

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2019

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Contempt Petition No.1310 of 2019

J.Daniel

... Petitioner

Vs.

1.Mr.S.Arulnathan,

The Diocesan Educational Officer & Convener,
CSI Diocese of Madras,
The Diocesan Office,
Post Box No.4914,
Chennai 600 086.

2.Mrs.Hepzibah Francis,

The Correspondent/ Headmistress,
CSI Ebbas Girls Higher Secondary School,
Mylapore, Chennai 600 004.

... Respondents

Prayer :

Contempt petition filed under Section 11 of Contempt of Courts Act, praying to punish the respondents for wilfully disobeying the orders passed in W.M.P.No.17460 of 2019 in W.P.No.18070 of 2019 dated 26.06.2019.

For Petitioner	:	Mr.G.Sankaran
For Respondents	:	M/s.Father Xaviour Arul Raj Senior Counsel

ORDER

This contempt petition is filed alleging willful disobedience of the order dated 26.06.2019 made in W.M.P.No.17460 of 2019 in W.P.No.18070 of 2019.

2.The facts of the case in the contempt petition is as follows: CSI Ebbas Girls Higher Secondary School is a Government Aided School governed by the Provisions of the Tamil Nadu Private School Regulations coming under the Corporate Management of the CSI Diocese of Madras. The petitioner was appointed as Sweeper - cum - Gardener in the CSI Higher Secondary School on 01.05.1995 and his appointment was duly approved by the Department from the date of his initial appointment.

3.When the petitioner was working as Office Assistant in the Anderson Higher Secondary School, Kancheepuram in the year 2006, he was posted as Office Assistant without any additional monetary benefits. Since the petitioner was not considered for further promotion for several years, he submitted a representation during the year 2015 seeking promotion to the post of Record Clerk. His representation

was duly considered and the Headmaster of the School also forwarded proposal to the CSI Diocese of Madras, however, he was not considered for promotion.

4. Thereafter, during January, 2018, vacancy to the post of Lab Assistant arose in Anderson Higher Secondary School, Kancheepuram and the petitioner submitted his representation dated 18.12.2017 seeking promotion. According to the petitioner since he was requesting for promotion, he was issued with an order of transfer dated 31.07.2018 transferring the petitioner from Kancheepuram to CSI Ebbas Girls Higher Secondary School, Mylapore and the petitioner joined the post of Office Assistant in the said School on 01.08.2018.

5. In CSI Ebbas Girls Higher Secondary School, Mylapore, a vacancy arose for the post of Junior Assistant from 01.06.2019 and the petitioner submitted his representation seeking promotion to the post of Junior Assistant. While being so, the CSI Diocese of Madras issued an order of transfer dated 15.06.2019 transferring the petitioner from CSI Ebbas Girls Higher Secondary School, Mylapore, Chennai to CSI St. David's Higher

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Secondary School, Cuddalore. Challenging the said transfer order dated 15.06.2019, the petitioner filed W.P.No.18070 of 2019 before this Court.

6.This Court vide order dated 26.06.2019 made in W.P.No.18070 of 2019 and W.M.P.No.17460 of 2019, granted an order of interim stay. The said order was despatched by the Registry on 08.07.2019.

7.According to the petitioner, the respondents have neither allowed him to continue to work in the School as Office Assistant nor paid salary from 18.06.2019 to 30.06.2019 to him till date. The petitioner also sent legal notice to the respondents on 18.07.2019 seeking to comply the order of this Court dated 26.06.2019 made in W.P.No.18070 of 2019 and W.M.P.No.17460 of 2019 and since there was no response, has filed this contempt petition.

8.The contempt petition was listed before this Court on 22.08.2019 and was adjourned to 05.09.2019. On 05.09.2019, it was again adjourned to 11.09.2019. When the contempt petition was listed on 12.09.2019, this Court issued statutory notice to the respondents returnable in

four weeks. On 18.10.2019, the contemnors/ respondents did not appear before this Court and based on the submissions made by the learned counsel appearing for the contemnors/ respondents that due to health issue, the contemnors/ respondents were not able to appear before this Court, the contempt petition was adjourned to 25.10.2019.

9.Mr.Father Xaviour Arul Raj, learned Senior Counsel appearing for the contemnors/ respondents, on instructions, submitted that chain of transfer orders cannot be implemented and would further submit that if it is implemented, it would create choas in the administration. The learned Senior Counsel would further submit that the respondents have filed vacate stay petition in W.P.No.18070 of 2019 and requested this Court to take up the vacate stay petition prior to contempt petition.

10.This Court perused the records. The petitioner sent legal notice to the respondents on 18.07.2019 and filed this contempt petition on 26.07.2019. The learned Senior Counsel appearing for the contemnors/ respondents fairly conceded that the vacate stay petition in W.P.No.18070 of 2019 was filed only after filing of the

contempt petition.

