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Contempt Petition Nos.1667 & 1668 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Contempt Petition Nos.1667 and 1668 of 2021

S.Ebinezar,
Junior Assistant,
L.M.C. Higher Secondary School,
Pidari West Street,
Sirkazhi 609 110

... Petitioner in Cont.P.No.1667 of 2021

T.Gabriel Sathiyaseelan,
Record Clerk,
L.M.C. Higher Secondary School,
Pidari West Street,
Sirkazhi 609 110

... Petitioner in Cont.P.No.1668 of 2021

vs.

1. K.Mathivanan
Chief Educational Officer,
Nagapattinam Educational District,
Nagapattinam.

2. N.Kumar,
District Educational Officer,
Sirkazhi Education District,
Sirkazhi 609 110,
Nagapattinam District.

3. P.Samson Gilbert,
Correspondent,
L.M.C. Higher Secondary School,
Pidari West Street,
Sirkazhi – 609 110.

... Respondents

Contempt Petitions filed under Section 11 of the Contempt of Courts

Act, 1971, praying to punish the Respondents for wilful disobedience of the

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common order dated 16.02.2021 passed by this Court in W.P.Nos.3139 and 3144 of 2021.

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For Petitioner in both cases : Mr.G.Sankaran

For Respondents in both cases : Mrs.S.Mythreye Chandru,
Special Government Pleader

COMMON ORDER

These Contempt Petitions are filed praying to punish the Respondents for wilful disobedience of the common order dated 16.02.2021 passed by this Court in W.P.Nos.3139 and 3144 of 2021.

2. When the matter was taken up for hearing, learned counsel for the Petitioners submitted that, Writ Appeal Nos.2575 and 2587 of 2021 respectively, have been preferred by the Petitioners herein, challenging the common order under contempt, and the same are pending.

3. Applying the principle of Doctrine of Merger, the writ Petitioners can file contempt proceedings against the judgment passed in the Writ Appeals, if so advised, before the Hon'ble Division Bench of this Court, and the Single Judge who has passed the order cannot deal with the Contempt Petition initiated by the Petitioner.

4. At this juncture, it would be worth referring to the decision of the Apex Court in the case of **Kunhayammed & Others -vs- State of Kerala & Another, (2000 (6) SCC 359)**, wherein, the principle of Doctrine



of Merger has been widely discussed. Relevant portion of the said decision is usefully extracted hereunder:

“32. It may be that in spite of having granted leave to appeal, the Court may dismiss the appeal on such grounds as may have provided foundation for refusing the grant at the earlier stage. But that will be a dismissal of appeal. The decision of this Court would result in superseding the decision under appeal attracting doctrine of merger. But if the same reasons had prevailed with this Court for refusing leave to appeal, the order would not have been an appellate order but only an order refusing to grant leave to appeal.

41. Once a special leave petition has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. The order impugned before the Supreme Court becomes an order appealed against. Any order passed thereafter would be an appellate order and would attract the applicability of doctrine of merger. It would not make a difference whether the order is one of reversal or of modification or of dismissal affirming the order appealed against. It would also not make any difference if the order is a speaking or non-speaking one. Whenever this Court has felt inclined to apply its mind to the merits of the order put in issue before it though it may be inclined to affirm the same, it is customary with this Court to grant leave to appeal and thereafter dismiss the appeal itself (and not merely the petition for special leave) though at times the orders granting leave to appeal and dismissing the appeal are contained in the same order and at times the orders are quite brief. Nevertheless, the order shows the exercise of appellate jurisdiction and therein the merits of the order impugned having been subjected to judicial scrutiny of this Court.

42. To merge means to sink or disappear in something else; to become absorbed or extinguished; to be combined or be swallowed up. Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the



5. In similar circumstances, the Apex Court in yet another decision in the case of **Dineshan, K.K. vs. R.K.Singh and another, [(2014) 16 SCC 88]**, has held as under:

“9. We have carefully perused the decision of this Court. A reading of the judgment would certainly indicate that when the civil appeals and the special leave petitions are dismissed with reasons, the orders passed by the courts below would merge with the judgment and order passed by this Court. The said decision has been followed by this Court in a catena of subsequent judgments of this Court.

10. In view of what has been said by this Court in the aforesaid decision, we cannot hold that the judgment and order passed by the High Court has not merged with the judgment and order passed by this Court when the civil appeal filed by the petitioner complainant was dismissed.

12. We requested Shri K.K. Venugopal and Dr Rajeev Dhavan, learned Senior Counsel to assist us in the matter. Their view on the second question is that undoubtedly the order passed by this Court, while accepting the judgment and order passed by the courts below, would merge with the judgment and order passed by the courts below. ...”

6. With reference to the three-Judge ruling in **Kunhayammed** case, a two-Judge Bench in the above case of **K.K.Dineshan**, in exercise of the powers under Articles 129, 136 and 142 of the Constitution of India, has directed the complainant therein to approach the High Court. This Court is of the view that, once the order passed in a Writ Petition gets merged with the order of the Writ Appeal, the remedy available to the Petitioner is to file a



Apex Court specifically directs the High Court to decide the issue.

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7. Thus, in view of the principle of Doctrine of Merger discussed above, **these Contempt Petitions cannot be adjudicated and hence, they are closed.**

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

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//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

from 25th day of September 2008 the Registry is issuing Certified copies of the Orders/Judgments/Decrees in this format.

GS/30/05/2022

To

1. The Chief Educational Officer,
Nagapattinam Educational District,
Nagapattinam.
2. The District Educational Officer,
Sirkazhi Education District,
Sirkazhi 609 110,
Nagapattinam District.