



Cont.P.(MD)No.1624 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED: 30.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cont.P.(MD)No.1624 of 2021
in
W.P.(MD)No.19616 of 2019

A.Brita Nicy ... Petitioner

VS.

1.Srinivasan, The Registrar,
Tamilnadu Dr.J.Jayalalitha Fisheries University,
Vettar River View Campus, Nagapattinam.

2.N.V.Sujath Kumar, The Dean,
Fisheries College and Research Institute,
Thoothukudi.

3.S.Vijayakumar, I.A.S.,
The Principal Secretary to Government,
Animal Husbandry (Diary and Fisheries),
Chennai.

4.M.Felix, The Registrar,
Tamilnadu Dr.J.Jayalalitha Fisheries University,
Nagapattinam – 611 002. ... Respondents

(R4 suo motu impleaded vide order dated 15.11.2022)



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PRAYER: Petition filed under Section 11 of the Contempt of Courts Act, to punish the respondents for the willful and disobedience of the order of this Court made in W.P.(MD).No.19616 of 2019 dated 29.09.2021.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.Vijay Narayan, Senior Counsel,
for Mr.V.Vijay Shankar for R1, R2 & R4.

Mr.R.Suresh Kumar,
Addl. Government Pleader for R3.

ORDER

This contempt petition has been filed by the petitioner in W.P.(MD)No.19616 of 2019. She is an aspirant for the post of Assistant Professor (Fish Processing Technology) in Tamilnadu Dr.J.Jayalalitha Fisheries University, Nagapattinam. The University issued notification dated 27.06.2019 calling for applications from eligible candidates for various posts including the post of Assistant Professor in Fish Processing Technology. The University had advertised three vacancies out of which one was reserved for BC (other than BCM(W)-1). The essential qualification has been set out as follows:-



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“Qualification:

Assistant Professor:

- a) Good academic record as defined by the University with atleast 55% of marks (or and equivalent grade in a point scale wherever grading system is followed) at the Master's Degree level in a relevant / concerned subject or an equivalent degree from an accredited foreign University. A minimum Overall Grade Point Average of 2.25/4.00 or 6.50/10.00 or its equivalent is essential. ***The candidates should posses base degree of B.F.Sc.****
- b) For the candidates having Master's degree, National Eligibility Test (NET) conducted by the ASRK, UGC, CSIR or similar test accredited by the UGC shall remain compulsory along with one publication in NAAS (National Academy of Agricultural Sciences, New Delhi) rated referred journal for recruitment to the post of Assistant Professor and equivalent in the disciplines in which NET is conducted.”*

2. Clause 4 of the instruction to candidates reads as follows:-

“4. Candidates may send copies of testimonials from persons intimately acquainted with his/her work and character and must also give name and address of three persons to who references can be made. If he/she has been in employment, he should either give his present or more recent employer or immediate superior as a referee or submit a



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recent testimonial from him. He/She should also submit an attested copy of the entry relating to his / her date of birth, from the Matriculation or Secondary School Leaving Certificate and attested copies of his/her Degree Certificate or / and Diploma testimonials."

Possession of Ph.D. in the relevant discipline with good academic performance was mentioned as a desirable qualification. The notification did not envisage holding of any written examination. Only an interview was proposed to be conducted. It was held on 10.09.2019 and 12.09.2019.

3. The petitioner apprehended that she may not be called for interview. She, therefore, filed W.P.(MD)No.19616 of 2019 for directing the respondents to consider her application dated 28.07.2019 for the said post. An interim order was granted enabling her to attend the interview. The college authorities permitted the petitioner to attend the interview. When the matter was taken up for hearing, the authorities informed the Court that the reason for not summoning the petitioner for interview was because she scored marks below the threshold. According to the



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authorities, only a person who scored 40 marks and above can be called
WEB COPY for interview. The petitioner could be awarded only 37.9 marks based on her credential.

