

ITEM NO.2+45

COURT NO.8

SECTION XII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Item No.2

CONTEMPT PETITION (CIVIL) Diary No(s). 6415/2021

IN SLP(C) No.2886/2016

P. MADHU

Petitioner(s)

VERSUS

K. NANTHAKUMAR & ANR.

Respondent(s)

IA No. 14131/2023 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

WITH

Diary No(s). 42575/2022 (XII)

IA No. 204460/2022 - APPLICATION FOR PERMISSION TO FILE CONTEMPT
PETITION

Diary No(s). 38903/2022 (XII)

IA No. 186015/2022 - APPLICATION FOR PERMISSION TO FILE CONTEMPT
PETITION

Diary No(s). 38952/2022 (XII)

FOR APPLICATION FOR PERMISSION TO FILE CONTEMPT PETITION ON IA
186210/2022

Diary No(s). 19523/2022 (XII)

FOR APPLICATION FOR PERMISSION TO FILE CONTEMPT PETITION ON IA
88869/2022

Diary No(s). 19413/2022 (XII)

IA No. 88626/2022 - EXEMPTION FROM FILING O.T.

Diary No(s). 19414/2022 (XII)

IA No. 88629/2022 - APPLICATION FOR PERMISSION TO FILE CONTEMPT
PETITION

Diary No(s). 19318/2022 (XII)

Diary No(s). 19314/2022 (XII)

IA No. 88299/2022 - APPLICATION FOR PERMISSION TO FILE CONTEMPT
PETITION

Diary No(s). 18971/2022 (XII)

IA No. 87190/2022 - PERMISSION TO FILE PETITION (SLP/TP/WP/..)

Diary No(s). 18901/2022 (XII)

IA No. 86962/2022 - PERMISSION TO FILE PETITION (SLP/TP/WP/..)

Diary No(s). 25553/2022 (XII)

Diary No(s). 24170/2022 (XII)

Diary No(s). 24169/2022 (XII)

Diary No(s). 20010/2022 (XII)

IA No. 90740/2022 - APPLICATION FOR PERMISSION TO FILE CONTEMPT
PETITION

Diary No(s). 28335/2022 (XII)

IA No. 131809/2022 - APPLICATION FOR PERMISSION TO FILE CONTEMPT

PETITION**Diary No(s). 18771/2022 (XII)****IA No. 86971/2022 - APPLICATION FOR PERMISSION TO FILE CONTEMPT PETITION****Diary No(s). 18738/2021 (XII)****FOR CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS ON IA 38671/2023****FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 38672/2023****Diary No(s). 6756/2023 (XII)****FOR APPLICATION FOR PERMISSION ON IA 34372/2023****Diary No(s). 5190/2023 (XII)****IA No. 26044/2023 - APPLICATION FOR PERMISSION TO FILE CONTEMPT PETITION****Diary No(s). 32863/2022 (XII)****IA No. 154289/2022 - APPLICATION FOR PERMISSION TO FILE CONTEMPT PETITION****Diary No(s). 409/2023 (XII)****Diary No(s). 32862/2022 (XII)****IA No. 154287/2022 - APPLICATION FOR PERMISSION TO FILE CONTEMPT PETITION****Diary No(s). 34512/2022 (XII)****IA No. 162822/2022 - APPLICATION FOR PERMISSION TO FILE CONTEMPT PETITION****W.P.(C) No. 851/2022 (X)****FOR ADMISSION and IA No.146642/2022-GRANT OF INTERIM RELIEF****Diary No(s). 21308/2022 (XII)****Diary No(s). 25527/2022 (XII)****IA No. 116202/2022 - APPLICATION FOR PERMISSION TO FILE CONTEMPT PETITION****Diary No(s). 21084/2022 (XII)****IA No. 93358/2022 - APPLICATION FOR PERMISSION TO FILE CONTEMPT PETITION****Diary No(s). 32012/2021 (XII)****Diary No(s). 583/2022 (XII)****FOR EXEMPTION FROM FILING O.T. ON IA 832/2022****Diary No(s). 584/2022 (XII)****Diary No(s). 686/2022 (XII)****CONMT.PET.(C) No. 687/2021 in SLP(C) No. 2890-2894/2016 (XII)****Diary No(s). 761/2022 (XII)****Diary No(s). 798/2022 (XII)****Diary No(s). 806/2022 (XII)**

IA No. 1627/2022 - EXEMPTION FROM FILING O.T.

