

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

-

LETTERS PATENT APPEAL No.4 of 2015

JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed in C.C.No.1899 of 2013 dated 11.02.2014. C.C.No.1899 of 2013 was filed by the respondent herein to punish the appellants for disobeying and violating the order passed in C.A.No.621 of 2013 in C.C.No.519 of 2005 dated 15.07.2013.

C.C.No.519 of 2005 was filed by the respondent herein requesting the Court to punish the appellants herein for violating and disobeying the order of this Court in W.P.No.20337 of 2004 dated 11.02.2005. This Court, in its order in C.C.No.519 of 2005 dated 27.07.2005, noted that the respondent herein was terminated from service on 19.06.2000 by the Commandant, National Defence Academy, NDA, Khadakwasla, Pune; challenging the said termination order, he had filed O.A.No.433 of 2000 before the Central Administrative Tribunal, Mumbai which was dismissed on 30.01.2001; challenging the same, the respondent herein had filed W.P.No.1928 of 2002 before the High Court at Mumbai; the said Writ Petition was also dismissed on 03.06.2003; the respondent herein had moved S.L.P.No.12941 of 2003 before the Supreme Court which was also dismissed by order dated 17.11.2003; suppressing these facts he had filed W.P.No.20337 of 2004 before this Court; at the stage of admission, the Writ Petition was disposed of setting aside the impugned orders dated 19.06.2003, and the matter was remitted back for fresh disposal on merits, in accordance with law, after giving notice and opportunity to both sides; once the order has become final by the Supreme Court, the respondent herein, suppressing those facts, had filed W.P.No.20337 of 2004 and had obtained orders at the stage of admission; though a counsel had represented the respondents (appellants herein), it was the duty of the petitioner (respondent herein) to state all relevant material facts; and suppressing the

facts, the petitioner had obtained orders from the Court in W.P.No.20337 of 2004 dated 11.02.2005, which was highly deplorable; and the conduct of the petitioner (respondent herein) was not above-board. C.C.No.519 of 2005 was dismissed as devoid of merits.

Thereafter, the respondent herein filed C.A.No.621 of 2013 requesting the learned Single Judge to review the earlier order passed in C.C.No.519 of 2005 dated 27.07.2005. Even without reviewing the said order, the learned Single Judge passed an order on 15.07.2013 directing the appellant herein to dispose of the appeal filed by the respondent, if any, pending with it on merits, as early as possible, after giving all reasonable opportunity to him to put forth his pleas.

The respondent herein, thereafter, filed C.C.No.1899 of 2013 alleging violation of the order passed in C.A.No.621 of 2013 in C.C.No.519 of 2005 dated 15.07.2013. An elaborate order dated 11.02.2014 was passed by the learned Single Judge wherein he observed that the point that arose for consideration was whether appointment of the petitioner was treated as a regular appointment, and a regular departmental enquiry had to be conducted; this aspect, i.e. whether appointment of the petitioner was to be treated as a regular appointment or not, was not considered in the earlier proceedings and, therefore, this aspect had to be examined by the appellate authority in detail; when certain allegations were made against an employee on probation, his services could not be terminated without holding a regular enquiry; where the allegations showed that it may result in stigma, a regular enquiry is to be conducted; the concerned authorities seem not to have examined this rule position; it became necessary for the appellant, therefore, to examine these aspects; these two important aspects were not considered in the earlier orders rendered by various Courts; in the circumstances, the appellant should consider whether there were any recruitment rules during the relevant period?, and what is the effect if there are no regular recruitment rules?, whether appointment of the petitioner should be treated as regular appointment and whether the CCS (CCA) Rules are applicable?; whether any regular departmental enquiry was conducted, as contemplated in those rules; dismissing the appeals, or rejecting the contention of the petitioner, merely on the ground that all his earlier petitions had been dismissed was not proper; the

authorities had to apply their mind, examine the rule position, and come to a definite conclusion; and the authorities also had to consider whether stigma was attached to the allegations made against the respondent herein. The learned Single Judge directed the appellants herein to dispose of the appeal filed by the respondent within a period of 60 days from the date of receipt of a copy of the order. The respondent was directed to file a fresh appeal before the appellant within two weeks from the date of receipt of a copy of the order and if, for any reason, the earlier appeal papers were not available with the appellant, the appellant was directed to dispose of the appeal filed by the respondent within the time stipulated.

