



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.04.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Orders Reserved On 22.04.2022	Orders Pronounced On 28.04.2022
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Cont.P.(MD) No.115 of 2021

R.Paul Murugan .. Petitioner/Petitioner

-vs-

1.S.Emperumal
The District Educational Officer,
Vallioor, Tirunelveli District.

2.K.Srinivasan
The Block Educational Officer-II,
Vallioor,
Tirunelveli District. .. Respondents/Respondents

Prayer:- Petition under Section 11 of Contempt of Courts Act to punish the respondent for willful disobedience of order passed by this Court in W.P.(MD) No.7472 of 2020 dated 27.07.2020.

Prayer in WP(MD). 7472 OF 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorified Mandamus, to call for the records relating to impugned proceedings of second respondent herein in Na.Ka.No.90/2020 dated.16.06.2020 and quash the same and consequently direct the repondents herein to step up the pay of the petitioner on par with petirioners juniors with effect from 05.12.2016 with all monetary benefits.

For Petitioner : Mr.T.Pon Ramkumar
For Respondents : Mr.G.V.Vairam Santhosh
Additional Government Pleader



O R D E R

This Contempt Petition is filed to punish the respondents for their willful disobedience of the orders passed by this Court in W.P.(MD) No.7472 of 2020 dated 27.07.2020.

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2. This Court, after adjudication, passed final orders in the writ petition on 27.07.2020 and the operative portion of the judgment reads as under:-

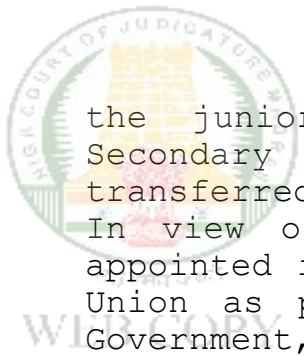
"13.Resultantly, the impugned order is set aside and the matter is remitted back to the respondents for reconsideration. By making such reconsideration, the respondents shall borne in mind that from the date of appointment till the date the petitioner reached the position of Primary School Headmaster, the petitioner is ahead of the individual one Kanagaraj. However, the latter is getting higher pay than the petitioner. It should be considered and rectified by removing the disparity of pay between these two. Necessary order to that effect shall be passed by the respondents within a period of eight(8) weeks from the date of receipt of a copy of this order.

14.With the above direction, this Writ petition is disposed of. No costs."

3. The learned counsel appearing on behalf of the petitioner contended that the order of this Court passed in the writ petition has not been implemented properly. Though the 1st respondent has passed an order in proceedings dated 30.09.2020, pursuant to the orders passed in W.P(MD) No.7472 of 2020, the said order is not as per the directions issued by this Court in the writ petition. Thus, the respondents have committed contempt of Court.

4. It is contended that the manner in which this Court directed the respondents to decide the matter has not been implemented by the respondents. Contrarily, the respondents have rejected the claim of the writ petitioner by stating that each union is a separate unit and therefore, the Teachers who all are appointed and working in the same union alone are eligible to claim stepping up of pay on par with the junior and therefore, the claim of the writ petitioner cannot be stepped up on par with his junior.

5. The order passed by the 1st respondent dated 30.09.2020 reveals that as per the orders of this Court in W.P.(MD) No.7472 of 2020, proposals were sought for and re-considered by the authorities pursuant to the remand order passed. The respondents found that the petitioner, who is senior in service, was appointed in another Union as Secondary Grade Teacher and thereafter, by way of transfer, he was posted at Vallioor Union as Secondary Grade Teacher. Similarly



the junior in service Thiru.Kanagaraj was also appointed as Secondary Grade Teacher in some other union and thereafter, transferred to Vallioor Union and joined as Secondary Grade Teacher. In view of the fact that both the senior and the junior were appointed in another union and thereafter, transferred to Valliyoor Union as per the orders of the Head of the Department and the Government, stepping up of pay cannot be granted.

6. The learned counsel for the petitioner attacking the said observations in the order dated 30.09.2020, drew the attention of this Court with reference to Para 11 and 12 of the orders passed in W.P.(MD) No.7472 of 2020. Relying on the observations, the learned counsel for the petitioner reiterated that the observations are in favour of the petitioner and even in such circumstances, the petitioner is entitled for stepping up of pay and therefore, the orders passed by this Court have been violated.

