(2014) 09 MAD CK 0165

Madras High Court

Case No: Cont. P. No. 1711 of 2012 in W.P. No. 13067 of 2005 and Sub Appln. No. 602 of 2012

S. Joseph Raj — APPELLANT

Vs

P.K. Misra — RESPONDENT

Date of Decision: Sept. 24, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 47 Rule 1
- Constitution of India, 1950 - Article 136, 141, 21
- Contempt of Courts Act, 1971 - Section 12, 13(a)

Citation: (2014) 7 MLJ 129

Hon'ble Judges: S. Rajendran, J; P.N. Prakash, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

P.N. Prakash, J.
"Knock with faith, the doors of heaven will open to you" proclaimed Christ, the son of Joseph. Alas! Joseph Raj, the petitioner herein, has been relentlessly knocking the doors of the Government in vain and he continues to be in hell without employment.

2. In this contempt application, the petitioner is seeking to indict the above named four respondents for willful disobedience of the order dated 30.04.2009 passed by a Division Bench of this Court in W.P. No. 13067/2005. The matter came up for admission on 11.12.2012 and notice was issued to the respondents. On receipt of notice by the respondents, memo. of appearance was filed by Mrs. R. Maheshwari, learned Senior Central Government Standing Counsel on their behalf.

3. Mr. P.K. Misra, the first respondent and Mr. V.P. Pandey, the fourth respondent have filed a detailed counter affidavit. Mr. V.P. Pandey has stated in his counter

affidavit that he has filed it on behalf of the respondents 2 and 3 also. The first respondent also filed his typed set of papers along with the counter affidavit.

4. We heard the arguments of Mr. Singaravelan, learned counsel for the petitioner and Mr. P. Wilson, learned Additional Solicitor General for Mrs. R. Maheshwari, learned Senior Central Government Standing Counsel for the respondents.

5. During conclusion of either side arguments, we felt that it will be better if the alleged contemnors are directed to appear in person, so that we could ascertain from them if there are any administrative difficulties in implementing the directions issued by this Court. We did not want to merely pass final orders in this Contempt Application by going through the averments in the counter affidavit and hearing the learned Additional Solicitor General for the respondent. From our experience we know that, in Government Service, the Officer who passed the impugned order may not always be in the same seat when the matter reaches the stage of final adjudication in the Court. Bearing all these factors in mind, we passed an order on 30.01.2014 directing the contemnors to be present in the Court, so that we could hear their difficulties, if any, and pass appropriate orders in the open Court.

6. As requested by the learned Additional Solicitor General, we posted the case to 12.02.2014 at 2.15 p.m. On 12.02.2004, Mr. P. Wilson, the then learned Additional Solicitor General represented that, our order dated 30.01.2014 was stayed by the Hon''ble Supreme Court in SLP (Civil) No. 4498/2014. Therefore, we adjourned the case. After final orders were passed by the Supreme Court in Civil Appeal No. 5894/2014 [arising out of SLP (C) No. 4498/2014] on 01.07.2014, this Contempt Application was once again listed before us.

7. In the meantime, due to change of Government in the Centre, Mr. G. Rajagopalan, learned Additional Solicitor General appeared for the respondent and submitted his arguments, based on the order passed by the Hon''ble Supreme Court on 01.07.2014. He submitted that the order dated 30.04.2009 in W.P. No. 13067/2005 [which is the subject matter of this Contempt Application] had merged with the order of the Supreme Court in SLP (C) Nos. 14962-14963/2010 dated 14.02.2012 and therefore, this Contempt Application before this Court is not maintainable and that, the petitioner should have approached the Hon''ble Supreme Court, if he is aggrieved. In support of this contention, learned Additional Solicitor General relied upon the judgments of the Supreme Court in:

(1) Chandi Prasad and Others Vs. Jagdish Prasad and Others,); and

(2) Kunhayammed and Others Vs. State of Kerala and Another,

where the ''Doctrine of Merger'' has been elaborately discussed.

8. Per contra, Mr. Singaravelan, the learned counsel for the petitioner submitted that on the facts of this case, the "Doctrine of Merger" will not apply and he relied upon the following judgments:

(1) Omprakash Verma and Others Vs. State of Andhra Pradesh and Others,

(2) Commissioner of Central Excise, Delhi Vs. Pearl Drinks Ltd.,

(3) S. Nagaraj (dead) by LRs. and Others Vs. B.R. Vasudeva Murthy and Others etc. etc.,

9. On a careful analysis of the citations referred to by both sides, we find that the three Judge Bench of the Hon''ble Supreme Court in Kunhayammed and Others Vs. State of Kerala and Another, is the bedrock case on the law pertaining to "Doctrine of merger". We are extracting paragraph 44 of the said judgment, where the conclusions are catalogued.

