

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE **S.MANIKUMAR**
and
THE HONOURABLE MR.JUSTICE **SUBRAMONIUM PRASAD**

Cont.P.No.914 of 2019

M.Silamparasan ... Petitioner

Versus

Nandakumar, I.A.S.,
The Secretary and
Controller of Examinations,
Tamil Nadu Public Service Commission,
Chennai - 600 003. ... Respondent

Prayer: This Contempt Petition filed under Section 11 of the Contempt of Court Act, 70/71 to punish the respondent for having committed contempt of Court for disobeying the order dated 23.01.2019 made in WA No.424 of 2018.

For Petitioner : Mr.S.Subbiah, Sr. Counsel
for Mrs.Elizabeth Ravi.

For Respondent : Mr.M.Loganathan
Standing Counsel for TNPSC

ORDER

(Order of the Court was made by **S.MANIKUMAR, J.**)

Alleging wilful disobedience of the order of this Court made in WA No.424 of 2018, dated 23.01.2019, instant Contempt Petition is filed against Mr.Nandakumar, IAS, Secretary and Controller of Examinations, Tamil Nadu Public Service Commission (TNPSC), Chennai.

2. Material on record discloses that Contempt Notice dated 25.03.2019, has been acknowledged by the Secretary and Controller of Examinations, Tamil Nadu Public Service Commission (TNPSC), Chennai, on 27.03.2019. Notice dated 25.03.2019, reads thus:-

"WHEREAS M/s.Elizabeth, Counsel for the Petitioner herein has filed under Section 11 of the Contempt of Courts Act, 1971 praying this Hon'ble Court to punish the respondent herein for the act of Contempt of Court for the disobedience of the order dated 23.01.2019 passed in WA No.424 of 2018.

While hearing the above Contempt Petition on 19.06.2019, this Hon'ble Court hath directed to issue statutory notice to you, herein, returnable by 18.07.2019.

You, the aforesaid respondent herein be and are hereby directed to appear in person before the Hon'ble Division Bench presided over by the Hon'ble Mr.Justice S.MANIKUMAR of the High Court, Madras on THURSDAY, the 18th day of JULY, 2019 at 10.30. a.m., to show cause why you should not be punished for contempt of Court said to have been committed by you."

3. On 19.06.2019, we issued statutory notice to respondent. Said notice has been acknowledged on

Secretary and Controller of Examinations, Tamil Nadu Public Service Commission (TNPSC), Chennai, is present in Court.

4. Posed with a question as to why order dated 23.01.2019 in WP No.424 of 2018, has not been implemented, despite the receipt of contempt notice dated 25.03.2019, Mr.M.Loganathan, learned counsel for the alleged contemnor submitted that summer vacation intervened and therefore, orders could not be complied with.

5. Added further, Mr.Nandakumar, IAS, Secretary and Controller of Examinations, Tamil Nadu Public Service Commission (TNPSC), Chennai, submitted that due to the process of recruitment by TNPSC in filling up of several posts coming under the purview of TNPSC, there occasioned a delay. Scrutiny of the applications is done only by the staff and it is not done by the Secretary and Controller of Examination, TNPSC. That is not a reason to ignore the implementation of orders of this Court. We are not inclined to accept both reasons, stated supra.

6. Mr.Nandakumar, IAS, Secretary and Controller of Examinations, Tamil Nadu Public Service Commission (TNPSC), Chennai, has further submitted that no sooner

the Commission received the copy of the order made in WA No.424 of 2018 dated 23.01.2019, in March 2019, learned counsel for the Commission in the Hon'ble Supreme Court, New Delhi was addressed in April 2019 for filing an appeal. There was a similar case pending before the Hon'ble Supreme Court, in which the Commission could not succeed. As per the order of the Commissioner, on 04.07.2019, the Advocate on record, New Delhi, Mr.K.V.Vijayakumar, was addressed to seek for legal opinion from Mr.R.Venkataramani, Senior Advocate, Supreme Court. On 09.07.2019, opinion was given and thereafter, the petitioner Thiru.M.Silamparasan was informed about the Commission's letter No.2438/OTD-D2/2014, dated 17.07.2019. Another letter of even number and date has been addressed to the Commissioner, Hindu Religious & Charitable Endowments Department, Chennai and given in person. Both the letters are extracted hereunder.

