
(2015) 06 MAD CK 0079

In the Madras High Court

Case No : Contempt Petition No. 2704 of 2014 in W.P. No. 27961 of 2013

R.S. Narayanan

APPELLANT

Vs

Balamurugan and Others

RESPONDENT

Date of Decision : 01-06-2015

Acts Referred:

Citation : (2015) 06 MAD CK 0079

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Advocate : Dakshayani Reddy for K.H. Ravi Kumar, for the Appellant; N. Roofus Abraham, GA, Advocates for the Respondent

Judgement

R. Subbiah, J.

1. This contempt petition has been filed to punish the respondents for the willful disobedience of the order dated 11.12.2013 passed by this Court in W.P. No. 27961 of 2013 and to pass further orders.

2. The petitioner had filed Writ Petition No. 27961 of 2013 seeking for a direction to the respondents 1 to 3 to approve the appointment of the petitioner in the post of Office Assistant from the date of his initial appointment ie., from 14.05.2011 based on the proposal submitted by the 4th respondent on 18.05.2011 and the re-submitted proposal, with all consequential benefits along with arrears of pay.

3. It is the case of the petitioner that he was appointed as Office Assistant on 14.05.2011 in the 4th respondent school, in the vacancy which arose on account of the promotion given to one C.Babu. The said post is a sanctioned post. The 4th respondent school is an aided school, which is receiving grant from the Government. The petitioner is having the required qualification of 10th standard Pass to hold the post of Office Assistant as per the norms fixed under the Private School Regulation Act, 1973. Based on the school committee resolution passed on 5.5.2011, an appointment order was issued to the petitioner by the Secretary

of the 4th respondent school on 14.5.2011 for the said post. A proposal for approval of the petitioner's appointment has been sent to the 2nd respondent along with the enclosures on 18.5.2011 and the same was acknowledged by the 2nd respondent on 23.5.2011. But the said proposal was returned for want of some particulars and the same was re-submitted by the 4th respondent. Again, another communication has been sent on 18.4.2012 requesting the respondents 1 and 2 to approve the appointment of the petitioner with effect from 14.5.2011. The petitioner has also sent several representations through the 4th respondent to the 3rd respondent to approve his appointment with effect from 14.5.2011, since it is a sanctioned post. But, since no orders have been passed by the 3rd respondent, the petitioner filed the present writ petition.

4. In the writ petition, the 3rd respondent filed a counter affidavit stating that the 4th respondent school is having the post of Office Assistant, and the person who worked in the erstwhile post was promoted as Junior Assistant with effect from 11.11.2010. The said promotion was approved by the authorities on 3.9.2013. After the said promotion, the post of Office Assistant became vacant. It is the primary duty of the 4th respondent, being a non-minority school, to get prior permission to fill up the said post. But, without getting prior permission from the authorities, the 4th respondent school has filled up the post of Office Assistant. Submission of proposal for approval will not confer any right on the 4th respondent school since the appointment of the petitioner has to be approved by the authorities. It is an adopted procedure by the Government that insofar as the aided management schools are concerned, even though it is a sanctioned post, the committee constituted by the Government will review the position as to whether the vacant post in the aided school is required to be filled up. After the recommendations from the committee, the Government will order, if necessary, that the sanctioned post has to be filled up in accordance with the existing rules and regulations. Thus, the 3rd respondent sought for dismissal of the writ petition.

5. On 11.12.2013, after considering the submissions made on either side, this Court has passed the following order_

"In fine, the present writ petition is allowed and the respondents 1 to 3 are directed to approve the appointment of the petitioner in the post of Office Assistant from the date of his initial appointment i.e., from 14.05.2011, with all consequential benefits along with arrears of pay. The said exercise has to be carried out within a period of four weeks from the date of receipt of a copy of this order."

Since the above order passed by this Court has not been complied with, the present contempt petition has been filed by the petitioner.

6. In the contempt petition, the 4th respondent has filed a detailed counter statement contending that the Office Assistant post must be filled up by the approval of the respective District Educational Officer and after the approval, a

