

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01-04-2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

Contempt Petition No.453 of 2019

N.N.Thiyagarajan

Petitioner

vs

1.Mr.S.K.Prabakar, I.A.S.,
Principal Secretary to Government,
Public Works Department,
Fort St. George,
Chennai-9.

2.Mr.M.Bakthavathsalam,
Engineer-in-Chief and Chief Engineer (General),
Public Works Department,
Chepauk,
Chennai-5.

.. Respondents

Contempt Petition is filed under Section 11 of the Contempt of Courts Act, 1971 to punish the respondents for their willful and intentional disobedience to the orders passed by this Court in WP No.33216 of 2018 dated 14.12.2018.

For Petitioner : Mr.K.Venkata Ramani,
Senior Counsel for Mr.M.Muthappan.

For Respondents : Mr.A.N.Thambidurai,
Special Government Pleader.

O R D E R

The present contempt petition is filed to punish the respondents for their willful and intentional disobedience to the orders of this Court passed in WP

No.33216 of 2018 dated 14.12.2018.

2. The learned Senior Counsel, appearing on behalf of the writ petitioner, vehemently contended that the respondents had not implemented the order in its letter and spirit.

3. The writ petitioner is adjudicating the issues right from the year 2002 before the Tamil Nadu Administrative Tribunal. The Government also issued orders in G.O.Ms.No.23, dated 5.2.2007. However, the benefits granted in the Government Order is not extended even after passing of an another order by this Court in WP No.33216 of 2018 dated 14.12.2018.

4. The learned Senior Counsel for the writ petitioner is of an opinion that the order passed by the respondents in proceedings dated 20.3.2019, now passed pursuant to the orders of this Court in WP No.33216 of 2018, is not a compliance at all. They have not considered the earlier orders of the Tamil Nadu Administrative Tribunal passed during the year 2002.

5. This Court is of the considered opinion that the contempt petition now filed is to be considered with reference to the orders passed by this Court in WP No.33216 of 2018 dated 14.12.2018, against which the present contempt petition is filed. This Court passed the order as under:-

<https://hcservices.ecourts.gov.in/hcservices/>

*"The petitioner, who was appointed
as Assistant Engineer in the Public*

Works Department in the year 1984, had approached the Tamil Nadu Administrative Tribunal in O.A.No.1014 of 2002, seeking a direction to revise his seniority in the post of Assistant Engineer from the date of first appointment, and the Tribunal had granted the relief holding that the petitioner is also entitled to all consequential benefits. However, as no action was taken pursuant to the order passed by the Tribunal, the petitioner filed W.P.No.29837 of 2005, which was disposed of by this Court on 16.09.2005, directing the respondents to implement the order of the tribunal. Thereafter, the Government issued G.O.Ms. No.33 dated 05.02.2007, revising the seniority from the date of his appointment with all consequential benefits and the petitioner was promoted as Assistant Executive Engineer. However, alleging that the said order has not been given effect to, the petitioner has sent a detailed representation to the respondents on 29.10.2018 for revision of seniority and consequential promotion. As the said representation did not evoke any response till date, the petitioner has approached this Court for appropriate relief.

on behalf of the respondents.

3. Learned counsel for the petitioner contends that the petitioner has got only 15 months of service and unless his prayer for revision of seniority in the cadre of Assistant Executive Engineer and Executive Engineer and for further promotion as Superintending Engineer is ordered, his further promotion prospects will be totally jeopardised and seeks the intervention of this Court for appropriate relief.

4. In view of the limited relief sought for, this Court is of the view that it is not necessary to dwell into the merits of the issue, but it would be suffice to direct the respondents to consider the representation of the petitioner and pass orders on the same within a particular time frame.

5. In the above circumstances, the respondents are directed to consider the representation of the petitioner dated 29.10.2018 especially in the light of G.O.Ms.No.33 dated 5.2.2007 and pass orders thereon, within a period of six weeks from the date of receipt of a copy of this order. The writ petition is disposed of accordingly. No costs."

6. On a perusal of the entire order, cited supra, there was no adjudication of issues on merits.

7. The grievance of the writ petitioner had not been adjudicated with reference to the legal principles settled or with reference to the rules in force.

8. Contrarily, paragraphs 4 and 5 of the order, this Court recorded that in view of the limited relief sought for, this Court is of the view that it is not necessary to dwell into the merits of the issue, but it would be suffice to direct the respondents to consider the representation of the writ petitioner.