"44. To sum up, our conclusions are:

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the

declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 C.P.C."

10. In this case, aggrieved by the order dated 30.04.2009 in W.P. No. 13067/2005, the Union of India filed Special Leave Petition in Special Leave to Appeal (civil) Nos. 14962-14963/2010 before the Hon''ble Supreme Court. While these SLPs were pending, the Director, Defence Research and Development Organisation passed an order dated 14/15 July 2009 appointing the petitioner to the post of STA "A" (Library Science), in compliance with the order dated 30.04.2009 in W.P. No. 13067/2005 passed by this Court. The order of the DRDO dated 14/15 July 2009 was not brought to the notice of the Supreme Court and it was suppressed. The Hon''ble Supreme Court did not grant Special Leave to Appeal and instead, disposed the Special Leave to Appeal (Civil) Nos. 14962-14963/2010 on 14.02.2012 by holding that, there are no grounds to interfere in the order dated 30.04.2009 passed by the High Court. In other words, leave was not granted by the Supreme Court and the Special Leave Petitions were disposed of at that stage itself by giving two months'' time to the Union of India to do the needful. Applying the parameters laid down in paragraph 44[iv] and [v] in Kunhayammed case cited above, it is crystal clear that, the order of this Court dated 30.04.2009 has not merged with the order dated 14.02.2012 passed by the Hon''ble Supreme Court refusing to grant leave in Special Leave to Appeal (Civil) Nos. 14962-14963/2010. Suffice to say that the other judgments relied upon by the learned counsel for the petitioner have followed the law laid down in Kunhayammed case and hence, we are not quoting therefrom.

11. The learned Additional Solicitor General submitted that the Hon''ble Supreme Court in the order dated 01.07.2014 has held that the High Court''s order had merged with the order of the Supreme Court in SLA(Civil) Nos. 14962-14963/2010 and therefore, this Contempt Application is not maintainable. We are not able to countenance this argument, because in the last paragraph of the Hon''ble Supreme Court''s order it is clearly stated as follows:

"In view of the aforesaid discussion we set aside the impugned order dated 30th January, 2014 passed by the High Court in Contempt Petition Nos. 1710 and 1711 of 2012 with liberty to the High Court to pass appropriate order in accordance with law, after notice and hearing the parties. The appeal is allowed with aforesaid observations."

12. In our considered opinion, the Hon''ble Supreme Court was aware of the law laid down in Kunhayammed case and that is why they have not completely quashed the proceedings before this Court and have instead sent the matter to this Court to pass appropriate orders in accordance with law after notice. The Hon''ble Supreme Court has only set aside the order dated 30.01.2014 passed by us directing the alleged contemnors to appear before us. Therefore, we are not insisting on the appearance of the alleged contemnors before us.

13. We once again heard Mr. R. Singaravelan, learned counsel for the petitioner and Mr. G. Rajagopalan, learned Additional Solicitor General for the alleged contemnors again, as directed by the Hon''ble Supreme Court.

14. Next, we proceed with the adjudication in this Contempt Application.

15. For the sake of convenience, we would like to refer the petitioner as Joseph Raj and the respondent as Union of India.

16. Joseph Raj was appointed on 13.08.1985 as Clerk-cum-Store keeper initially on ad hoc basis through the Employment Exchange in the Combat Vehicles Research and Development Establishment (For short ''CVRDE'') under the Ministry of Defence, Government of India. He was given the postings on 26.08.1985 in the CVRDE School, Avadi, Madras and he was subsequently regularized. He acquired his B.Com. Degree and Master of Library and Information Science in the year 1990 and 1997 respectively. When the post of Librarian fell vacant in the above said School, he applied for the post as Departmental candidate and was selected as Librarian on merits. It appears that CVRDE School was started with the sanction of His Excellency, the President of India vide No. 96617/CVRDE/RD-2/5609/D(RND) dated 15.07.1978. Some time in 2001, a decision was taken to close the School and the employees were served with notice of termination of service dated 01.08.2001 proposing to terminate the service with effect from 01.09.2001. Aggrieved by this decision, about 18 employees including Joseph Raj moved the Central Administrative Tribunal, Madras Bench in O.A. No. 592 of 1990 challenging their termination. The respondent took the plea that the School was not established by the Government of India, but it was established by CVRDE Employees'' Educational Society and that further the petitioners are not Government Servants as there was no post sanctioned for the petitioners. The Tribunal by order dated 26.04.1991 held as follows:
"From the facts and averments made by the counsel it is clear that the school has been run by the respondents departmentally until the formation of the CVRDE Educational Society very recently. Until that time there has been no legal entity set

