

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.07.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

CONT.P.Nos.1609, 1610 & 1758/2017

M.Karthikeyan

... Petitioner in
Cont.P.Nos.1609
& 1610/2017

- 1.Syed Sulaiman
- 2.K.Dasprakash
- 3.R.Jeganathan
- 4.R.Vijayaprasad
- 5.R.Karthik
- 6.P.Ranjith Kumar
- 7.T.Rajesh
- 8.G.Panneer Selvam
- 9.S.Anand
- 10.Ahamed Umar Mukthar
- 11.S.Tamil Selvan
- 12.M.Prabu
- 13.S.Kanagaraj
- 14.T.Udayapandian
- 15.R.Kumar
- 16.B.Pravin Kumar
- 17.K.Raja
- 18.M.Mohammed Ali Jinna
- 19.N.Alaguraja
- 20.M.Ashok Kumar
- 21.V.Sakthi Narayanan
- 22.P.Prakash Kumar
- 23.P.Srinivasan
- 24.B.Vignesh
- 25.K.Umashankar
- 26.B.Simbu

... Petitioners in
Cont.P.No.1758/2017

Versus

G.Rajarathinam
The General Manager - Human Resources
Chennai Metro Rail Ltd., Admin.Building
CMRL Depot, Poonamallee High Road
Koyambedu, Chennai 600 107.

.. Respondents
in all contempt
petitions

Prayer in Cont.P.No.1609/2017:- Contempt petition filed under section 11 of the Contempt of Courts Act,1971, to punish the respondent for willfully disobeying the common order passed by this Court in Rev.Appln.No.129/2017 in WP.No.31492/2016 [contempt petitioner herein] dated 18.08.2017.

Prayer in Cont.P.No.1610/2017:- Contempt petition filed under section 11 of the Contempt of Courts Act,1971, to punish the respondent for willfully disobeying the common order passed by this Court in WP.Nos.31492/2016 [contempt petitioner herein] dated 02.01.2017.

Prayer in Cont.P.No.1758/2017:- Contempt petition filed under section 11 of the Contempt of Courts Act,1971, to punish the respondent for willfully disobedience of the order of this Court made in WP.No.31550/2016 dated 02.01.2017 and Rev.Appln.No.130/2017 dated 18.08.2017.

For Petitioners in
Cont.P.Nos.1609
& 1610/2017 : Ms.B.Subhashini

For Petitioners in
Cont.P.No.1758/2017 : Mr.L.Chandrakumar

For Respondent in
all contempt petitions: Mr.Jayesh B. Dolia

COMMON ORDER

The facts leading to the filing of the above contempt petitions, have been narrated in detail, in the common order dated 02.01.2017 made in WP.Nos.15196, 15197, 31491, 31492 and 31550/2016 as well as in the common order dated 18.08.2017 made in Rev.Appln.Nos.128 to 130/2017 and therefore, it is unnecessary to restate the facts once again.

2 The applicants/petitioners in the contempt petitions had filed the writ petitions seeking for the quashment of the proceedings dated 23.08.2016 and the consequential Notification dated 24.08.2016 issued by the respondent / contemnor - Chennai Metro Rail Limited [in short CMRL] and consequently, directing them to appoint them who have been selected as per the Notification / Advertisement dated 19.01.2013.

3 It is relevant to extract the operative portion of the common order passed in the above cited writ petitions:-

"17 This Court, taking into consideration the peculiar facts and circumstances of the case, coupled with the stand of the respondents/CMRL as to the merit-wise selection of the petitioners herein, is of the view that the following orders would meet the ends of Justice:

[i] WP.Nos.31491, 31492 and 31550 of 2016 are partly allowed and the impugned cancellation notification dated 23.08.2016 and the consequential Advertisement No.CMR/HR/06/2016 for the posts of Junior Engineer Grade II published by the respondents signed by the 3rd respondent are set aside. The respondents/CMRL are directed to call for the willingness of the petitioners in the order of merit ranking, within a period of four weeks from the date of receipt of a copy of this order and thereafter, shall consider their claim for

appointment to the post of Junior Engineer Grade-II [Station Control], in the Scale of Pay of Rs.8,000-14,140, subject to exercise of option by them and fulfillment of eligibility criteria and issue orders of appointment within a period of six weeks thereafter and communicate the decision taken to the petitioners. No costs. Consequently, connected miscellaneous petitions are closed.

[ii] In the light of the orders passed in WP.Nos.31491, 31492 and 31550/2016, no further orders are necessary in WP.Nos.15196 and 15197/2016. Hence, WP.Nos.15196 & 15197/2016 are closed. No costs. Consequently, connected miscellaneous petitions are closed.

[iii] It is made clear that since this order came to be passed on peculiar facts and circumstances, it cannot be cited as a precedent in future cases."