11.The contemnors/ respondents appeared before this Court and expressed that they are not in a position to implement the order dated 26.06.2019 made in W.P.No.18070 of 2019 and W.M.P.No.17460 of 2019.

12.Since the contemnors appeared before this Court and categorically stated that they are not going to implement the order of this Court dated 26.06.2019 made in W.P.No.18070 of 2019 and W.M.P.No.17460 of 2019 and in view of the above said position, in order to exercise the contempt jurisdiction, this Court has to see whether the contemnors committed wilful contempt or not.

13.The un-disputed fact is that the interim order was passed by this Court on 26.06.2019, legal notice was sent by the petitioner to the respondents on 18.07.2019 and this contempt petition was filed on 26.07.2019. Admittedly, this Court passed exparte interim order against the contemnors. Even wrong order can be vacated in the manner known to law. In similar situation, in ***State of West Bengal vs. Hemant Kumar [AIR 1966 Supreme Court 1061]***, the

Hon'ble Supreme Court in paragraph no.14 has observed that a wrong decision by a Court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher tribunals or other procedure like review which the law provides. Hence, unless the interim order is set aside or vacated, it is binding on the parties.

14.In the present case, the contemnors did not take any steps to vacate the stay immediately after the interim order. Even after the legal notice, the respondents have not taken any steps to file the vacate stay petition. However, they have filed vacate stay petition after filing of the contempt petition. Hence, this Court has no hesitation to arrive at the conclusion that the contemnors willfully disobeyed the order of this Court. Even today, they have clearly stated that they are not going to implement the order of this Court.

15.In similar situation, in **Maninderjit Singh Bitta vs. Union of India [(2012) 1 SCC 273]**, the Hon'ble Supreme Court observed as under:

'19. Under the Indian law the conduct

of the parties, the act of disobedience and the attendant circumstances are relevant to consider whether a case would fall under civil contempt or criminal contempt. For example, disobedience of an order of a court simpliciter would be civil contempt but when it is coupled with conduct of the parties which is contemptuous, prejudicial and is in flagrant violation of the law of the land, it may be treated as a criminal contempt. Even under the English law, the courts have the power to enforce its judgment and orders against the recalcitrant parties.

16. In ***E.T.Sunip vs. C.A.N.S.S.Employees Association [(2004) 8 SCC 683]***, the Hon'ble Supreme Court in paragraph no.16 has observed that it has become a tendency with Government officers to somehow or the other circumvent the orders of the Court and try to take recourse to one justification or the other. It was further observed that it showed complete lack of grace in accepting the orders of the Court and this tendency of undermining the Court's order could not be countenanced.

17.Further everyone is expected to obey the orders of this Court in its true spirit and substance with due respect for the institution. If the contemnors fail to obey the order of this Court, this Court has no other option except to invoke the contempt jurisdiction to punish the persons for violation of the Court order. Hence, I have no hesitation to arrive at the conclusion that the respondents/ contemnors are guilty of committing contempt.

18.The respondents/ contemnors are punished under Section 12 of the Contempt of Courts Act, 1971. The first respondent shall undergo Civil imprisonment for a period of one month and shall pay a fine of Rs.5,000/- (Rupees Five Thousand Only). The second respondent shall pay a fine of Rs.5,000/- (Rupees Five Thousand Only). The fine amount shall be paid by the respondents before the State Legal Services Authority, High Court Campus, Chennai - 600 104.

19.The Educational Authorities are directed to implement the order of this Court dated 26.06.2019 made in W.P.No.18070 of 2019 and W.M.P.No.17460 of 2019.

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20.Considering the request made by the learned Senior Counsel appearing for the respondents, this order shall remain suspended for a period of ten (10) days from the date of receipt of a copy of this order in respect of the first respondent, so as to enable the first respondent/ contemnor to avail appellate remedies, if he so chooses. Subject to just exceptions, the Registry shall take steps to give effect to this order thereafter.

21.This Contempt Petition is allowed on the above terms.

SD/-

ASSISTANT REGISTRAR (COMM.CASES)

PRI

//Certified to be true copy//

Dated at Madras this the day of 2019.

COURT OFFICER (O.S.)

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NRK/04/11/2019

To

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CSI Diocese of Madras,
The Dioceasan Office,
Post Box No.4914,
Chennai 600 086.
- 2.The Correspondent/ Headmistress,
CSI Ebbas Girls Higher Secondary School,
Mylapore, Chennai 600 004.
3. The Director,
Directorate of Elementary Education,
DPI Campus, College Road,
Chennai 600 006.
4. The Chief Educational Officer,
Chennai 600 006.
5. The District Educational Officer,
Saidapet, Chennai 600 015.
6. The Public Prosecutor,
High Court, Madras.