



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 23.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE **N.KIRUBAKARAN**

AND

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

**Cont.A. (MD) Nos.5 & 8 of 2019**

and

**C.M.P. (MD) Nos.2652 & 4897 of 2019**

**Cont.A. (MD) No.5 of 2019:**

Dr.Aneesh Sekhar,  
Commissioner,  
Madurai Municipal Corporation,  
Madurai.  
Presently working as  
Executive Director,  
Tamil Nadu Industrial Development Cooperation (TIDCO),  
19-A, Rukmani Lakshipathy Road, Old Marshall Road, Egmore,  
Chennai. : Appellant / 3<sup>rd</sup> Respondent

Vs.

1.J.Vijayakumar  
Assistant (Rtd),  
South Zone,  
Madurai Municipal Corporation,  
Madurai.  
Residing at : No.25, Paulraj Compound,  
Vaithiyanathapuram, Madurai-10. ...1<sup>st</sup> Respondent/Petitioner

2.Panindra Reddy, I.A.S.,  
Secretary to Government,  
Municipal Administration and  
Water Supply (Corp 4) Department,  
Fort St.George, Chennai - 9.

3.Prakash, I.A.S.,  
Commissioner of Municipal Administration,  
Chepauk, Chennai - 5. ... Respondents 2&3/Respondents

For Appellant

: Mr.K.Chellapandian,  
Additional Advocate General  
Assisted by  
Mr.R.Murali  
Standing Counsel



WEB COPY

For Respondents

: Mr.Veera Kathiravan  
Senior Counsel  
for Mr.R.Alagumani  
for R.1

Mrs.J.Padmavathi Devi  
Special Government Pleader  
for R.2 & R.3

**Cont.A. (MD) No.8 of 2019:**

1.Panindra Reddy, I.A.S.,  
Secretary to Government,  
Municipal Administration and  
Water Supply (Corp 4) Department,  
Fort St.George, Chennai - 9.

2.Prakash, I.A.S.,  
Commissioner of Municipal Administration,  
Chepauk,  
Chennai - 5.

... Appellants/Condemner 1&2

Vs.

1.J.Vijayakumar  
Assistant (Rtd),  
South Zone,  
Madurai Municipal Corporation,  
Madurai.  
Residing at :No.25,Paulraj Compound,  
Vaithiyanathapuram,Madurai-10.

2.Dr.Anies Sekar,I.A.S.,  
Commissioner,  
Madurai Municipal Corporation,  
Madurai.  
Presently working as  
Executive Director,  
Tamil Nadu Industrial Development Cooperation (TIDCO),  
19-A,Rukmani Lakshipathy Road,Old Marshall Road,Egmore,  
Chennai.

: Respondents

For Appellants

: Mr.K.Chellapandian,  
Additional Advocate General  
Assisted by  
Mrs.J.Padmavathi Devi  
Special Government Pleader

For Respondents

: Mr.Veera Kathiravan  
Senior Counsel  
for Mr.R.Alagumani



for R.1

Mr.R.Murali  
Standing Counsel for R.2

**COMMON PRAYER:** Appeals filed under Section 19(1)(a) of the Contempt of Court Act r/w Clause 15 of the Letters Patent challenging the order dated 07.03.2019, made in Cont.P.(MD)No.86 of 2017 on the file of this Court.

Prayer in CONT P(MD). 86/ 2017 :

Petition filed under section 11 of the Contempt of Courts Act, to punish the respondents for disobeying the order of this Court dated 24.10.2016 in W.P(MD) No.16887 of 2013

Prayer in WP(MD). 16887/ 2013 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the 1st respondent in his proceedings Letter (2g) No. 85 dated 27/08/2013 and the consequential circular issued by the 3rd respondent in his proceedings Ma.Ne.1/25997/2010 dated 23/09/2013 and quash the same as illegal .

#### **COMMON JUDGMENT**

(Judgment of the Court was delivered by **B.PUGALENDHI, J.**)

These contempt appeals are filed as against the order passed in Cont.P.(MD)No.86 of 2017, dated 07.03.2019, in and by which, this Court found the appellants guilty for disobeying the order / judgment of this Court in W.P.(MD)No.16687 of 2013 and in W.A.(MD) No.1411 of 2016, dated 24.10.2016 and 27.07.2018, respectively.

2. The appellant in Cont.A.(MD)No.5 of 2019 was convicted and sentenced to undergo simple imprisonment for a period of one week and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of one week, as per Section 12 of the Contempt of Courts Act, 1971. The first appellant in Cont.A.(MD)No.8 of 2019 was also directed to take appropriate action against the erring officials of the Madurai Corporation for not properly implementing the order / judgment in W.P.(MD)No.16687 of 2013 and in W.A.(MD)No.1411 of 2016, dated 24.10.2016 and 27.07.2018, respectively.