9. Thus, this Court had not gone into the merits of the issues nor adjudicated the issues with reference to the legal principles or rules in force. Contrarily, this Court directed the respondents to consider the representation on merits and pass orders in the light of G.O.Ms.No.23 dated 5.2.2007. Such a direction issued would not confer any right on the writ petitioner to draw the factual inference that he is entitled for all the reliefs, which all are sought for in his representation. An inference in this regard in respect of implementation of the order is certainly impermissible. A simple direction to consider the representation is to be construed that the respondents have passed an order on the representation and the same would not provide any right on the writ petitioner to claim that his representation should be considered

either favourably or all issues raised in the representation are not considered.

10. For such a claim, the writ petition ought to have been adjudicated on merits and the issues are to be settled. In the absence of settling the issues raised by the writ petitioner in his representation or in the writ petition, this Court would not come to the conclusion that the order passed by the respondents in proceedings dated 20.3.2019 made to contempt of Court warranting punishments under the Contempt of Courts Act, 1971.

11. The learned Senior Counsel for the writ petitioner is of the opinion that the issues were earlier adjudicated before the Tamil Nadu Administrative Tribunal in the year 2002 and the Government issued Government Order in G.O.Ms.No.23, dated 5.2.2007.

12. Thus, the respondents ought to have granted all the reliefs sought for in the representation by the writ petitioner. If such an argument is accepted, then the writ petition ought to have been adjudicated on merits and a direction to be issued in this regard. In the absence of any specific direction by this Court in the writ petition, it cannot be construed that the relief sought for by the writ petitioner in his representation must be granted as it is by the respondents. This is the reason why now the Courts are declining to grant such a relief of considering the representation in a routine manner.

13. The Hon'ble Supreme Court of India in the case of **Government of India and Another vs. P.Venkatesh [decided on 1.3.2019 in Civil Appeal No.2425 of 2019]** held that "this 'dispose of the representation' mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice. The litigant is back again before the Court, as this case shows, having incurred attendant costs and suffered delays of the legal process. This would have been obviated by calling for a counter in the first instance, thereby resulting in finality to the dispute".

14. The Apex Court discouraged in respect of the issue of such directions to consider the representation without adjudicating the issues and passing orders on merits.

15. Contrarily, the High Courts are also granting direct orders to consider the representation in a mechanical and routine manner without adjudicating the issues. Such issues under orders by High Courts are also not appreciated by the Supreme Court.

16. The present contempt petition is a classic one, where based on the order, the respondents are directed to dispose of the representation, now the writ petitioner

is claiming that the reliefs set out in the representation must be considered favourably, in view of the fact that in the year 2002, the Tamil Nadu Administrative Tribunal has passed an order in his favour and the Government has also issued an order.

17. Now by making such a submission, the writ petitioner is attempting to get the reliefs in an indirect manner without any adjudication in the writ petition in the order passed in WP No.33216 of 2018 dated 14.12.2018. Thus, it is not as if the writ petitioner can tag the order of the Tamil Nadu Administrative Tribunal, which was passed during the year 2002 for the purpose of getting the relief in the writ petition, wherein a direction was sought for to consider the representation.

18. The direction to consider the representation means that the representation, which is kept pending is to be considered and an order is to be passed. That does not mean that the respondents should pass an order in favour of the writ petitioner. Even if the order passed is not satisfactory to the writ petitioner, the writ petitioner cannot draw a factual inference by stating that the direction issued by the Tribunal in the year 2002 had not been considered.

19. In the event of entering into such arguments, this Court is attempting to adjudicate the merits of the case in a contempt petition and such a course is impermissible in law. Contempt jurisdiction is to be invoked sparingly and for the purpose of certain limited purposes. This Court cannot use the contempt proceedings for the purpose of adjudication on the merits of the cases nor forcing the respondents to pass an order in favour of the writ petitioner in respect of the issues, which all are not adjudicated in the original writ petition and in the order passed in the main writ petition.

20. This being the principles to be followed, this Court is of the opinion that if at all the writ petitioner is aggrieved from and out of the order passed by the respondents in implementation of the orders of this Court dated 14.12.2018 in WP No.33216 of 2018, it is for the writ petitioner to workout his remedy in the manner known to law.

21. This being the factum, that the prayer to punish the respondents under the Contempt Courts of Act, deserves no merit consideration.

22. Accordingly, the contempt petition stands dismissed. However, there shall be no order as to costs.

SD/-
ASSISTANT REGISTRAR (COMM.CASES)

svn

//Certified to be true copy//

Dated at Madras this the day of 2019.

COURT OFFICER (O.S.)

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THS/09/04/2019

To

1.The Principal Secretary to Government,
Public Works Department,
Fort St. George,
Chennai-9.

2.The Engineer-in-Chief and Chief Engineer (General),
Public Works Department,
Chepauk,
Chennai-5.

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