



WEB COPY

Cont.P.Nos.1141 and 1142 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Cont.P.Nos.1141 and 1142 of 2019

N.P.Sudha,
B.T.Assistant (Science),
Viatheswara Higher Secondary School,
Mettur R.S. .. Petitioner in Cont.P.No.1141/2019

K.S.Balaji,
B.T.Assistant (Maths),
Viatheswara Higher Secondary School,
Mettur R.S. .. Petitioner in Cont.P.No.1142/2019

Vs.

1.Karuppusamy,
Director of School Education,
College Road, Chennai 6

2.Ganeshamoorthy,
Chief Education Officer,
Salem

3.A.Vijaya,
District Education Officer,
Shankakiri, Salem

4.Chakaravarthy,
Secretary,
Vaitheswara Higher Secondary School,
Mettur R.S.

.. Respondents in Both Contempt Petitions



Cont.P.Nos.1141 and 1142 of 2019

Prayer: Petitions filed under Section 11 of the Contempt of Courts Act, 1971 to punish the respondents for wilfully disobeying the common order passed in W.P.Nos.837 and 838 of 2014, dated 24.01.2017.

For Petitioners :: Mr.S.N.Ravichandran

For Respondents :: Mr.C.Munusamy, Spl.G.P.
For respondents 1 to 3

Mr.Sai Prasad,
for M/s.Sai Raj Association
for 4th respondent

COMMON ORDER

(made by the Hon'ble Chief Justice)

The petitioners complain of the wilful and deliberate violation of an order of January 24, 2017, passed in a batch of writ appeals headed by W.A.No.1126 of 2015.

2. The matter pertains to the entitlement of teachers in government-aided schools and whether such teachers could continue in service and be entitled to receive salaries without passing the Teacher Eligibility Test (for short, 'TET') after the issuance of Government order no.181 dated November 15, 2011. The batch of appeals was disposed of with the following operative order at paragraph 42 of the judgment delivered on January 24, 2017:



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42. Accordingly, to meet the ends of justice, the writ appeals and the writ petitions are disposed with the following directions :

“(i) The Teachers herein, who have been appointed subsequent to the issuance of the Government Order, are granted one opportunity to appear for the Teacher Eligibility Test to be conducted by the Teachers Recruitment Board and in the event of their passing in the Teacher Eligibility Test, their appointments shall be approved else, they have no other option but to quit the service/ousted from service;

(ii) Till the results are published, the Government shall pay the salary to the Teachers, who are in service of the aided institutions, for the services rendered by them and in the cases where salary was not paid the same shall be paid along with arrears, if any, forthwith;

(iii) Learned Advocate General submitted that salary has been paid to most of the Teachers and only a few were not paid, for want of particulars. In such a case, the Teachers whose salary have not been paid for want of particulars, they shall furnish the requisite particulars immediately, so to enable the Government pay the salary immediately;

(iv) Insofar as W.P.No.7593 of 2015 is concerned, though the writ petitioner has qualified with a pass in Teacher Eligibility Test during 2013, she has not been paid the difference of salary from the date of appointment, till the date of passing of the Teacher Eligibility Test. In view of the discussions aforesaid, the Government is directed to pay the difference of salary within a period of four weeks from the date of receipt of a

<https://hcservices.ecourts.gov.in/hcservices> copy of this order; and



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(v) The Teachers Recruitment Board is directed to take note of the above observations and to issue notification for conducting Teacher Eligibility Test on or before the end of February 2017, indicating the date of exam to be either in the last week of March 2017 or in the first week of April 2017.”

3. It will be evident from clause(i) of paragraph 42 of the judgment that for those teachers appointed subsequent to the issuance of the government order of November 15, 2011, they were to be entitled to an opportunity to appear for the TET and if they passed the same, their appointments would stand approved; or else, they would have to quit or be ousted from service. The first clause of the said operative part may reasonably be read and understood to imply that all teachers who were appointed in government-aided schools and who had not obtained TET qualification but whose appointments were made after the government order of November 15, 2011 was published were to be entitled to appear at the next TET and, if they qualified, their appointments would stand approved or else, they would have to go out.

4. It is not in dispute that petitioner K.S.Balaji cleared the next TET. However, petitioner N.P.Sudha not only did not clear the next TET but she has not even cleared any subsequent TET.

