

V. Senthur vs M. Vijayakumar, Ias, Secretary Tamil ... on 1 October, 2021

Author: B.R. Gavai

Bench: B.R. Gavai, L. Nageswara Rao

REPORTABLE

IN THE SUPREME COURT OF INDIA
INHERENT/CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION (CIVIL) NO. 638 OF 2017
IN

CIVIL APPEAL NO. 4954 OF 2016

V. SENTHUR AND ANOTHER ...PETITIONER(S)

VERSUS

M. VIJAYAKUMAR, IAS,
SECRETARY, TAMIL NADU
PUBLIC SERVICE COMMISSION
AND ANOTHER ...RESPONDENT(S)

WITH

CONTEMPT PETITION (CIVIL) NO. OF 2021
[DIARY NO.16048 OF 2020]
IN
SLP (C) NOS. 2890-2894 OF 2016

CONTEMPT PETITION (CIVIL) NO. OF 2021
[DIARY NO. 6415 OF 2021]
IN
SLP (C) NO. 2886 OF 2016

CONTEMPT PETITION (CIVIL) NO. 1848 OF 2018
IN

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SLP (C) NO. 2886 OF 2016

CONTEMPT PETITION (CIVIL) NO. 2188 OF 2018
IN
SLP (C) NO. 2886 OF 2016

SLP (C) NOS. 12114-12117 OF 2021

CONTEMPT PETITION (CIVIL) NO. 1247 OF 2019
IN

SLP (C) NO. 2886 OF 2016

CONTEMPT PETITION (CIVIL) NO. 687 OF 2021
IN

SLP (C) NOS. 2890-2894 OF 2016

ORDER

B.R. GAVAI, J.

1. The present contempt petitions have been filed by the petitioners praying for initiation of contempt proceedings against the alleged contemnors-respondents for willfully disobeying the order passed by this Court dated 22 nd January 2016 in SLP(C) Nos. 2890-2894 of 2016 and SLP(C) No. 2886 of 2016.

2. Brief facts giving rise to the filing of the present petitions are as under: The contempt petitioners had filed writ petitions before the Single Judge of the Madras High Court being aggrieved by the fixation of inter se seniority list published on 29 th April 2004. The petitioners along with the contesting respondents were selected in pursuance of the selection process held on the basis of the notification dated 10th September 1999, issued by the Tamil Nadu Public Service Commission (hereinafter referred to as "TNPSC"). Upon selection, the selectees were appointed in the Public Works Department of the State of Tamil Nadu and the Highways Department in the year 2000.

3. After a period of 4 years from the date of joining of the selectees, the seniority list came to be notified on 29 th April 2004. One R. Balakrishnan made a representation contending therein that though he was a more meritorious candidate belonging to the Backward Class category, he was allotted to the General Turn (open category) and kept at Serial No. 172 of the roster point. It was however his contention that the other persons belonging to the Backward Classes, who were less meritorious, were placed higher in the list and given seniority over and above him since they were placed against reserved vacancies. The representation of R. Balakrishnan was rejected by TNPSC vide order dated 20 th December 2004, on the ground that the roster point itself determined the seniority, in view of the decision of this Court in the case of P.S. Ghalaut v. State of Haryana and Others¹. Being aggrieved by the said order dated 20th December 2004, R. Balakrishnan and few others filed various writ petitions before the Madras High Court. The said writ petitions came to be dismissed vide judgment and order dated 18th October 2012, passed by the Single Judge of the Madras High Court, on the ground of delay and laches.

4. Being aggrieved thereby, the original writ petitioners preferred appeals before the Division Bench of the Madras High Court. The Division Bench vide judgment and order dated 31 st March 2015

(hereinafter referred to as “the first judgment”), 1(1995) 5 SCC 625 allowed the appeals and set aside the judgment and order dated 18th October 2012, passed by the Single Judge and directed the official respondents to take the rank assigned by TNPSC to the selectees, as the basis for fixation of seniority. The Division Bench also directed TNPSC to issue appropriate orders within a period of 4 weeks from the date of receipt of a copy of the said order. The same came to be challenged before this Court by TNPSC vide SLP(C) Nos. 2890□2894 of 2016. This Court vide its judgment and order dated 22 nd January 2016, by a speaking order, dismissed the same. The present contempt petitions are filed contending non□compliance of the order passed by this Court dated 22nd January 2016.

