



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Cont. P. (MD) No.548 of 2022

M.Parimala

... Petitioner/Petitioner

Vs.

Balathandayuthapani
The Chief Educational Officer,
Tuticorin District.

... Contemnor/Respondent

Prayer: Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971, to punish the contemnor/respondent for wilful deliberate disobedience of the order passed by this Court in W.P. (MD) No.11684/2020 dated 22.09.2020.

Prayer in WP(MD) . 11684/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Ceriorarified Mandamus or any other appropriate Writ or order or direction in the nature of Writ calling for the records pertaining to the order passed by the 6th respondent in his proceedings in Na.Ka.No.11/2019 dt.14.6.2019 and consequently order passed by the 4th respondent in his proceedings in Na.Ka.NO.286/a2/1a dt.2.8.2019 and quash the same and consequently direct the respondents to grant incentive increment for higher qualification of M.Ed., with all consequential benefits

For Petitioner : Mr.H.Mohammed Imran
for Mr.K.Hema Karthikeyan

For Respondent : Mr.S.P.Maharajan
Special Government Pleader

O R D E R

This contempt petition is filed to punish the respondent for their wilful disobedience of the order of this Court passed in W.P (MD)No.11684 of 2020 dated 22.09.2020.



2.This passed an order on 22.09.2020 as under:

"21.In the result, the impugned orders are quashed and the matter is remitted back to the respondents especially, fourth respondent, who shall re-consider the same and pass necessary orders after verifying the original certificates for M.Ed., obtained by the petitioner for advance incentive increment, as she claimed and accordingly, orders to that effect shall be passed within a period of six weeks from the date of receipt of a copy of this order.

22.With this direction, this writ petition is ordered, accordingly. No costs. Consequently, connected miscellaneous petition is closed."

3.The learned counsel for the petitioner relied on the observations made by the petitioner and has contended that the relief has been granted to the petitioner and taking into consideration of those findings of this Court, the respondents have passed an order in a mechanical manner, reiterating the very same reason, which has been stated in the earlier order.

4.The learned counsel for the petitioner is of an opinion that the authorities have repeated the same grounds, which results in disobedience of the order of this Court. Thus, the respondents are to be punished under the Contempt of Court Act.

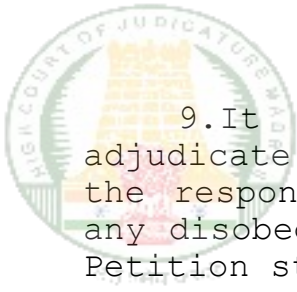
5.The learned Special Government Pleader appearing on behalf of the respondent objected the said contentions by stating that in compliance of the order of this Court, the service particulars of the writ petitioner was verified by the competent authority and a decision was taken and order was passed in proceedings dated 01.03.2021 Therefore there is no wilful disobedience of the order of this Court. Thus, the contempt petition is to be rejected.

6.This Court is of the considered opinion that the scope of contempt proceedings cannot be extended for the purpose of adjudication of issue on merits. The Courts are bound to consider whether there is any wilful disobedience of the order of this Court or not. No doubt, certain observations are made in favour of the petitioner. However, all such observations are subject to verification of records by the competent authorities, that exactly the reason why this Court passed an order of remanding the matter back for fresh consideration. Whereas in the matters remanding for fresh consideration, the parties are at liberty to look into the records and take independent decision on merits and in accordance with law. Even non application of mind, with reference to certain issue cannot invoke contempt proceedings under the Contempt of Court Act. In the event of adjudication of such issue, which will result in deviation of this scope of the contempt proceedings under the Contempt of Courts Act, the Courts are expected to find the issue with reference to the wilful disobedience as contemplated under the Act.



7. 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.

8. 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 issues 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.



9.It is made clear that the petitioner is at liberty to adjudicate the issue on merits and in accordance with law. However, the respondents have not committed any contempt and not committed any disobedience of order of this Court. Accordingly, this Contempt Petition stands dismissed.

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Sd/-

Assistant Registrar (Amin I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

Balathandayuthapani
The Chief Educational Officer,
Tuticorin District.

+1 CC to M/s.SPL.GP. (SR-21907[F] dated 27/04/2022)

Cont. P. (MD) No.548 of 2022

26.04.2022

MGJ(01.06.2022) 4P 3C