up by the respondent to run and manage the school. The order dated 5.2.1982, which we have reproduced earlier, clearly shows that the expenditure on the school was directly debited to the Defence R & D organisation under the Government''s Budget sub-head "Expenditure on Educational facilities". It has also been specifically stated in the aforesaid letter that the entire expenditure on the running of the CVRDE Primary School is compliable under this head with effect from the financial year 1981-82. It is further stated in the letter dated 13.3.1984 from the respondents to the Secretary CBSE, referred to earlier that the School has been charging a nominal sum of Rs. 5/- per student per month towards the pupils fund as is in vogue in the Central Schools and no separate tuition fees are being levied. Thus the contention that the school was partly being run out of tuition fees is not correct. The entire budget for running of the school is being sanctioned by R & D Hqrs. There is therefore no substance in the contention of the respondent that the school was not a government school. It is thus clear that the status of the CVRDE school has been that of a school run from public funds. It is different from other schools run by the Ministry of Defence from non public funds."

Ultimately the Tribunal held:

"Therefore, while we cannot direct the respondent to run the school departmentally and to regularise the applicants on a permanent basis as government servants, we direct the respondent to ensure that the applicants are given the terms and conditions hither-to applicable to them, and wherever these have not been specified, to the terms and conditions applicable to the teachers and staff of the Kendriya Vidyalaya Sanghatan, while absorbing them as members of CVRDE School, Avadi, to be run by the CVRDE Educational Society, Avadi."

17. Since this case arose before L. Chandrakumar judgment, (the appeals had to be filed only in the Apex Court at that point of time and not in the High Courts) the matter was taken by the Union of India to the Supreme Court in SLP Civil No. 11083-84/91 and the same came to be dismissed on 22.07.1991. Thereafter, the petitioner was appointed as Librarian in the CVRDE School by order dated 25.07.1995 on probation for a period of two years. It may be relevant to mention here that the petitioner''s pay as Librarian was fixed under Central Civil Services (Revised Pay) Rules, 1997. As things were going on smoothly, once again adversity visited the petitioner in the form of notice of termination of service dated 01.08.2001 on the ground that the CVRDE School is going to be closed. For the second round of litigation by the petitioner and similarly placed employees and teachers of the School who approached the Central Administrative Tribunal, Madras Bench in O.A. Nos. 440 to 445, 436 and 568 of 2001 batch, the respondents once again began their old story by contending that the School was not started by the Central Government and it was purely a private School run with grant in aid from the DRDO and controlled by a Committee and that the petitioner is not a Government servant. The Tribunal considered all the arguments in extenso and after relying upon the order

dated 26.04.1991 in O.A. No. 592 of 1990 held as follows:

"16. From the above decision, it is clear that the applicants can be treated as Government servants though the school is running by public funds. It is admitted by both sides that even though there was a proposal to transfer the school to the Society, the same could not be materialised and even now the school is running by management Committee while it was started in 1978. The learned counsel for the applicant has also produced before us documents to substantiate the above point."

After giving such a finding, the Tribunal did not give any substantial relief in the O.A. to the petitioners, but recorded the submissions of the Government which is as follows:

"In view of the above, we are of the view that we cannot give a direction as prayed for. At the same time, we make it clear that an abrupt closure of the school is a heavy loss to all the applicants. It is only appropriate on the part of the respondents to see that they are placed in some of the employment. For the said purpose, the learned counsel for the respondents submitted that even now they are prepared to recommend the names of the applicants whenever the applicants apply for any job and whatever assistance they can provide will be provided. We record the said submission of the learned counsel for the respondents."

This submission was recorded and the O.A. was disposed of by saying:

"(iii) Regarding those applicants who are not Teachers, what are their rights consequent to abolition of posts, they are permitted to agitate the same in accordance with law and if any other authority take the view that they are entitled to more compensation, the compensation paid pursuant to closure and on the basis of this order will adjusted in that claim and the balance alone will be payable.

(iv) We are sure that the respondents will honour their commitment as recorded in paragraph 25 above."

18. Since the Tribunal had not granted any substantial relief, Joseph Raj filed W.P. No. 20552/2001 in the Madras High Court. Similarly the employees aggrieved by the order of the Tribunal also filed writ petitions in W.P. Nos. 20179 to 20182, 20187 to 20190 and 20549 to 20556 of 2001. After notice to the Union of India, a Division Bench of this Court disposed of the writ petitions by order dated 13.03.2003 as follows:

"2. In fact, in the course of the hearing of the original application before the Central Administrative Tribunal (hereinafter referred to as ''the tribunal''), the status of the petitioners as government servants was seriously challenged by the respondents herein. However, the tribunal reached the conclusion that they were all government servants and the fact remains that the respondents have not chosen to challenge the said conclusion of the tribunal. Be that as it may. The tribunal, however, held that the decision of the concerned authorities to close down the school was a bona

fide decision made in good faith. The tribunal also felt that there was no scope for giving any direction to provide alternative employment to the applicants before it. The tribunal, nevertheless, held that all the applicants were entitled to the benefits as are provided in the service conditions including reasonable compensation which is to be paid to them. A time limit of one month was prescribed by the tribunal from the date of its order. The tribunal also gave certain other directions in its order dated 26.9.2001. When these writ petitions were pending in this Court, it was represented on behalf of the petitioners that they will be satisfied if they are allowed to work out their benefits as per the scheme framed under the Provisions of the C.C.S. (Re-deployment of Surplus Staff) Rules, 1990.