5. Certain developments which took place in the meanwhile also need to be noted. To overcome the first judgment of the Madras High Court as affirmed by this Court, the State of Tamil Nadu enacted Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (hereinafter referred to as “the said Act”). Section 40 of the said Act provided that the seniority of a person in service will be determined in accordance with the rule of reservation and the order of rotation. The same came to be challenged in a batch of writ petitions before the Madras High Court. The Division Bench of the Madras High Court vide judgment and order dated 15th November 2019 (hereinafter referred to as “the second judgment”), allowed the said writ petitions. It declared Sections 1(2), 40 and 70 of the said Act as ultra vires and unconstitutional. It further directed to redo the exercise of fixation of seniority within a period of 12 weeks from the date of receipt of the copy of said order. The said order of the High Court dated 15th November 2019, was challenged before this Court by filing SLP(C) Nos. 2861□2876 of 2020. This Court passed the following order on 6th July 2020:□
“Permission to file Special Leave Petition(s) is granted.

Application for impleadment is allowed to the extent of intervention.

There is absolutely no merit in these petitions. The Special Leave Petitions are, accordingly, dismissed. Pending application(s) is/are disposed of.”

6. After dismissal of the said SLPs, the official respondents had filed review petitions before the Division Bench of the High Court. So also, certain contempt petitions were filed by the selectees, who were aggrieved by non□revision of the seniority list. The Division Bench of the Madras High Court vide judgment and order dated 26th March 2021 dismissed the review petitions, so also, the contempt petitions. The same is challenged before this Court by the selectees, who were aggrieved by non□revision of the seniority list, by filing SLP(C) Nos. 12114□12117 of 2021.

7. The contempt petitions have been listed before this Court on various dates. Vide order dated 11 th February 2021, this Court passed the following order:□“In the meanwhile, the judgment dated 22.01.2016 shall be implemented. In case the judgment is not implemented by that date, the following alleged contemnors/respondents shall be present in this court on the next date of hearing:

C.P.(C)No.638 of 2017 in C.A.No.4954 of 2016

1) M. Vijayakumar

2) S. Thinakaran Dy No.16048 of 2020 in SLP(C) Nos.2890-2894 of 2016:

1) Dr. S. Swarna

2) K. Ramamoorthy

3) K. Nanthakumar C.P.(C) No.1247 of 2019 in SLP (C) No.2886 of 2016:

1) K. Shanmugam

2) K. Nanthakumar

3) Dr. K.Manivasan

4) K. Ramamurthy C.P.(C)No.1848 of 2018 and C.P.(C)No.2188 of 2018 in SLP (C)No.2886 of 2016:

1) K. Nanthakumar

2) S. K. Prabhakar

3) S. Bakthavathchalam”

8. The contempt petitions have also been listed thereafter on various dates. Today, we have heard Shri Prashant Bhushan, learned counsel appearing on behalf of the petitioners, Shri C.S. Vaidyanathan, learned Senior Counsel appearing on behalf of TNPSC, Shri Mukul Rohatgi, Shri V. Giri and Shri P. Wilson, learned Senior Counsel appearing on behalf of the respondents-alleged contemnors, at length.

9. Shri Prashant Bhushan submitted that the first judgment has been merged into the order passed by this Court dated 22 nd January 2016. He submitted that in the said order, this Court has categorically held that in view of the judgment in the case of Bimlesh Tanwar v. State of Haryana and Others 2, the seniority list has to be prepared on the basis of merit list of selection and that the list drawn on roster point would not be valid in law. He submitted that the respondent authorities have not implemented the said order, on the contrary, a revised seniority list is published on 13th March 2021, contending that the said seniority list has been published on the basis of the orders passed by this Court. He submitted that a perusal of the said seniority list would further show that the said list is prepared totally in breach of the judgment in the case of 2(2003) 5 SCC 604 Bimlesh Tanwar (supra). It is thus submitted that by publishing the said list, the respondent authorities have not only committed the aggravated contempt of court but have also committed perjury.

10. Shri C.S. Vaidyanathan, Shri Mukul Rohatgi, Shri V. Giri and Shri P. Wilson, learned Senior Counsel appearing on behalf of the respondents, on the contrary, submitted that the contempt petitions are without any merit.