4. The petitioner took the stand that as per the norms set out in the notification, she must have been awarded 47 marks. When this Court probed the matter further to find out as to how there can be variance between the stand taken by the petitioner and the one taken by the college, it emerged that the college authorities had changed the scoring pattern. This Court thereupon held that it was not open to the recruiting authority to change the rules of the game after the issuance of the recruitment notification. By a very detailed order, the writ petition was disposed of on 29.09.2021 in the following terms:-

“25. In view of the modification of score pattern after commencement of selection process, the petitioner is entitled to marks as per the score pattern published in the Website. As per the orders of this Court dated 12.09.2019, the petitioner attended the interview and one post is kept vacant.



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26. Considering the above materials and judgments of the Hon'ble Apex Court relied on by the learned counsel appearing for the petitioner, the respondents are directed to consider the credentials of the petitioner and award marks as per the original score card and if the petitioner gets minimum of 40 marks or above, consider the petitioner for appointment taking into consideration her performance in the interview.

27. With the above direction, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed”

5. Since nothing was heard from the respondents, the petitioner caused to issue legal notice dated 01.11.2021. Finding that the legal notice did not elicit any response, the present contempt petition came to be filed.

6. The Registrar of University filed counter affidavit dated 22.01.2022. He also filed two additional counter affidavits and reply to the rejoinder filed by the petitioner. Typed set of papers were also filed by the respondents. On 10.03.2022, a copy of the communication



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bearing Lr.No.774/C2/TNJFU/Court case/2022, dated 08.03.2022 issued
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by Dr.A.Srinivasan was served on the petitioner. The stand taken in the said communication is that the selection committee had taken a policy decision only to select Ph.D. degree holders for appointment. Since the petitioner was not in possession of Ph.D. degree during the relevant time, she was not selected. It was further pointed out that 16 other similarly placed candidates who though eligible to be called for interview were not called as it would have been an exercise in futility as none of them possessed Ph.D. degree at the relevant point of time. The stand of the respondents is that they fully complied with the earlier direction given by this Court.

7.The learned counsel for the petitioner took me through the averments taken in the pleadings and contended that the order passed by this Court has been wilfully breached. He also endeavoured to make good his submissions by contending that the petitioner had been unfairly dealt with.



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8. The learned senior counsel assisted by the learned standing counsel for the respondents/University took me through the averments set out in the counter affidavit and additional counter affidavits. According to the learned senior counsel, all that this Court directed was that the credentials of the petitioner should be considered and marks awarded as per the original score card. The respondents did consider the petitioner's case for appointment. That the respondents had complied with the direction of this Court is evident from the fact that the petitioner's marks were revised and enhanced to 47 from the original marks of 37.9. Though the petitioner had crossed the threshold, she could still not be appointed for the reason that she did not fulfil the short listed criteria. On 10.09.2019, when the selection committee met, it decided that only those candidates who possessed Ph.D. degree would be considered for appointment and the candidates who did not possess Ph.D. degree will not be considered. It is not as if the petitioner was singled out. There were many other candidates who had scored above the threshold limit but still were not invited for interview or considered



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for appointment for the sole reason that they did not possess Ph.D. **WEB COPY** degree.

9.Replying to the contentions of the learned counsel for the petitioner that discriminatory treatment had been meted out by highlighting the instances of two other candidates namely, Dr.Hema and Mr.Masilan, the learned senior counsel submitted that when the aforesaid individuals are not before this Court, it would not be appropriate or fair to even take up their cases for consideration or comparison. In the alternative, he contended that even if this Court were to assume that a preferential treatment was erroneously accorded in favour of Dr.Hema, that would still not advance the case of the petitioner.

