

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

LPA No. 145/2023
CM No. 5232/2023
CM No. 5233/2023

- 1. Bhopinder Kumar, Commissioner/Secretary, ...Applicant(s)/Appellant(s)
Health & Medical Education Department,
J & K Govt., Civil Secretariat,
Jammu/Srinagar**
- 2. Rajeev K Sharma, Director Health Services,
J & K Govt. Jammu**

Through :- Mr. Raman Sharma, AAG

v/s

**Umreena Akhtar W/O Afzal Ahmed
R/O Village VPO Gool, District Ramban**

.....Respondent(s)

Through :- Mr. M Y Akhoon, Advocate

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MOHAN LAL, JUDGE**

**ORDER
13.10.2023**

(ORAL)

(Sanjeev Kumar J)

CM 5232/2023

1. Through the medium of this application, applicants seek condonation of delay of 12 days in filing the appeal.
2. For the reasons stated in the application, coupled with the submissions made at the Bar, the instant **application is allowed** and the delay of 12 days in filing the appeal is condoned.

3. *Application disposed of.*

LPA 145/2023

1. This appeal has been filed against the order dated 16.06.2023, passed by the learned Single Bench of this Court (**for short, “*the Writ Court*”**) in CPSW No. 770/2018 titled “*Umreena Akhtar vs. Atul Dulloo & Anr.*”, whereby the Writ Court has framed Rule against the Secretary to Govt., Health & Medical Education Department, Govt. of UT of J & K/Appellant No. 1 herein, with further direction to him to appear in person.
2. Before we come to the grounds of challenge, urged by the appellants, we deem it appropriate to take note of brief resume of factual antecedents leading up to the filing of this appeal.
3. Respondent-Umreena Akhtar, whose name figured in the waiting list under RBA category for the post of Female Multi Purpose Health Worker (FMPHW), District Cadre, Ramban was denied appointment by the Appellant- the then Commissioner Secretary to the Government, Department of Health & Medical Education, on the ground that the wait list had outlived its life on the expiry of period of one year from the date of issuance of original select list.
4. Respondent agitated the matter before the Writ Court in SWP 282/2016 and called in question the communication dated 16.10.2015 of Department of Health & Medical Education, whereby the respondent herein had been intimated that the wait list in which her name figured at S.No.1 had expired by efflux of time

and therefore, could not be operated. The impugned communication was contested by the concerned department, relying upon Rule 14 (7) of SRO-375 dated 21.10.2010. The matter was considered by the Writ Court vide judgment dated 17.05.2018, whereby the Writ Court came to a conclusion that the petition filed by the respondent herein had merit and therefore, deserved to be allowed. The impugned communication dated 16.10.2015 was set aside and the respondents in the writ petition were directed to consider the case of the respondent herein for appointment against the vacancy, which had remained unfilled, keeping in view the fact that her name figured at S.No.1 in the wait list under RBA category.

5. An appeal i.e. LPA No. 28/2020, filed by Govt. of UT of Jammu & Kashmir against the judgment of Writ Court dated 17.05.2018 came to be dismissed on 18.02.2022. When the Writ Court judgment dated 17.05.2018 was not complied with, a contempt petition was filed by the respondent herein before a learned Single Judge, in which the concerned department filed a compliance report and placed on record a consideration order i.e. Govt. Order No. 198-JK (HME) of 2023 dated 08.03.2023.

6. As is apparent from the impugned order, the consideration order was rejected by the Single Bench and respondents in the contempt petition were directed to file a fresh status/compliance report. Accordingly, Dr. Rajeev K Sharma-Director Health Services, Jammu filed a compliance report dated 29.05.2023, in which it was

reiterated that the Government Order dated 08.03.2023, which has already been placed on record is complete compliance of the directions passed by the Writ Court and therefore, no further compliance was required. The matter then came up for consideration before the court on 16.06.2023, when the learned Single Judge having regard to the contumacious conduct exhibited by the respondents in showing complete defiance to the directions passed by the Writ Court *prima facie* found that the appellants herein had committed contempt of court. Accordingly, Rule was directed to be framed against the Appellant No. 1 with further direction for his personal appearance in the court on the next date of hearing. It is this order dated 16.06.2023, which is called in question before us.

7. The impugned order dated 16.06.2023 is challenged by the appellants, primarily, on the ground that there was no occasion for the learned Single Judge to frame the Rule and the personal appearance of Appellant No. 1, when the judgment passed by the Writ Court stood complied with and consideration order was issued in that regard.
8. Learned counsel for the appellants submits that the learned Single Judge in exercise of contempt jurisdiction could not have gone beyond the directions passed by the Writ Court and directed the appellants to comply with the judgment in a particular manner, not envisaged in the original judgment.

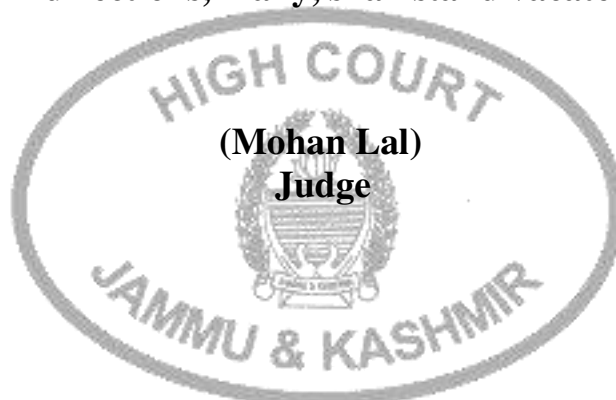
9. Learned counsel for the respondent raises preliminary objection to the maintainability of this contempt petition. He submits that in terms of Section 19 of the Contempt of Courts Act, the appeal is maintainable only against an order of punishment passed by the court in the exercise of jurisdiction to punish for contempt of Court. Framing of Rule and making a *prima facie* view, with regard to the commission of contempt cannot be said to be an order passed in exercise of jurisdiction for the punishment of contempt.
10. Having heard learned counsel for the parties and perused the material available on record, we are of the considered opinion that this appeal against the order dated 16.06.2023 passed by the learned Single Judge is not maintainable. Indisputably, the contempt petition is still pending and the learned Single Judge has not passed any order in the exercise of its jurisdiction to punish the appellants herein for committing contempt of Court.
11. In terms of order impugned, the learned Single Judge has only framed a *prima facie* opinion about the commission of contempt and has put Appellant No. 1 on notice to explain as to why he should not be punished for committing the contempt of the court. Such order, on the face of it, is not appealable under Section 19 of the Contempt of Courts Act. Even the Letters Patent Appeal (LPA) under clause 12 of the Letters Patent is not maintainable, as the impugned order cannot, by any stretch of reasoning, be termed as a judgment or order determining finally the rights of the parties. The

appellants could not, from reading of the impugned order, demonstrate that the learned Single Judge i.e. Contempt Court has issued any fresh directions which are beyond the scope of the judgment of Writ Court and therefore, we must hold the appeal against the impugned order dated 16.06.2023 maintainable under Clause 12 of Letters Patent.

12. For the foregoing reasons, we do not find any merit in **the instant appeal**, the same is, **accordingly, dismissed along with connected CM(s).**

13. **Interim directions, if any, shall stand vacated.**

JAMMU
13.10.2023
Manan



(Mohan Lal)
Judge

(Sanjeev Kumar)
Judge

Whether the order is speaking : Yes/No

Whether the order is reportable : Yes/No