Diary No(s). 872/2022 (XII)

IA No. 1945/2022 - EXEMPTION FROM FILING O.T.

Diary No(s). 13380/2022 (XII)

IA No. 65715/2022 - APPLICATION FOR PERMISSION TO FILE CONTEMPT PETITION

FOR ADMISSION and IA No.162511/2021-APPLICATION FOR PERMISSION [THE REGISTRATION NUMBER OF THIS MATTER MAY BE READ AS D.NO. 28300/2021]

Diary No(s). 874/2022 (XII)

CONMT.PET.(C) No. 403/2022 in CONMT.PET.(C) No. 638/2017 In C.A. No. 4954/2016 (XII)
(FOR ADMISSION)

CONMT.PET.(C) No. 124/2022 in C.A. No. 4954/2016 (XII)

FOR INTERVENTION/IMPLEADMENT ON IA 98508/2022

FOR impleading party ON IA 117474/2022

IA NO.162949/2022- APPLICATION FOR PERMISSION TO FILE WRITTEN SUBMISSION

Diary No(s). 7222/2022 (XII)

Diary No(s). 8660/2022 (XII)

IA No. 41459/2022 - APPLICATION FOR PERMISSION TO FILE CONTEMPT PETITION

Diary No(s). 8839/2022 (XII)

FOR EXEMPTION FROM FILING O.T. ON IA 42390/2022

Diary No(s). 8986/2022 (XII)

IA No. 43201/2022 - APPLICATION FOR PERMISSION TO FILE CONTEMPT PETITION

Diary No(s). 8990/2022 (XII)

IA No. 43186/2022 - APPLICATION FOR PERMISSION TO FILE CONTEMPT PETITION

Diary No(s). 9132/2022 (XII)

IA No. 43993/2022 - APPLICATION FOR PERMISSION TO FILE CONTEMPT PETITION

Diary No(s). 12680/2022 (XII)

FOR EXEMPTION FROM FILING O.T. ON IA 69412/2022

Diary No(s). 13378/2022 (XII)

FOR APPLICATION FOR PERMISSION ON IA 65695/2022

Diary No(s). 13381/2022 (XII)

IA No. 65735/2022 - APPLICATION FOR PERMISSION TO FILE CONTEMPT PETITION

CONMT.PET.(C) No. 404/2022 in CONMT.PET.(C) No. 638/2017 In C.A. No. 4954/2016 (XII)

IA No. 94901/2022 - APPLICATION FOR PERMISSION TO FILE CONTEMPT PETITION

Item No.45**CONTEMPT PETITION (CIVIL) Diary No(s). 9663/2023****([TO BE TAKEN UP ALONG WITH ITEM NO. 2 I.E. Diary No. 6415/2021.].....****IA No. 48830/2023 - APPLICATION FOR PERMISSION)****Date : 18-04-2023 These matters were called on for hearing today.****CORAM :****HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE VIKRAM NATH**

For Petitioner(s)

Mr. S. Nagamuthu, Sr. Adv.
 Mr. R. Balasubramaniam, Sr. Adv.
 Mr. Dama Seshadri Naidu, Sr. Adv.
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 Mr. M.P. Parthiban, Adv.
 Mr. Y. Arunagiri, Adv.
 Mr. M. Sathyanarayanan, Sr. Adv.
 Mr. V. Prabhu, Adv.
 Mr. Rakesh Sharma R., AOR

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 Mr. Garvesh Kabra, AOR
 Mr. Arihant Jain, Adv.

Mr. Amit Anand Tiwari, A.A.G.
 Mr. D. Kumanan, AOR
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 Mr. Sheikh F. Kalia, Adv.
 Ms. Racheeta Chawala, Adv.
 Ms. Divya Singh, Adv.

Mr. V. Raghavachari, Sr. Adv.
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 Mr. Sunny Sheen Akkara, Adv.
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 Mr. Pranav Sachdeva, AOR
 Mr. Jatin Bhardwaj, Adv.
 Ms. Neha Rathi, Adv.
 Ms. Aakriti, Adv.