11. In a nutshell, the contentions as raised on behalf of the said respondents are thus:□

(i) In the first judgment, the Division Bench of the Madras High Court had granted relief to the individual petitioners. Understanding the same, the respondent authorities had issued a fresh seniority list, thereby granting the requisite seniority to the individual petitioners.

(ii) Perusal of the second judgment of the Madras High Court dated 15th November 2019, would further fortify that the relief granted in earlier round was restricted to individual petitioners. Relying on certain observations in the said judgment, it is submitted that the Division Bench has clearly held that the delay, laches, acquiescence and accrued right would be the relevant factors and as such, the individuals who were not petitioners in the first round, are not entitled to get the seniority as per the first judgment of the Madras High Court.

(iii) That the rights of the parties have been crystallized for more than almost two decades and upsetting those at this stage, would cause great heart□burn amongst the employees in the cadre.

(iv) That some of the employees have accepted the seniority list and now the entire exercise cannot be redone to thrust the revised seniority on such employees.

(v) That in any case, the judgment of the Division Bench of the Madras High Court was capable of being interpreted as applying only to the individuals and therefore, even if the official respondents have incorrectly understood the judgment, the non□compliance of the directions cannot be considered to be willful or deliberate and as such, the action for contempt would not lie.

12. In addition, Shri Rohatgi submitted that the contempt, if any, is of the order passed by the High Court. He submitted that since by the order dated 22 nd January 2016, this Court has dismissed the SLPs albeit giving certain reasons, the same would not amount to merger, and as such, it cannot be held that the respondents have committed contempt of this Court. He further submitted that if tomorrow, merely upon dismissal of SLPs against the judgments of the High Court, the contempt petitions are entertained contending contempt of this Court, it will open a floodgate of contempt petitions. He submitted that such a practice would not be conducive to the interest of justice.

13. Shri Vaidyanathan relied on the following judgments of this Court in support of his submissions that, in contempt proceedings, the Court cannot travel beyond the original judgment and order.

Jhareswar Prasad Paul and Another v. Tarak Nath Ganguly and Others³, Midnapore Peoples' Coop. Bank Limited and Others v. Chunilal Nanda and Others ⁴, V.M. Manohar Prasad v. N. Ratnam Raju and Another⁵ and Sudhir Vasudeva, Chairman and Managing Director, Oil and Natural Gas Corporation Limited and Others v. M. George Ravishekar and Others⁶.

14. There can be no quarrel with the proposition that in a contempt jurisdiction, the court will not travel beyond the original judgment and direction; neither would it be permissible for the court to issue any supplementary or incidental directions, which are not to be found in the original judgment ³ (2002) 5 SCC 352 ⁴ (2006) 5 SCC 399 ⁵ (2004) 13 SCC 610 ⁶ (2014) 3 SCC 373 and order. The

court is only concerned with the wilful or deliberate non-compliance of the directions issued in the original judgment and order.

15. At the outset, we may clarify that in the present proceedings, we are only concerned with the contempt of the order passed by this Court dated 22nd January 2016.

16. Insofar as the contention of the respondents that the issue before the High Court in the first round was individualistic in nature is concerned, it will be relevant to refer to the following observations passed by the Division Bench of the Madras High Court in the first judgment: “37.

(ii) The cases on hand are not individualistic in nature, depending upon individual dates, facts and sequence of events. The cases on hand arise out of a most fundamental question as to the principle of law to be applied in the matter of fixation of seniority. The grievance of the writ petitioners was not individualistic, depending for their adjudication, upon distinct facts. These cases question the very foundation on which seniority was sought to be determined on principle. To such cases, the enabling provision under Rule 35(f) entitling the department to summarily reject the claim of the individuals, cannot be invoked.”

17. It can thus be seen that the High Court has clearly observed that the case before the High Court was not individualistic in nature, depending upon individual dates, facts and sequence of events. It has further observed that it arose out of the most fundamental question as to the principle of law to be applied in the matter of fixation of seniority.

