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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

Cont. P.No.833 of 2015

A.Fathima,
No.19, C.T.A. Garden,
1st Avenue, Mangadu,
Chennai – 122.

... Petitioner

VS.

Mr.Vijayakumar,
Secretary,
Tamilnadu Public Service Commission,
Chennai.

... Respondent

Contempt Petition filed under Section 11 of the Contempt of Court Act, pleaded to punish the respondent for contempt of Court for violating the directions issued by this Court in WA No.1394 of 2013, dated 20.08.2014.

For Petitioner : Mr.M.Devaraj

For Respondent : Mr.G.Hema, for
TNPSC

**ORDER**

(Order of the Court delivered by S.VAIDYANATHAN,J.)

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This Contempt Petition is filed for the alleged disobedience of the Order of this Court, dated 20.08.2014 made in W.A.No.1394 of 2013 which is filed for the following relief:

“The Writ Appeal filed under Clause 15 of the Letters Patent against the order of the Court, dated 30.01.2013 made in W.P.No.29618 of 2012, filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the Respondents to treat the petitioner as Backward Class (Muslim) and include her name in the selection list published by the 2nd respondent on 16.10.2012 and appoint the petitioner in common degree post. ”

2. On a perusal of documents, after contest, the Division Bench passed the following order:

“6. In the light of the said settled legal position, this Writ Appeal is allowed and the Tamil Nadu Public Service Commission is directed to treat the appellant as Backward Class (Muslim) candidate and consider her claim for selection as per her ranking and if the appellant is within the zone of consideration by treating her as Backward Class (Muslim), the selection order has to be issued by the Tamil Nadu Public Service Commission to the appellant and for appointment. The said exercise is directed to be completed and orders be passed, within a period of four weeks from the date of receipt of a copy of this order. ”



3. According to the petitioner, they should have considered the case of the petitioner treating her as Backward Class (Muslim) for common degree post. But, giving her an option to choose the post in the two posts namely Assistant in RD & PD Nagapattinam District and Assistant in Prison Department, available for counseling, is contrary to the decision of this Court and that the respondent has wilfully and deliberately disobeyed the orders of this Court. Hence, this Contempt Petition.

4. The respondent has filed a detailed counter affidavit contending that there is no disobedience of the orders of this Court and the petitioner was asked to attend the counseling and that the petitioner appeared for certificate verification and counseling. The details of the averments in paragraph 4 and 5 in the counter is mentioned below:

4. In the aforesaid circumstance and in view of the Hon'ble Court order dated 15.02.2021 in order to comply with the same, the vacancies available for the categories of BC (M) was arrived at and found that the following posts alone were available for counseling, for which she is eligible to exercise her option:

S.No .	Name of the Post	Category	No.of vacancy
1	Assistant in RD & PD Nagapatinam District	BCM (W)	1
2	Assistant in Prison Department	BCM (G)	1

5. It is humbly submitted that a memo to the candidate, dated



03.03.2021 was sent calling her for Certificate Verification / counseling.

On the said date i.e., 09.03.2021, she has signed the attendance for having attended the counseling and she sought for 5 days time orally to discuss with her husband regarding to choose the option of post. She had refused to choose the post when she was called for counseling at the office of the Tamil Nadu Public Service Commission. The other statements furnished by the petitioner regarding marks are irrelevant to this issue as she was not called for Oral Test and that the WP filed by her at the relevant point of time was dismissed, by which time the Oral Test was over and selection of candidates for this recruitment relating to the oral Test posts was finalized. However, the vacancy that was available relates only to the Non Oral Test for which she has not opted on the day of counseling i.e., 09.03.2021.

Hence, according to the respondent, she had wantonly refused to choose the post when she was called for counseling. The other averments stated by the petitioner regarding the marks were also irrelevant to the issue on hand. Hence, they prayed for dismissal of the Contempt Petition.

5. The Writ Petitioner also filed an additional affidavit, dated 13.03.2021, wherein it has been stated that the petitioner was asked to appear for Certificate Verification for Direct Recruitment to Non-interview post included in the Combined Subordinate Service examination-1, (Group-II Services) 2009-2011. The petitioner also appeared on the said day with all relevant Certificates. It is further stated that she should have been appointed in the interview post and not in



the non interview post which is a lower category since there is a specific order of this Court in the Writ Appeal. Hence, according to the petitioner, there is a wilful disobedience on the part of the respondent.

6. Heard both counsel and perused the materials available on record.

7. It is not in dispute that the petitioner has sought for her candidature to be considered as Backward Class (Muslim). As far as the claim of appointment in the common degree post is concerned, there is no specific direction of this Court to that effect. The Bench has observed that if she falls within the zone of consideration as Backward Class (Muslim), the orders need to be issued within a period of four weeks. It is seen that her candidature has been duly considered, she also appeared in the examination and that, finally, she had refused to take up the said post.

8. Hence, in the considered opinion of this Court, there is no wilful and deliberate disobedience of the orders of this Court, in view of the proper adherence of the selection process and on the whole, the candidature of the petitioner has been considered as per the direction of this Court. The petitioner has raised a different cause of action in this contempt petition, which is not permissible. Since this Court has not given any specific direction to appoint the petitioner in the common Degree Post, there is no contempt made out by the respondents. Hence, the Contempt petition is closed, with liberty to the petitioner



to work out the remedy, in the manner known to law.

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9. It is needless to mention that option shall be given to the petitioner to accept any of these two posts mentioned in the Paragraph No.4 in the counter affidavit which is extracted supra and it is for the petitioner to accept the same, without prejudice to her right.

SD/-

ASSISTANT REGISTRAR (COMM.CASES)

vum

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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GS/11.03.2022

To

The Secretary,
Tamilnadu Public Service Commission,
Chennai – 3.