Mr. Abhijeet Sinha, AOR
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 Mr. Jatin Bhardwaj, Adv.

Mr. Pranav Sachdeva, AOR

Mr. Prashant Bhushan, Adv.
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For Respondent(s) Mr. Kapil Sibal, Sr. Adv.
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Ms. Tanvi Anand, Adv.
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Ms. Divya Singh, Adv.

Mr. Pranav Sachdeva, AOR

Mr. Sabarish Subramanian, AOR

Ms. Promila, AOR

Mr. S. Thananjayan, AOR

**UPON hearing the counsel the Court made the following
O R D E R**

1. The present matters have arisen on account of

the State of Tamil Nadu not giving effect to the judgments and orders passed by the Division Bench of the Madras High Court. Not only that, it appears that even after this Court had found various Officers of the State Government to be guilty of contempt of this Court and convicted them, the State Government has not taken the issue seriously. It appears that since this Court was lenient and left the Officers who were convicted for contempt, only with a warning, the State thought that it could deal with the matter at leisure.

2. The first judgment of the Division Bench of the Madras High Court dated 31st March, 2015 is very much clear which has been reproduced in para 17 of our order dated 1st October, 2021. The Division Bench has clearly observed that the cases on hand were not individualistic in nature depending upon individual cases facts, and sequences of events. It has further been observed that the case arose out of the most fundamental question as to the principle of law to be applied in the matter of fixation of seniority. The Court observed that the question was on the principle as to whether the seniority of the candidates selected was to be fixed on the basis of merit as determined by Tamil Nadu Public Service Commission [hereinafter as 'TNPSC'] or as per the roster provided under Rule 35(f) of the General Rules for

Tamil Nadu State and Subordinate Services.

3. The Division Bench in its first order directed the State Government to take the rank assigned by the TNPSC to the selectees as the basis for fixation of seniority and issue appropriate orders within a period of four weeks from the date of the said order. The first order of Division Bench came to be challenged before this Court. This Court vide order dated 22nd January, 2016 dismissed the same.

4. The basis on which the Madras High Court decided the first petition was the judgment of this Court in the case of *Bimlesh Tanwar v. State of Haryana & Ors.* reported in (2003) 5 SCC 604.

5. To overcome the judgment of the Madras High Court, the State of Tamil Nadu came out with Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The said enactment was challenged before the Madras High Court. The Division Bench vide judgment dated 15th November, 2019 allowed the petitions and held certain provisions of the said Act to be unconstitutional.

6. Alleging non-compliance of the judgment and order of the Madras High Court in the first judgment, which was affirmed by this Court, various contempt petitions came to be filed before this Court.

7. This Court vide order dated 1st October, 2021 held that this Court while dismissing the Special

Leave Petition against the first judgment had observed that after the emergence of 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 the roster points would not be permissible in law.

8. We were, therefore, of the considered view that the respondent State was bound to follow the law as 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. We had, therefore, found various officers of the State Government to be guilty of contempt and convicted them. However, we had granted them a period of 12 weeks for completing the exercise as directed by the Division Bench in the first judgment. However, we had postponed the issue of punishment.

9. When the matter was listed before us subsequently on 19th January, 2022, the affidavits of compliance were filed which persuaded us to end the Contempt Petitions only with a warning.

10. However, subsequently various Petitions have been filed and in some Petitions allegation is that the directions issued by the High Court in first judgment were not complied with in its true spirit. In other set of Contempt Petitions, the petitioners

have alleged that though in certain Departments exercise has been carried out, in other departments the said exercise is not being carried out.

11. We have extensively heard Mr. S. Nagamuthu, Mr. R. Balasubramaniam, Mr. Dama Seshadri Naidu, Mr. Kapil Sibal, Mr. M. Sathyanarayanan, Mr. V. Raghavachari, Mr. V. K. Shukla, learned senior counsels and Mr. Amit Anand Tiwari, learned AAG for the State of Tamil Nadu, Mr. Prashant Bhushan, Ms. Shantha Devi Raman, Mr. Pranav Sachdeva, Mr. N. Subramaniyan, learned counsels.