person can be appointed or otherwise the priority goes to only appointing through out sources and it is very clearly established by the orders of the Government issued in G.O. Ms.No. 525, School Education Department, dated 29.12.1997. The petitioner's father Thiru.D.Rajan, Superintendent in the Office of the Directorate of Public Instructions, had recommended that his son should be appointed as Office Assistant, having known the vacancy position of the school, from the then Interim Committee. On that occasion only, the Interim Committee was under force and the Interim Committee does not have any role at all to appoint the Teaching and Non-Teaching staff to the school. The powers are vested with the School Committee as mentioned in Rule 18(b) of Tamil Nadu Recognized Private Schools (Regulation) Act 1973 and Rule 1974. The date of appointment of the petitioner is 14.05.2011 and the order of appointment states that the resolution was passed by the Interim Committee on 05.05.2011. Within couple of days after the resolution was passed, the petitioner was appointed as Office Assistant and from a reading of the appointment order, it is very clear that there is no approval from the District Educational Officer, Chennai East. Later on, on 18.05.2011 the Secretary of the said Interim Committee sent a letter to the District Educational Officer, Chennai East to give approval to the post, to which the petitioner was appointed. The Letter dated 18.05.2011 of the Interim Committee has been returned to the Secretary with 10 queries in letter A.Thi.Mu.No. 2702/A1/2011 dated Nil.07.2011 signed by the District Educational Officer, Chennai East on 13.07.2011. But, no proper reply was received for the 10 points raised by the District Educational Officer, Chennai East and it is more important and unfortunate to submit that the then Secretary, Interim Committee vide letter dated 01.12.2011 stated that having expected the approval from the District Educational Officer, Chennai East, the petitioner was appointed as Office Assistant on 14.05.2010 itself and hence, the approval is required to fill up the Office Assistant post from 12.11.2010. This reply of the Interim Committee would show that even before the order of approval was obtained from the District Educational Officer, Chennai East, the petitioner was appointed as Office Assistant. The Interim Committee consists of the president and Secretary was not conferred with any powers to appoint a person, that too also in a sanctioned post, without following the communal rotation and without consulting the employment exchange and without getting prior approval of the District Educational Officer, Chennai East. The only criteria behind appointing the petitioner is that his father is a Superintendent in the Office of the Directorate of Public Instructions. On 18.04.2012 the Secretary of the Interim Committee sent a letter to the CEO through District Educational Officer, Chennai East replying to the DO Letter addressed by the District Educational Officer, Chennai East. In his letter A.Thi.Mu.No. 6979/A1/2011, dated 09.01.2012, the District Educational Officer, Chennai East had stated that he has already informed that the petitioner's appointment cannot be given approval since one Thiru.C.Babu was appointed by promotion as Junior Assistant, and he is drawing an Office Assistant Scale of pay and only after the full-fledged promotion given to the said C.Babu, the claim of the petitioner may be reviewed. Though the said C.Babu is holding

the post of Junior Assistant, his substantial post is only Office Assistant. Hence, the petitioner can not be considered for the post of Office Assistant, which is a sanctioned post. In fact, on 01.11.2013 itself, the petitioner's service was terminated. But, inadvertently this fact was not brought to the knowledge of this Court at the time of passing the order on 11.12.2013. Only under such situation, since the petitioner was not in service even on the date of passing the order by this Court, the respondents are not in a position to comply with the order. In fact, the 4th respondent has filed an appeal in W.A. Sr.No. 1057 of 2014, as against the order dated 11.12.2013 passed in W.P. No. 27961 of 2013; but since the petitioner's service was already terminated, the said writ appeal was not pursued.

7. The 1st respondent has also filed counter affidavit, for himself and also on behalf of the respondents 2 and 3, stating that on 18.05.2011 the Secretary of the Interim Committee submitted a request application to appoint the petitioner as Office Assistant and that was returned by the 3rd respondent in his proceedings dated 13.07.2011 issued in A.Thi.Mu.No. 2702/A1/2011. The appointment order appointing the petitioner as Office Assistant was issued by the Secretary of the 4th respondent School. But the Interim Committee does not have powers to create any post or appoint anybody else without approval of the competent authorities. The petitioner had not brought the full particulars before this Court and he has simply stated that he was appointed and the proposal sent by the 4th respondent has not been complied with. The petitioner has got no right at all to continue in the said post when the said Babu is working as Office Assistant even though he was promoted as Junior Assistant. However, the 1st respondent tenders his apology.

8. Heard the submissions made on either side and perused the materials available on record.

9. It is the submission of the learned counsel for the petitioner that pursuant to the direction given by this Court to the respondents 1 to 3 to approve the appointment of the petitioner for the post of Office Assistant, the petitioner made a representation to the respondents 1 to 3 through proper channel on 27.01.2014 along with the order copy passed in the writ petition requesting the respondents to approve the appointment of the petitioner. Since no order was passed on the petitioner's representation, the petitioner has made further representations on 05.02.2014 and 03.03.2014; but the same were also not considered by the respondents. The petitioner sent a pre-contempt notice to the respondents on 02.04.2014 which was duly acknowledged by the respondents. But, having acknowledged the same, the respondents failed to comply with the orders passed by this Court in W.P. No. 27961 of 2013, dated 11.12.2013. Despite the fact that the respondents have been put on notice about the orders passed by this Court, they are deliberately violating the orders of this Court.

10. But, it is the submission of the learned counsel for the respondents that even before the order was passed by this Court, the petitioner's service was

terminated on 01.11.2013 and the termination order was also served on the petitioner even much earlier to the order passed by this Court; only under such circumstances, the respondents are not in a position to comply with the order passed by this Court. In order to show that the petitioner's service was terminated with effect from 01.11.2013, the 4th respondent has produced the School Committee Minute Register for a perusal of this Court. On a perusal of the said Register, I find that on 09.11.2013 the School Committee has passed a resolution to withdraw the proposal sent to the Education Department for the approval of appointment of the petitioner to the post of OA, stating that there is no vacancy in the sanctioned post of OA. The relevant portion of the said Register is extracted hereunder_

Further, from a perusal of the attendance register, I find that the petitioner has signed the said register only till 18th November 2013. Hence, prima facie from the records produced on the side of the respondents, it appears that the service of the petitioner was terminated much earlier to the order dated 11.12.2013 passed by this Court in the present writ petition.

11. Since prima facie from the records produced on the side of the respondents I find that the petitioner's service was terminated much earlier to the order passed by this Court, I do not find any willful disobedience of the order of this Court on the part of the respondents. Hence, accepting the apology tendered by the respondents, the Contempt Petition is ordered to be closed. However, the petitioner is at liberty to work out his remedy as against the order of termination in the manner known to law if he so desires.