4 Thereafter, CMRL had filed the above cited Review Applications. The learned Standing counsel appearing for the review petitioners advanced the arguments as if the impugned order quashing the cancellation of the Notification dated 23.08.2016 as well as the consequential Employment Advertisement / Notification dated 23.08.2016, are re-called and restored, the writ petitioners will be given accommodation as per the Merit List drawn and

therefore, prayed for appropriate orders.

5 The Court, taking into consideration the rival submissions, had allowed the review application with the following directions:-

"8. In the light of the fact that the respondents/writ petitioners have no objection for restoration of the Cancellation Notification dated 23.08.2016 as well as the employment notification in Advt.No.CMRL/HR/06/2016 dated 23.08.2016, these Review Application are allowed with the following directions:

(i) Paragraph No.17(i) of the common order dated 02.01.2017 made in W.P.Nos.15196, 15197, 31491, 31492 and 31550 of 2016 insofar as the impugned Cancellation Notification dated 23.08.2016 and consequential employment notification dated 23.08.2016 is recalled and both stand restored.

(ii) The appellants/official respondents in the writ petitions, in the light of the stand taken in Ground (D) of the Review Application, is directed to draw the merit list as per the above said notification/advertisement dated 23.08.2016 insofar as the respondents/writ petitioners are concerned and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order and communicate the decision taken, to the writ petitioners. No costs.'

6 CMRL, aggrieved by the order dated 18.08.2017, passed in the Review Appln.Nos.128 to 130/2017, had filed WA.No.615/2018 and a Division Bench of this Court, having found that there is no scope for any interference of the said order, however granted liberty to CMRL to seek for clarification in the order passed in the Review Applications. Accordingly, the learned counsel appearing for CMRL has circulated a letter dated 09.04.2018.

7 Private notices were ordered in the Review Applications and the contemnors/CMRL had entered appearance and counter affidavits have been filed.

8 According to CMRL, they have to follow the Government of Tamil Nadu Reservation Roster System while appointing the candidates and though some of the writ petitioners have been given appointment, the others could not be given on account of following the Reservation Roster System and also took a stand that while filling up vacancies to a particular post, there cannot be discrimination among candidates who come to Court and the candidates who choose not to do so.

9 The learned counsel for the petitioners would point out that though persons similarly placed as that of the writ petitioners/applicants, did not make a challenge to the Notification by filing writ petitions, curiously,

the respondent / CMRL, under the guise of adopting the Government of Tamil Nadu Reservation Roster System, had accommodated them and as a consequence, the contempt petitioners / writ petitioners have been eschewed from consideration and therefore, prays for appropriate orders. In support of his submissions, has placed reliance on the following judgments:-

[1] Civil Appeal No.9849/2014 [*State of UP and others Vs. Arvind Kumar Srivastava and others*] dated 17.10.2014 ; and

[2] Civil Appeal No.2127/2018 etc., batch [*Khatoon and others V. State of UP through the Principal Secretary and others*] dated 15.02.2018.

10 Per contra, Mr. Jayesh B. Dolia, learned counsel appearing for the respondent / contemnor [CMRL] would submit that a clarification is required only in respect of Ground No.[b] in the review application as to the following of the Government of Tamil Nadu Reservation Roster System and in all fairness, they have to follow the reservation and therefore, CMRL have also considered the candidates who have not approached the Court.

11 The Court has considered the rival submissions and also perused the materials placed before it.

12 This Court, while disposing of the review applications, had also made it clear that the Merit List is to be drawn as per the said Notification/Advertisement dated 23.08.2016 insofar as the writ petitioners are concerned with a further direction to pass appropriate orders within a period of four weeks from the date of receipt of a copy of the said order.

13 The order dated 18.08.2017 passed in Rev.Appln.Nos.128 to 130/2017 was also put to challenge by the respondent / contemnor - CMRL in WA.No.615/2018 and the Division Bench, having found that there is no scope for any interference, has dismissed the writ appeal and however, granted liberty to the learned counsel appearing for CMRL to seek for clarification. It is to be pointed out at this juncture that the learned counsel has circulated a letter dated 09.04.2018 to the Registrar [Judicial], for taking up the matter under the caption "For Being Mentioned" and it is the submission that Ground No.[b] of the review application is to be considered and permit them to follow the Government of Tamil Nadu Reservation Roster System. In the considered opinion of the Court, the said submission lacks merit and substance for the reason that under the guise of circulating letter dated 09.04.2018 "for being mentioned", the respondent/contemnor-CMRL, once again wants this Court to review its own review order dated 18.08.2017 and the same is impermissible. It is very

pertinent to point out at this juncture that the challenge made to the order dated 18.08.2017 in Rev.Appln.No.129/2017 has also ended in dismissal as per the order dated 21.03.2018 made in WA.No.615/2018 and no further challenge has been made so far and it has become final.

