

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

CP/310/00155/2017 in OA/310/01061/2015

Dated the 01st day of June Two Thousand Twenty

**CORAM : HON'BLE MR. P. MADHAVAN, Member (J)
HON'BLE MR. T. JACOB, Member (A)**

S.Kasipandy,
Pointsman,
Tenkasi Railway Station,
Madurai Division,
Southern Railway.

....Applicant

By Advocate M/s. Ratio Legis

Vs

Mr. R. K. Kulshrestha,
The General Manager,
Southern Railway,
Chennai 600003.

....Respondent

By Advocate Senior Counsel for Railways, Mr. V. Radhakrishnan
for Dr. D. Simon

ORDER

(Pronounced by Hon'ble Mr. P. Madhavan, Member(J))

This is a contempt petition filed under S.17 of the A.T act 1985.

2. The petitioner herein had filed OA 1061/15 seeking to quash the impugned order dt 9-6-2015 passed by R2 and to direct the respondent to accept the request for voluntary retirement and consider the applicant's son for compassionate appointment under the LARSGESS scheme. The tribunal after hearing both sides ordered as follows.

"Therefore the impugned order dt.9-6-2015 is quashed and set aside. The respondents are directed to consider all the above aspects and pass appropriate orders. We hope that again the applicant will not be driven to this court. The OA is allowed. No costs".

3. The respondents in the OA filed WP. No. 37533/16 and the Hon'ble Madras High Court confirmed the order of the tribunal and the WP was dismissed on 4-11-2016. No SLP was filed by the respondents. Since the relief was not granted, the OA applicant has filed this CP alleging wilful disobedience of the order of the tribunal. When the CP came up for consideration, the counsel for the respondents submitted that a review petition has been filed before the Hon'ble High Court and sought further time. On the next hearing, the counsel for the respondents submitted that

the Hon'ble Punjab and Haryana High Court in **Kala singh and others V Union of India and others** as per the order dt. WP 7714/2016 dt 27-4-2016, had observed that the scheme cannot stand the test of Art.14 and 16 of the constitution of India and directed the Railways not to make any appointments before its validity and sustainability be revisited keeping in view of the principles of equal opportunity and elimination of the monopoly in holding public employment. The SLP filed by the writ petitioners were dismissed by the Hon'ble Supreme Court on 8-1-18. It was disposed by stating that "*the impugned order is only to revisit the scheme, no interference was called for at this stage and railways may take a conscious decision in the matter within 6 weeks.*" The order of the Hon'ble Apex Court is produced as annexure R6. The Ministry of Railways referred the matter to Attorney General for his opinion. He gave opinion that the 2004 and 2010 scheme suffers the same vice of unconstitutionality as the proposed 2018 scheme and no further appointments can be made under the LARSGESS scheme. The copy of the opinion given by the Attorney General is produced as annexure R8. When the judgement of the Hon'ble Madras High Court was pronounced, the appointment to the scheme was already stopped by the order of the

Hon'ble Punjab and Haryana High Court order. The learned senior counsel for the contempt respondents Adv. Radhakrishnan would submit that the respondents could not give appointment due to the order of the Hon'ble Punjab and Haryana High Court. There was no willful disobedience of the order of the tribunal in this case. The Hon'ble Apex Court also did not interfere with the order of the Hon'ble Punjab and Haryana High Court order and directed the railways to take a decision. Accordingly, the a decision to close the scheme was taken as it was found to be unconstitutional. It was also submitted by the senior counsel that the contempt applicant has received all benefits on his retirement as usual and there is no question of implimenting the LARSGESS scheme.

4. We have heard both sides and perused the **judgements of the Hon'ble Punjab and Haryana High Court in Kala singh and others V Union of India and others dt. 27-4-2016 and the order in SLP 4482/17, 37460/17**. The SLP's were disposed by the Hon'ble Supreme Court declaring that" *If any party is affected by the decision taken, such party may take remedy against the same in accordance with law*". This tribunal happened to pass the order without knowing the order passed in Kala singh's case.

5. In view of the above circumstances, we hold that there is no wilful disobedience of the order of the tribunal in OA 1061/15 dt 9-8-2016.

6. Hence CP is treated as closed. Notice if any issued will be considered as discharged.

(T.Jacob)
Member(A)

(P. Madhavan)
Member(J)

01.06.2020

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