

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

L.P.A.Nos.2 & 3 of 2019
and
C.M.P.Nos.19480 & 19483 of 2019

N.K.Senthamarai Kannan, IPS
Member Secretary / IG of police,
Tamil Nadu Uniformed Services
Recruitment Chairman (DG),
Old Commissioner Complex
Pantheon Road, Egmore,
Chennai - 600 008.

Now Inspector General of Police (HQ),
DGP Office, Mylapore,
Chennai - 600 004.

...Appellant in both the appeals

Vs

1.High Court of Madras,
Chennai.

2.Dr.G.Vijayakumar @ G.V.Kumar

3.D.Murthi

...Respondents in both the appeals

R2 impleaded vide Order of Court
dated 05/09/2019 made in CMP Nos.18954
and 18950/2011 in LPA SR NOS.97743 AND 97744/2019 (NKKJ & PVJ)

R3 impleaded vide Order of Court
dated 20/09/2019 made in CMP Nos.20372
and 20369/2019 in LPA No.2 of 2019 (NKKJ & PVJ)

COMMON PRAYER : Letters Patent Appeals filed under Clause 15 of Letters Patent against the orders dated 05.04.2019 and 22.04.2019 in Suo Motu Contempt Petition No.613 of 2019 on the file of this Court, Suo Motu Contempt proceedings initiated by this Honourable High Court of Madras on 02/04/2019 in W.P.No.5542 of 2019 against the Contemnor (in both LPA. 2 and 3 of 2019).

For Appellant : Mr.AR.L.Sundaresan,
Senior Counsel for
Mrs.AL.Gandhimathi. (in both LPAs)

For Respondents: Mr.B.Vijay for R1.

1 Dr.A.E.Chellaiah, Senior
Counsel for Mr.I.Joseph for R2.

Mr.N.L.Rajah,
Senior Counsel for
M/s.Rohini Ravikumar for R3.
(in both LPAs)

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

These Letters Patent Appeals have been filed against the suo motu contempt proceedings initiated by the learned Single Judge of this Court arising in and out of a Writ Petition filed by one Mr.S.Arunachalam who sought for a direction to the Respondent (Tamil Nadu Uniformed Services Recruitment Board) to consider and dispose of his representation dated 16.02.2019 and permit his name to be included in the list of provisionally selected candidates in the Departmental Quota for the post of Sub-Inspector of Police (Finger Print) - 2018 recruitment.

2.The facts of the case are as follows:

The Writ Petitioner, viz., Mr.S.Arunachalam, who applied for the post of Sub-Inspector of Police (Finger Print) was not selected and therefore, he gave a representation on 16.02.2019 permitting his name to be included in the list of provisionally selected candidates. As his representation was not considered, he approached this Court seeking a Writ of Mandamus praying to direct the Respondent to consider and dispose of the petitioner's representation dated 16.02.2019 within the time frame fixed by this Court and permit the petitioner's name to be included in the list of provisionally selected candidates in the Departmental Quota for the post of Sub-Inspector of Police (Finger Print) - 2018 recruitment.

3.On contest, the said Writ petition was dismissed by order dated 13.03.2019 and the relevant portions are extracted as follows:

"7.It is relevant to point out that, Court is not an expert body. Court cannot ascertain the genuinity of the answers to a particular question

relating to the subject of mathematics. Court is being not an expert body cannot be expected to analyse the correctness or otherwise of the key answer given by the experts in the subject. In the present case, in order to ascertain genuinity, this Court directed the respondent to produce the expert opinion and accordingly, Dr.D.Murthi, M.Sc., Ph.D., Professor, Department of Mathematics, Indian Institute of Technology, Madras, submitted his expert opinion and as per the expert opinion, the correct answer of question number 145 is B)5.

8.Thus, the Writ petitioner has not written the correct answer in respect of question number 145 and further the relief as such sought in the present Writ petition is to consider the representation submitted by the Writ petitioner. Such a prayer was initially not considered in view of the fact that, the issues are to be ascertained so as to find out the right of the Writ petitioner and now based on the expert opinion, it is verified that the Writ petitioner is not written the correct answer in the answer sheet and accordingly, he is not entitled for a relief as such sought for in the present Writ petition. Accordingly, the Writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed."

4.From the above, it is clear that based on the statement made by the official respondent that based on the opinion of the expert, viz., Dr.D.Murthi, M.Sc., Ph.D., Professor, Department of Mathematics, Indian Institute of Technology, Madras, the correct answer for question No.145 is found to be B)5 and hence, the Writ Petition was dismissed.

5.Subsequently, the matter was brought before the learned Single Judge under the caption "For Being Mentioned" at the instance of the learned Counsel for the Writ Petitioner. It was stated that the expert's opinion filed by the Additional Advocate General before this Court was a bogus one. On verification, the Writ Petitioner came to understand that no such professor is working in the name of Dr.D.Murthi, M.Sc., Ph.D., Professor in the Department of Mathematics in the Indian Institute of Technology, Madras.