3. Mr. Velusamy, learned Senior Central Government Standing Counsel has also fairly stated that when once the petitioners have been declared to be government servants by the tribunal under the order impugned, it will be open for the petitioners to make their representations invoking the above said rules to the Department of Personnel and Training and that as and when such representations are made, the same would be considered in accordance with the said rules and the schemes framed thereunder.

4. Having regard to the above said stand of the parties as represented before us, we hereby direct that the petitioners shall make their representations to the Department of Personnel and Training within two weeks from today and on such representations being presented, the same shall be considered and disposed of in accordance with the above said rules as well as the schemes framed thereunder within eight weeks thereafter. These writ petitions are disposed of with the above directions. No costs."

19. The fond hope expressed by the Tribunal and this Court that the Union of India will give the benefit to Joseph Raj as per C.C.S. (Re-deployment of Surplus Staff) Rules, 1990 stood belied by the order of the Government of India, Ministry of Personnel and Public Grievances and Pensions Department dated 13.02.2004 which states:

"After considering all aspects, Division of Retraining and Redeployment is of the view that your request for alternative employment under C.C.S. (Re-deployment of Surplus Staff) Rules, 1990 cannot be acceded to, since the existing rules do not cover your claims."

The Union of India reiterated in the said letter dated 13.02.2004 that CVRDE School was not a Government school and therefore, its employees were not Government servants. It is strange as to how the Union of India could continue to maintain such an opinion in the teeth of the unequivocal and categorical findings of the Tribunal in the earlier applications and by the High Court. It may be recapitulated that the Hon''ble Supreme Court had dismissed the SLP filed against the order of the Central Administrative Tribunal, Madras bench in O.A. No. 592/2090 way back on

26.04.1991. Even thereafter, if the Union of India is going to take a plea that CVRDE School is not established by the Government and therefore, the employees are not Government servants, what does it smack of? We do not want to use any harsh words because sobriety is the hall mark of judicial wisdom. One another reason stated in the order dated 12.02.2004 for denying benefit to Joseph Raj is that the Ministry of Defence has challenged the High Court''s order dated 13.03.2003 in the Supreme Court of India and the same is pending.

20. Reverting to the narration of facts, Joseph Raj once again commenced the third round of litigation before the Central Administrative Tribunal, Madras Bench in O.A. No. 854 of 2002 challenging the order dated 12.02.2004. Once again the respondent started the same story contending that CVRDE School is not a Government School and the petitioner is not a Government servant and therefore, he cannot claim any benefit under the C.C.S. (Re-deployment of Surplus Staff) Rules, 1990. The Tribunal by order dated 07.04.2004 in O.A. No. 854 of 2002 rejected the respondent''s contention and directed that the petitioner''s case should be considered for employment under the C.C.S. (Re-deployment of Surplus Staff) Rules, 1990. Though the Tribunal passed an order in favour of Joseph Raj, the respondents kept him in limbo on the ground that they have filed W.P. No. 27559 of 2004 before this Court challenging the order of the Tribunal in O.A. No. 854 of 2002.

21. In the meantime, there was an advertisement for the post of Senior Technical Assistant, - A (Library Science) in the School run by the CVRDE, for which Joseph Raj applied based on his past services and by invoking the provisions under the C.C.S. (Re-deployment of Surplus Staff) Rules, 1990. Since the respondents denied him the said appointment, he once again knocked the doors of the Tribunal for the fourth time in O.A. No. 69 of 2004. In this proceedings also the respondent took the plea that CVRDE School is not a Government School and Joseph Raj is not a Government servant. Once again the Tribunal negatived the plea and directed the respondents to consider the case of Joseph Raj to the post of Senior Technical Assistant - A (Library Science) under the C.C.S. (Re-deployment of Surplus Staff) Rules, 1990 and also consider his appointment on the basis of the past services rendered by him in the School run by the CVRDE from 26.08.1995 to 31.08.2001. This order in O.A. No. 69 of 2004 was passed on 10.02.2005.

