
(2011) 03 MAD CK 0389

In the Madras High Court

Case No : Contempt Petition No's. 1379 and 1751 of 2010 and connected Sub-Applications

M. Ravi, E. Nagalakshmi, M. Pandiselvi and G. Sukhanya

APPELLANT

Vs

K. Kaleeswarasubramanian Director Local Fund Audit
Department
V.R. Palanivel Rajan and K. Arivarasan Vs
K. Shanmugam Principal Secretary to Government Finance
Department Secretariat and Others

RESPONDENT

Date of Decision : 30-03-2011

Acts Referred:

Citation : (2011) 03 MAD CK 0389

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : R. Thiagarajan Cont. Petn. No. 1379/10 for M. Hidayathullah Khan and N.R. Chandran Cont. Petn. No. 1751/10 for K.J. Parthasarathy, for the Appellant; N. Senthil kumaran, Cont. Petn. No. 1379/10, Addl. Govt. Pleader and for R.1 to R.3 in Cont. Petn. No. 1751/10 and R. Thiagarajan Cont. Petn. No. 1751/10 for M. Hidayathullah Khan, for R.4 to R.7, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—The writ petitions in W.P. Nos. 3823 & 6508 of 2008, were filed challenging the order of the Director of Local Fund

Audit Department, Chennai-108 dated 18.12.2007, which is the inter-se seniority list, insofar as it relates to Sl. Nos. 109 to 280 and also G.O.

Ms. No. 261 Finance (Local Fund) Department, dated 24.6.2009 and the consequential temporary regularization of appointment of candidates in

Sl. Nos. 109 to 280 with retrospective effect and also for revising and refixing the seniority in accordance with the quota and rota prescribed under

the Special Rules for the post of Deputy Inspector of Local Fund Audit in both the cases and this Court by order dated 26.02.2010, disposed of

the said writ petitions and the operative portion of the order is as follows:

19. For the reasons aforesaid, these writ petitions stand disposed with the following directions:

(i) the impugned G.O. Ms. No. 261, Finance (Local Fund) Department, dated 24.06.2009 and the consequential temporary regularization order

dated 20.07.2009 in respect of S. Nos. 109 to 280 of the impugned seniority list stand quashed;

(ii) since representations as admitted in paragraph (31) of the counter affidavit have already been made, it is open to any of the Petitioners or the

Respondents or affected parties to make fresh representations within ten days from the date of receipt of a copy of this order and after the said

time stipulated, the third Respondent shall treat those representations as review petitions along with the applications already made in January, 2008

and pass appropriate orders, after hearing all parties concerned, in accordance with law within a period of four months thereafter; and

(iii) till the third Respondent passes such final orders, the impugned seniority list shall not be given effect to.

2. By the said order, this Court quashed the said Government Order and the consequential temporary regularization in respect of persons in Sl.

Nos. 109 to 280, with permission to any of the Petitioners to make fresh representation within 10 days in which event, directed the Respondent to

treat it as review and consider the same along with the applications made in January, 2008 and pass appropriate orders.

3. The Respondents 25 to 34 in W.P. No. 6508 of 2008 filed appeal against the said order in W.A. No. 862 of 2010 and the Division Bench of

this Court in M.P. No. 1 of 2010 in W.A. No. 862 of 2010 by order dated 28.4.2010 granted stay of the order insofar as it relates to quashing of

G.O. Ms. No. 261 dated 24.6.2009 in the following words:

Heard and perused.

There shall be an order of interim stay insofar as Quashing of G.O. Ms. No. 261 dated 24.06.2009.

4. The Appellants in the writ appeal, who are the Respondent Nos. 27, 28, 29 and 31 in W.P. No. 6508 of 2008 and the Petitioner Nos. 94 and

90 in W.P. No. 6508 of 2008 have filed Contempt Petition Nos. 1379 of 2010 and 1751 of 2010 respectively. It is the case of the Petitioners in

the contempt Petition No. 1379 of 2010, who are the promotees, that the Respondent viz., the Director, Local Fund Audit Department has failed

to comply with Para 19(ii) of the order since the stay granted by this Court was only for para 19(i) and that the Respondent has not chosen to

consider their representation. On the other hand, the Petitioners in Contempt Petition No. 1751 of 2010, who are the direct recruits have also

made representations on 17.3.2010 and further represented on 7.6.2010 personally and in spite of the same, the Director of Local Fund Audit due

to the threat of contempt petition filed by the Petitioners in Contempt Petition No. 1379 of 2010, issued an inter se seniority list on 17.12.2010

being a public holiday in violation of the quota, rota Rule 4:1 provided in the special rules for Tamil Nadu Local Fund Audit Subordinate Service

Rules for appointment to the post of Assistant Inspector of Local Fund Audit from two sources. Therefore, the grievance is that the inter se

seniority list issued by the Director of Local Fund Audit due to the threat of filing of Contempt Petition No. 1379 of 2010 as stated above dated

17.12.2010 is only a reproduction of the earlier seniority list published on 18.12.2007, which was struck down in W.P. No. 6508 of 2008 and

according to the Petitioners, by issuing the seniority list dated 17.12.2010 the third Respondent, viz., the Director of Local Fund Audit has not

acted as per the direction of this Court.

