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Cont.P. No. 517 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2022

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MS. JUSTICE N. MALA

Contempt Petition No. 517 of 2021

K. Chandramohan,
733, KPL Nagar,
Kadachanullur Panchayat,
Thiruchengodu Taluk,
Namakkal

... Petitioner

Vs.

Mr. Lakshaman,
The General Manager,
Tamil Nadu State Transport
Corporation (Salem) Limited,
Salem Region,
Salem.

... Respondent

Prayer: Petition under Section 11 of the Contempt of Courts Act,
1970/71 to punish the respondent for wilful disobedience of the order
passed by this Court in W.A. No. 1713 of 2013 dated 03.12.2014.

For Petitioner :: Mr.J. Pradeep

For Respondent :: Mr.A. Sundaravadanan

O R D E R

The petitioner has come forward with the present contempt petition
contending that the order of this Court dated 03.12.2014 in W.A. No. 1713



of 2013 has not been complied with.

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2. Learned counsel for the petitioner drew the attention of this Court to paragraph Nos. 3 & 4 of the order passed in the writ appeal, which reads thus:

“3. When the matter was pending before this Court, the Director of Government Examinations was directed to verify the correct Date of Birth of the first respondent and on verification, the learned Special Government Pleader was informed by the Directorate of Government Examinations, through communication dated 01.08.2014 stating that the first respondent's correct Date of Birth was 10.04.1970 and not 14.10.1970. Even if his Date of Birth was taken as 10.04.1970, the respondent was within the age of appointment as he belongs to Backward Class Community and due to the ban order issued by the Government in the year 2001, the upper age limit was enhanced to five years.

4. Hence, we are of the view that the order of the learned Single Judge needs no interference. Therefore, this Writ Appeal is dismissed and the appellant Management is directed to implement the order of the learned Single Judge



*within a period of four weeks from the date of receipt of a
copy of this order.....”*

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3. The petitioner was appointed as a conductor on daily wages by the Corporation vide proceedings dated 14.03.2008 and his services were regularised with effect from 01.02.2009. Pursuant to the charge memo dated 23.09.2010 alleging that the petitioner had tampered with the records with regard to his date of birth, a detailed enquiry was conducted based on which he was removed from service on 21.02.2011.

4. The learned Single Judge came to the conclusion that the writ petitioner along with others had tampered the records and thereby gained entry into service. However, holding that the punishment imposed is disproportionate to the nature of misconduct, the learned Single Judge by order dated 02.11.2012 directed the authorities to take a fresh decision with regard to modification of punishment within a period of three months from the date of receipt of the order dated 02.11.2012 in W.P. Nos. 7223, 7243 & 7246 of 2011.

5. Aggrieved by the order of the learned Single Judge, the Transport Corporation preferred an appeal being W.A. No. 1713 of 2013 against the order dated 02.11.2012 in W.P. No. 7223 of 2011 by impleading the Tamil Nadu State Board of School Education as a party to the writ



appeal vide order dated 11.04.2014. Though it was brought to the notice of the Division Bench that the petitioner's correct date of birth was 10.04.1970 and not 14.10.1970, the Division Bench was of the view that even if his date of birth was taken as 10.04.1970, the petitioner was within the age of appointment as he belongs to Backward Class Community and due to the ban order issued by the Government in the year 2001, the upper age limit was enhanced to five years. While holding so, the Division Bench has neither interfered with the punishment nor interfered with the order of the learned Single Judge directing the employer to impose a lesser punishment. When the matter stood thus, the employer has imposed the punishment of stoppage of increment for a period of 5 years with cumulative effect, which has not been challenged by the petitioner.

6. The respondent in the contempt petition would submit that the order of this Court has been complied with and as contended by the petitioner, the punishment has also been imposed and that the contempt petition is not at all maintainable. Moreover, the petitioner cannot file a contempt petition to have a Damocle's Sword hanging on the head of the employer even after the order of this Court has been complied with. In the counter, it is stated that the contempt petition has been filed belatedly and in terms of Section 20 of Contempt of Courts Act, proceedings for contempt



will have to be initiated within a period of one year from the date of disobedience. It is further stated in the counter that in case of any disobedience, they tender unconditional apology and they are willing to comply with the orders of this Court, if any passed.

7. Heard both parties.

8. The facts narrated supra are not in dispute. As rightly contended by the respondent, this Court cannot traverse beyond the order passed in the writ petition or writ appeal. Moreover, in contempt proceedings, the Court cannot give a different order or direction unless the Court comes to the conclusion that the respondent is guilty of contempt. Prima facie, we are of the view that there is no contempt made out. As long as the order in the writ appeal, in particular, paragraphs 3 and 4, stand as it is, we cannot punish the respondent for wilful and deliberate disobedience of the orders of this court. The employer ought to have acted in a fair manner, more so, as a model employer when the Court came to pass an order in favour of the petitioner holding that petitioner was within the age for appointment even if his correct date of birth was taken into account.

9. However, we cannot agree with the contention of the respondent that the contempt is belated. The powers of this Court under Article 215 of the Constitution of India cannot be curtailed by Section 20 of



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the Contempt of Courts Act. The Registry cannot refuse to number the contempt quoting Section 20 and it is for the Bench to decide whether contempt is made out or not.

10. Since contempt has not been made out, we close the contempt petition, however, giving liberty to the petitioner to challenge the order of punishment imposed on him on 25.04.2015 apart from giving liberty to the petitioner to file a review against the order in W.A. No. 1713 of 2013 dated 03.12.2014.

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

nv

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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GS/06/06/2022