22. Thereafter, W.P. No. 27559 of 2004 filed by the Union of India against the order of the Tribunal in O.A. No. 854 of 2002, came up for final hearing before a Division Bench of this Court on 04.04.2005 and this Court rejected the plea of the Union of India and directed that the order in O.A. No. 854 of 2002 should be implemented and Joseph Raj should be given employment by considering him under the C.C.S. (Re-deployment of Surplus Staff) Rules, 1990. This Court had given a caveat in that order, namely that the order will be subject to the result of SLP Nos. 903 to 918 of 2004 filed by the Union of India against the common order dated 13.03.2003 passed by the Division Bench of this Court in W.P. No. 20552 of 2001 filed by Joseph Raj and

the connected writ petitions filed by other petitioners.

23. The Union of India filed a fresh writ petition in W.P. No. 13067 of 2005 challenging the order of the Tribunal dated 10.02.2005 passed in O.A. No. 69 of 2004 in favour of Joseph Raj, wherein the Union of India was directed to consider the case of Joseph Raj to the post of Senior Technical Assistant - A, (Library Science) under the C.C.S. (Re-deployment of Surplus Staff) Rules, 1990. Again in this writ petition, the story that CVRDE School is not a Government School and Joseph Raj is not a Government servant was taken and the writ petition was dismissed on 30.04.2009 confirming the order of the Tribunal. In this writ petition also the Division Bench said that the appointment will be subject to the disposal of the SLP Nos. 903 to 918 of 2004 filed by the Union of India in the Supreme Court of India.

24. Since the Hon''ble Supreme Court of India had not granted stay of this Court''s order in the Special Leave Petitions, the Union of India by order dated 14.07.2009 appointed Joseph Raj to the post of Senior Technical Assistant – A (Library Science) under the C.C.S. (Re-deployment of Surplus Staff) Rules, 1990, subject to of course the result of the said Special Leave Petition in the Supreme Court. Here we would like to extract the order dated 14.07.2009 because hair splitting arguments resting on semantics was advanced by Mr. P. Wilson, the then learned Additional Solicitor General on behalf of the Union of India.

Consequent to the Hon''ble Madras High Court order dated 30.04.2009 in W.P. No. 13067 of 2005 and WPMP No. 14296 of 2005, your case is considered for selection to the post of STA ''A'' (Library Science) under CCS (Re-deployment of Surplus Staff) Rules, 1990. However, your appointment to the post of STA ''A'' (Library Science) is subject to the result of the SLP pending on the file of the Hon''ble Supreme Court of India."

25. The joy of Joseph Raj was very short lived because when he reported to the duty at Hyderabad, he was not permitted to assume duty and was kept away without giving any written communication. Such things are heard of in private employment where employers physically prevent employees with henchmen. What can an ordinary citizen of this Country do when the mighty Government gives an order in one hand and prevents the person to perform his duty? Therefore, Joseph Raj sent a detailed representation dated 24.07.2009 complaining that he was not allowed to join duty by the Chief Administrative Officer on the ground that SLP in the Supreme Court is pending. This has not been denied by the Union of India any way.

26. Now comes the subterfuge adopted by the Union of India. The Union of India has all along been telling the High Court that their SLP Nos. 903 to 918 of 2004 against the order dated 13.03.2003 is pending in the Supreme Court and therefore, they cannot re-employ Joseph Raj. SLP Nos. 903 to 918 of 2004 got converted into Civil Appeal Nos. 4666 and 4667 of 2006. These Civil Appeals were listed before the Supreme Court on 02.06.2011 and it was represented on behalf of the Union of

India Appellants in the appeal before the Supreme Court] that the appeals have become infructuous. We are extracting the contents of the order passed by the Hon''ble Supreme Court verbatim to appreciate the mindset of Union of India:

"Learned counsel for the appellants submits that in furtherance to the orders of the High Court dated 13.03.2003 and 04.04.2005, impugned in the present Appeals, the appellants have passed the order rejecting the representation moved by the respondents in the Appeals. This has been done without prejudice to their rights and contentions.

In these circumstances, the present Appeals have become infructuous and they are dismissed as such."