3. Aggrieved over the same, the then Commissioner, Madurai Corporation / 3<sup>rd</sup> respondent in the contempt petition has filed Cont.A.(MD)No.5 of 2019 and the Secretary to Government, Municipal Administration & Water Supply Department and the Commissioner of Municipal Administration, Chennai /1<sup>st</sup> & 2<sup>nd</sup> respondents in the contempt petition filed Cont.A.(MD)No.8 of 2019, that they have strictly complied with the orders of this Court.



4. For the sake of convenience and clarity, the appellants are being referred to as per their then official rank.

5. Mr.K.Chellapandian, learned Additional Advocate General appearing for the Corporation Commissioner / 3<sup>rd</sup> respondent assisted by Mr.R.Murali, learned Standing Counsel submits that this Court convicted the appellant for disobeying the orders of the Writ Court in W.P.(MD)No.16887 of 2013. But, an appeal was filed as against the orders passed in the said writ petition in W.A.(MD)No.1141 of 2016 and the same was allowed by judgment dated 27.07.2018, modifying the orders passed in W.P.(MD)No.16887 of 2013. The Corporation Commissioner has also followed the judgment of the Appellate Court, wherein, the Court has given specific findings in paragraph nos.25 to 27 of its judgment as to the manner in which the seniority has to be fixed, ie., from the date of joining of the Assistant as a criteria to fix the seniority.

6. Mr.Veera Kathiravan, learned Senior Counsel appearing for the first respondent / contempt petitioner would submit that the Writ Court has dismissed the writ petition filed by the petitioner, upholding the Government Clarification Letter (2g) No.85, dated 27.08.2013, passed by the Secretary to Government / 1<sup>st</sup> respondent and the consequential circular issued by the Corporation Commissioner / 3<sup>rd</sup> respondent in Ma.Ne.1/25997/2010, dated 23.09.2013 and also directed the official respondents to give promotion to the respondents 4 to 8 in the writ petition on par with their juniors. In the said clarification letter, the Government made a clarification with regard to the seniority of the Bill Collectors as follows:

*"a. The seniority list should be drawn based on joining of service as Tax Collectors prior to 01.10.1996 and inter-se seniority be drawn between Tax Collectors and Junior Assistants, based on the same panel should be drawn for every year and based on approved list promotion should be granted to the vacant post. While granting promotion the salary of the individual may be fixed on the date of joining of the assistant and from that date monetary benefit could be granted."*

7. The learned Senior Counsel would further submit that the writ appeal was also disposed of, directing the Corporation Commissioner / 3<sup>rd</sup> respondent to redraw the *inter se* seniority list consequent upon the Government Clarification Letter (2g) No.85, dated 27.08.2013, in line with the interpretation set out by the Court, within a period of four weeks. However, in utter disregard to the orders, the Corporation Commissioner / 3<sup>rd</sup> appellant has not considered the clarification letter issued by the Secretary to Government / 1<sup>st</sup> respondent and therefore, it is a deliberate disobedience and the Court is right in punishing him, as per Section 12 of the Contempt of Courts Act.



8. This Court paid it's anxious consideration to the rival submissions and also to the materials placed on record.

9. The issue revolves around the seniority list of Assistants. The post of Assistant shall be filled by Direct Recruitment and by Promotion from the holders of the post of Junior Assistant cum Typist, at the ratio 1 : 9. Vide the Government Order in G.O.Ms.No.24, Municipal Administration and Water Supply Department, dated 11.08.2010, the Tax Collectors, who had entered into service before 01.10.1996 and who had completed twenty years of service as on 27.05.1997, on the basis of seniority in the post of Tax Collectors, are permitted to be promoted as Assistants by relaxing the condition of service for two years in the Junior Assistant cum Typist. This Government Order was challenged in W.P.(MD)No.10931 of 2010 and the said writ petition was dismissed. The Government has also issued a Clarification in Letter (2g) No.85, dated 27.08.2013, with a direction to prepare an *inter se* seniority list between the Tax Collectors and Junior Assistants, who are appointed prior to 01.10.1996 and based on the *inter se* seniority list, a year wise promotion panel has to be prepared and based on this panel, the post of Assistant shall be filled up. This clarification letter as well as the consequential seniority list prepared by the Corporation was challenged by one of the Assistants, namely, Ahamed Ibrahim in W.P. (MD)No.16887 of 2013 and the said writ petition was dismissed by this Court by order dated 24.10.2016 in the following lines:

*"36. Therefore, in my considered view, when this Court clearly upheld the G.O.Ms.No.24, dated 11.08.2010 in W.P(MD) No.10931 of 2010 dated 26.04.2010, it is made clear that the Revenue Assistants are all entitled to get promotion as Assistant from the year 1996 onwards and challenging of the impugned Government Clarification letter dated 27.08.2013 and revised seniority list dated 23.09.2013 in accordance with the rules in G.O.Ms.No.237, Municipal Administration and Water Supply Department, dated 27.09.1996 and based on the order passed in W.P(MD)No.10931 of 2010 dated 26.04.2010 is not warranted to interference by this Court. Hence, the writ petition fails and the same is liable to be dismissed. Accordingly, I pass the following orders:-*

*(a) The Writ Petition is dismissed by upholding the Government Clarification Letter (2g) No.85 dated 27.08.2013 passed by the first respondent and consequential circular issued by the 3rd respondent in his proceedings Ma.Ne.1/25997/2010 dated 23.09.2013.*

*(b) The Official respondents are directed to give promotion to the respondents 4 to 8 on par with their juniors as some of them are going to retire from service very shortly. The said exercise shall be completed by the official respondents 1 to 3, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed."*



10. As against the same, the writ petitioner filed W.A.(MD) No.1411 of 2016 and a Division Bench of this Court, while entertaining the writ appeal, on 10.11.2016, passed the following order:

"Heard Mr.B.Saravanan, learned counsel for the appellant/writ petitioner, Mr.D.Muruganandam, learned Additional Government Pleader, who accepts notice for respondents 1 and 2, Mr.R.Murali, learned Standing Counsel, who accepts notice for 3rd respondent and Mr.G.Elanchezhian for 5th respondent.

2.A perusal of the typed set of documents and the grounds of appeal would disclose that the first respondent in his letter (2Pa) No.85, dated 27.08.2013, sent a communication to the second respondent stating among other things that the 27 post of Assistant in the service of 3rd respondent Corporation alone are the sanctioned post and the vacancy in the sanctioned post alone can be filled by promotion and additional posts cannot be created.

3.Mr.B.Saravanan, learned counsel for the petitioner would submit that admittedly the appellant/writ petitioner was promoted as Assistant, which is earlier to that of the contesting respondents and as such they cannot have march over the petitioner in case of further promotion as Superintendent.

4.Per contra, Mr.G.Elanchezhian, learned counsel for the 5th respondent would submit that in the light of decision of this Court in W.P.(MD) Nos.6403 of 2006, 10931 of 2010 dated 26.04.2013, the said submission made by the learned counsel for the appellant lacks merits and substance and admittedly the private respondents joined much prior to the appellant / writ petitioner and therefore tentative seniority list is correctly drawn by the 3rd respondent.

5.Learned Standing Counsel for the 3rd respondent would submit that the impugned seniority list is only tentative seniority list and after hearing objections, if any, final seniority list will be drawn and prays for time to get instruction.

6.Call on 14.12.2016.

7.In the meanwhile, if the objections are received, it may be considered and finalized and be informed to the Court in the form of an affidavit."

11. The contempt petitioner, one of the respondents in the main writ petition, moved the contempt petition in Cont.P.(MD)No.86 of 2017 alleging wilful disobedience against the order dated 24.10.2016 made in W.P.(MD)No.16888 of 2013. By order dated 23.01.2017, this Court, referring to the law of merger as laid down by the Hon'ble Apex Court in **Kunhayammed & Others v. State of Kerala & Another**, reported in **2000 (6) SCC 359**, closed the said contempt petition on the following terms:

9. 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. If the order of a Single Judge is affirmed or modified, the contempt can be filed only before the Division Bench and not before the Single Judge. Once a Writ Appeal is numbered, then the Single Judge cannot take up the contempt in view of the decisions of the Apex Court. If the Writ Appeal is withdrawn, certainly contempt will lie before the Single Judge and the time limit as per Section 20 of the Contempt of Courts Act will commence only from the date of order in the Writ Appeal.

7. In this case, since Writ Appeal is pending against the order of the learned Single Judge, this Contempt Petition can be adjudicated only after orders in the Writ Appeal and hence, it is closed at present."

12. Subsequent to that, the writ appeal filed by the writ petitioner in W.A.(MD)No.1411 of 2016 was also taken up for final disposal and by judgment dated 27.07.2018, the writ appeal was allowed as follows:

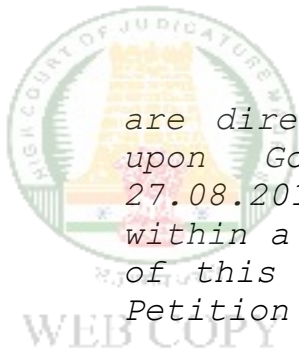
"25.It is an admitted position that the appellant was already in the post of Assistant as on the date when the Tax Collectors were promoted to the post. It would, therefore, not stand to reason that the Tax Collectors, who have been integrated to the post of Assistants by virtue of the special benefit extended to them, be placed above the appellant in order of seniority. No doubt, a special benefit has been extended to the Tax Collectors, but this cannot mean that they are entitled, as a matter of right, to supercede those already appointed in the post of Assistants.