10.The learned senior counsel took me through the communication dated 08.03.2022. He pointed out that as many as nine candidates were selected for various disciplines in the interview held in June 2019. He pointed out that all the nine candidates possessed Ph.D. degree. His core contention is that all that this Court had directed was to consider the



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petitioner's case for appointment. The authorities had considered the petitioner's case. They however came to the conclusion that she could not be offered with appointment for the reason already mentioned. According to the learned senior counsel, there has been a full and strict compliance with the direction given by this Court. According to them, it is not as if this Court directed the authorities to appoint the petitioner as Assistant Professor and that the respondents failed to honour the direction. When direction was only for consideration and the exercise of consideration had already been completed, the question of the respondents having committed contempt will not at all arise.

11. The learned senior counsel also contended that the issue regarding possession of Ph.D. as a desirable qualification and it being a short listing criteria had already attained finality. He drew my attention to the order dated 08.01.2022 made in W.P.No.32624 of 2019. One unsuccessful candidate by name M.VasanthaRajan filed the said writ petition raising the very same issue now raised in this petition. A learned Judge of this Court vide order dated 12.01.2022 allowed the writ petition



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WEB COPY after holding that a candidate can not be excluded for the sole reason that he did not possess Ph.D. degree. Aggrieved by the said order, the University filed W.A.No.361 of 2022. Vide order dated 29.04.2022, the Hon'ble Division Bench set aside the order of the learned Single Judge and allowed the writ appeal after holding that it is very much open to the selection committee to confine the zone of selection only to Ph.D. degree holders. The Hon'ble Division Bench had also held that merely because the University had appointed non-Ph.D. degree holders in the selection process held during the subsequent year, that would not in any way make a difference. According to the learned senior counsel, in view of the order dated 29.04.2022 passed by the Hon'ble Division Bench in W.A.No.361 of 2022, there is absolutely no merit in the contempt proceedings.

12. The learned senior counsel strongly contended that contempt can be said to be made out only if there is any wilful disobedience on the part of the respondents. If the respondents acted on a bonafide understanding, that would not amount to contempt. It is very well open



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to the petitioner to question the communication dated 08.03.2022.
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However, what has to be probably achieved by filing a fresh writ petition cannot be achieved through this contempt proceeding. The learned senior counsel relied on the following precedents:-

“(i)(1996) 10 SCC 102 [V.Kanakarajan Vs. General Manager, South Easter Railway and Others]

(ii)(2001) 7 SCC 530 [Chhotu Ram Vs. Urvashi Gulati and Another]

(iii)(2005) 6 SCC 98 [Director of Education, Uttaranghal and Others Vs. Ved Prakash Joshi and Others]

(iv)(2008) 14 SCC 392 [Sushila Raje Holkar Vs. Anil Kak (retired)]

(v)(2014) 3 SCC 373 [Sudhir Vasudeva Vs. George Ravishankaran]

(vi)2017 SCC Online Mad 10873 [B.Vasantha Vs. Dr.Pawan Goenka and Others]

(2021) 7 SCC 613 [Abhishek Kumar Singh Vs. G.Pattanaik and Others)”

According to him, the respondents have not committed any act of contempt and the present contempt petition deserves to be closed.



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13.I carefully considered the rival contentions and went through the materials on record. Dr.A.Srinivasan who had issued the communication dated 08.03.2022 is no longer the Registrar. He is however is the teaching faculty. Dr.Felix is the present Registrar. He assumed charge in September 2022. He was present before this Court on 15.11.2022. I wanted to know from Dr.Felix, the current Registrar, if he is endorsing the stand already taken by the respondent University. Dr.Felix categorically informed the Court that he is endorsing the stand already taken. Therefore, I impleaded Dr.Felix on 15.11.2022.

14.The petitioner herein filed W.P.(MD)No.19616 of 2019 with the following prayer:-

“To issue a Writ of Mandamus, directing the respondents to consider the Application of the petitioner dated 28.07.2019 for the post of Assistant Professor (Fish Processing Technology) in pursuant to the Advertisement No.03/2019 dated 27.06.2019 by the 1st respondent and to call the petitioner to attend the interview.”