27. SLP No. 4666 of 2006 is against the order of this Court dated 13.03.2003 in W.P. No. 20197 of 2001 batch. In this Joseph Raj is one of the parties. This Court in that order dated 13.03.2003 has recorded the concession made on behalf of the Union of India that Joseph Raj is a Government servant as declared by the Tribunal and therefore, he will be entitled to be considered under the CCS (Re-deployment of Surplus Staff) Rules, 1990. In the light of this concession, this Court directed that the case of Joseph Raj should be considered in terms of the said Rules and the Scheme framed thereunder for re-employment. After making such a concession to this Court, the Union of India thought it fit to challenge the order dated 13.03.2003 before the Hon''ble Supreme Court contending that CVRDE School is not a Government School and Joseph Raj is not a Government Servant. True, the law does not prevent them from making such challenge even after such concession, but the wily part of it is that the Union of India has been consistently telling this Court that the benefits of CCS (Re-deployment of Surplus Staff) Rules, 1990 can be given only subject to the results in the SLP filed against the order dated 13.03.2003 because they are seriously contending before the Supreme Court of India that CVRDE School is not a Government School and Joseph Raj is not a Government servant for extending him the benefit of C.C.S. (Re-deployment of Surplus Staff) Rules, 1990. This is what this Court has also recorded in the order dated 04.04.2005 and also in the order dated 30.04.2009. Though the Tribunal has in no uncertain terms held CVRDE School is a Government School and Joseph Raj is a Government servant entitled to the benefits of C.C.S. (Re-deployment of Surplus Staff) Rules, 1990, still in the writ petitions filed by the Union of India, this Court has been very circumspect in giving relief to Joseph Raj in deference to the fact that the Union of India has challenged these contentions before the Supreme Court in SLP Nos. 903 to 918 2004 (now C.A. Nos. 4666 and 4667 of 2006). After challenging this fundamental aspect in the Supreme Court, on one fine day Union of India represented to the Supreme Court that the matter has become infructuous because the Union of India have passed orders rejecting the representation of the petitioners before the High Court. When a party who has filed a case before a Court comes and says that his case has become infructuous, then the Court will naturally believe his statement and permit

him to withdraw it or dismiss it as such. This is exactly what the Supreme Court had done.

28. In our considered opinion the Union of India appears to have made an innocuous representation with insidious intent before the Hon''ble Apex Court to create a smoke screen as if the representations have been rejected and the employee should have worked out their remedies elsewhere. That is why we are forced to call this a subterfuge.

29. We wish to once again recapitulate a parallel story which we have referred to in detail above, wherein Joseph Raj filed O.A. No. 69 of 2004 in the Central Administrative Tribunal, Chennai praying for a direction to be considered as Senior Technical Assistant-A, (Library Science) under the C.C.S. (Re-deployment of Surplus Staff) Rules, 1990. This prayer was granted by the Tribunal in O.A. No. 69 of 2004 on 10.02.2005. The Union of India challenged this order in W.P. No. 1306 of 2005 before this Court and this Court upheld the Tribunal''s order and directed Union of India to consider the case of Joseph Raj for the post of Senior Technical Assistant - A (Library Science) within two weeks from the date of receipt of a copy of this order, of course subject to the outcome of the SLP pending in the Apex Court challenging the earlier order dated 13.03.2003. In compliance with this order, the Union of India gave appointment to Joseph Raj by order dated 14.07.2009 on paper, but did not permit him to join duty. The SLP Nos. 14962-14963 of 2010 challenging the order of this Court in W.P. No. 13067 of 2005 dated 30.04.2009 came up for final disposal before the Hon''ble Supreme Court of India on 14.02.2012 and the following order is passed:

"The final direction of the High Court which is reproduced herein below:

"For the aforesaid reasons, we are not inclined to interfere with the order of the Tribunal and the writ petitioners are directed to consider the second respondent for appointment to the post of Senior Technical Assistant - A (Library Science) under the CCS (Redeployment of Surplus Staff) Rules, 1990, within a period of two months from the date of receipt of a copy of this order. However, we make it clear that his appointment is subject to the result of the case i.e., S.L.P. Pending in the Apex Court."

Against the aforesaid directions issued by the High Court, we do not find any ground to interfere.

Petitioners have only been directed to consider the case of the respondent S. Joseph Raj in accordance with Rules applicable to him. In view of this, the petitions are dismissed.

We, therefore, direct the petitioners to consider the case of the respondent, in the light of the Rules mentioned hereinabove and the previous orders passed in this regard."

30. Thereafter, the Union of India has passed the order dated 13.04.2012 stating that Joseph Raj is not eligible to be considered as Senior Technical Assistant Library Science under the C.C.S. (Re-deployment of Surplus Staff) Rules, 1990 because he is not a Government servant.

31. This Contempt Petition is filed stating that the order dated 13.04.2012 has been passed in total violation of the order dated 30.04.2009 passed in W.P. No. 13067/2005. Therefore, it is contended that the order dated 13.04.2012 amounts to willful disobedience of Court orders.

32. Notice was ordered to the Union of India and three counter affidavits have been filed. Mr. P.K. Misra, Secretary to the Government of India, Ministry of Personnel, Public Grievances and Pensions, New Delhi, who is the first respondent in the Contempt Petition, has filed a counter affidavit narrating various litigations before the Tribunal, before this Court and the Apex Court in this case. The crux of his contention can be seen from paragraphs 5 and 7 wherein, he has stated that he has not committed any contempt of the order dated 30.04.2009 passed by this Court in W.P. No. 13067 of 2005 because that order has merged with the orders of the Hon''ble Supreme Court of India in SLP No. 14962-14963 of 2010 which was disposed of on 14.02.2012 and which has been extracted by us above. According to him, the Hon''ble Supreme Court has only directed the Union of India to consider the case of the petitioner within a period of two months and therefore, the case of Joseph Raj has been considered by the order dated 13.04.2012 and is rejected. The other respondents have also filed their counter affidavit which is tune with the counter affidavit filed by Sri P.K. Misra and they also repeat the same defense.

