

(2011) 07 MAD CK 0286

Madras High Court

Case No: Contempt Petition No. 843 of 2010

V. Kaliaperumal

APPELLANT

Vs

Smt. Amudhavalli The Chief
Educational Officer and
Chairman and Mr. Perumalsamy
The Director of School Education

RESPONDENT

Date of Decision: July 1, 2011

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: M. Thamizhvel, for the Appellant; R. Ravichandran, Additional Government
Pleader, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.

This Contempt Petition is filed for the alleged disobedience of the order dated 12.08.2004 passed by this Court in W.P. No. 9432 of 1999. By the aforesaid order, this Court allowed the writ petition by setting aside the order dated 30.03.1999 passed by the Chief Educational Officer cum Chairman, South Arcot District Mobile Medical Inspection Van Committee, Cuddalore and directed the first Respondent to regularise the service of the Petitioner and the Petitioner shall continue in the post held by him prior to his termination. The said order was to be complied within two months.

2. While allowing the writ petition, this Court, in para 4 of the judgment, had observed as follows:

4. It is not in controversy that the Petitioner was appointed as a driver under the Mobile Medical Inspection Van of the first Respondent on 2.9.76 and he continued to serve till 31.3.99 without any break. The order of the first Respondent which is

challenged was served on him stating that the service of the Petitioner was terminated and it has its effect from 1.4.99 (F.N.). The contention of the Petitioner side that the termination order was served without calling for explanation and without giving opportunity of hearing, is not disputed by the Respondent side. Hence, in short it has to be stated that the order of termination which is under challenge is an outcome of violation of principle of natural justice and on that account, it has got to be set aside. The contention of the Respondent is that the van which was attached to the first Respondent Medical Committee was condemned and under such circumstances, the Petitioner service was no more required and hence, his service was terminated, cannot be accepted for the reason that it was a Mobile Medical Inspection Committee which has to serve throughout the District in order to conduct the medical check up for the students in the High School and Higher Secondary Schools. It is also not in dispute that for the medical inspection, a special fee of Rs. 1/- is collected from each student and that the performance of duties and responsibilities of the first Respondent cannot be stopped and it has to be continued. Even, from the very averments made in the counter, it could be seen that steps were taken to purchase a new vehicle with the permission of the Director of School Education, Madras. Under such circumstances, it is evident that vehicle is not in good condition and it has got to be repaired or a new vehicle has to be purchased. However, the duty of the Committee has to be performed without break. It is stated in the counter affidavit that as soon as the vehicle was purchased, the Petitioner will be again appointed as driver on a consolidated pay. Now, at this juncture, it is not the case of the Respondent that a new van has not been purchased or the committee of the Mobile Inspector is abruptly stopped. Therefore, the order of the first Respondent has got to be quashed for the reason that the principles of natural justice has been flouted.

3. As against the aforesaid order of this Court, the Respondents preferred a writ appeal in W.A. No. 1 of 2005 before this Court. The writ appeal was dismissed by a Division Bench of this Court on 26.03.2008. While dismissing the writ appeal, the Division Bench held as follows:

7. ...The case of the Respondent in their counter as well as from the argument of the learned Government Pleader was to the effect that till the time the new vehicle is purchased the Petitioner cannot be given employment, which also is not an acceptable reason. It is the duty of the Committee to look after the scheme moving without any break as rightly pointed out by the learned single Judge. Therefore, we are of the considered view that the order passed by the learned single Judge is justifiable as the order passed by the 1st Respondent dated 30.03.1999 was against the canons of natural justice and therefore, we find no reason to interfere with the order of the learned single Judge dated 12.08.2004 passed in W.P. No. 9432 of 1999. Accordingly, the writ appeal is dismissed.

4. Though the Respondents preferred a review application in Rev. Apln. No. 16 of 2009, the same was dismissed by this Court on 17.02.2010. In paras 2 and 3 of the said order, it was stated as follows:

2. Mr. S. Gopinathan, learned Additional Government Pleader appearing for the applicants would contend that the prayer in the writ petition was only to quash the order of termination and for a consequential direction to reinstate the Respondent. Nevertheless, the learned Judge, while disposing the writ petition, had directed the regularisation of the services of the Respondent herein. Inasmuch as the direction is beyond the scope of the writ petition, it should be reviewed.

3. In our opinion, the said contention cannot be accepted at this stage. The very same argument was available to the applicants when the writ appeal was heard and this question was not raised and the writ appeal also confirmed the order of the learned single Judge. Nevertheless, we are informed that the order in the writ appeal has not been given effect to and there is no proper order of reinstatement of the Respondent. We are further informed that the Respondent is attending the office of the first applicant and he is paid only a sum of Rs. 1,500/- This compliance of the order, in our considered opinion, is not in conformity with either the order in the writ petition or the order in the writ appeal. When the order has not been complied with, the review which is sought on new ground cannot be entertained. Accordingly, the review application is dismissed.

