

Sr. No.

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

LPA No. 101/2023
CM No. 3768/2023

Reserved on: 28.02.2024.

Pronounced on: 06.03.2024

1. UT of J&K through Principal Secretary to Govt. Forest Department, Civil Secretariat, J&K, Jammu/Srinagar.
2. Principal Chief Conservator of Forests, J&K
3. Chief Conservator of Forests, Jammu.
4. Conservator of Forests, Chenab Circle, Doda.
5. Divisional Forest Officer, Kishtwar.

....Petitioner(s)/Appellant(s)

Through :- Mr. Amit Gupta, AAG.

V/s

Farooq Ahmed Butt, Age 45 years
S/O Mohammad Abdullah Butt,
R/O Zarger Mohalla Kishtwar,
Teshil and District Kishtwar.

....Respondent(s)

Through :- Mr. F S Butt, Advocate.

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

JUDGMENT

TASHI RABSTAN, J:

1. This letters patent appeal is directed against the interlocutory order dated 27.12.2022 passed in CCP(S) No. 672/2019 titled '*Farooq Ahmed Butt v. Mr. Manoj Kumar Dwivedi & Ors*' in which the learned Single Judge has given the last and final opportunity of four weeks to the appellants herein to comply with the directions passed by the court vide order/judgment dated 20.11.2017 in SWP No. 684/2008.
2. Mr. Amit Gupta, learned AAG while arguing on behalf of the appellants submitted that the learned Single Judge had failed to appreciate that the respondent was not eligible for promotion and if his promotion was accorded

with retrospective effect, it would be illegal and injustice with other candidates and in this regard, he submitted that the impugned order is not sustainable.

3. Mr. F S Butt, learned counsel for the respondent submitted that the instant appeal is not maintainable as, on the one hand, the appellants seeks setting aside of the order dated 27.12.2022 passed in CCP(S) No.672/2019 through the medium of this appeal and on the other hand, the appellants on 03.04.2023 by way of filing CM No.1597/2023 in CCP(S) No.672/2019 sought reasonable time to comply the order dated 27.12.2022 passed by the court. The appellants have concealed this fact from the court and have not approached the court with clean hands. It is submitted that the appellants cannot run with the hares and hunt with the hounds simultaneously. Learned counsel for the respondent further submitted that no appeal can lie against the interlocutory order passed in the contempt petition.

4. In support of his submissions, learned counsel for the respondent has relied upon the judgment dated 24.08.2021 passed by this court in **LPA No.20/2021** titled **'Union Territory of JK v. Shahnaza Parveen & Ors'**. Paragraphs 13 and 14 of the said judgment are reproduced hereinbelow:

*"13. In State of J&K & Ors vs. Mohd. Tayoub Leharwal and Anr. 2018 (1) JKJ 627 (HC) a Division Bench of this court held that under Section 19 of the Contempt of Courts Act 1997 Right to Appeal is available only against an order or decision of the High Court to punish for contempt. It has further relied upon a decision of the Supreme Court in the case of **Midnapore People's Cooperative Bank Ltd. vs. Chuni Lal Nanda 2006 (5) SCC 399** to hold that under Clause 12 of Letters Patent, an appeal would lie to the Division Bench only from the "judgment" of the learned Single Judge passed in exercise of original jurisdiction. The word "judgment" in terms of Clause 12 is undoubtedly a*

concept of finality in broader sense. It would either be a final judgment, a preliminary judgment or intermediary judgment or interlocutory judgment, but it should be a judgment in the sense that it decides some issue or right between the parties finally. The intermediary and interlocutory orders passed during the course of the proceedings which do not determine any right or issue between the parties cannot be said to be a “judgment” amenable to available jurisdiction of the Division Bench under Clause 12 of the Letters Patent.

14. In view of the above decision of the Coordinate Bench of this Court, as in the case at hand, all the orders passed in proceedings for contempt are of interlocutory nature which does not determine any right or issue between the parties finally, we are of the considered opinion that the Letters Patent Appeal under Clause 12 of the Letters Patent is not maintainable.”

5. Heard Mr. Amit Gupta, learned AAG for the appellants and Mr. F S Butt, learned counsel for the respondent.

6. In the present case, in our view, the learned Single Judge on contempt side has not issued any additional direction or improved upon the earlier direction issued by the writ court vide order dated 20.11.2017 passed in SWP No.684/2008. Rather, the appellants have misled the court by suppressing the material fact that they first approached the learned Single Judge by filing CM No. 1597/2023 on 03.04.2023 seeking extension of time for complying with the directions issued in the impugned order dated 27.12.2022. This shows that they were willing to comply with the directions. However, when the time was not granted and the application was dismissed, they, as an afterthought, filed the instant appeal against the interlocutory order.

7. It is trite that no appeal would lie against an interlocutory order passed in the contempt petition, that too, in a case where the contempt court has not finally

decided the rights of the parties. [See: (2006) 5 SCC 399, Midnapore People's Cooperative Bank Ltd. v. Chuni Lal Nanda; and 2018 (1) JKJ 627 (HC), State of J&K and Ors. v. Mohd. Tayoub Leharwal and anr.]

8. The above conspectus would show that the appellants have not approached the court with clean hands and the court on contempt side has not decided the issue finally and has given the time to the appellants to comply with the judgment by way of filing a fresh compliance report.

9. In view of the preceding analysis, we dismiss the appeal as being not maintainable.

10. No order as to costs.

Jammu:
06.03.2024
Raj Kumar

(Puneet Gupta)
Judge

(Tashi Rabstan)
Judge

Whether the order is speaking?
Whether the order is reportable?

Yes/No.
Yes/No.