TAMIL NADU PUBLIC SERVICE COMMISSION
MEMORANDUM NO.2438/OTD-D2/2014, DATED 17.07.2019

Sub: Recruitment (Direct) - Post of Executive Officer Grade- III included in the Tamil Nadu Hindu Religious and Charitable Endowments Subordinate Service 2014-2017 - Selection Intimation - Regarding.

Ref: 1. Application dated 08.12.2016 from the candidate.
 2. Order of the Hon'ble High Court in WA No.424 of 2018 and CMP No.3728 of 2018 dated 23.01.2019.

The Commission is to inform that Thiru.M.Silambarasan (Reg.No.300102167) has been selected provisionally for appointment by direct recruitment to the post of Executive Officer Grade-III included in Tamil Nadu Hindu Religious and Charitable Endowments Subordinate Service 2014-

2017 in obedience the orders of the Hon'ble High Court of Madras in the reference 2nd cited.

2. The appointing authority to the said post is the Commissioner, HR&CE Department, Nungambakkam, Chennai - 600 0034.

3. He may await further communication from the appointing authority with regard to production of certificate of physical fitness and his order of appointment.

4. Any change in his address may be intimated without fail to the appointing authority as well as the Commission.

5. The mark obtained by him both in the Written Examination and Oral Test are as follows:

Written Test Marks	: 529.50
Oral Test Marks	: 42.00

Total Marks	: 571.50

6. The Selection is purely provisional subject to the final outcome of the writ petitions if any, pending on the files of the Hon'ble High Court of Madras / Madurai Bench of Madras High Court relating to this recruitment.

Sd/-
D.ANANTHAPADMANABAN
UNDER SECRETARY.

To
Thiru.M.Silambarasan,
VADAKKUVELI T. KEELAVELI,
THATHAUR,
UDAYARPALAYAM,
ARIYALUR,
TAMIL NADU 621 804.

Confidential / By Special Messenger

From
Thiru.K.Nanthakumar, I.A.S.,
Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road,
Chennai - 600 003.

To
The Commissioner,
Hindu Religious & Charitable
Endowments Dept., Nungambakkam,
Chennai - 600 034.

Letter No.2438/OTD-D2/2014, dated 17.07.2019

Sir,

Sub: Recruitment (Direct) - Post of Executive Officer Grade-III in the Tamilnadu Hindu Religious and Charitable Endowments Subordinate Service (2014-2017) - Implementation of the order issued by the Hon'ble High

Court of Madras - M.Silambarasan - Selection -
Regarding.

- Ref:
1. Commission's Letter No.2438/OTD-D2/2014, dated 22.02.2018
 2. Commission's Letter No.2438/OTD-D2/2014, dated 22.03.2018
 3. Interim order of the Hon'ble High Court of Madras in WA No.424 of 2018 filed by Thiru M.Silambarasan.
 4. Commission's Letter No.2438/OTD-D2/2014, dated 21.08.2018
 5. Your Letter No.11474/2018/ எஸ்3, Dated 01.09.2018
 6. The order of Hon'ble High Court of Madras in WA No.424 of 2018 filed by Thiru.M.Silambarasan, Dated 23.01.2019.
 7. Your Letter No.11474/2018/ எஸ்3, Dated 12.04.2019
 8. Your Letter No.11474/2018/ எஸ்3, Dated 25.04.2019
 9. Commission's Letter No.2438/OTD-D2/2014, dated 24.06.2019

I am directed to invite your kind attention to the references cited and to say that in the references 1st and 2nd cited, the lists containing the names and other particulars of 29 candidates (27+2), who were selected provisionally for appointment by direct recruitment to the post of Executive Officer Grade-III in the Tamil Nadu Hindu Religious and Charitable Endowments Subordinate Service (2014-2017), were communicated for issuance of appointment orders in the said post. In the reference 9th cited, the list containing names and other particular of 5 candidates, who have been selected supplementally from the reserve / ranking list for appointment to the said post due to the joined and left was forwarded as requested in your letter 8th cited.

2. With reference to the interim order in WA No.424 of 2018 filed by Thiru.M.Silambarasan against the order dated 18.01.2018, in your letter 5th cited, it has been stated that one vacant has been kept in the said post as requested by this office.