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It was allowed in the following terms:-

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“25. In view of the modification of score pattern after commencement of selection process, the petitioner is entitled to marks as per the score pattern published in the Website. As per the orders of this Court dated 12.09.2019, the petitioner attended the interview and one post is kept vacant.

26. Considering the above materials and judgments of the Hon'ble Apex Court relied on by the learned counsel appearing for the petitioner, the respondents are directed to consider the credentials of the petitioner and award marks as per the original score card and if the petitioner gets minimum of 40 marks or above, consider the petitioner for appointment taking into consideration her performance in the interview.

27. With the above direction, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed”

15. The writ petition was taken up for final disposal only on 30.07.2021 and order was pronounced on 29.09.2021. As already noted, the writ petition had been filed on 10.09.2019. During these two years, the respondents had enough and more opportunity to inform this Court



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that marks secured by the petitioner would not make any difference on WEB COPY account of her not possession of Ph.D. degree. On the other hand, the focus of this Court was only on the proper awarding marks as per the original score pattern. That is why, this Court directed the respondents to consider the petitioner's credentials and award marks as per the original score card. It did not stop there. In fact, the petitioner's prayer was only for considering her application and for enabling her to attend the interview. Exercising the power to mould relief, this Court chose to give a further direction. It was in the following terms "if the petitioner gets minimum marks as per the original score card, consider the petitioner for appointment taking into consideration her performance in the interview".

16. The operative portion of the order if subjected to parsing can be broken down as follows :

- (i) the respondent university should consider the credentials of the petitioner and award marks as per the original score card.
- (ii) if the petitioner gets minimum of 40 marks or more, the respondent should consider her



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appointment taking into consideration her performance in the interview.

Direction No.2 can be understood only in one way. If the petitioner had scored 40 or above, her appointment would depend only on her performance in the interview. No other factor can be taken into account.

The terms of direction set out in Paragraph No.26 do not admit of any doubt or ambiguity. In other words, her performance in the interview plus her clearing the threshold ceiling alone were to stand between her and the appointment and nothing else. The respondents for reasons best known did not chose to challenge the order dated 29.09.2021. If they had any doubt, they could have as well moved this Court seeking clarification ; they could have asked for review. Without doing so, it is not open to the respondents to construe the direction of this Court in a manner which suited their convenience. The Hon'ble Supreme Court in the decision reported in *(2007) 11 SCC 374 (All Bengal Excise Licensees' Association v. Raghabendra Singh and others)* approvingly cited the common law principle that it is the duty of the Crown and of every branch of the executive to abide by and obey the law. It is the duty



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of the executive in case of doubt to ascertain the law in order to obey it,
WEB COPY not to disregard it. The proper course would have been to apply to the court for clarification.

17.Though the learned senior counsel for the respondents is right in his contention that this Court will not be justified in drawing any adverse inference as regards persons who are not before this Court, I am entitled to take into account certain admitted facts which are beyond the scale of controversy. It is a fact that Dr.Hema also took part in the very same interview for the post of Assistant Professor (Fish Quality Assurance). When she applied in response to the recruitment notification dated 27.06.2019, she was also not having any Ph.D. degree. In fact, her viva voce for Ph.D. degree was held on 07.09.2019, like the petitioner. She was given provisional certificate awarding Ph.D. degree only on 27.09.2019. The convocation degree was awarded to the said Dr.Hema only on 30.11.2019. The petitioner also completed her Ph.D. degree course on 07.09.2019. Her viva voce was on the same day. She was also issued with convocation only on 30.11.2019. Since the petitioner had



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completed the Ph.D. degree course on 07.09.2019 like Dr.Hema, award
WEB COPY of Ph.D degree will obviously date back to 07.09.2019. If Dr.Hema can be considered as eligible candidate, the petitioner also deserves to be considered on the same basis. According discriminatory treatment to the petitioner indicates the mind of the contemporaries.