33. The learned counsel for Joseph Raj took us through the order of the Tribunal in O.A. No. 69 of 2004, the order of this Court in W.P. No. 13067 of 2005 and the order of the Hon''ble Supreme Court in SLP Nos. 14962-14963 of 2010 and contended that the Hon''ble Supreme Court has not set aside the order dated 30.04.2009 passed by this Court and in fact, in no uncertain terms held that it is not interfering with that order. There is sufficient force in the contention of the learned counsel for Joseph Raj because in the order dated 14.02.2013 passed by the Hon''ble Supreme Court, operative portion of the order dated 30.04.2009 has been extracted verbatim and the Supreme Court has stated that:

"Against the aforesaid directions issued by the High Court, we do not find any ground to interfere."

34. Per contra, the learned Additional Solicitor General contended that the Supreme Court has not given a direction that Joseph Raj should be considered under the C.C.S. (Re-deployment of Surplus Staff) Rules, 1990, but that his case must be considered on merits within two months, which has been done by the order impugned in the contempt petition by the respondents and therefore, there is no willful disobedience of any order.

35. When it was brought to his notice that Union of India had given appointment to Joseph Raj as Senior Technical Assistant - A, Library Science under C.C.S. (Re-deployment of Surplus Staff) Rules, 1990, by order dated 14.07.2009 and now how can they take a stand otherwise, for this the learned Additional Solicitor General contended that the letter dated 14.07.2009 is not an appointment letter, but it is once again a letter assuring Joseph Raj that he is being considered for selection to the post of Senior Technical Assistant - A (Library Science). The learned Additional Solicitor General is drawing inspiration from the order dated 13.04.2012 impugned in this contempt application, wherein in para 23 it is stated:

"23. AND WHEREAS you are communicated by letter dated 14/15 July 2009 that you are being considered for selection for the post of Senior Technical Assistant-A (Library Science) subject to disposal of the Special leave Petition."

36. Therefore, a hairsplitting argument was advanced that the letter dated 14.07.2009 is only a letter, wherein it was stated that Joseph Raj is being considered for Senior Technical Assistant - A, (Library Science). Unfortunately, we are not able to subscribe to this contention of the learned Additional Solicitor General. The appointment letter dated 14.07.2009 cannot be seen in isolation but is sequel to the order dated 30.04.2009 passed by this Court, wherein it is stated that Joseph Raj should be considered for the said appointment under C.C.S. (Re-deployment of Surplus Staff) Rules, 1990 within a period of two months from the date of receipt of a copy of the order. If the Union of India wanted to deny Joseph Raj the benefit of this Court''s order dated 30.04.2009 as done now, it should have passed a similar order on 14.07.2009 instead of saying that "Your case is considered for selection, but however your appointment to the post is subject to the result of the SLP pending in the Supreme Court". Here the expression "being considered" has not been used.

37. On a bare reading of the order dated 14.07.2009 it is clear that Joseph Raj has been considered and appointed to the said post. Therefore, we are not agreeing with the contentions of the learned Additional Solicitor General on this score. As regards the further contention of the learned Additional Solicitor General that the Supreme Court had only directed to consider and pass orders within a period of two months and therefore, the Union of India has considered and rejected the case of Joseph Raj and therefore, there is no willful disobedience, we are not able to appreciate this contention too. The Tribunal and this Court have been consistently giving a finding that CVRDE School is a Government School and the case of Joseph Raj should be considered under C.C.S. (Re-deployment of Surplus Staff) Rules, 1990. The Supreme Court has not differed or disagreed with this finding in its last order dated 14.02.2012. In fact, it has clearly stated that there are no grounds to interfere with the order dated 30.04.2009 passed by this Court. In the teeth of such categorical finding if the contemnors are going to consistently sing the same song that CVRDE School is not a Government School and Joseph Raj cannot be given the

benefits under C.C.S. (Re-deployment of Surplus Staff) Rules, 1990, it clearly amounts to administrative authorities sitting in judgment over judicial orders, which can never be countenanced. Merely by passing an eight page order and reiterating the contentions which were rejected by Courts, the respondents cannot save themselves from the charge of contempt. In our considered opinion the order impugned in this contempt application shows that the respondents are stonewalling the legitimate claim of Joseph Raj which has been settled by the Courts.