3. In obedience of the Hon'ble High Court's order in the reference 6th cited the Commission had decided to release the withheld of the said candidate. Accordingly, the said candidate has now been selected provisionally and the name and other particulars of the said candidate is enclosed herewith for issuing appointment order to the post of Executive Officer Grade-III in the Tamil Nadu Hindu Religious and Charitable Endowments Subordinate Service (2014-2017)

4. The candidate whose name and other particulars now

communicated is being informed individually of his selection by Commission. The instructions issued in the Commission's letter 1st cited may be followed at the time of issuing appointment order to the said candidate. I am to request that a copy of proceedings in which the candidate is appointed may be furnished to the Commission for its information along with the date of joining duty of the candidate. The seniority position of the candidate will be communicated later.

5. I am to request that the receipt of this letter along with its enclosures may kindly be acknowledged at an early date.

Enclosed: Particulars of the selected
Candidate

Sd./- K.Nanthakumar,
Secretary.

//Forwarded by Order//

Sd/-
Section Officer
(B.Punithavathi)

Copy to : LCD-D Section.

7. From the material on record, it could be deduced that despite receipt of contempt notice dated 25.03.2019, the alleged contemnor Mr.Nandakumar, IAS, Secretary and Controller of Examinations, Tamil Nadu Public Service Commission (TNPSC), Chennai, has not even responded to the notice and sent any reply to the writ petitioner.

8. Though right of appeal to the Hon'ble Supreme Court is available to the respondent, that does not mean that he need not give a reply to the contempt notice dated 25.03.2019 nor implementation of the order made in WA No.424 of 2018 dated 23.01.2019, can be kept in abeyance, till a final decision is arrived at, in a

9. Order made in WA No.424 of 2018, has been received in the month of March 2019 itself. Now four months have lapsed. Affidavit of the Mr.Nandakumar, IAS, Secretary and Controller of Examinations, Tamil Nadu Public Service Commission (TNPSC), Chennai, does not indicate as to what steps were taken from April 2019 to 17.07.2019, when the Commission has finally issued a letter, implementing the directions of this Court.

10. Material on record discloses that at each and every stage, writ petitioner has to seek remedy by approaching the Court.

11. When appearance of the alleged contemnor is posted on 18.07.2019 i.e., today, Commission has issued the letter No.2438/OTD-D2/2014 dated 17.07.2019, i.e. yesterday, followed by an affidavit of the Secretary and Controller of Examinations, TNPSC, Chennai dated 17.07.2019, stating that the Commission has due regard to the orders of this Court and that there is no intention to disobey the orders of this Court.

12. Though the opinion was given on 09.07.2019, just before the date of hearing of this contempt petition

i.e. today, Mr.Nandakumar, IAS, Secretary and Controller of Examinations, Tamil Nadu Public Service Commission (TNPSC), Chennai, has issued the letter No.2438/OTD-D2/2014 dated 17.07.2019 and stated to have served the Commissioner, HR&CE, in person, which only shows the speed in which the Secretary and Controller of Examination, TNPSC, has acted just before the date scheduled for his appearance in this Court. It is also to be noted that not even an appeal is filed against the order made in WA No.424 of 2018 dated 23.01.2019. Courts have held that even if an appeal is filed, unless there is an order of stay, orders passed by the Court has to be implemented. On the above aspect, it is useful to refer to few decisions,

(i) In **S.P.Agarwal vs. R.R.Upadhyia**, reported in **1978 Cr1 LJ 789**, the contemnors took a defence that their counsel advised them to file an appeal to the Hon'ble Supreme Court, against the order of the High Court, directing payment of salary, and not to make payment. Addressing the defence, a Hon'ble Division Bench of the Allahabad High Court, at Paragraph Nos.20 and 21, held thus:-

"20. The contemnors have further raised a plea in their defence that their counsel advised them to file appeal before the Supreme Court against the order dated 19th May,

1977 and not to make payment of salary to S.P. Agarwal, instead to deposit the amount payable to him in the Supreme Court. As noted earlier an application under Art. 136 of the Constitution was filed before the Supreme Court on 5th June, 1977, but that appeal was neither heard nor any orders were passed by the Supreme Court in the absence of any orders passed by the Supreme Court staying the direction contained in the order of this Court dated 19th May, 1977, the contemners had no justification to disregard that order. A mere filing of the appeal under Art 136 of the Constitution before the Supreme Court against any order of this Court cannot be a justification for disobedience or non-compliance of the orders of this Court. Of course the position would be different if the Supreme Court takes cognizance of the appeal and passes any positive order of stay. There is no dispute that the Supreme Court had not taken cognizance of the appeal filed under Art. 136 of the Constitution and no orders had been passed staying the operation of the order of this Court.

