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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment pronounced on: 29th November, 2016

+ LPA 276/2016

THE MANAGING COMMITTEE OF THE PINNACLE SCHOOL

...Appellant

Through: Mr. Ashok Chhabra, Advocate

Versus

DIRECTORATE OF EDUCATION & ANR. ...Respondents

Through: Mr. Gautam Narayan, ASC with Mr.R.A. Iyer, Advocate for respondent No. 1
Mr. Daljeet Singh, Senior Advocate with Mr.Chandrashekhar, Advocate for R-2.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

MS. G. ROHINI, CHIEF JUSTICE

CM No.16349/2016 (delay in filing)

CM No.16350/2016 (delay in re-filing)

These applications have been filed for condonation of the delay of 04 days in filing the appeal and the delay of 180 days in re-filing the appeal.

Heard the learned counsel for both the parties.

In the facts and circumstances explained in the applications, the delay in filing as well as re-filing is hereby condoned.

Both the applications are accordingly disposed of.

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1. The appeal under Clause 10 of the Letters Patent is preferred against the order of the learned Single Judge dated 27.05.2015 in Contempt Case (C) No.13/2015.

2. The said Contempt Case (C) No.13/2015 was filed by the respondent No.2 herein (Ms.Bindu Khanna) alleging violation of the order dated 20.05.2014 in W.P.(C) No.3212/2014 whereunder the respondent No.1 herein/Directorate of Education, GNCTD was directed to enforce its order dated 20.05.2014 in accordance with law.

3. The facts in brief are as under:

The respondent No.2 herein (Ms.Bindu Khanna) was appointed as TGT on 06.01.1994 in Pinnacle School, Panchsheel Enclave, New Delhi, i.e., the appellant herein. She was promoted as PGT on 01.04.2006. She filed W.P.(C) No.2742/2011 with a prayer to grant monetary benefits of 4th, 5th and 6th Pay Commission Reports payable to teachers/employees in schools. The said writ petition was disposed of by this Court by order dated 16.09.2013 permitting Ms.Bindu Khanna to file a detailed representation before the Director of Education specifying the arrears of monetary emoluments to which she was entitled to in terms of 4th, 5th and 6th Pay Commission Reports and that the school management will also file a reply along with its calculations and documents and thereafter, the Director of Education shall pass an order within a period of four months. Accordingly, the following order was passed by the Director of Education on 25.04.2014:

“AND WHEREAS, Dy. Controller of Accounts, Dte. Of Education was directed to examine the matter and calculate the amount to be paid to a similarly placed TGT teacher appointed in a government school as per the applicable pay scales from time

to time as per recommendations of 4th, 5th and 6th Pay Commission.

AND WHEREAS, accordingly Dy. Controller of Accounts, Dte. Of Education has prepared the due statement in r/o a similarly placed TGT teacher appointed in a government school and total due amount is calculated as Rs. 47,60,187/- (Rupees Forty Seven Lakhs Sixty Thousand and One Hundred Eighty Seven only). The statement of calculation is enclosed herewith.

AND WHEREAS, Ms. Bindu Khanna submitted that she had drawn Rs. 30,87,925/- (Rupees Thirty Lakhs Eighty Seven Thousand and Nine Hundred Twenty Five only) for the similar period for which the due is calculated. The said drawn amount has not been objected by the schools representatives during the hearings. The drawn statement is enclosed herewith.

Now Therefore, I , Dr. Madhu Rani Teotia, Addl. Director (Act-1), Director of Education nominee in this case, hereby issue directions to the school management of The Pinnacle School, D-Block, Panchsheel Enclave, New Delhi-110017 to take further necessary action for payment of the difference amount to Ms. Bindu Khanna.

This disposes off the directions given by the Hon'ble High Court vide order dated 16.09.2013 in W.P. (C) 2742/2011 – Ms. Bindu Khanna vs Director of Education & Ors.”