Thereafter an order appears to have been passed on 22.08.2014 which was signed by the Under Secretary to the Government of India. The respondent herein filed C.A(SR) No.3329 of 2014 in C.C.No.1899 of 2013 alleging that the appeal was disposed of by the Under-Secretary to the Government of India. The learned Single Judge, by his order in C.A(SR).No.3329 of 2014 in C.C.No.1899 of 2013 dated 28.08.2014, directed the appellant to fix a date for hearing of the appeal and, after giving an opportunity to the respondent to argue the appeal in-person, to pass appropriate orders on or before 07.10.2014 failing which the appellant was directed to appear in-person before the Court on 07.10.2014 at 10.30 a.m.

In compliance with the aforesaid order, the Defence Secretary appears to have passed an order on 27.09.2014. Despite the appeal having been disposed of by the Defence Secretary, the learned Single Judge passed yet another order in C.C.No.1899 of 2013 on 05.11.2014 directing the appellant herein to be present before the Court on 18.11.2014. He was further directed to examine the matter in detail before filing the affidavit and, if necessary, to review his earlier order. Aggrieved by the order passed in C.C.No.1899 of 2013 dated 05.11.2014, the appellant herein filed L.P.A.No.4 of 2014; and a Division Bench of this Court, by order in L.P.A.No.4 of 2014 dated 30.07.2015, allowed the appeal, and set aside the order of the learned Single Judge in C.C.No.1899 of 2013 dated 05.11.2014.

The order under challenge in this appeal is the order passed in C.C.No.1899 of 2013 dated 11.02.2014 wherein, as noted hereinabove, the learned Single Judge had passed an elaborate order on merits, and had eventually directed the appellant to dispose of the appeal filed by the respondent within 60 days.

Before us, Sri S.Satyanarayana Prasad, learned Senior Counsel appearing on behalf of the appellant, would place reliance on the judgments of the Supreme Court in **J.S.Parihar vs. Ganpat Duggar, Midnapore Peoples' Coop. Bank Ltd. vs. Chunilal Nanda** and **Special Deputy Collector vs. N.Vasudeva Rao** to submit that, if the High Court decides an issue and passes any direction relating to the merits of the dispute between the parties in contempt proceedings, an appeal under Clause 15 of the Letters Patent would lie. The aforesaid judgments of the Supreme Court were followed by the earlier Division Bench in its order in L.P.A.No.4 of 2014 dated 30.07.2015, and it was observed:-

*“..... The question whether an appeal, under Clause 15 of the letters patent, would lie against the order passed by the Learned Single Judge, in CC No.1899 of 2013 dated 05.11.2014, is not res-integra. As noted hereinabove the Learned Single Judge, while directing the appellant to be present before him, also directed him to review his earlier order. The direction to the appellant, to review his earlier order, is an order on merits and is not an order passed in the exercise of the power to punish for contempt. In **J.S. Parihar¹**, the Supreme Court held that, once an order is passed by the Government, a fresh cause of action arises for which redressal is required to be sought in an appropriate forum; the order may be wrong or may be right or may or may not be in conformity with the directions of the High Court; that would, however, be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review; and such an order cannot be considered to be in wilful violation of the orders of the Court. In **Midnapur Peoples' Co-operative Bank Ltd²**, the Supreme Court held that if the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in contempt proceedings, the aggrieved person is entitled to challenge the said order in an intra-court appeal if the order is of a Learned Single Judge and there is a provision for an intra-court appeal, or by seeking special leave to appeal to the Supreme Court under Article 136 of the Constitution of India. In **N. Vasudeva Rao³**, the Supreme Court, following its earlier judgment in **Midnapur Peoples' Co-operative Bank Ltd²**, held that a letters patent appeal was maintainable. Clause 15 of the Letters Patent provides for an intra-court appeal and, consequently, an appeal under Clause 15 of the Letters Patent is maintainable against the order passed in C.C. No.1899 of 2013 dated 05.11.2014.....”*

