

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2019

CORAM

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Contempt Petition No.2745 of 2018

B.Thangaraj

... Petitioner

vs.

Dr.J.Radhakrishnan, I.A.S.,
Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Chennai 600 009.

... Respondent

Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971, praying to punish the Respondents for the act of wilful disobedience of the order dated 04.06.2018 passed by this Court in W.P.No.1636 of 2013.

For Petitioner : Mr.N.Krishnakumar
For Respondent : Mrs.P.Kavitha,
Government Advocate

ORDER

When the matter is taken up hearing today, it is represented by the learned Government Advocate appearing for the Respondent that the order under contempt has been challenged in a Writ Appeal and an interim order has been granted by the Division Bench of this Court in C.M.P.No.7861 of 2019 in W.A.No.1069 of 2019 on 03.04.2019.

2. In view of the submissions of the learned Government Advocate, Contempt Petition will not lie against the order passed in W.P.No.1636 of 2013.

3. In the case of **Kunhayammed vs. State of Kerala**, reported in **(2000 (6) SCC 359)**, the principle of Doctrine of Merger has been widely discussed. With reference to the three-Judge ruling in **Kunhayammed** case and yet another decision of the Apex Court in the case of **Dineshan, K.K. vs. R.K.Singh** reported in **(2014) 16 SCC 88**, this Court is of the view that once the order passed in a Writ Petition gets merged with the order of the Writ Appeal, the remedy available to the petitioner is to file a Contempt in the Writ Appeal and not in the Writ Petition, unless and until the Apex Court specifically directs the High Court to decide the issue.

4. Thus, in view of the principle of Doctrine of Merger discussed above, **the present Contempt Petition cannot be adjudicated and hence, it is closed.** However, it is open to the Petitioner to work out his remedy in the manner known to law.

SD/-

ASSISTANT REGISTRAR (COMM.CASES)

aeb

//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