



Cont.P(MD)No.374 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.08.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **BATTU DEVANAND**

Cont.P.(MD)No.374 of 2020

in

W.P.(MD)No.10915 of 2019

P.Gnana Pragasam

... Petitioner/ Petitioner

Vs.

1.Pradeep Yadav, I.A.S.

The Secretary to the State of Tamilnadu
Department of School Education,
Fort St. George,
Chennai - 600 009.

2.Muthupalanichamy

The Director of Teacher Education Research and Training Education,
DPI Campus,
College Road,
Chennai - 600 009.



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3.Boobala Anto

The Principal

District Institute of Education and Training

Munanjipatti,

Tirunelveli District.

4.Dr.Ponnu

The Correspondent,

Oliyasthanam Teacher Training Institute,

Palayapettai,

Tirunelveli District.

... Contemnors/Respondents

PRAYER: Petition filed under Section 11 of the Contempt of Courts Act, to punish the contemnors/respondents for their deliberate and willful disobedience of the order of this Court made in W.P.(MD)No.10915 of 2007, dated 03.12.2012.

For Petitioner : Mr.K.Ragatheeshkumar
for M/s.Issac Chambers

For Respondents : Mr.J.Ravindran,

Senior Counsel



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Mr.Veerakathiravan

Senior Counsel

Assisted by Mr.V.Nirmal Kumar - for R1 to R3

ORDER

This Contempt case has been filed complaining willful disobedience of the order, dated 03.12.2012 in W.P.(MD)No.10915 of 2007 in true letter and spirit.

2. On behalf of Respondent No.1, affidavits and additional affidavits have been filed along with material papers.

3. Heard Mr.K.Ragatheesh Kumar, learned counsel for the petitioner and Mr.Veerakathiravan and Mr.J.Ravindran, learned Senior Counsel assisted by Mr.V.Nirmal Kumar, learned counsel appearing on behalf of the respondents and perused the materials available on record.



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4. While allowing the Writ Petition on 03.12.2012, this Court directed the respondents to regularize the service of the petitioner w.e.f. 01.04.1979 on par with that of the similarly placed persons and extend the monetary benefits by passing suitable orders within a period of eight weeks from the date of receipt of a copy of the order.

5. The learned counsel for the petitioner submits that the order of the Court is not complied with in true letter and spirit and the petitioner's service was regularized by the respondents only on 19.03.2021 and monetary benefits are not paid as per the observation of this Court, dated 20.10.2021 in this Contempt case. As such the respondents are liable for punishment under the provisions of Contempt of Courts Act for the willful disobedience of the Court order.

6. On the other hand, the learned Senior Counsel would submit that against the order of the learned Single Judge, dated 03.12.2012, the respondents have filed a Writ Appeal and it was dismissed on 05.08.2019 and thereafter, on 19.03.2021 the petitioner's



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service was regularized and immediately monetary benefits were settled on par with the similarly situated persons w.e.f. 30.06.2006 and as such there is no willful disobedience on the part of the respondents in complying with the order and sought for dismissal of the Contempt case.

7. Having heard the submissions of the respective counsels and on carefully gone through the materials on record, this Court is of the prima facie view that the order of this Court is not complied with in true letter and spirit by the respondents and issued statutory notice directing the respondents to appear before the Court by order, dated 05.07.2023.

8. Accordingly, on 19.07.2023, all respondents present before this Court and sought time to comply with the order in toto. Now the respondents issued G.O.(Ms) No.92, School Education (ER&T) Department, dated 20.07.2023 to extend the monetary benefits w.e.f 27.01.2000 to 29.06.2006 and also placed a certificate from the Principal, District Institute of Education and Training, Munanjipatti,



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Tirunelveli District, wherein, it is stated that a sum of Rs.1,38,486/- has been credited to the petitioner's account on 28.07.2023 as per G.O.Ms.No.92, dated 20.07.2023.

9. On perusal of the Order Sheet of this case, it appears that earlier on 05.02.2021, a statutory notice was issued to the respondents. However, liberty is granted to file a petition for dispensing with the appearance of the contemnors along with the compliance report, if the order is complied with. But the order is not complied with. The first respondent filed dispensed with petition. Again the case is adjourned to 19.03.2021 for reporting compliance, failing which, for the appearance of the first respondent on 19.03.2021. Considering the request of the respondents that due to Election Model Code of Conduct, the G.O was not issued, posted to 01.04.2021 for reporting compliance and for issuing of Government Order.