18. Having observed this, in the operative part, the Division Bench of the Madras High Court in the first judgment held thus: “85. In view of the above, the writ appeals are allowed, the order of the learned judge is set aside and the writ petitions filed by the appellants are allowed. There will be a direction to the official respondents to take the rank assigned by the Service Commission to the selectees, as the basis for fixation of seniority and issue appropriate orders within a period of 4 weeks from the date of receipt of a copy of this order. There will be no order as to costs.”

19. It could thus clearly be seen that the Division Bench of the Madras High Court in the first judgment issued a direction to the official respondents to take the rank assigned by TNPSC to the selectees as the basis for fixation of seniority and appropriate orders were directed to be issued by TNPSC within a period of 4 weeks from the receipt of the copy of the said order.

20. The basis for allowing the writ petitions by the High Court was the judgment of this Court in the case of *Bimlesh Tanwar* (supra), which held that the seniority has to be determined, not on the basis of roster point but on the basis of the seniority assigned at the time of selection of the selectees. This Court, while dismissing the SLPs vide order dated 22 nd January 2016, observed thus: “The fundamental principle which has been applied by the Division Bench in the cases on hand relates to the question as to what should be the basis for drawing a seniority list. In that context, the Division Bench has noted that at the time when the Service Commission drew the list in 2000 the same was in tune with the judgment of this Court in *P.S. Ghalaut v. State of Haryana & Others*, reported in (1995) 5 SCC 625. The Court also found that the said list which was approved by the State

Government did not achieve the finality and that ultimately when the seniority list came to be issued on 29.2.2004, by which time the judgment of this Court in *Bimlesh Tanwar v. State of Haryana and others*, reported in (2003) 5 SCC 604 had come into effect which reversed the judgment in *Ghalaut* (supra). The Division Bench, therefore, held that there was no delay in the challenge made to the seniority list. After the emergence of the judgment in *Bimlesh Tanwar* (supra), the fundamental principle relating to drawl of seniority list was that it should be based on merit list of selection and that the list drawn based on roster point can have no application for the purpose of seniority list.

As the said fundamental principle was applied by the High Court in passing the impugned judgment, we do not find any merit in these special leave petitions. The special leave petitions are dismissed.

The learned Attorney General for India, appearing for the Tamil Nadu Public Service Commission, raised an issue that with reference to a contra view taken by another Judgment of Madurai Bench of the Madras High Court, at the instance of one of the employees an SLP is pending in this Court. Since the issue is now covered by the decision of this Court in *Bimlesh Tanwar* (supra), the pendency of the said SLP will be of no consequence as the said SLP should also be covered by the said judgment of this Court, namely, *Bimlesh Tanwar* (supra).” [emphasis supplied]

21. It will be relevant to refer to the following observations of this Court in the case of *Kunhayammed and Others v. State of Kerala and Another*: “27. A petition for leave to appeal to this Court may be dismissed by a non-speaking order or by a speaking order. Whatever be the phraseology employed in the order of dismissal, if it is a non-speaking order, i.e., it does not assign reasons for dismissing the special leave petition, it would neither attract the doctrine of merger so as to stand substituted in place of the order put in issue before it nor would it be a declaration of law by the Supreme Court under Article 141 of the Constitution for there is no law which has been declared. If the order of dismissal be supported by reasons then also the doctrine of merger would not be attracted because the jurisdiction exercised was not an appellate jurisdiction but merely a discretionary jurisdiction refusing to grant leave to appeal. We have already dealt with this aspect earlier. Still the reasons stated by the Court would attract applicability of Article 141 of the Constitution if there is a law declared by the Supreme Court which obviously would be binding on all the courts and tribunals in India and certainly the parties thereto. The statement contained in the order other than on points of law would be binding on the parties and the court or tribunal, whose order was under challenge on the principle of judicial discipline, this Court being the Apex Court of the country. No court or tribunal or parties would have the liberty of taking or 7 (2000) 6 SCC 359 canvassing any view contrary to the one expressed by this Court. The order of Supreme Court would mean that it has declared the law and in that light the case was considered not fit for grant of leave. The declaration of law will be governed by Article 141 but still, the case not being one where leave was granted, the doctrine of merger does not apply. The Court sometimes leaves the question of law open. Or it sometimes briefly lays down the principle, may be, contrary to the one laid down by the High Court and yet would dismiss the special leave petition. The reasons given are intended for purposes of Article 141. This is so done because in the event of merely dismissing the special leave petition, it is likely that an argument could be advanced in the High Court that the Supreme Court has to be understood as not to have differed in law with the High Court.”