21. There was no justification for the contemners to deposit the salary in the Supreme Court. There is no opinion in writing by any counsel advising the Bank or the Administrator not to pay salary to S.P. Agarwal or to deposit the same before the Supreme Court along with the memo of appeal filed under Art. 136 of the Constitution. The contemners' plea for taking shelter behind legal advice is without any foundation. But even assuming that any such advice was given to the contemners that would not be a valid ground for the disobedience of the orders of this Court. If a counsel advised a litigant not to obey the orders of a Court of law such an ill advice of counsel cannot be a valid defence in contempt proceedings. It is the

duty of each and every person who is a party in a proceeding before a court to comply with the orders of the court and if he has any grievance against the order he is free to file appeal or to make application before that court for modification or discharge of the same, but unless that order is stayed, varied or modified the party concerned has no justification to flout the order of the Court. It is noteworthy that both the officers acted contrary to the legal advice as tendered to them by the District Government Counsel, Bijnor, as well as by the Bank's counsel Sri Vijai Bahuguna and in spite of their advice they did not pay salary to S.P. Agarwal as required by this Court's order dated 20th Oct., 1976. Their conduct makes it amply clear that the plea of legal advice for not complying with the order of this court dated 19th May, 1977 appears to be an afterthought raised for the purpose of creating a defence in these proceedings."

(ii) On the facts and circumstances of the case, taking note of the decisions of the Hon'ble Supreme Court in **Baradakanta Mishra vs. Bhimsen Dixit**, reported in 1973 (1) SCC 446 = AIR 1972 SC 2466, a Hon'ble Division Bench of Himachal Pradesh in **Hans Raj Dhir vs. State of Himachal Pradesh and others**, reported in 1985 Cri LJ 1030, at Paragraph No.10, observed thus:-

"10. Before parting with the matter, we regard it to be expedient to observe that an impression has been left on our minds that the concerned authorities failed to reinstate and to pay arrears of salary to the petitioner soon after the decision of the learned single Judge, even though at the

material time no stay order was operative; as they appeared to be entertaining the belief that since a Letters Patent Appeal was preferred, the matter had once again become sub-judice and that, therefore, there was no legal obligation to grant the benefits accruing due to the petitioner pursuant to the decision of the learned single Judge. This belief, which appears to have been entertained by the concerned authorities, is wholly unwarranted. Once a case is decided, it is the bounden duty of the State and its subordinates to implement, with the utmost expedition, the said decision. In a Government which is ruled by law, there must be complete awareness to carry out faithfully and honestly the decisions rendered by courts of law after effective adjudication. Then only will private individuals, organisations and institutions learn to respect the decisions of courts. In absence of such attitude on the part of all concerned, chaotic conditions might arise and the functions assigned to the courts of law under the Constitution might be rendered a futile exercise. It requires to be emphasised, in this connection, that mere preferment of an appeal does not automatically operate as a stay of the decision under appeal and that till an application for stay is moved and granted by the appellate court, or, in the alternative, the court which rendered the decision is moved and grants an interim stay of the decision pending the preferment of an appeal and grant of stay by the appellate court, the decision continues to be operative. Indeed, non-compliance with the decision on the mere ground that an appeal is contemplated to be preferred or is actually preferred, and that, therefore, the matter is sub-judice, may amount to contempt of court punishable under the Contempt of Courts Act, 1971. The

decision of the Supreme Court in *Baradakanta Mishra v. Bhimsen Dixit*, (1973) 1 SCC 446 : AIR 1972 SC 2466 : (1973 Cri LJ 19), places the matter beyond dispute, doubt or debate as regards this aspect."