10. On perusal of the G.O.(1D)No.52, dated 19.03.2021, though the petitioner's service was regularized from 01.04.1979,



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restricted the monetary benefits from the date of his retirement, this Court came to *prima facie* opinion that it is a Contempt of Court and directed the first respondent to clarify the issue and file an appropriate affidavit to that effect and adjourned the case to 09.04.2021. Thereafter, this case disappeared from the list. Only on 20.10.2021, this case is listed. On that date, the Court expressed its view that denying monetary benefits atleast from 2000 is not warranted. Then, the learned Government Advocate appearing for the respondents sought for an opportunity to correct the mistake. Accordingly, this case is adjourned for one week for filing fresh affidavit and passing an order in tune with the directions of the Court in its letter and spirit. Thereafter, it appears that the order is not complied with and affidavit is also not filed.

11. On 05.07.2023 after hearing both sides and on perusal of the entire records, this Court issued statutory notice to all the respondents to appear in person on 19.07.2023. On 19.07.2023 the respondents No.1 to 3 present before the Court and sought time till 24.07.2023 to comply with the order. On 24.07.2023 the respondents



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again sought time to issue modified order in compliance of the order of the Court. On 31.07.2023, the first respondent filed his affidavit along with G.O.Ms.No.92 School Education Department, dated 20.07.2023. In the said affidavit, he contended that he served as Principal Secretary to Government, School Education Department from 26.08.2017 to 09.02.2020. Thereafter, he was transferred from School Education Department. In the said affidavit, it is stated that against the order dated 20.10.2021 in this Contempt Case, they filed Contempt Appeal in C.A. (MD)No.05 of 2023, which was dismissed on 18.07.2023, as no appeal lies against the order dated 20.10.2021 passed in the Contempt Petition. It is also averred in the said affidavit that in order to comply with the order of this Court, the Government issued G.O.(P)No.92, School Education (ERT) Department, dated 20.07.2023, whereby, monetary benefit was given from 27.01.2000 to 29.06.2006 as directed by the Court.

12. On careful perusal of the entire materials available on record, it is an admitted fact that the service of the petitioner was



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regularized by order, dated 19.03.2021. Though the Writ Appeal filed by the respondents was dismissed on 05.08.2019, they did not regularize the service of the petitioner immediately in compliance of the order of this Court. To settle the monetary benefits also there is an abnormal delay made by the respondents. Only after issuance of the statutory notice, the respondents have complied with the order in toto. As such, this Court has no hesitation to hold that the respondents did not comply the order of the Court in true letter and spirit till 20.07.2023.

13. The learned Senior Counsel would submit that with regard to delay caused in regularizing the service of the petitioner that in view of Covid-19 situation, the respondents could not process with the file immediately and due to that reason, the delay occurred in regularizing the service. With regard to delay in settling the monetary benefits, the learned Senior Counsel contended that in fact in the similarly situated persons their monetary benefits are settled from only 30.06.2006, as they are still continuing in service and in the light of the directions of the learned Single Judge to consider the case of the



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petitioner on par with the similarly placed persons, they settled the monetary benefits initially w.e.f 30.06.2006 only. After considering the observations recorded by this Court in Contempt case on 20.10.2021, learned Senior Counsel would submit that against the observation in this Contempt case, dated 20.10.2021 the respondent preferred a Contempt Appeal and the same was dismissed on 18.07.2023.

14. On careful perusal of the proceedings sheet, dated 20.10.2021 in the opinion of this Court, it is not an order passed in this Contempt case. As rightly opined by the Division Bench while dealing with the Contempt Appeal, it is an observation of the Court. Besides this, on 20.10.2021, the respondents, themselves have sought time to correct their mistakes. Filing Contempt Appeal against the proceedings, dated 20.10.2021 of the Court is nothing but an abuse of process of law by the respondents.

15. In the affidavit filed by the first respondent it is contended that he served as Principal Secretary to Government, School



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Education Department, from 26.08.2017 to 09.02.2020. Thereafter, he was transferred to some other Department. Admittedly, while disposing the Writ Petition this Court passed order on 03.12.2012 and against this order the respondents filed Writ Appeal and it was dismissed on 05.08.2019. As such, it is clear that as on the date of the dismissal of the Writ Appeal, the first respondent was holding the post of Principal Secretary to School Education Department and he continued till 09.02.2020. As such it is his responsibility to implement the order of the Court dated 03.12.2012 and he cannot escape from liability saying that he was transferred to some other place.

16. For the above stated reasons, in our considered view, there is an abnormal delay on the part of the respondents in complying the order of the Court, dated 03.12.2012 in true letter and spirit and as such, the respondents are found guilty of the Contempt of the Court.