The Petitioner has now come forward to punish the Respondents.

5. When the matter came up on 25.04.2011 and 06.06.2011, this Court directed the Respondents to inform this Court the nature of the Scheme under which the Van was purchased.

6. In the meanwhile, the first Respondent has passed an order dated 03.12.2010 granting salary to the Petitioner for the period from 01.10.1999 to 31.10.2010 a sum amounting to Rs. 6,47,749/- and also paid the same by way of a cheque to the total amount of Rs. 6,84,035/-. They have initially filed a counter affidavit dated 06.01.2010 stating that the Petitioner was unwilling to receive the cheque and they were ready to issue the cheque. A photocopy of the cheque was also produced before this Court.

7. Subsequently, a further counter affidavit dated 14.06.2011 was also filed. In the counter affidavit, the first Respondent had stated that she is only a Chairman of the Committee and by virtue of her post, she has to oversee the functioning of the Medical Inspection Committee comprising of the Medical Officer and Driver and it is not a Government body and no financial assistance was sanctioned to the Committee by the Government. The Committee's functions were fully met by collection of Re.1/- from each of the student studying in High Schools and Higher Secondary Schools. The Committee was also not competent to raise the rate of fee. The entire collection raised from the students were spent for paying salary to the

Petitioner. When there being no work, the vehicle was out of road on 31.03.1999 and obeying the orders of this Court, they have paid a total sum of Rs. 7,29,363/- related to the period from 01.04.1999 to 30.04.2011, being the date of his superannuation. It was also stated that during the year 2010-2011, there were 1,43,909 students and hence, a sum of Rs. 1,43,909/- was realised from the students. The salary of the Petitioner for the month of April 2011 was Rs. 11,332/- and his entire salary dues works out to Rs. 1,35,984/-. It is only Rs. 7,925/- was left for essential expenditures. In any event, the order of this Court has been complied with and they have also tendered unconditional apology, if there was any delay in making the payment.

8. Though the learned Counsel for the Petitioner contended that the amounts paid were not commensurate with the salary paid to him, this Court is not inclined to accept the same. In a contempt petition, the only question to be considered is whether there was any will disobedience of the orders passed by this Court. Though at this stage, this Court cannot go behind the merits of the orders passed by this Court, but yet it can be said that complying with the orders of this Court, substantial amounts have been paid to the Petitioner, without doing any work and he had also reached the age of superannuation. Therefore, it cannot be said that there was willful disobedience of the orders passed by this Court. Even otherwise, when an order passed by this Court become impossible of compliance, then a person cannot be punished on account of the alleged disobedience.

9. It must be noted that the Supreme Court vide its judgment in Mohd. Iqbal Khanday Vs. Abdul Majid Rather, has held that impossibility of performance can be a legitimate defence in the contempt petition. The following passages found in paragraphs 14 to 16 of the said judgment may be usefully reproduced below:

14. The law of contempt is based on sound public policy by punishing any conduct which shakes the public confidence in the administration of justice. The order dated 21-9-1992 while directing notice also required the Appellant to accord promotion to the Respondent as Associate Professor. It requires to be noticed here that is the main prayer in the writ petition itself. In such circumstances, the correctness of such an interim order is open to serious doubt. For a moment, it is not to be understood that the court has no power to pass such an order but the question is whether while granting such interim reliefs the discretion of the court has been correctly exercised? If the writ petition is ultimately dismissed, the Respondent would have gained an undue advantage of getting a promotion undeservedly. But we are not on the merits of the interim order.

15. Right or wrong, the order has been passed. Normally speaking, it cannot be gainsaid that the order ought to have been obeyed but it appears that there are insuperable difficulties in implementing the order. First is that the post of Associate Professor, according to the Respondent, is a selection post. Secondly, the mere seniority, even if that is assured in favour of the Respondent, would not be enough

to gain such a promotion. Thirdly, the specific order of the Government was to exclude the period of deputation on foreign assignment from reckoning the duration of the teaching experience of the Respondent. Therefore, the Respondent did not possess the requisite qualification. Fourthly, such necessary qualifications seem to be mandatory under the rules. That being the position to accord such a promotion, will be violative of the rules. Fifthly, the promotion could be granted only by the Public Service Commission and not by the Appellant.

16. From the above, it appears that the Appellant was expressing his genuine difficulties with regard to the implementation of the order dated 21-9-1992. In such a situation the insistence of the courts on implementation may not square with realities of the situation and the practicability of implementation of the court's direction. In our considered view, hooking a party to contempt proceedings and enforcing obedience to such orders hardly lends credence to judicial process and authority; more so, in the peculiar facts and circumstances of the case. The court must always be zealous in preserving its authority and dignity but at the same time it will be inadvisable to require compliance of an order impossible of compliance at the instance of the person proceeding against for contempt. Practically, what the court by means of the contempt proceedings seeks is an execution which cannot meet with our approval.

10. In the light of the same, the contempt petition stands dismissed.