4. On the basis of the same, the respondent No.2 requested the appellant school to pay Rs.16,72,262/- towards the monetary benefits. Since the school failed to respond, she filed W.P.(C) No.3212/2014, which was disposed of by order dated 20.05.2014 with directions as under:

"5. The writ petition, in effect, seeks implementation of the order dated 25.04.2014 passed by the Directorate of Education pursuant to a direction issued by this Court on 16.09.2013 in W.P.(C) 2742/2011. In these circumstances, the writ petition is

disposed of with a direction to respondent No.1 to take recourse to the relevant provisions under the Delhi School Education Act, 1973 and the Rules framed thereunder for enforcement of its order dated 25.04.2014; albeit in accordance with law. However, it is made clear that before passing any coercive orders, respondent No.2 will be called upon by the Directorate of Education to seek its explanation as to why the order dated 25.04.2014 has not been complied with.

6. The writ petition is, accordingly, disposed of.

7. Needless to say, the requisite action shall be taken by Directorate of Education due expedition, preferably not later than twelve weeks from today."

5. At that stage, the appellant school filed W.P.(C) No.4059/2014 challenging the order of the Directorate of Education dated 25.04.2014. The said writ petition was disposed of by order dated 18.02.2015 directing the Director of Education to pass a fresh order in the light of the observations made therein. The operative portion of the order in W.P.(c) No.4059/2014 reads as under:

"30. Let the Director of Education now pass a speaking order within two months from today after giving hearing to both the parties and the speaking order will give reasons as regards the issues which are raised by both the parties and will also refer to the documents relied upon by each of the parties which will decide the respective issues and contentions which are raised before the Director of Education. Both the parties are entitled to urge all issues of facts and law as per the records existing before the Director of Education with respect to respective cases. It is clear that the Director of Education will not give more than two opportunities to each of the parties for hearing and if any party fails to utilize the opportunity, Director of Education is entitled to proceed on the basis of the record without hearing the party which has not availed the opportunity of hearing."

6. In compliance of the above order dated 18.02.2015, the Director of Education passed a fresh order dated 05.05.2015. The relevant portion may be reproduced hereunder:

“The documents as referred to above and relied upon by the school are their internal documents which were not shared with Directorate of Education and same are satisfactorily explained by Mrs. Bindu Khanna. The fact remains that School could not wriggle out of their own documents such as Staff Statements submitted with the Directorate of Education and Salary records nor could give any satisfactory replies to those documents which on face of it approve the claim of Mrs. Bindu Khanna as correct.

The counsel for Mrs. Bindu Khanna had submitted that the school has been taking dishonest plea as and when they are caught or they have no answer that these record are misplaced. The conduct of the school that they are taking such pleas and plea of error repeatedly before the Directorate of Education and other forums is unsustainable.

In view of above findings, I, Padmini Singla, Director of Education, hold that Mrs. Bindu Khanna was appointed as TGT with effect from 06.01.1994 and promoted as PGT from 01.04.2006, and direct the management of the Pinnacle School to pay difference amount of arrears of 4, 5 and 6th Pay Commission payable to Mrs. Bindu Khanna within 2 weeks from date of receipt of this order.

This disposes off the directions given by the Hon’ble High Court vide order dated 18.02.2015 in W. P. (C) No. 4059/2014 and C. M. No. 8146/2014 in the matter of The Managing Committee of The Pinnacle School, D-Block, Panchsheel Enclave, New Delhi Vs. Director of Education & Anr.”

7. In the meantime, the respondent No.2 herein/Bindu Khanna filed Contempt Petition (C) No.13/2015 alleging violation of the order dated

20.05.2014 in W.P.(C) No.3212/2014 and the same was disposed of by the order under appeal dated 27.05.2015, which reads as under:

"1. Learned counsel appearing on behalf of respondents submits that the present petition has arisen against order dated 18th February, 2015 passed in W.P.(C) 4059/2014.