22. It is thus clear that this Court in unequivocal terms has held that if the order of dismissal of SLPs is supported by reasons, then also the doctrine of merger would not be attracted. Still the reasons stated by the court would attract applicability of Article 141 of the Constitution of India, if there is a law declared by this Court which obviously would be binding on all the courts and the tribunals in India and certainly, the parties thereto. It has been held that no court, tribunal or party would have the liberty of taking or canvassing any view contrary to the one expressed by this Court. Such an order would mean that it has declared the law and in that light, the case was considered not fit for grant of leave.

23. This Court, while dismissing the SLPs against the first judgment, has clearly held that after the emergence of the judgment in *Bimlesh Tanwar* (supra), the fundamental principle governing the determination of seniority was that, it should be based on merit list of selection and that the list made on the basis of roster point, would not be permissible in law. It could thus be seen that while dismissing the SLPs, this Court has reiterated the legal position as laid down in the case of *Bimlesh Tanwar* (supra) to the effect that while determining seniority, what is relevant is the inter se merit in the selection list and not the roster point.

24. It is pertinent to note that though, the then learned Attorney General had raised an issue with regard to a contrary view taken by the Madurai Bench of the same High Court, this Court clearly held that since the issue was now covered by the decision of this Court in *Bimlesh Tanwar* (supra), the pendency of the SLPs challenging the judgment of Madurai Bench, would be of no consequence inasmuch as the said SLPs would be governed by the judgment of this Court in *Bimlesh Tanwar* (supra).

25. It is thus clear that though it cannot be said that the second judgment of the Madras High Court has merged into the order of this Court dated 22 nd January 2016, still the declaration of law as made in the said order, would be binding on all the courts and tribunals in the country and in any case, between the parties.

26. In that view of the matter, the respondents were bound to follow the law laid down by this Court and determine the inter se seniority on the basis of selection by TNPSC and not on the basis of roster point.

27. At the cost of repetition, we may clarify that though various arguments were advanced with regard to the merits of the matter by the learned Senior Counsel appearing on behalf of the respondent authorities, we cannot go into those aspects inasmuch as we are exercising limited jurisdiction of contempt. Insofar as the lis between the parties is concerned, it has achieved finality by the order of this Court dated 22 nd January 2016. We find that the seniority list, which is purportedly published in accordance with the order of this Court, is totally in breach of the directions of this Court. A first glance at the list would reveal that various selectees, who have received much less marks, are placed above the selectees who have received higher marks. We, therefore, have no hesitation to hold that the following persons named in our order dated 11 th February 2021, are guilty of having committed contempt of order of this Court: □“C.P.(C)No.638 of 2017 in C.A.No.4954 of 2016

1) M. Vijayakumar

2) S. Thinakaran Dy No.16048 of 2020 in SLP(C) Nos.2890-2894 of 2016:

1) Dr. S. Swarna

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3) K. Nanthakumar C.P.(C) No.1247 of 2019 in SLP (C) No.2886 of 2016:

1) K. Shanmugam

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1) K. Nanthakumar

2) S. K. Prabhakar

3) S. Bakthavathchalam”

28. We therefore direct the respondents to revise and publish the seniority list of the selectees, who were selected in the selection process conducted in pursuance of the notification issued by TNPSC dated 10th September 1999, strictly on the basis of the merit determined by it in the selection process and not on the basis of the roster point. The same shall be done within a period of 12 weeks from the date of this order.

29. Insofar as the issue with regard to quantum of punishment to be imposed upon the aforesaid contemnors is concerned, the matter be kept on 10 th January 2022. We clarify that on the said date, the persons named in paragraph (25) who have been held guilty of contempt of this Court by us, shall remain present before this Court and would be heard on the quantum of punishment.

30. Insofar as SLP(C) Nos. 12114-12117 of 2021 are concerned, in view of the order passed by us in the contempt petitions, no order is necessary. Accordingly, the said SLPs are disposed of.

.....J. [L. NAGESWARA RAO]J. [B.R. GAVAI] NEW DELHI;

OCTOBER 01, 2021.