

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM
CONTEMPT CASE No.1594 of 2017

ORDER:

This contempt case is filed alleging violation of the order dated 26.12.2016, passed by this Court in W.P.No.21401 of 2007.

2) This Court while disposing of Writ Petition No.21401 of 2007 and Contempt Case No.671 of 2011, filed earlier, on 06.07.2011, alleging violation of the orders, dated 27.04.2011, in W.P.M.P.No.14720 of 2011 in W.P.No.21401 of 2007, made the following order:

“This Court, under Article 226 of the Constitution of India, cannot create posts nor can stretch its jurisdiction to direct the government to create posts. However, in view of the submissions made by the learned Senior Counsel and also keeping in view the Order dated 30.11.2006 passed by this Court in Writ Petition No.8975 of 2005, it is directed that the cases of the petitioners be considered in any suitable posts, if not the driver posts, subject to their eligibility.

It is also the matter of record that at one point of time, the petitioners were offered the posts of watchman, but however, petitioner No.1 refused to accept the same. Now, the learned counsel for the petitioners submits that the 1st petitioner is willing to join in the post of Watchman. On instructions, the learned Senior Counsel submits that the said petitioner may approach the Superintending Engineer, who shall consider his case subject to availability of vacancy at this point of time.

The Writ Petition, with this Order, stands disposed of. No costs.”

3) In the affidavit filed in support of the Contempt Case, the petitioners have narrated that there are at least 17 posts of JLM Drivers available in Operation Circle, APEPDLC, Eluru, West Godavari District, from 09.07.2012, and the Government also directed the 2nd respondent-Chief Managing Director, APTRANSCO, Gunadala, Vijayawada, to fix the pay scale of the lineman drivers in the pay scale of Rs.9210-250-10520-325 etc., and thus 17 posts of JLM drivers are existing in Eluru Operation Circle. In those circumstances, the contempt petitioners assert that they ought to have been accommodated. So far as the 1st petitioner is concerned, he was offered employment through a contactor, whereas this

Court directed the respondents to accommodate in the available vacancy. Thus, there is a willful and deliberate disobedience of this Court's Order.

4) Respondent Nos.1 and 3 filed counter affidavits. So far as respondent No.2 is concerned, this Court, taking into consideration the submissions made, had dismissed the case against him on 21.03.2018. In the counter affidavit filed by the 1st respondent, it is stated that though the 1st petitioner was offered the post of watchman through M/s Seva Supreme Dictate Private Limited, Guntur, at Operation Division Office, Tadepalligudem, with effect from 21.01.2016, he did not join duty. The said fact was communicated to the counsel appearing on behalf of the respondents on 18.04.2016 and was also reiterated in the letters, dated 29.11.2016 and 17.12.2016, by duly enclosing the letter, dated 21.09.2016, received from the contractor. Once again, on 13.02.2017, considering the representation of the 1st petitioner, he was directed to approach the contractor with advise to approach the Contractor, who was advised to issue an offer letter appointing him as unskilled watchman, and accordingly, a letter dated 19.12.2017 was issued, appointing the 1st petitioner as watchman, to work at Bhimavaram, with effect from 19.12.2017. However, he did not report to duty. Thus, the respondents have complied with and obeyed the orders of this Court. So far as petitioners 2 to 11 are concerned, a direction was issued to consider them in any suitable post, if no driver post is available, subject to their eligibility, and petitioners 3, 7 and 11 were engaged as drivers through contractors. Petitioner No.8 expired on 11.12.2014. Petitioner No.9 had crossed the age of 60 years. Petitioner No. 2 is executing the electrical contract works in Eluru Operation Circle, and he was awarded work contract and other petitioners are working in organization. It is also further stated that petitioners 1 to 7, 9 to 11 are of 54, 44, 48, 49, 52, 40, 48, 60, 45 and 53 years respectively. As per the recruitment rules, the age limit is 34 years for O.C. candidates and 5 years relaxation is applicable to

the reserved candidates. Thus, all the petitioners are above 39 years of age. It was also asserted that after bifurcation of State of Andhra Pradesh and after disposal of the Writ Petition, no decision has been taken by the Government and APDPCL sanctioning posts of Junior Driver or any other Class-IV drivers, though series of correspondence, latest by the one dated 14.08.2018, is made by the APPDPCL and TRANSCO. In those circumstances, it is stated that the respondents have utmost respect to the orders of this Court and complied with the orders of this Court without any deviation. So far as the 1st petitioner is concerned, he did not join the service in spite of the offer and so far as other petitioners are concerned, their candidature cannot be considered as there are no sanctioned posts in Class-IV category.

5) Heard the learned counsel for the petitioner. On behalf of the respondents Sri G.Vidyasagar, learned senior counsel argued.

6) In the facts of the case before the Court, the point for consideration is whether there is any willful disobedience on the part of the respondents, in complying with the orders of this Court.

7) While taking note of the fact that this Court cannot stretch the jurisdiction to direct the Government to create posts, keeping in view the earlier orders made by this Court, disposing of the Writ Petition with observation that the petitioners' cases be considered in suitable posts, if not the driver posts, subject to their edibility, this Court finds that the consideration of the petitioners' cases could have been done by giving appointment orders in their favour, before which twin conditions are required to be taken note by the respondent authorities; one is availability of the sanctioned posts and second is suitability of the individuals for appointment. Viewed from that angle, in view of the specific assertion of the petitioners in the affidavit that 17 posts are available, which fact as not denied in the counter affidavit, the availability of the posts can be presumed. The said objection cannot be hindrance for the respondents to

implement the orders of this Court at least in considering the cases of the petitioners. However, considering the specific assertion of the respondents that the petitioners have all crossed the recruitment age limit of 39 years, they could have informed the said fact to the petitioners, which would, in fact, have been a sufficient compliance of the orders of this Court, as this Court did not direct the respondents to appoint the petitioners. What all this Court directed is that the respondents should consider the case of the petitioners subject to availability of the posts and their eligibility.

8) In the light of the undeniable fact, as of date since all the petitioners are not in the prescribed age limit to be recruited and that, there being no positive directions to the respondents to appoint the petitioners in the posts, it cannot be said that there is any contempt on the part of the respondents case. Accordingly, the contempt case is dismissed.

9) So far as the 1st petitioner is concerned, in the light of the fact that he is of the 54 years, even with respect to the 1st petitioner, there is no contempt against respondents directing offering the post.

10) Accordingly, the Contempt Case is dismissed.

Date:10.12.2018

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CHALLA KODANDA RAM, J

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM



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Date:10.12.2018

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