It is also worthwhile to consider as to how the Hon'ble Supreme Court dealt with the abovesaid defence taken by the alleged contemnor in *Baradakanta Mishra's* case was dealt with, as extracted in *Hans Raj Dhir's* case,

"11. In *Baradakanta Mishra's* case, the Additional Assistant Commissioner of Hindu Religious Endowments had taken an action under S. 27 of the Orissa Hindu Religious Endowments Act, 1952 (hereinafter referred to as "the Act") and appointed an interim Trustee of the deities. The person affected lodged objections under S. 41 of the Act but the objections were rejected without holding any inquiry. Against the said decision, the objector filed a Revision before the Commissioner of Hindu Religious Endowments, who was a member of the Superior Judicial Service of the State and was at one time an officiating District Judge. While the Revision application was pending before the Commissioner, the High Court of Orissa, in a different case which was pending before it, held that the Assistant Commissioner had no power to appoint an interim Trustee under S. 27 of the Act until he had held an inquiry under S. 41 and found that there was no hereditary Trustee of the religious institution. At the hearing of the Revision before the Commissioner, the aforesaid decision of the Orissa High Court was cited by the objector in

support of his case. The Commissioner made the following observations in the said context:

“.....The decision in the High Court on Bantala case (AIR 1970 Orissa 141) would not be applicable to this instance. Further against the order, we have moved the Supreme Court and as such, the matter can be safely deemed to be sub judice.”

12. The decision of the Commissioner was challenged in a writ petition before the Orissa High Court. The High Court issued a notice to the Commissioner taking exception to the observations made in his order that since the decision of the High Court was under challenge, before the Supreme Court, the matter could be regarded as sub-judice. The plea taken up by the Commissioner, who appeared before the High Court in response to the notice, was that under the Constitution the decision of the Supreme Court was the law of the land. He, therefore, bona fide entertained the opinion that when the matter was under appeal or otherwise before the Supreme Court, the point of law became sub-judice and only the decision of the Supreme Court in the matter would be binding on the subordinate authorities. The Commissioner further pleaded that the proceedings before him were of administrative nature and that the act of not following the decision of the High Court in such a proceeding would not amount to contempt of court. The High Court rejected the plea and held that the conduct of the Commissioner, far from being bona fide, was clearly mala fide and that he intentionally avoided to follow that decision of the High Court by advancing grounds which were most inappropriate. The High Court, therefore, found the Commissioner guilty of

contempt of court and admonished him in open court and directed him to pay Rs. 300/- as costs of the proceedings. The Commissioner preferred, an appeal against the said decision to the Supreme Court. The Supreme Court, in the course of its decision, observed that the Commissioner has had 23 years judicial experience and that he could not have legitimately entertained the belief that as soon as a petition for a certificate to appeal to the Supreme Court was filed in the High Court against its decision the binding character of the decision disappeared. The Supreme Court, while upholding the finding of the High Court that the appellant had deliberately avoided to follow the decision by giving wrong and illegitimate reasons and that his conduct was clearly mala fide, made the following pertinent observations:

“Under Art. 227 of the Constitution, the High Court is vested with the power of superintendence over the courts and tribunals in the State. Acting as a quasi judicial authority under the Orissa Hindu Religious Endowments. Act, the appellant was subject to the superintendence of the High Court.

Accordingly the decisions of the High Court were binding on him. He could not get away from them by adducing factually wrong and illegitimate reasons.....

The conduct of the appellant in not following the previous decision of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. His conduct is

therefore comprehended by the principles underlying the law of contempt. The analogy of the inferior court's disobedience to the specific order of a superior court also suggests that his conduct falls within the purview of the law of contempt. Just as the disobedience to a specific order of the Court undermines the authority and dignity of the court in a particular case, similarly any deliberate and mala fide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court. Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court generally, but is also likely to subvert the Rule of law and engender harassing uncertainty and confusion in the administration of law."

13. On this view of the matter, the Supreme Court dismissed the appeal preferred by the Commissioner."

At Paragraph No.15 in **Hans Raj Dhir's** case, the Hon'ble Division Bench, further observed thus:-

15. Be it stated that in that case, even though the Commissioner had declined to follow the decision of the High Court rendered in a different case on the ground that an appeal having been preferred against the said decision its binding character had disappeared, the contempt jurisdiction was invoked and exercised. When there is disobedience to a

specific order of the court whether on account of sheer neglect or refusal to implement the order on the ground that an appeal is preferred or intended to be preferred, the contempt would take still a more aggravated form and will be liable to be visited with a higher penalty."

(iii) In *Dr.Sajad Majid vs. Dr.Syed Zahoor Ahmed and another*, reported in *1989 Cr1 LJ 2065*, a Hon'ble Division Bench of the Jammu and Kashmir High Court has considered that in a contempt petition, defence raised was that "in a case an order is passed by the Court which is open to an appeal and the party concerned again whom the proceedings for contempt are brought, has availed of the remedy, can be a case be considered for contempt or issuance of a rule against the wrong doer? In the given case, SLP was preferred.

