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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,

ACTING CHIEF JUSTICE,

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HON'BLE MR.JUSTICE V.PARTHIBAN

Contempt Petition No.571 of 2019

Retired Officials Association
(Reg.No.126/99), Rep. by its
State General Secretary,
Muthukalathy Street, Triplicane,
Chennai 600 005.

... Petitioner

vs

Mr.Pradeep Yadav,
Secretary,
State of Tamil Nadu,
School Education Department,
Fort St. George, Chennai 600 009.

... Respondent

Prayer: Petition filed under Section 11 of the Contempt of Courts Act, 1971, to punish the respondent herein for not obeying orders of this Court in Review Application No.255 of 2015 in W.A.No.959 of 2014 dated 09.12.2016.



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For the Petitioner : Mr.V.Chandrakanthan

For the Respondents : Mrs.T.Mythreye Chandru
Spl.G.P. (Edn.)

* * * * *

ORDER

(Order of the Court was made by
the Hon'ble Acting Chief Justice)

The contempt petition has been filed alleging non-compliance of the judgment passed by this Court on 09.12.2016 on a review application. In the judgment aforesaid, the following directions were given in para 38:

“38. Today, when the matters are taken up for consideration, keeping in mind the financial strain that would fall on the State exchequer in the event of implementation of the G.O., and in order to give a quietus to the issue, we feel it appropriate to fix the date as 01.03.2017 from which date onwards, the Government shall calculate and revise the pension and family pension (without arrears) based on the revised scales of pay by implementing the G.O., for which, the learned 56 Advocate General and the learned counsels appearing for the Teachers have fairly acceded to the same. Accordingly, we pass the following:



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i) *The Government is directed to implement the G.O.Ms.No.216, dated 22.3.1993 for the period between 1.6.1988 and 31.12.1995, on and from 1.3.2017 onwards in respect of all the Secondary Grade Teachers of High/Higher Secondary Schools including the Special Teachers who attained Selection grade/Special Grade during the above said period, on par with the pay scale of Primary School Headmasters; i*

ii) *Consequently, the Government shall calculate and revise the pension of those who retired from service and revise the family pension in respect of those who expired, based on the revised scales of pay in terms of G.O.Ms.No.216, dated 22.3.1993 payable on and from 1.3.2017;*

iii) *It is made clear that the beneficiaries under this order, are not entitled to the arrears of revised pay 57 scales;*

iv) *It is further made clear that the benefits as directed above, shall be extended to the parties who are before this Court alone and and no fresh Writ Petitions would be entertained on and from 09.12.2016;*

v) *The Government is directed to expedite the process of calculating and fixing the revised pension and family pension and we do hope that the Government will complete the same as early as possible without making any further delay; vi) All the matters which are at SR stage and listed before this Court are also ordered and*



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disposed of by this common order and consequently, connected MPs thereof, are ordered.”

2. The directions aforesaid were to be complied by the respondent qua the parties who were before this Court. The petitioner-association was also party to the litigation and, accordingly, its members, apart from other petitioners, were entitled to the benefits as directed in the para quoted above.

3. It is alleged that many members of the association have not been extended the benefits and, therefore, there is a willful disobedience of the directions issued by this Court. This Court may pass an appropriate order either for compliance or for punishment of the contemnor under the Contempt of Courts Act, 1971.

4. The contempt petition has been contested by the learned counsel appearing for the respondent contemnor. She submits that pursuant to the judgment of this Court, an order in compliance was passed. Despite compliance of the judgment, this contempt petition has been filed in reference to those who were



not parties to the litigation. Referring to para 38 (iv), the learned counsel submits that as per the judgment referred to above, benefits were to be extended only to those who were party to the litigation before this Court and a fresh writ petition for it was not allowed/permitted. In view of the above, those who were not parties to the litigation are not entitled to seek compliance of the judgment. Referring the list of the members given by the petitioner association, the learned counsel submits that there is nothing on record to show that they were the members of the association at the time of filing of the writ petition or as on the date of the judgment sought to be complied. In the absence of it, a case of willful disobedience is not made out and, accordingly, the prayer is to dismiss the contempt petition.

5. The learned counsel for the petitioner at this stage submits that since the list of the members of the petitioner association has now been furnished, the respondents may be directed to make a verification as to whether they were the members at the time of filing of the writ petition before this Court or at the time of passing of the judgment in the review application and, accordingly, appropriate



direction in the contempt petition may be given. After making a verification of the list of the members furnished by the petitioner association, if any of the member has not been extended the benefit, a case for contempt would be made out.

6. We have considered the rival submissions of the parties.

7. Para 38 of the judgment has been quoted in the preceding paragraph, where manifold directions were given. While sub-paras (i) and (ii) speak about the benefits to be extended, sub-para (iii) denies any consequential benefits in terms thereof and sub-para (iv) makes it clear that the judgment in review would be applicable only to the parties to the litigation. It has been further directed that fresh writ petitions would not be entertained on and from 09.12.2016.

8. In view of the specific direction referred to above, two issues would arise for our consideration. First is as to whether it is a case of willful disobedience of direction given by this Court so as to attract the provisions of the Contempt of Courts Act, 1971. Second is regarding the scope of jurisdiction of the Court under



the Act of 1971. The issues aforesaid have been formulated for the reason that, according to the petitioner, the list of members now given were the members at the time of filing of the writ petition, though from the record it is not coming out that such a list was furnished at the time of filing of the writ petition, more so while filing the writ petition on behalf of the association, the list of members should have been enclosed. In any case, even if we take a lenient view in the matter, it was obligated on the part of the petitioner to submit authenticated documents so as to show and prove that the members enlisted were the members on the date of filing of the writ petition or on the date of the judgment under review. No such document has been produced so as to take a prima facie view on non-compliance of the judgment. We cannot otherwise enlarge the jurisdiction of this court hearing the contempt petition in view of the judgment of the Apex Court in the case of ***J.S.Parihar vs Ganpat Duggar***, reported in ***(1996) 6 SCC 291***. The relevant paragraph of the judgment is quoted hereunder:-

"6. The question then is: whether the Division Bench was right in setting aside the direction issued by the learned single Judge to redraw the seniority list. It is contended by Mr.S.K. Jain, learned counsel appearing for the appellant, that unless the learned Judge



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on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the single Judge, the Division Bench corrected the mistake committed by the learned single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned single Judge when the matter was already seized of the Division Bench."

9. It was a case where the writ petition was allowed with a direction to the respondents therein to frame the seniority list. In compliance of the judgment, the seniority list was issued by the respondents, however, while deciding the contempt petition, a direction was given to formulate the list in a particular manner than drawn by the respondents while making compliance of the judgment. In an appeal before the Apex Court, the view taken in the contempt petition was not accepted. It was held that the scope of the contempt petition is quite limited. The action in compliance may be right or wrong, it can give cause of action to a new litigation, but cannot be a subject matter of contempt.



10. In view of the above, the scope in the contempt petition is quite limited.

We cannot direct the respondent to cause verification to find out whether the list of the members now furnished were the members or not. It is otherwise a fact that those who were party to the review application have been extended the benefits. In the facts and circumstances of the case, we do not find it to be a case of willful disobedience of the judgment and thereby, we close the contempt petition. There will be no order as to costs.

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

sra

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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GS/05/04/2022

To
The Secretary,
State of Tamil Nadu,
School Education Department,
Fort St. George,
Chennai-600 009.