18.The learned counsel for the petitioner pointed out that on 06.11.2019, the Controller of Examinations wrote to the Dean that the journal of coastal research in which the petitioner's paper had been published is not a suitable journal for publishing the research work and that she may be directed to publish the research paper in a reputed and subject relevant journal with NAAS rating of >6.0 and that after submission of the papers, it may be sent to them for declaration of the results. When the matter was taken on the last occasion, I wanted to know from Dr.A.Srinivasan if this communication is based on any formal decision, Dr.A.Srinivasan informed that it is possible that it may be in the note file but he could not produce the same. In fact, I gave a direction for production of the note file. Even today, I specifically queried



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Dr.A.Srinivasan ; it was still not forthcoming. When I wanted to know
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when the decision to short list was taken, it was informed across the bar by the contemnors that the then selection committee had orally taken the decision. These aspects indicate that the contemnors were bent on denying relief to the petitioner.

19. It is true that the Hon'ble Division Bench in WA No.361 of 2022 sustained the stand of the university to appoint only Ph.D degree holders. The learned counsel for the petitioner had convincingly shown that the reasons set out by the university before the Hon'ble Division Bench have no application to the petitioner. Be that as it may, the respondents have conveniently remained indifferent to the fact that the order dated 29.09.2021 in WP(MD)No.19616 of 2019 had become final.

The Hon'ble Apex Court in ***Pradeep Kumar Maskara v. State of W.B (2015) 2 SCC 653*** held as follows :

“26. It is well settled that even if the decision on a question of law has been reversed or modified by subsequent decision of a superior court in any other case it shall not be a ground for review of such judgment



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merely because a subsequent judgment of the single judge has taken contrary view. That does not confer jurisdiction upon the tribunal to ignore the judgment and direction of the High Court given in the case of the appellants.”

The same principle will apply to the case on hand. The respondent university cannot rely on the order dated 29.04.2022 in WA No.361 of 2022 when the decision rendered inter partes is still holding good. The university officials have deliberately not placed all the cards on the table. The issue of Ph.D degree had been deliberately held as “card up their sleeves”. Such an approach is not expected from educational authorities. This kind of conduct makes the breach of this Court's order willful. There can be no quarrel with any of the legal propositions advanced by the learned Senior Counsel for the respondents. But in view of my finding that the respondents have played with the process of this Court and deliberately violated the order, the said precedents are not applicable to the facts of the case. I therefore hold that the respondents namely Dr.A.Srinivasan and Dr.M.Felix guilty of contempt.



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20. Dr.M.Felix submitted that he had assumed charge as Registrar only very recently and that therefore he ought not to be visited with any punishment. I accept the explanation of Dr.M.Felix. Even though I hold him technically guilty of contempt, I refrain from passing any sentence on him.

21. Dr.A.Srinivasan also would plead that as Registrar he is only the face of the University. But then, he was not the effective decision-maker. He only carried out the decision taken by the Vice-Chancellor. I accept the said explanation. Even though I hold that Dr.A.Srinivasan guilty of contempt, I refrain from imposing any sentence on him. The learned Senior Counsel appearing for the contemnors submitted that Dr.A.Srinivasan is to retire shortly. I make it clear that my holding him guilty of contempt will not have any bearing on his impending retirement.



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22. However, the matter cannot rest there. The learned counsel for the petitioner drew my attention to the decision of the Hon'ble Apex Court reported in ***AIR 1984 SC 1826 (Mohammad Idris v. Rustam Jehangir Bapurji)*** wherein it was held that the High Court was justified in giving appropriate directions to close the breach in addition to punishing the party for contempt of court.