26.The proper interpretation of the GOs in question precludes an interpretation that results in those already appointed as Assistants losing their seniority by virtue of the said interpretation. If that were so, it would be a clear case of the State robbing Peter to pay Paul. In other words, such an interpretation would mean that the State, in attempting to compensate the Tax Collectors for the delay in their promotions, compromises and prejudices another group of innocent employees in the process.

27.The appellant was promoted to the post of Junior Assistant on 19.11.2009 and Assistant on 21.06.2013. Admittedly, contesting respondents 4 to 8 were appointed as Bill Collector / Revenue Assistants in the year 1996 and were promoted as Assistants as on 18.08.2013 by virtue of the benefit extended to them. The promotion of the Tax Collectors to the post of Assistant is subsequent to the promotion of the appellant to the post of Assistant and as such, they ought to have been placed in the seniority list after the appellant.

<https://hcservices.ecourts.gov.in/hcservices/>

28.The Writ Appeal is allowed and the official respondents



are directed to redraw the inter se seniority list consequent upon Government Clarification Letter 2(g) No.85, dated 27.08.2013 in line with the interpretation set out by us above, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed."

13. Pursuant to the judgment made in the writ appeal, the Corporation Commissioner / 3<sup>rd</sup> respondent, by proceedings dated 10.08.2018, has drawn a provisional seniority list for the Assistants calling for objections from the other stakeholders and thereafter, by proceedings dated 20.09.2018, drawn the final seniority list. In the meantime, the contempt petitioner moved an application to re-open the contempt petition in Cont.P.(MD)No.86 of 2017 in C.M.P.(MD)No.112 of 2018 and the same was allowed by order dated 27.06.2018 and the Registry was directed to restore the contempt petition. This Court, under the impression that the orders of this Court has been wilfully disobeyed, found the appellants guilty.

14. In fact, the appellants are found guilty based on the orders of the Writ Court. But, even before that, a Division Bench of this Court has entertained the writ appeal and has also permitted the appellants to draw seniority list and to receive the objections, if any, by order dated 10.11.2016. The Contempt Petition in Cont.P.(MD).No.86 of 2017 was also dismissed on the doctrine of merger with a specific observation that once a writ appeal is numbered, the single Judge cannot take up the contempt petition and the same can be adjudicated only after the orders in the writ appeal. The writ appeal was allowed and the orders of the learned Single Judge was set aside and the officials / appellants were directed to redraw the inter se seniority list by fixing the Tax Collectors next to the Assistants.

15. The Hon'ble Apex Court, in **Kunhayammed's** case (referred supra), has discussed the doctrine of merger as follows:

"44. To sum up, our conclusions are:

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.



(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC."

16. When the Appellate Court has passed a specific order and this Court, by earlier order dated 23.01.2017, in Cont.P.(MD)No.86 of 2017, has closed the contempt petition, the re-opening of the contempt petition by the learned Single Judge and the consequential



conviction under Sections 11 & 12 of the Contempt of Courts Act is bad in law.

17. That apart, the Appellate Court, in W.A.(MD)No.1411 of 2016, has specifically held that the writ petitioner was already in the post of Assistant as on the date when the Tax Collectors were promoted to the post of Assistant and therefore, they ought to have been placed in the seniority list after the writ petitioner. It appears that the seniority list dated 20.09.2018 was issued by the Corporation in accordance with the judgment of the Appellate Court in W.A.(MD)No.1411 of 2016, as such, this Court is of the view that the appellants have complied with the order of this Court.

18. In such view of the matter, these Contempt Appeals are allowed. The impugned order passed in Cont.P.(MD)No.86 of 2017 dated 07.03.2019 and the consequent conviction and sentence are also set aside. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

gk

To

1.The Secretary to Government,  
Municipal Administration and  
Water Supply (Corp 4) Department,  
Fort St.George, Chennai - 9.

2.The Commissioner of Municipal Administration,  
Chepauk, Chennai - 5.

3.The Commissioner,  
Madurai Municipal Corporation,  
Madurai.

+1 CC to Mr.R.Murali ,Advocate,in SR.No.27201.

+1 CC to Special Government Pleader SR.No.27371 & 27236.

Cont.A.(MD)Nos.5 & 8 of 2019

23.12.2020

(SE) CO

AP(06/01/2021) 10P 6C

<https://hcservices.ecourts.gov.in/hcservices/>