

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.20049 of 2020
(Heard through VC)

S.Jubithabi

...Petitioner

-vs-

1. Government of Tamil Nadu,
Rep. by the Additional Chief Secretary to Government,
Home (Prison.II) Department, Fort St.George,
Secretariat, Chennai-600 009.
2. The Superintendent,
Special Prison for Women,
Salem.
3. The Accountant General (A&E),
DMS Compound, Teynampet,
Chennai-600 018.

...Respondents

Prayer: Petition filed under Article 226 of Constitution of India to issue a Writ of Mandamus, directing the 1st respondent herein, namely, the Government of Tamilnadu, represented by the Additional Chief Secretary to Government, Home (Prison.II) Department, Fort St.George, Secretariat, Chennai-600 009, to implement the order of this Hon'ble Court dated 11.04.2019 made in W.P.No.42 of 2015 within a time frame that may be stipulated by this Hon'ble Court.

For Petitioner : Mr.K.S.Govinda Prasad

For Respondents : Mr.P.V.Selvakumar
Addl. Govt. Pleader

O R D E R

The petitioner has come forward with this writ petition, seeking a direction to the 1st respondent herein to implement the order of this Court dated 11.04.2019 made in W.P.No.42 of 2015 in a time bound manner.

2. Mr.P.V.Selvakumar, learned Additional Government Pleader takes notice on behalf of the respondents. By consent of both parties, the writ petition is taken up for final disposal at the admission stage itself.

3. According to the Petitioners, she was initially appointed as Female Escort Warder on daily wage basis on 31.12.1992 and after a long struggle, she was subsequently appointed on regular basis as Female Grade-II Warder with effect from 22.04.2009, pursuant to the orders of this Court dated 21.07.2010. It is the grievance of the petitioner that even though she obtained a favourable order from this Court on 11.04.2019 in W.P.No.42 of 2015 with regard to regularization of her service with effect from 29.09.2000, till now, no order was passed in compliance with the orders of this Court, despite sending a representation dated 30.05.2019. Aggrieved by the wilful disobedience of the orders of this Court, the petitioner has invoked the writ jurisdiction of this Court with the above relief.

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 non compliance of the orders of this Court and 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 will 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/contemners 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.

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

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

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To:

1. The Additional Chief Secretary to Government,
Government of Tamil Nadu,
Home (Prison.II) Department, Fort St.George,
Secretariat, Chennai-600 009.
2. The Superintendent,
Special Prison for Women,
Salem.
3. The Accountant General (A&E),
DMS Compound, Teynampet,
Chennai-600 018.

+1 CC to Mr.K.S.Govinda Prasad, Advocate sr 611
+1 CC to The Government Pleader sr 56

W.P.No.20049 of 2020

KK(CO)
SP(03/03/2021)

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