7. No doubt, throughout the order, this Court has made several observations including the orders passed in other writ petitions also. No doubt, all are observations and finally, the Court passed an order remitting the matter back to the respondents for re-consideration. Further, the Court has said that the authorities should keep in mind that the petitioner is ahead of the individual one Kanagaraj and that the said Kanagaraj is getting higher pay than the petitioner. However, it is stated finally that necessary orders to be passed by the respondents.

8. Question arises in a case where the Court remitted/remanded the matter back for re-consideration to the authorities, whether the observations made would attract the provisions of the Contempt of Courts Act or not.

9. This Court is of the considered opinion that orders of the Court are to be implemented in its letter and spirit by the executives. However, certain observations made by the Courts undoubtedly are to be taken into consideration, if the matters are remanded back for fresh consideration by the competent authorities, but such observations cannot be construed as a positive direction for the purpose of strict implementation, as the observations are to be taken as guiding factors and cannot be conclusive, as the Courts have not adjudicated such issues on merits with reference to the documents and evidences and given a clear finding. Therefore, the observations are distinguishable from the orders issued by the Courts. Orders are to be implemented scrupulously. In the present case, the order passed by the Court is remanding the matter back to the authorities for fresh consideration. Thus, it is to be considered whether the authorities have reconsidered the issues and passed an order or not. To that extent alone, the contempt proceedings can be dealt with. Consideration cannot travel further so as to consider the observations as mandatory for the purpose of contempt against the executives.



10. The very purpose and object of remanding/remitting the matters back to the competent authorities provides scope for such authorities for fresh adjudication of the issues on merits and in accordance with law. When the authorities are conferred with the power of re-adjudication by way of remand, then there cannot be any restriction for such re-adjudication, as such adjudications are expected to be done with reference to the documents and evidences as well as the grounds raised between the parties. Therefore, the observations made while remanding the matter are to be considered as guiding factors and cannot be construed as mandatory directions. The mandatory direction is issued on remand for fresh consideration. Thus, it is sufficient if an order is passed by considering the issues afresh. The Court cannot test the validity of such orders passed by the competent authorities. The validity is to be tested separately by way of a fresh litigation. While re-adjudicating the issues pursuant to the remand order passed by the High Court, the authorities may form a different opinion based on certain documents or evidences. Even if the same order has been passed without any application of mind, then also, contempt cannot be a way out, as non-application or incorrect adjudication cannot be a ground for initiation of contempt proceedings. The scope of contempt proceedings is to be limited only to the implementation of the orders passed by this Court and it cannot be extended for the purpose of re-adjudication of issues with reference to the observations made by the Courts.

11. To invoke the provisions of the Contempt of Courts Act, wilful disobedience regarding the implementation of the orders must be established. If any positive directions/orders are passed by the Courts, then the authorities are bound to implement the same in its letter and spirit. In those circumstances, non-implementation would attract the provisions of Contempt of Courts Act. However, in a case where the Courts have remanded the matter back to the authorities for fresh consideration, then such authorities are empowered to consider the issue as a whole afresh and even in case, the authorities have committed some error or repetition or otherwise, while reconsidering the issues, the same would not attract the provisions of Contempt of Courts Act, but may provide a fresh cause for filing a writ petition. Thus, the litigants cannot file contempt proceedings for the purpose of implementing certain observations made in the orders by the Courts. Those observations are made by the Courts mostly based on the averments made in the affidavit or based on the arguments advanced by the respective learned counsels. When the Court thought fit to remand the matter for fresh adjudication with reference to the documents and evidences, the authorities are empowered to adjudicate all issues on merits and in accordance with law and even in case of erroneous order is passed, the same would not attract the provisions of the Contempt of Courts Act.



12. For the reasons stated in the aforementioned paragraphs, this Court has no hesitation in forming an opinion that the petitioner has not established any wilful disobedience of the order of remand passed by this Court and accordingly, the Contempt Petition stands dismissed.

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Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The District Educational Officer,
Vallioor, Tirunelveli District.

2.The Block Educational Officer-II,
Vallioor, Tirunelveli District.

+1 CC to M/s.SPL.GP (SR-23268[F] dated 02/05/2022)

Order made in
Cont.P.(MD) No.115 of 2021
28.04.2022

gm(CO)

GC(01.06.2022) 5P 4C