A Hon'ble Division Bench of the Jammu and Kashmir High Court, in *Dr.Sajad Majid's* case reported in *1989 Cri LJ 2065* at Paragraph Nos.8 to 10, held thus:-

"8. It is not disputed before us that SLP against the Court direction has been filed before the Supreme Court. It is also not disputed that no stay has been obtained against the implementation of the order but all the same the Court direction has been kept in abeyance by the respondent simply under the pretext of pendency of appeal before the apex

Court against the Court order. There is no doubt that appeal against a judgment from one forum to another forum may be available under the Statute, the question is: Whether this provision even if availed by a party without obtaining a stay from the appellate Court will ipso facto keep the implementation of the order in abeyance? The proposition put forth by Mr. Khan, CGA appears to us misconstruing the provision of appeal and period of limitation. Noncompliance of the order during the pendency of appeal without stay order appears to us an attempt by a party to support his intention of not complying the Court direction. The, initiation of contempt proceedings for Non-compliance of an order, in our opinion, will forestall only after service of stay order on the party provided, firstly, a certain period for compliance has been specified and within that period no contempt proceedings will lie. Secondly, when after the service of order the party, has obtained stay from the appellate forum. Thirdly, on motion by the party time is granted by the Court for execution of the order which passed the same. No other circumstances apparently can be made available to a party against whom the order has been passed to sleep over the execution of the order or flout its execution. Mere pendency of appeal before the appellate Court against the order will not absolve the party not to comply the order and if he so does, it will be on his own risk without any legal justification and the provisions of appeal even if availed without any stay, will expose the party to contempt proceedings for non-compliance and pendency of such appeal will not protect him from facing the proceedings of non-compliance of the order. Once a relief has been granted by a Court not modified or varied by such Court or its

execution stayed by appellate Court, its compliance is warranted from the date the party against whom it is passed or from the date he acquires knowledge of the said order. This observation will dispose the argument of Mr. Khan having submitted that no time limit is specified in the order of implementation. We, therefore, make it clear that a party against whom order has been passed by the Court, having knowledge of the same or the order being served on him, cannot take refuge of limitation period for preferring an appeal for non-compliance of the order or even if the appeal has been filed but no stay has been obtained against the order, contempt proceedings will be entertained against such party for noncompliance. However, it is the discretion of the Court finally, while holding the defaulting party guilty, to pass appropriate orders looking to the gravity of the matter and conduct of such party, but in no case rebate of non-compliance of the Court order will be made available merely an appeal without stay is pending. We are further supported in our view by the observations made by their Lordships of the Allahabad High Court, reported in 1978 Cri LJ 789, in these words:

“It is the duty of each and every person who is a party in a proceeding before a Court to comply with the orders of the Court and if he has any grievance against the order he is free to file appeal or to make application before that Court for modification or discharge of the same, but unless that order is stayed varied or modified the, party concerned has no justification to flout the order of the Court. Thus, a mere filing of the appeal under Art. 136 of the Constitution before the Supreme Court against any order of the High Court cannot

be a justification for disobedience or non-compliance of the orders of the High Court. Of course the position would be different if the Supreme Court takes cognizance of appeal and passes any positive order of stay.”

9. To the same effect are the observations made by their Lordships of Himachal Pradesh High Court, reported in 1985 Cri LJ 1030 having observed as under (at p. 1033):—

“Mere preferment of an appeal does not automatically operate as a stay of the decision under appeal and till an application for stay is moved and granted by the appellate Court, or, in the alternative, the Court which rendered the decision is moved and grants an interim stay of the decision pending the preferment of an appeal and grant of stay by the appellate Court, the decision continues to be operative. Indeed, non-compliance with the decision on the mere ground that an appeal is contemplated to be preferred or is actually preferred, and that, therefore, the matter is sub-judice, may amount to contempt of Court punishable under the Contempt of Courts Act, 1971.”

10. Above all, the Supreme Court in identical situation in (1973) 1 SCC 446 : AIR 1972 SC 2466 : (1973 Cri LJ 19), has laid the following rule:—

“A subordinate Court or Tribunal refusing to follow a High Court decision where a petition for leave to appeal to Supreme Court against that High Court decision was pending, held amounts to deliberate disobedience and wilful disregard of the High Court and is contempt of Court.”

