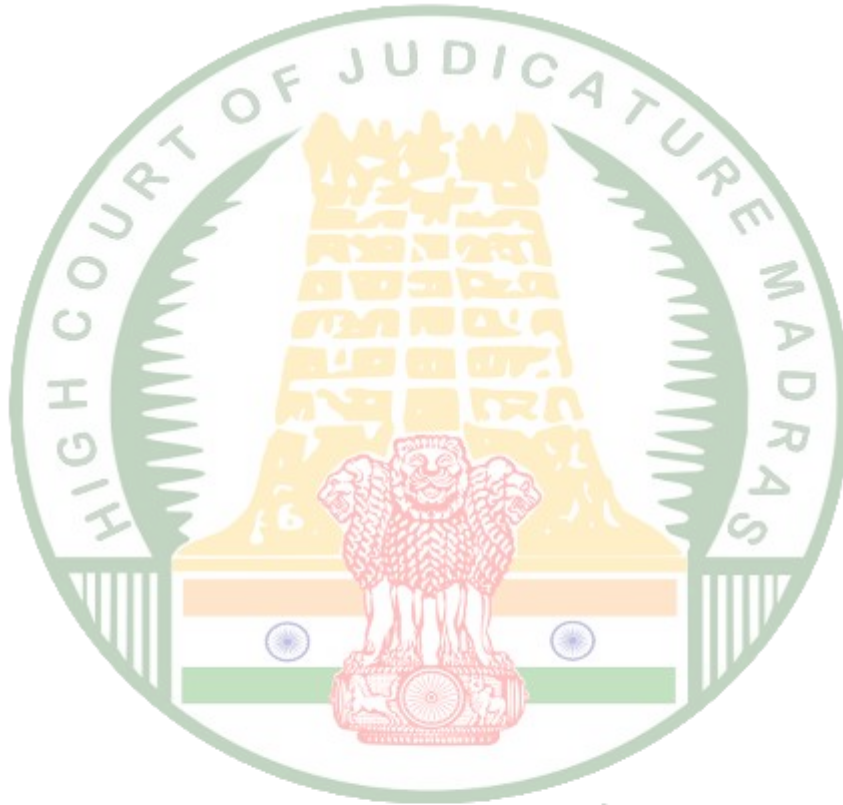
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