23. I had occasion to consider the scope of contempt jurisdiction in ***CONT. P(MD)No.1017 of 2021 (N.Balakrishnan v. R.Seethalakshmi, I.A.S and ors)***. In the said case, the authority had passed an order contrary to an earlier court order. The aggrieved party initiated contempt proceedings. Question arose if I can also set aside the order that was passed in breach of the earlier court order. Vide order dated 20.01.2022, I had held as follows :

“11. Now the question that arises for consideration is whether I can set aside the offending order. Article 129 of the Constitution of India states that the Supreme Court shall be a Court of record and shall have all the powers of such a Court including the power



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to punish for contempt of itself. Article 215 of the Constitution of India states that every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself. These two Articles do not confer any new jurisdiction or status on the Supreme Court and the High Courts. They merely recognise a pre-existing situation. Such inherent power to punish for contempt is summary. It is not governed or limited by any rules of procedure except for the principles of natural justice. This jurisdiction is inalienable. It cannot be taken away or whittled down by any legislative enactment subordinate to the Constitution. The provisions of Contempt of Courts Act, 1971 are in addition to or not in derogation of the Articles 129 and 215 and they cannot be used for limiting or regulating the exercise of the jurisdiction contemplated by the said Articles. [T.Sudhakar Prasad V. Government of Andhra Pradesh (2001) 1 SCC 516] . When it is brought to the notice of the Court that its order has been willfully disobeyed, the accused may be punished with simple imprisonment for a term which may extend to six months or with fine which may extend to Rs.2,000/- or with both. [Section 12 of the Contempt of Courts Act, 1971]. When the



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Constitutional Court is confronted with an act of Contempt, its powers are not limited to handing out sentences alone. In Elliot V. Klinger (1967) 1 WLR 1165, the following passage from Oswald's Contempt of Court was cited:

"The Court, however has, power to restrain by injunction threatened contempts. It is competent for the Court where a contempt is threatened or has been committed, and on an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not."

In Howarth V. Howarth (L.R.) 11 P.D. 95, it was held that when steps are taken for enforcing an order, the respondent has no right to say that he prefers going to prison; he is compellable to obey the order of the Court. It was not beyond the power of the Court to ensure obedience of its order by directing the act to be done by some person appointed for that purpose instead of enforcing its order by imprisonment.

12. On most occasions, when the contemnor expresses apology demonstrating his sense of remorse,



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the Court does accept the same and closes the proceedings. As observed elsewhere, 'slap – say sorry – and forget' approach cannot be the right ending in all situations. The contemnor must purge himself of the contempt. The majesty of the Court and the authority of law must be upheld. This can be achieved only if the offending act is effaced. Contempt jurisdiction is not only about punishment but also about restoring the status quo that obtained following the judicial order and before the offending act was committed. Halsbury's Laws of England states that the Court may invoke other remedies in lieu of punitive action. In AG V. Times Newspapers Ltd., (1973) 3 All ER 54, the house of Lords addressing the question as to whether the publication of Articles in respect of a pending litigation would amount to contempt; granted injunction restraining publication that may pre-judge the issue. When injunction can be granted in exercise of Contempt jurisdiction, certainly the power to set aside the offending action is also equally available.

13. I therefore set aside the order dated dated 25.10.2019 made in proceedings No.P6/17245/2018 passed by the District Collector, Chennai District. Still I refrain from holding the first respondent guilty of



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contempt. This is because she went entirely by the legal opinion given by the Government Pleader. The Government Pleader ought not to have misled the District Collector with such opinion.

14. This contempt petition is disposed of with this direction.”

I can adopt the same approach in this case also. The petitioner is not going to get any solace by my holding the respondents guilty of contempt. She came to this Court seeking certain relief. It is my duty to enforce the order passed in her favour in these proceedings. That can be achieved only by directing the respondents to issue an order of appointment to the petitioner. I direct the Registrar of the respondent University to appoint the petitioner to the post of Assistant Professor (Fish Processing Technology) forthwith.

24. The contempt petition is allowed accordingly and it is closed as far as the respondents 2 and 3 are concerned.

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To:-

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1. The Principal Secretary,
Animal Husbandry (Diary and Fisheries),
Chennai.



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