At paragraph No.13 the Hon'ble Division Bench, answered thus:-

"13. For the reasons given and observations made, the question framed gets settled and we hold that there is no bar to entertain contempt proceedings or issue Rule during limitation period provided for appeal or even if the appeal against the order is filed and stay is not obtained."

(iv) In *Collector of Customs, Bombay vs. Krishna Sales (P) Ltd*, reported in **1994 Supp 3 SCC 73**, the Hon'ble Supreme Court, observed thus:-

"6. According to the said para 4, the goods will not be released even where the party succeeds in cases where the Customs authorities decide to go in appeal before the Tribunal or the Supreme Court. They will consider the issuance of such certificate only after the decision of the Tribunal or the Supreme Court, as the case may be. The learned counsel for the respondent characterises the said direction as arbitrary and contrary to law. We see the force in his submission. If the authorities are of the opinion that the goods ought not to be released pending the appeal, the straightforward course for them is to obtain an order of stay or other appropriate direction from the Tribunal or the Supreme Court, as the case may be. Without obtaining such an order they cannot refuse to implement the order under appeal. As is well-known, mere filing of an appeal does not operate as a stay or suspension of

the order appealed against. Moreover, such detention is likely to create several complications relating to the demurrage charges besides the possible deterioration of the machinery and goods. We hope and trust that the Collector of Customs, Bombay shall appropriately revise the said public notice in the light of the observations made herein. If he does not do so, there is a likelihood of the Customs authorities being themselves made liable for demurrage charges in appropriate cases."

(v) On the plea as to whether an apology should be accepted, after considering a decision of the Hon'ble Supreme Court in *Mulk Raj vs. State of Punjab*, reported in 1972 (3) SCC 839 = AIR 1972 SC 1179, at Paragraph Nos.24, 25, 27 and 28, held thus:-

"24. During the course of hearing of contempt matters the contemnors paid the salary to S.P. Agarwal and they tendered unqualified apology. Learned Counsel for the contemnors urged that since the payment of salary was made on 7th Nov., 1977. and as the contemnors have tendered unqualified apology this Court should take a lenient view and no action should be taken against them. It is true that apology is an act of contrition. When a contemner tenders apology as an act of contrition the Court must weigh that apology and in awarding the punishment the Court must consider the apology tendered by the contemner. If the apology is found to be an act of contrition, no action need be taken but if the apology is used as a weapon to escape the consequences of contemnors'

action, the apology must be rejected. In *Mulk Raj v. State of Punjab*. ((1972) 3 SCC 839 : AIR 1972 SC 1197 : (1972 Cri LJ 754) the Supreme Court observed (at p. 755 of Cri LJ):—

“Apology is an act of contrition. Unless the apology is offered at the earliest opportunity and in good grace the apology is shorn of penitence and hence is liable to be rejected. If apology is offered at a time when the contemner finds that the Court is going to impose punishment it ceases to be an apology and becomes an act of a cringing coward.”

25. In view of the above observation of the Supreme Court, we think it necessary to consider the question of acceptance of apology.

27. In his counter-affidavit filed in contempt petition No. 12389 of 1977 R.R. Upadhy had no doubt expressed regret and tendered apology and in the counteraffidavit filed in Contempt Petition No. 23 of 1977 R.R. Upadhy while defending his action has also expressed regret and tendered apology in his affidavit which was filed in July, 1977. From a careful scrutiny of the contemnners' conduct and their wilful disobedience of the orders of this Court on one pretext or the other it is crystal clear that steps were taken by them for the payment of salary to S.P. Agarwal as late as on 7-11-1977 when it had become apparent that the defence taken by them was unacceptable and their position had become precarious. As discussed earlier, both the contemnners have taken wrong pleas and have perjured themselves on more than one occasion which shows their attitude of mind. They have not been candid in their conduct or truthful in their testimony.

Having regard to these facts and circumstances we are of the opinion that the apology tendered by them is not an act of contrition, instead they have used it as a weapon to escape the consequences of the present proceedings. In the circumstances, we do not consider it proper to accept the apology tendered.