6.The learned Single Judge took up the matter on 01.04.2019 and found that deliberately, a wrong information has been given to the Court only to dismiss the Writ Petition and opined by virtue of order dated 02.04.2019 that the act of the Appellant has to be construed as an obstruction caused for administration

of Justice and initiated suo motu contempt proceedings against the Appellant herein. Against the said order only, the present Letters Patent Appeal has been filed. The relevant portion of the said order is extracted as follows:

"26.The expert opinion submitted before this Court cannot be trusted upon. The respondents had not taken care even to find out the authenticity of the expert opinion. It is further possible that knowingly or intentionally, such expert opinion was obtained and submitted before this Court for the purpose of deciding the Writ petition in their favour. However, this Court is of an undoubted opinion that, the respondents had not only misguided the Hon'ble High Court, but also filed a bogus expert opinion resulted dismissal of the Writ petition. Thus, the act of the respondents are to be construed as an obstruction caused for administration of Justice and consequently, resulted in miscarriage of Justice.

7. Mr.AR.L.Sundaresan, learned Senior Counsel for the Appellant would strenuously argue that prima facie finding given by the learned Single Judge would come under the definition of criminal contempt as defined in 2 (c) (ii) of the Contempt of Courts Act, 1971, which can be taken cognizance and dealt with only by the Division Bench of this Court under Section 15 of the Contempt of Courts Act, 1971. Therefore, he would argue that the order of the learned Single Judge has to be set aside.

8.In this case, the parties have produced the records. Before going into the merits of the case, this Court would only like to decide about the maintainability of the appeals. A perusal of the order passed by the learned Single Judge would reveal that the prima facie finding for initiation of suo motu contempt proceedings come under the definition of criminal contempt which is defined in Section 2 (c) (ii) of the Contempt of Courts Act, 1971. In the custody, many signatures were obtained forcefully to prepare documents to suit the convenience of the Appellant.

9.Mr. B. Vijay, learned Counsel for the First Respondent would submit that appeals are not maintainable. Mr. N.L. Rajah, learned Senior Counsel appearing for the Fourth Respondent would submit that as per the request of the Second Respondent only, the key answer for the disputed question was given by him. On the other hand, Mr.A.E.Chellaiah, learned Senior Counsel appearing for the Second Respondent would contend that the appeal is not maintainable. Further, the Second Respondent has been made as victim and for no fault of him, he was detained in jail for longer period illegally.

10.If a criminal contempt proceedings has to be initiated stating that somebody has caused obstruction to the administration of the justice, it should be taken cognizance only by the Division Bench of this Court under Section 15 of the Contempt of Courts Act, 1971, which reads as follows:

"15.Cognizance of criminal contempt in other cases: - (1)In the case of a criminal contempt, other than a contempt referred to in Section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by -

(a)the Advocate-General, or

(b)any other person, with the consent in writing of the Advocate-General, [or]

[(c) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.]

(2)In the case of any criminal contempt of a subordinate Court, the High Court may take action on a reference made to it by the subordinate Court or on a motion made by the Advocate-General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(3)Every motion or reference made under this Section shall specify the contempt of which the person charged is alleged to be guilty.

Explanation.- In this Section, the expression "Advocate General" means-

(a)in relation to the Supreme Court, the Attorney-General or the Solicitor-General;

(b)in relation to the High Court, the Advocate-General of the State or any of the States for which the High Court has been established;

(c)in relation to the Court of a Judicial Commissioner, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf."

11.Without going into the merits of the case, this Court accepts the contention made by the Appellant. Therefore, this Court holds that the impugned contempt proceedings could be dealt with only by a Division Bench consisting of two Judges which takes cognizance of the criminal contempts under Section 15 of the Contempt of Courts Act, 1971, and this case also comes under the said criteria. This Court holds that the LPAs are maintainable, as the learned Single Judge does not have the jurisdiction to deal with criminal contempt proceedings and the

appeal to that extent alone is allowed and the suo motu contempt proceedings have to be placed before a Division Bench to be constituted by My Lord, the Hon'ble Acting Chief Justice.

12. Generally, in the case of civil contempts, the matter would be decided by the very same Judge who passes the order which is said to have been violated as the same Judge alone would be in a better position to appreciate the facts of the case. In this case, this Court has gone into the entire file and it is seen that the learned Single Judge has gone into the matter in detail and various orders have been passed by him. Since this matter happens to be a criminal contempt proceedings, the same has to be dealt with by a Division Bench in which Hon'ble Mr. Justice S.M.Subramaniam is a member or any other Division Bench to be constituted by My Lord, the Hon'ble Acting Chief Justice.

13. With the above observations, these Letters Patent Appeals are disposed of. No costs. Consequently, connected miscellaneous petitions are closed. All the papers along with the reports submitted by the Commissioner of Police in sealed covers are directed to be placed before My lord, the Hon'ble acting Chief Justice.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

- 1) The Registrar General,
High Court of Madras,
Chennai.
- 2) The Registrar (Judicial),
High Court of Madras.

+2 ccs to M/s.AL.Gandhimathi, Advocate, S.R.No.83477 and 83478.

+2 ccs to Mr.A.Mohammed Sadiq, Advocate, **S.R.No.86252 (16/10/19)**

L.P.A.Nos.2 & 3 of 2019
and

C.M.P.Nos.19480 & 19483 of 2019

SR(CO)
SSM(15/10/2019)
SSM(16/10/2019) .