5. K.S.Balaji claims that in terms of the order of January 24, 2017, his



appointment was not only to be approved, but he would be entitled to the salary at the appropriate rate from the date of his appointment. It appears that some time in 2013, both K.S.Balaji and N.P.Sudha may have been removed from service because the government did not provide their salary and the relevant school could not afford paying these teachers out of its own resources. It is evident that K.S.Balaji rejoined some time on March 4, 2020 after successfully completing the TET and N.P.Sudha has joined in March, 2020, though without passing the TET. It appears that both K.S.Balaji and N.P.Sudha are being paid since March, 2020.

6. K.S.Balaji says that since he has passed the TET and is being paid from March 2020, he should be paid for the previous period also. N.P.Sudha claims that since she is being paid from March 2020, she is also entitled to be paid for the previous period.

7. There is no doubt that K.S.Balaji's right to the approval of his appointment is indisputable. That is the effect of the order dated January 24, 2017. However, nothing in such order deals with the case of a teacher who may have been appointed after the issuance of the government order dated November 15, 2011 but who was discontinued from service some time thereafter and only in pursuance of the order dated January 24, 2017, took the TET, qualified and became entitled to approval of the appointment. The



order proceeds on the basis that teachers who had been appointed subsequent to the government order dated November 15, 2011, continued in service and, thus, were entitled to their appointment being approved upon them qualifying at TET and being paid. The order did not contemplate a situation where there would be a break in service and resumption of service on the basis of the said order.

8. It is elementary that a person is not entitled to be paid for the period that the person did not render any services unless the Court directs such payment to be made upon the Court reaching a finding that the concerned person had been unfairly kept out of service and such person did not have any alternative source of income during the period that the person had been kept unfairly away from service. Both in labour and service jurisprudence, back wages is not an absolute right and to obtain back wages, whether for illegal retrenchment or for arbitrary dismissal or removal from service in departmental action, the Court considers the nature of the prejudice and whether the employee had any alternative source of income at the relevant point of time. In service jurisprudence, even if the employee did not have any alternative employment, merely because he did not work – though it may not have been a fault on his part – to ensure that the government funds are not dealt with in a wanton manner, the Court passes an order which



provides for an extent of payment but which is invariably less than what the employee would have got if the employee was actually in service.

9. Thus, nothing in the order dated January 24, 2017 may be read to imply that even if a teacher was employed one day after the government order of November 15, 2011, came into effect and such teacher was not permitted to work from the following day and only got a right pursuant to the order dated January 24, 2017 being passed, such teacher would be entitled to the salary for the period that the teacher did not have to render any service. This aspect of the matter is not covered by the order and it was open to the parties to have urged the Court while passing the order dated January 24, 2017 to have covered such aspect.

10. There is a distinction between a petition filed to assert one's rights and a petition filed for contempt of Court. In a petition filed for contempt, the only relevant consideration is whether there has been any violation of the order. If there is any violation, the Court assesses whether the violation is deliberate or wilful. It is only when the violation is found to be deliberate or wilful that the Court proceeds to take action against the contemnor. If a particular order is capable of two meanings and one of the possible meanings has been ascribed to the order by the alleged contemnor, the benefit of the doubt in the quasi-criminal jurisdiction goes to the contemnor



and, though he may be permitted to correct himself, no action is taken against such person.

11. The petitioner in either case submits that subsequent writ petitions have been filed by similarly placed persons and by virtue of orders passed therein or otherwise, persons who did not qualify for TET after the order of January 24, 2017 was passed have continued in service and are being paid. Just as N.P.Sudha is being paid in the present case despite N.P.Sudha not having qualified at TET, but having rejoined services from March, 2020. It is not the court's concern, within the limited ambit of the present lis, to determine the right or entitlement of the petitioners in the absolute sense. The consideration in contempt proceedings is confined to whether the relevant order granted a benefit which has been deliberately or wilfully denied. In the present case, there is nothing in the order of January 24, 2017 that expressly directs payment to be made to the petitioners herein even during the time when they may not have rendered any service. As a consequence, it cannot be held that the alleged contemnors herein have acted in derogation of the order dated January 24, 2017.

12. Accordingly, the contempt proceedings are dropped and the petitioners are left free to pursue their rights in terms of their perceived entitlement in accordance with law. The only emphasis that needs be made



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in the present case is that in contempt proceedings, it is only the ambit of the relevant order which has to be looked into and not the right or entitlement of a party to the order that be otherwise desires.

13. Contempt Petition Nos.1141 and 1142 of 2019 are dropped. There will be no order as to costs.

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

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//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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GS/20/04/2021

To

1.The Director of School Education,
College Road, Chennai 6

2.The Chief Education Officer,
Salem

3.The District Education Officer,
Shankakiri, Salem