

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.6941 of 2021

R.Subramanian

...Petitioner

-vs-

1.The Director of Rural Development & Panchayat Raj,
Panagal Building
Saidapet, Chennai 600 015.

2. The District Collector
Dharmapuri District,
Dharmapuri.

3. The District Collector
Krishnagiri District
Krishnagiri.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to include the name of the petitioner in the list of Deputy Block Development Officer for the year 1994 and grant him notional promotion in the cadre of Deputy Block Development Officer, Block Development Officer and Assistant Director of Rural Development based on his seniority and in accordance with the order passed by this Court in W.P.No.17891/2006 dated 01.11.2006.

For Petitioner : Ms.T.Hemalatha

For Respondents : Mr.P.Rajalakshmi
Additional Government Pleader

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O R D E R

This Writ petition is filed, seeking direction to the respondents to include the name of the petitioner in the list of Deputy Block Development Officer for the year 1994 and grant him notional promotion in the cadre of Deputy Block Development Officer, Block Development Officer and Assistant Director of Rural Development based on his seniority and in accordance with

the order passed by this Court in W.P.No.17891/2006 dated 01.11.2006.

2. Ms.P.Rajalakshmi, learned Additional Government Pleader takes notice for respondents. By consent, final orders are passed in the Writ Petition at the admissions stage.

3. It is the case of the petitioner that since his name was not included in the panel of Deputy Block Development Officer for the year 1994, he filed Original Petition in O.A.No.3787/1996 on the file of Tamil Nadu Administrative Tribunal, seeking for a direction to include his name in the said panel and upon abolition of Tamil Nadu Administrative Tribunal, the original petition got transferred to this Court and renumbered as W.P.No.17891 of 2006, which was allowed vide order dated 01.11.2006, by directing the respondent to consider the appeal filed by the petitioner on 30.01.1995 for inclusion of his name in the panel of Deputy Block Development Officer for the year 1994. Despite the said Direction, the respondents have not passed any order. It is further stated that the petitioner had given a representation on 06.11.2019 as well as on 04.07.2020 to the first and second respondents. As no orders have been passed till date, the petitioner has filed this Writ Petition seeking for the aforesaid relief.

2. The learned Additional Government Pleader submits that if the order dated 01.11.2006 passed in W.P.No.17891/2005 has not been complied with, the remedy available to the petitioner is to file contempt petition and not by way of this writ petition.

3. Heard both sides. Perused the records.

4. A bare reading of the relief sought for in this Writ Petition itself discloses the fact that the present Writ Petition is not maintainable and taking note of Article 215 of the Constitution of India, contempt alone is maintainable for wilful and deliberate disobedience of the orders of this Court and it held for contempt, the properties of contemnor can also be attached in terms of the judgment of the Hon'ble Division Bench of this Court in the case of A.Sachidanandam, Macneil and Magor Kilburn Group Companies Employees' Union, Chennai vs. S.Srinivasan and others, reported in 2011 (5) LLN 696 (DB) (Mad.). Though there is a limitation of one year prescribed for invoking the provisions of Section 20 of the Contempt of Courts Act to punish the contemnor, the said provision may apply only to a criminal contempt and not to a civil contempt. If the powers of High Courts are restricted, then High Courts will be a laughing stock amongst public and the first person to make mockery of judiciary is the violator. The contemnor, who disobeyed the orders of this Court will only enjoy the fruits of

the litigation and not the person, who has got a favourable order. When Execution proceedings can be effected within twelve years, the powers of this Court cannot be curtailed, contending that the powers under Article 215 of the Constitution of India are abridged by Section 20 of the Contempt of Courts Act, as the powers under Constitution are supreme than the powers enumerated under the Contempt of Courts Act.

5. The Hon'ble Supreme Court, in the case of Elumalai and Others vs. A.G.L.Irudayaraj and Others, reported in AIR 2009 SC 2214, has elaborately discussed its powers under the provisions of Article 129 of the Constitution of India to punish for the contempt, if the disobedience or breach continues, by holding as under:

"The next question is whether for disobedience of the order passed by this Court, the respondents/contemnors are liable to punishment? In this connection, we may refer to some of the legal provisions. Article 129 of the Constitution declares this Court (Supreme Court) to be "a Court of Record having all the powers of such a Court including the power to punish for the contempt of itself". Clause (c) of Section 94 of the Code of Civil Procedure, 1908 enacts that in order to prevent the ends of justice from being defeated, the Court may, commit the person guilty of disobedience of an order of interim injunction to civil prison and direct his property be attached and sold. Rule 2A of Order XXXIX as inserted by the Code of Civil Procedure (Amendment) Act, 1976 (Act 104 of 1976) reads thus:

2A. Consequence of disobedience or breach of injunction- (1) In the case of disobedience of any injunction granted or other order made under Page 3178 Rule 1 or Rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at

the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto."

6. The question whether there is a wilful disobedience of the orders of this Court or not can be gone into by the Court only in contempt proceedings, if any such petition is moved by the petitioner and the Writ jurisdiction is not an alternative forum for the petitioner to ask for implementation of the orders of this Court dated 11.04.2019 passed in W.P.No.42 of 2015. It is not necessary that only the petitioner shall bring it to the notice of the Court about wilful and deliberate disobedience of the orders of this Court. Any beneficiary or third party can also have right to bring to the attention of this Court about the non-compliance of the orders of this Court.

7. Hence, finding no merits in the Petition, the Writ Petition is ordered to be dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Director of Rural Development & Panchayat Raj,
Panagal Building
Saidapet, Chennai 600 015.

2. The District Collector
Dharmapuri District,
Dharmapuri.

3. The District Collector
Krishnagiri District
Krishnagiri.

+lcc to Mr.V.Suthakar, Advocate, S.R.No.18070

W.P.No.6941 of 2021

GPL(CO)
RN(11/05/2021)