28. We are therefore of the opinion that R.R. Upadhyaya and S.N. Tewari both are guilty of wilful disobedience of the orders of this Court and they are further guilty of making reckless allegations against an officer of this Court which has a tendency of lowering down the prestige of this Court. We, therefore, hold that the contemnors are guilty of contempt of this Court for which they deserve punishment. Both the contemnors are therefore sentenced to pay a fine of Rs. 1000/- (Rupees one thousand) each payable within six weeks from today, or in default, to undergo one month's simple imprisonment. The contemnors shall also pay costs of these proceedings to S.P. Agarwal which we assess at Rs. 300/-"

सत्यमेव जयते

13. In Contempt Petition No.1278 of 2017 was filed for non-implementation of the order passed in W.P.No.29824 of 2016, a defence was taken up by the alleged contemnor therein that a SLP was preferred and therefore, the respondent has not committed any contempt much less wilful. On 14.09.2017, in Contempt Petition No.1278 of 2017, this Court, observed thus:-

came up for hearing, Mr.Su.Srinivasan, learned Assistant Solicitor General, Government of India, appearing for the respondents submitted that the order made in W.P.No.29824 of 2016, dated 16.11.2016 has been challenged by filing Special Leave Petition (Civil) with Diary No.21915 of 2017, on 04.09.2017 and that the same was not numbered. Placing reliance on the decisions in S.P.Agarwal v. R.R.Upadhyia reported in 1978 Cri.LJ 789, Hans Raj Dhir v. State of Himachal Pradesh reported in 1985 Crl.LJ 1030, Dr.Sajad Majid v. Dr.Syed Zahoor Ahmed reported in 1989 Crl.LJ 2065 and Collector of Customs, Bombay v. M/s.Krishna Sales (P) Ltd., reported in AIR 1994 SC 1239 - 1994 Supp (3) SCC 73, this Court has observed that as per Article 142 of the Constitution of India, mere filing of SLP, does not amount to stay and further directed the respondents herein, to implement the orders of this Court. This Court has also directed the Registry to post the contempt petition on 28.08.2017, for reporting compliance."

14. Subsequently, on the dismissal of SLP, recording the submission of the learned Advocate Solicitor General of India, that revised financial upgradation would be given, contempt petition was closed.

15. Above cited judgments are squarely applicable to the case on hand.

16. It has now become a matter of common practice that the State does not implement the orders of the Court promptly and the poor litigant, who has to face the

Court for redressal of his grievance at every stage. It is well settled that government is expected to act like a fair litigant. But, unfortunately, the present trend shows otherwise. It is so because, no cash goes from the pocket of the officer, who has to implement the orders of the Court and it is the mindset of the officer that at the end of the day, an apology, tendered by him, which is a mere *ipse dixit*, would get away from his act. This approach and attitude is not appreciated.

17. Though oral submissions made by the learned counsel for the TNPSC and the alleged Contemnor Mr.Nandakumar, IAS, Secretary and Controller of Examinations, Tamil Nadu Public Service Commission (TNPSC), Chennai, and the reasons assigned in the affidavit dated 17.07.2019 are not satisfactory, on the facts and circumstances of the case and taking note of the submission of Mr.M.Loganathan, learned counsel for TNPSC, that an opportunity be given, reiterating what we have observed above, we further add that orders of this Court, have to be implemented in letter and spirit, in all promptitude.

18. Commissioner, HR&CE Department, Chennai, is a party to WA No.424 of 2018 dated 23.01.2019. Now that

<https://hcservices.ecourts.gov.in/hcservices/> Mr.Nandakumar, IAS, Secretary and Controller of

Examinations, Tamil Nadu Public Service Commission (TNPSC), Chennai, has issued a letter No.2438/OTD/-D2/2014 dated 17.07.2019, to the Commissioner, HR&CE, Chennai, the latter is directed to issue an order of appointment to the petitioner, forthwith. Appearance of the officer is dispensed with. Contempt petition is closed. No costs.

SD/-
ASSISTANT REGISTRAR (COMM.CASES)
ars/dm

//Certified to be true copy//

Dated at Madras this the day of 2019.

COURT OFFICER (O.S.)

from 25th day of September 2008 the Registry is issuing Certified copies of the Orders/Judgments/Decrees in this format.

Mv/24/07/2019

To

1.The Secretary and
Controller of Examinations,
Tamil Nadu Public Service Commission,
Chennai - 600 003.

2. The Commissioner,
Hindu Religious & Charitable Endowments Department,
Nungambakkam,
Chennai 600 034.