2. Pursuant to order dated 20th May, 2014 passed in W.P.(C) 3212/2014 the order passed by Director of Education has been remanded. Consequently, the Director of Education has passed a fresh order dated 5th May, 2015.

3. Learned counsel appearing on behalf of respondent No.2 submits that respondent No.2 is in process to challenge the order dated 5th May, 2015.

4. In view of above, I direct respondent No.2 to comply the order dated 5th May, 2015 passed by the Director of Education within six weeks failing which the respondent No.2 shall be liable to pay Rs.50,000/- as costs in favour of the petitioner.

5. Accordingly, the petition is disposed of."

8. Aggrieved by the same, the present appeal has been filed by the school management.

9. It is contended by the learned counsel for the appellant that the impugned directions issued by the learned Single Judge are beyond the justification exercisable in contempt proceedings and therefore, on that ground itself the order under appeal is liable to be set aside. It is also contended that since the order dated 18.02.2015 no longer survives and is substituted by a fresh order dated 05.05.2015, the learned Single Judge should not have issued the impugned directions in the contempt case filed for implementation for the order dated 20.05.2014 in W.P.(C) No.3212/2014. In support of his submission, the learned counsel placed

reliance upon *Sudhir Vasudeva, Chairman and MD, Oil and Natural Gas Corporation Ltd. and Ors. vs. M.George Ravishekar and Ors. (2014) 3 SCC 373, Ashok Kumar Aggarwal vs. Sumit Bose and Anr. (2014) 13 SCC 215 and Noor Saba vs. Anoop Mishra and Anr. (2013) 10 SCC 248.*

10. On the other hand, it is contended by the learned Senior Counsel appearing for the respondent No.2 that the present appeal is liable to be dismissed in limine in the light of the law laid down by the Supreme Court in *Midnapore Peoples' Co-op. Bank and Ors. vs. Chunilal Nanda and Ors. (2006) 5 SCC 399.*

11. Having considered the scope of maintainability of appeals against the orders in contempt proceedings, the Supreme Court in *Midnapore Peoples' Co-op. Bank and Ors. vs. Chunilal Nanda and Ors. (supra)* summarized the legal position as under:

“11.The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarized thus:

I. An appeal under Section 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of 'jurisdiction to punish for contempt' and therefore, not appealable under Section 19 of CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under Section 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. 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 a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases).”

12. It is clear from the above decision that an appeal under Clause 10 of the Letters Patent, against an order in contempt proceedings is maintainable only where the High Court decides an issue or makes any direction relating to the merits of the dispute between the parties.

13. We, therefore, find force in the submissions made by the learned Senior Counsel for the respondents as to the maintainability of the appeal.

14. As is evident from the order under appeal, the learned Single Judge neither decided an issue nor made any direction relating to the merits of the disputes between the parties, but merely directed implementation of the order dated 05.05.2015 passed by the Director of Education. It may be true that the order dated 05.05.2015 came to be passed pursuant to the directions in a later writ petition, i.e., W.P.(C) No.4059/2014. However, it is not correct to say that the earlier order dated 20.05.2014 in W.P.(C) No.3212/2014 has been rendered redundant in view of the subsequent order dated 18.02.2015 in W.P.(C) No.4059/2014 and the consequential order

passed by the Directorate of Education dated 05.05.2015. It is relevant to note that the learned Single Judge while passing the impugned directions had taken note of the subsequent order of the Director of Education dated 05.05.2015, which in fact had reiterated the earlier order dated 25.04.2014. Hence, the learned Single Judge was justified in directing implementation of the order dated 05.05.2015. The mere fact that the said order came to be passed in terms of the order in W.P.(C) No.4059/2014 in no way creates a bar to pass such an order in exercise of the contempt jurisdiction.

15. For the aforesaid reasons, even on merits we do not find any justifiable reason to interfere with the order under appeal.

16. Accordingly, LPA is dismissed.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL J.

NOVEMBER 29, 2016

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