38. At this juncture, the learned Additional Solicitor General referred to the stay granted by the Hon''ble Supreme Court on 20.07.2012 in Special Leave Appeal No. 19307 of 2012 against the order dated 21.03.2012 of a Division Bench of this Court in W.P. No. 26493 of 2011. Joseph Raj is not a party in W.P. No. 26493 of 2011, whereas Joseph Raj is a party to the order dated 14.02.2012 passed by the Supreme Court affirming the order of this Court dated 30.04.2009, which has been violated pursuant to which the order impugned in this Contempt Application has been passed by the respondents. In other words, Joseph Raj''s case has reached finality in the Apex Court and it is not open to the Union of India to say that his case will be considered after disposal of some one else''s case. We have said in so many words that the Contemnors'' are aware of the findings of the Judiciary that CVRDE School is a Government School and Joseph Raj is entitled to be considered under the C.C.S. (Re-deployment of Surplus Staff) Rules, 1990, but still they feigned ignorance about all these and continue to keep saying otherwise. A sleeping man can be woken, but not a man who pretends to sleep. Here the Contemnors belong to the latter category and they can never be woken up unless orders in this Contempt Application are passed. Therefore, we hold that the second and thirds respondents have willfully committed contempt of the order of this Court dated 30.04.2009 in W.P. No. 13067 of 2005 as affirmed by the Hon''ble Apex Court by order dated 14.02.2012 in SLP Nos. 14962-14963 of 2010.

39. Now we have to decide as to who all should be punished for committing willful contempt of the orders of this Court. We find that though the first respondent is the ultimate authority, he acts on the decision of the appointing authorities for regularising the services of persons so appointed. Similarly, the fourth respondent merely conveyed the decision taken by the concerned authority. Therefore, we find that there has not been any willful disobedience on the part of the first respondent and the fourth respondent in this matter. We find that the second and third respondents are the actual appointing authorities and they have been parties to all the litigations in this connection. Both of them were parties in the case filed by Joseph Raj before the Central Administrative Tribunal, Madras Bench and they were also the Writ Petitioners in W.P. No. 13067/2005, in which they were given directions by this Court, which they failed to comply. The appointment order dated 14.07.2009 was issued to Joseph Raj by the third respondent pursuant to the order of this Court dated 30.04.2009. After giving him the appointment order, they did not allow him to join duty. Thereafter, the respondents 2 and 3 suppressed this and did not apprise

the Hon''ble Supreme Court about which we have discussed in the body of this order. Therefore, we find that the second and third respondents have willfully disobeyed the orders of this Court. We do find that the second and third respondents were aware of the earlier orders passed by the Tribunal and the Courts with regard to the status of the petitioner, in spite of which they were doing everything possible to deny employment to him in gross violation of his right to live with dignity guaranteed by Article 21 of the Constitution of India.

40. Coming to the nature of punishment to be awarded to the contemnors, keeping in mind Section 13(a) of the Contempt of Courts Act, we find that the second and third respondents were doing everything within their powers to deny a just benefit to Joseph Raj. We are aware that the second and third respondents are occupying very high position in the Government, but ensconced in a pedestal, their vision became blurred when it came to the travails of an ordinary employee who was suddenly thrown out of employment, for no fault of his. Even during the course of the contempt proceedings there was no tinge of remorse or an attempt to correct the mistake. We are quoting the following expression used by the Supreme Court [though in a different context] in State of Rajasthan Vs. Surendra Mohnot, , which will be very apt to describe the attitude of the second and third respondents:

"Non acceptance of a mistake is not a heroic deed. On the contrary, it reflects flawed devotion to obstinacy. The pink of perfection really blossoms in acceptance."

Therefore, we propose to impose punishment of sentence of imprisonment on the respondents 2 and 3 for their willful disobedience of this Court''s order. In the facts of this case, we feel that merely imposing fine on the second and third respondents would be inadequate and ends of justice would be served, only if they are awarded imprisonment and fine.

41. In the result, respondents 2 and 3 are held guilty for civil contempt under Section 12 of the Contempt of Courts Act, 1971 and they are punished with Simple Imprisonment for a period of three weeks and also pay a fine of Rs. 2,000/- each personally. The Government is directed to take appropriate departmental action against them for the reckless negligence and willful disobedience of the orders of this Court, which lead to insurmountable sufferings for the petitioner for more than a decade.

42. The contemnors are directed to surrender for undergoing the punishment of imprisonment within one week from today, failing which the Registry is directed to issue warrant of commitment to prison for undergoing the sentence imposed upon them.

43. By this order, the issue has not come to an end and the liability of the petitioners/contemnors in W.P. No. 13067 of 2005 to comply with the order dated 30.04.2009, does not abate. Therefore, they are directed to comply with the order forthwith.

Accordingly, this Contempt Petition is allowed. Consequently, connected Sub Application is closed.