14 In *State of UP and others Vs. Arvind Kumar Srivastava and others* [cited supra], the Hon'ble Supreme Court of India has considered the grant of relief to the persons who have not approached the Court and it is relevant to extract paragraph No.13[1] and [2] :-

"13.....

[1] Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

[3] However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like schemes of regularisation and the like [see K.C.Sharma and others Vs. Union of India [supra]]. On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an

intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

15 Admittedly, the persons who are similarly placed like that of the writ petitioners did not make any challenge to the Notification and the respondent / contemnor - CMRL under the guise of adopting the Government of Tamil Nadu Reservation Roster System, took a stand that on account of their accommodation, the petitioners herein stand eschewed from consideration. In the considered opinion of this Court, the said stand is wholly untenable and also in the light of the order passed in the Review Applications dated 18.08.2017 in Rev.Appln.Nos.128 and 130/2017, which has been confirmed by the Division Bench of this Court in WA.No.615/2018.

16 It is settled position of law that a review application cannot be filed to review the order passed in the review application under the guise of circulating the letter for "for being mentioned".

17 At this juncture, the learned counsel for respondent / contemnor -CMRL prays for one month time to

implement the order in letter and spirit.

18 Accordingly, a month's time is granted from the date of receipt of a copy of this order to implement the order insofar as the writ petitioners/petitioners in Contempt Petition Nos.1609, 1610 & 1758/2017 are concerned.

19 The contempt petitions are closed subject to the above observations / directions.

20 Call on 20.08.2018 for reporting compliance.

WITNESS THE HON'BLE MS.INDIRA BANERJEE, THE CHIEF JUSTICE OF HIGH COURT AT MADRAS, AS AFORESAID, THIS THE 13th DAY OF JULY 2018.

SD/
ASSISTANT REGISTRAR (Comm.Cases)
AP

//Certified to be true copy//

Dated at Madras this the day of 2018.

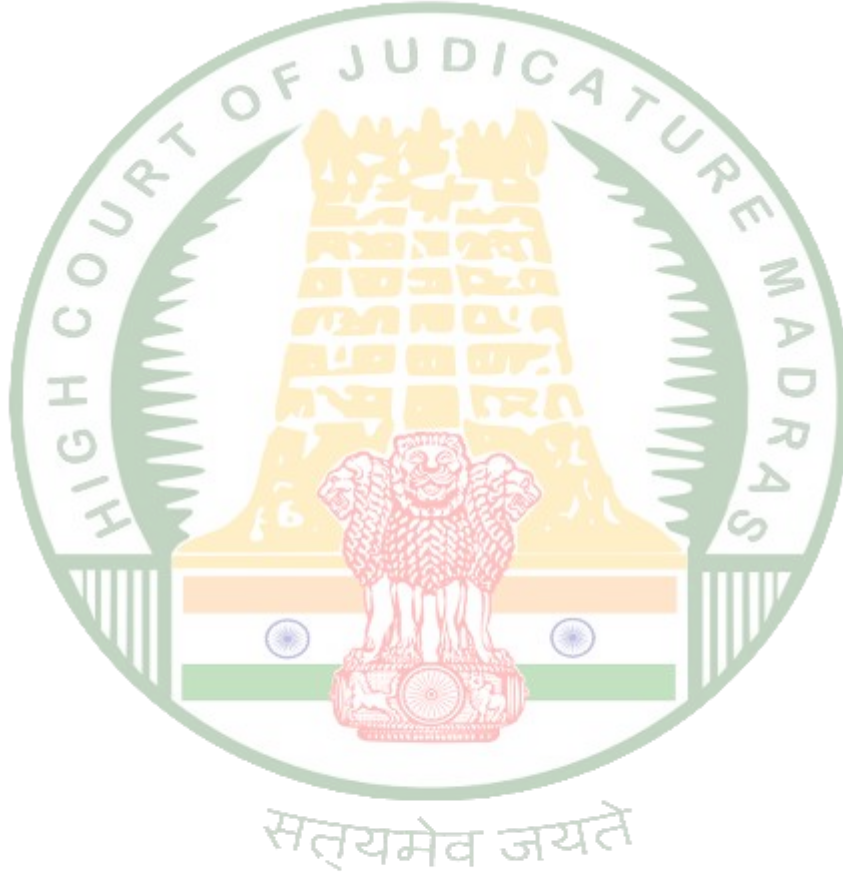
COURT OFFICER(O.S.)
From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

KR/CO/18/07/2018.

One CC to M/s.Chennai Law Associates, Advocate, SR.9740.

To

The General Manager - Human Resources
Chennai Metro Rail Ltd., Admin.Building
CMRL Depot, Poonamallee High Road
Koyambedu, Chennai 600 107.



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