Placing reliance on ***A.V.Papayya Sastry vs. Govt. of A.P.*** and ***Ram Chandra Singh vs. Savitri Devi***, Sri I.Ravi Kumar, the respondent-party-in-person would contend that an order, vitiated by misrepresentation or fraud, can always be questioned in collateral proceedings. In ***A.V.Papayya Sastry***⁴ the Supreme Court observed that fraud vitiates all judicial acts; a judgment, decree or order obtained by fraud, whether by the court of first instance or by the final court, has to be treated as non-est and a nullity; and it can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings. In ***Ram Chandra Singh***⁵ the Supreme Court referred with approval to the judgment of the Calcutta High Court in ***Chittaranjan Das vs. Durgapore Project Limited*** wherein it was held that suppression of a material document, which affected the conditions of service of the petitioner, would amount to fraud in such matters; and even principles of natural justice were not required to be complied with in such a situation.

The Supreme Court, in ***Ram Chandra Singh***⁵, also referred with approval to its earlier judgments in ***Sharda vs. Dharmpal*** wherein it was held that if a judgment and decree has been obtained by practising fraud on the court, principles of *res judicata* would not apply; to ***Dwarka Prasad Agarwal (D) By L.Rs vs. B.D.Agarwal*** wherein it was held that an order passed without jurisdiction is a nullity, and all orders and actions taken pursuant to or in furtherance thereof must also be declared wholly illegal and without jurisdiction; and to ***Rajesh D.Darbar vs. Narsingrao Krishnaji Kulkarni*** wherein it was held that the courts can take notice of subsequent events and can mould the relief accordingly; this could be done only in exceptional cases; and the equitable principle cannot stand in the way of the court adjudicating the rights already vested by a statute.

We asked the respondent-party-in-person whether the order of the learned Single Judge, in C.C.No.1899 of 2013 dated 11.02.2014, was passed on merits after recording a finding that the earlier orders were vitiated either by misrepresentation or by fraud. While the respondent party-in-person has taken us through several paragraphs of the said order, it is evident that no finding has been recorded therein that the earlier orders were vitiated either by

misrepresentation or by fraud. We make it clear here itself that this order shall not be construed as our opinion that, in contempt proceedings, the High Court can pass an order on merits, if it is satisfied that the earlier orders were vitiated by misrepresentation or fraud. All that we hold is that this submission of the respondent-party-in-person is not even supported by the findings recorded in the order under appeal.

The learned Single Judge has clearly exceeded his jurisdiction in examining the order, passed by the appellate authority on its merits, in contempt proceedings. The scope of an enquiry, in proceedings under the Contempt of Courts Act, is limited to an examination whether the order, violation of which is alleged in the contempt case, has been violated wilfully or deliberately; and, if so, the nature and extent of the punishment to be imposed. The Court, exercising jurisdiction under the Contempt of Courts Act, cannot examine the order passed by the authority, in compliance with its earlier order, on merits or to interfere therewith. The order under appeal, therefore, necessitates being set aside.

The respondent-party-in-person would draw our attention to the proceedings dated 18.08.2015 in support of his submission that the revision preferred by him has been entertained by the Department of Personnel and Training, Government of India, and to another proceedings dated 30.09.2002 in support of his submission that the competent authority is the Department of Personnel and Training. Sri S.Satyanarayana Prasad, learned Senior Counsel, expresses ignorance of both these proceedings. As the scope of enquiry in this appeal is limited to the validity of the order passed in C.C.No.1899 of 2013 dated 11.02.2014, we refrain from expressing any opinion on the aforesaid orders referred to by the respondent-party-in-person.

The Letters Patent Appeal is allowed, and the order in C.C.No.1899 of 2013 dated 11.02.2014 is set aside. However, in the circumstances, without costs. The miscellaneous petitions pending, if any, shall also stand disposed of.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

07th October 2015.

TSY/JSU