12. Learned counsel for the petitioners submitted that once a law was laid down by the Constitution Bench of this Court consisting of nine Judges in the case of *Indira Sawhney v. Union of India* - 1992 Suppl. (3) SCC 217 there could not have been reservations in promotions and the appointments ought to have been on the basis of seniority as determined by the TNPSC according to merit. It is further submitted that in any case, after the judgment of this Court was delivered on 10th March, 2003, the respondent State could not have given the seniority on the basis of roster points. It is submitted by learned counsel for the petitioners that if individuals are asked to agitate their individual grievances, it would be in contravention of the view taken by the Madras High Court in the first judgment

which is affirmed by this Court.

13. Learned counsels for petitioners in unison argue that they are not interested in any pecuniary benefits but however, they are only interested in removal of the injustice done to them by placing a less meritorious candidate above them in the seniority list.

14. Shri Amit Anand Tiwari, learned AAG, on the contrary, submitted that by efflux of time, much water has flown. He submitted that the rights have been accrued between the parties for decades and upsetting the same at this stage would have serious repercussions. In the alternative, Shri Tiwari submitted that it will be appropriate that this Court determines the cut off date and that cut off date should be the first judgment of the Madras High Court. He further submitted that for carrying out the exercise, this Court should appoint a Committee inasmuch as 10.76 lakh cases will have to be considered. It is submitted that the State is not equipped with the machinery to complete such a herculean task.

15. As already discussed hereinabove, the Division Bench in the first judgment has clearly held that the cases before it were not individualistic in nature to be decided on the basis of facts arising in each case. The cases arose only on one principle i.e. as

to whether seniority should be as per the merit reckoned by the TNPSC or as per roster point. The Division Bench clearly held that the seniority should be on the basis of the merit reckoned by the TNPSC and not as per the roster point. This Court while dismissing the Special Leave Petition affirmed the view of the High Court holding that after the judgment of this Court was pronounced in *Bimlesh Tanwar* (supra), the principle governing the determination of seniority was only on the basis of merit list of selection and not as per the basis of roster point.

16. We are of the view that though it can be said that even after the judgment of the *Indira Sawhney* (supra) on 16th November, 1992, the State could not have prepared the merit list on the basis of roster point, we find that it will not be appropriate to reopen the issues from as early as 1992. We find that in any case, once the law was pronounced by this Court specifically in the case of *Bimlesh Tanwar* (supra), the State was bound to follow the same.

17. We, therefore, though are not inclined to disturb the seniority lists which are finalized prior to 10th March, 2003 wherein the benefit is granted to either of the parties i.e. as per the roster or as per the seniority list, the seniority list finalized after 10th March, 2003 will have to be re-visited in

accordance with the law laid down by this Court in *Bimlesh Tanwar* (supra) and the first judgment of the Madras High Court.

18. We are unable to accept the contention of the learned AAG that the State is not equipped to complete the exercise. He submitted that this exercise has to be conducted in about 54 Departments.

19. If the State has 54 Departments, at least there would be 54 Secretaries/Principal Secretaries/Additional Chief Secretaries heading those Departments. Under such Secretaries, there will be at least half a dozen Joint Secretaries and more than a dozen Deputy Secretaries and about two dozen Under Secretaries working in each of the Department. Further, at the divisional levels also, there would be Heads who would be heading the Department insofar as the Divisions are concerned. We are therefore, not inclined to accept the argument.

20. If the State has the will to do, it can very well comply with the orders passed by the Division Bench of the Madras High Court and affirmed by this Court.

21. We therefore, direct the State Government to complete the exercise of finalizing the seniority lists of selection processes conducted after 10th March, 2003 on the basis of the principle that the seniority list shall be reckoned only on the basis of

the merit as determined by the TNPSC in the selection process.

22. It is further made clear that if any list is finalized in case of selections held prior to 2003 giving benefit to the persons selected as per their seniority or as per merit, the same shall also not to be disturbed.

23. Needless to state that if this exercise is not completed within a period of three months from today, we will consider re-opening of the contempt proceedings.

24. List on 18th July, 2023 for compliance.

(ASHA SUNDRIYAL)
ASTT. REGISTRAR-cum-PS

(ANJU KAPOOR)
COURT MASTER (NSH)