5. The Petitioners in the Contempt Petition No. 1751 of 2010 have also filed a Sub Application No. 7 of 2011 to implead themselves as

Respondents 2 and 3 in the Contempt Petition No. 1379 of 2010. Further, the Petitioners in the Contempt Petition No. 1751 of 2010 have also

filed a Sub Application No. 575 of 2010 to grant interim direction restraining the first Respondent from giving effect to the seniority list dated

17.12.2010 and consequentially drawing panel for promotion to the post of Deputy Inspector.

6. In the counter affidavit filed by the Director of Local Fund Audit in the Contempt Petition No. 1379 of 2010, it is stated that inasmuch as the

portion of order of this Court regarding quashing of G.O. Ms. No. 261 dated 24.6.2009 was stayed by the Division Bench, in accordance with

the second portion of the order directing him to consider the representation, the Director of Local Fund Audit considered the representation by

giving personal hearing to all and completed the entire process on 9.6.2010 and it was due to the order of stay granted by the Division Bench on

28.4.2010, the final order could not be passed by the said Respondent.

(a) It is also stated that the Division Bench has stayed the quashing of G.O. Ms. No. 261 dated 24.6.2009, which includes temporary

regularization order dated 20.7.2009 in respect of Sl. Nos. 109 to 280 and in the impugned seniority list, the date of finalisation of seniority list

based on the representation of the parties, can be done only after final orders are passed in the writ appeal since the original writ petition itself has

been filed as to correctness of the seniority list which would be the basis for awarding further promotion.

(b) It is also stated that the said Respondent has sent a detailed proposal dated 27.7.2010 to the Government for approval of the seniority list for

the posts of Assistant Inspector among the persons who were recruited directly and by promotion between 1998-99 and 1999-2000 to enable the

department to publish the same and as soon as it is received from the Government, the seniority list will be published and therefore, it is stated that

there is no willful and wanton disobedience of the orders of Court.

(c). It is the case of the Department that the original seniority list was made on 18.12.2007 among the direct recruits and the departmental

promotees and subsequently the promotion list was issued in G.O. Ms. No. 261 dated 24.6.2009 and consequential temporary regularization was

effected in respect of Sl. Nos. 109 to 280 in the order dated 20.7.2009 and the said Government Order as well as temporary regularization was

set aside but, that portion of the order passed by this Court came to be stayed by the Division Bench and therefore, the Respondent, with a view

that the original seniority list dated 18.12.2007 has to be restored, has issued the seniority list on 17.12.2010. (d) It is even admitted that both the

seniority lists are one and the same, as evident from the contention made in the Contempt Petition No. 1751 of 2010 that the seniority list dated

17.12.2010 has been drawn by reiterating the seniority list dated 18.12.2007 on the basis of threat of Contempt Petition No. 1379 of 2010.

However, it is the case of the Director of Local Fund Audit that due to the stay of the Court Order and also temporary regularization, he had no

other option but to reiterate the earlier list and therefore, according to him, there

is no willful disobedience of the order of the Court.

7. Since the Division Bench has only stayed the first paragraph of the order made in the writ petition, there was no impediment on the part of the

Director of Local Fund Audit to consider the representation of the parties. Certainly unless and until the Division Bench reaches the finality about

the correctness of the Government Order or otherwise or in fact, decides about the validity of the order passed by this Court in one way or the

other, one cannot come to a conclusion that by issuing the seniority list dated 17.12.2010, the said Director of Local Fund Audit is in willful

disobedience to the order of this Court. On the facts and circumstances of this case, one cannot presume that there is willful disobedience on the

part of the Director of Local Fund Audit.

8. In as much as the matter is at large pending before the Hon"ble Division Bench, I do not agree with the contention of the Petitioners in both

petitions that there is willful disobedience and I do not see any reason to pass any further orders for the purpose of keeping the seniority list dated

17.2.2010 suspended as an interim measure. The parties can always work out their remedy after the writ appeal is disposed of by the Hon"ble

Division Bench. In such view of the matter, the contempt petitions stand dismissed and all other applications are closed. No costs.