17. At this stage, the learned Senior Counsel submitted that the respondents have tendered their unconditional apology for the delay



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in implementing the order through their affidavits and requested to accept their unconditional apology. This Court declined his request to accept unconditional apology, in view of the facts and circumstances of the case and by observing the conduct of the respondents and however, this Court expressed its view that if the respondents are ready to do any social work, thereafter, the Court can consider their request, as accepting the apology of the respondents is at discretion of the Court.

18. The learned Senior Counsel requested passed over, to get instructions from his client. Till raising of the Court, he did not turned up. At the time of raising the Court, the Advocate on record for respondents sought adjournment, as they could not contact the respondents. Under those circumstances, this Court asked the Advocate on record for respondents to file an undertaking affidavit to that effect before the Court by next date of hearing and adjourned to 02.08.2023.

19. Today, the learned Senior Counsel appearing for the first respondent submitted that his submissions recorded at paragraph No.12

12/19



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are not made by him and sought to delete the same. Accordingly, the sentence started at the second sentence at paragraph No.12 is deleted.

20. The learned Senior Counsel appearing for the respondents submits that as already order of the Court is complied with and the respondents tendered their apology requested this Court to close the Contempt Petition.

21. But on perusal of the admitted facts in this case that though this Court passed favourable order in favour of the petitioner, while allowing the Writ Petition on 03.12.2012, without complying the same, the respondents filed Writ Appeal in W.A.(MD)No.1147 of 2013 in the year 2013 and the same was dismissed on 05.08.2019. Even after dismissal of the Writ Appeal also they did not implement the order of the Court. Only on 19.03.2021, the petitioner service was regularized. With respect to implementation of the second limb of the order to settle the monetary benefits, the respondents made several attempts to defeat the order of the Court including filing Contempt Appeal against the



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observation of this Court made on 20.10.2021, though they are aware that the Contempt Appeal is not maintainable. Only after dismissal of the Contempt Appeal on 18.07.2023 and only after issuance of the statutory notice on 05.07.2023 only they complied the order of the Court on 24.07.2023 by issuing modified order.

22. On careful consideration of the facts and circumstances of the case and the attempts made by the respondents to defeat the order of the Court, in my opinion, the unconditional apology tendered by the respondent Nos.1 to 3 is not acceptable to the Court as it is not bonafide.

23. In the opinion of the Court, if any lenient view is taken against such type of officers, who are not implementing the orders of this Court, years together, and implementing Court orders only after directing their appearance before the Court, in the opinion of this Court, it will send wrong message to such type of Government officers.



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24. A Four Judge bench of the Hon'ble Apex Court in *Mulkh Raj vs. State of Punjab* made the following observations which would throw considerable light on the question before us:

“Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace apology is shorn of penitence. If apology is offered at a time when the contemnor finds that the Court is going to impose punishment it ceases to be an apology and it becomes an act of a cringing coward. The High Court was right in not taking any notice of the appellants expression of apology “without any further word”. The High Court correctly said that acceptance of apology in the case would amount to allow the offender to go way with impunity after having committed gross contempt.”

25. On perusal of the record, it is clear that the fourth respondent is not responsible for the delay occurred in this issue. Only after passing appropriate orders by the respondents 1 to 3, the fourth



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respondent will send the bills for settlement of the monetary benefits. As such, in our considered view, the fourth respondent has not committed Contempt of the Court. Accordingly, Contempt case is dismissed as against the fourth respondent.

26. Therefore, this Court holds that the respondent Nos.1, 2 and 3 are liable for punishment under the provisions of Contempt of Court Act, 1971.

27. Accordingly, the Contempt Case is allowed against the respondent Nos.1, 2 and 3 and this Court passes the following order:

a) The Contemnor Nos.1 to 3 / Respondents 1 to 3 are sentenced to undergo simple imprisonment for two (02) weeks and to pay fine of Rs.1,000/- each (Rupees one thousand only), in default, they shall undergo simple imprisonment for three days.

b) The Contemnor Nos.1 to 3 /respondents 1 to 3 are directed to surrender before the Registrar



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(Judicial), Madurai Bench of Madras High Court,
Madurai, on or before 09.08.2023 for taking further
action in accordance with the provisions of Contempt
of Courts Act, 1971 and Rules made thereunder.

02.08.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes / No

RM



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To
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The Secretary to the State of Tamilnadu
Department of School Education,
Fort St. George,
Chennai - 600 009.
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BATTU DEVANAND, J.,

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