

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE T.RAJANI

WRIT APPEAL NO.4 OF 2017

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the *ad interim* order passed by the learned Single Judge, in WP.MP.No.56012 of 2016 in WP.No.45438 of 2016 dated 26.12.2016, suspending the order dated 03.12.2016 whereby the respondent-writ petitioner was reverted from the post of Depot Manager to the post of Assistant Manager by the Managing Director of the Telangana State Road Transport Corporation exercising his powers under Regulation 30(5) of the TSRTC Employees' (Recruitment) Regulations, 1966 ("the Regulations" for short) on administrative grounds.

The respondent-writ petitioner was earlier reverted by office order dated 21.10.2016 on the **ground** that the Executive Director, Karimnagar, had submitted a report recommending his reversion on the ground that he was incapable of discharging his duties as a Depot Manager effectively and harmoniously. Questioning the said order dated 21.10.2016, the respondent-writ petition filed WP.No.36592 of 2016 and, on the learned Single Judge ordering notice, he preferred WA.No.1287 of 2016. A Division Bench of this Court, by its order in WA.No.1287 of 2016 dated 13.12.2016, recorded the submission of Sri G.Vidyasagar, learned Senior Counsel appearing on behalf of the Telangana State Road Transport Corporation, that the impugned order of reversion had been withdrawn, and a fresh order was issued; and, accordingly,

closed the Writ Appeal. By its order dated 14.12.2016, WP.No.36592 of 2016 was closed by the Division bench granting liberty to the petitioner to challenge the fresh order of reversion. Thereafter, the order impugned in the Writ Petition came to be passed and against the *ad interim* order passed therein the present appeal is preferred.

As reliance is placed by Sri S.Satyam Reddy, Learned Senior Counsel, on the judgment of the Supreme Court, in **Deoraj v. State of Maharashtra**¹, to contend that an appeal is not maintainable against an ad-interim order passed by the Learned Single Judge, it is necessary to examine this contention at the very outset. While this Court, in the exercise of its jurisdiction under Clause 15 of the Letters Patent, would ordinarily not entertain an appeal against an *ad interim* order, that does not mean that an appeal against such an order is not maintainable. In this context, it is relevant to note that, in **Bharat Cooking Coal Limited v. Dev PL(JV), Dhanbad**², the challenge before the Division Bench of the Jharkhand High Court was to an interim order passed by the Learned Single Judge granting status quo. On an objection being raised to the maintainability of the appeal, the Division Bench of the Jharkhand High Court, relying on the judgment of the Supreme Court in **Midnapore Peoples Co-op. Bank Limited v. Chunilal Nanda**³, held that it is only against routine orders or orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties, that a Letters Patent Appeal is not

¹ (2004) 4 SCC 697

² 2014 Indlaw JHKD 294

³ (2006) 5 SCC 399

maintainable; and the interlocutory order under appeal, which caused gross injustice to a party, which deprived him of a valuable right, should be treated as a judgment within the meaning of the Letters Patent.

In **Union of India v. Government of Tamilnadu**⁴, the question which arose for consideration before the Division bench of the Madras High Court was whether an appeal, under Clause 15 of the Letters Patent, would lie against an interim order of injunction passed by the learned Single Judge. Relying on the judgment of the Supreme Court in **Shah Babulal Khimji v. Jayaben D.Kania**⁵, the Division bench of Madras High Court observed:

“.....In reply, the learned Advocate General submitted that the policy decision taken by the Central Government can be challenged if it is in violation of the provisions of the Constitution, statutory enactment and against public interest or does not subserve the public interest. He further submitted that under the dual pricing policy, there is no restriction imposed on any of the bulk consumers to get high speed diesel from the retail outlets operated by the petro dealers, and the effect of the impugned order passed by the learned single Judge is only to provide a single place for the supply of high speed diesel required for operating the buses. According to the learned Advocate General, if the impugned order had not been passed, the buses of the State Transport Undertakings would have to go to the retail outlets for getting their tanks filled up, for which the State would have paid only concessional rate payable to high speed diesel, as there is no such prohibition in the policy. Thus, neither the Union of India nor the oil marketing companies are suffering any losses on account of the interim injunction granted by the learned single Judge. **He further submitted that the interim injunction was granted only till 12th April, 2013, and before the learned single Judge, learned standing counsel appearing for the Union of India did not raise any such plea, as has been raised in the present appeal. It is always open to the Union of India to move an application for vacating the exparte order of interim injunction passed by the learned single Judge, and all the pleas raised herein by the appellant shall be considered by the learned single Judge at the time of passing final orders on the application filed for grant of interim relief or finally deciding the main writ petition.** He further submitted that it is the usual practice of this Court not to assign any reasons while granting interim relief by passing an order of interim injunction at the initial stage, which practice has been followed by the learned single Judge in this case also. According to him, after exchange of affidavits, this Court considers all the pleas raised by the respective parties while passing order on the miscellaneous application, and therefore, the impugned order passed by the learned single Judge does not call for any interference.

⁴ 2013 Indlaw MAD 832

⁵ AIR 1981 SC 1786

Mr.M.Ravindran, learned senior counsel appearing for the Oil Marketing Companies, submitted that the learned single Judge ought not to have granted an order of temporary injunction where a policy decision is under challenge. The effect of grant of temporary injunction has a cascading effect and the oil marketing companies are put to loss of approximately Rs.424 crores daily, as other bulk consumers have also approached the other High Courts for grant of interim injunction. He has relied upon a decision of the Hon'ble Supreme Court in Bhavesh D.Parish vs. Union of India reported in 2000 (5) SCC 471.

In the present case, the interim order passed by the learned single Judge, though does not finally decide a issue, but materially and directly affects the appellant, as the Oil Marketing Companies, which supply diesel to the first respondent herein, would be required to supply diesel at the rate at which they are supplying to the retail consumers thereby causing daily loss to the Oil Marketing Companies running into several crores of rupees, and thus burdening the appellant in grant of subsidy. The view, which we are taking, is in lines with the principles laid down by the Hon'ble Supreme Court in Shah Babulal Khimji vs. Jayaben D.Kania and another (supra) (which has been followed by the Hon'ble Supreme Court in the case of Midnapore Peoples' Coop.Bank Ltd., (supra), wherein the Hon'ble Supreme Court, while considering the scope of Clause 15 of the Letters Patent had held that every interlocutory order cannot be regarded as a judgment, but only those orders would be judgments, which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned.

Thus, the appeal preferred under Clause 15 of the Letters Patent by the appellant is maintainable....." (emphasis supplied)

The law laid down in the aforesaid judgments, of the Jharkhand and Madras High Courts, is that, even where the interim order passed by the learned Single Judge does not finally decide an issue, but materially and directly affects the appellant, it can be regarded as a judgment under Clause 15 of the Letters Patent as it affects the vital and valuable rights of the parties and causes serious injustice to them. In the case on hand, the interim order of suspension would undoubtedly cause serious injustice to the appellants as they are required, as a result of the said order, to continue the respondent-writ petitioner in the higher post of Depot Manager to which he was temporarily promoted earlier under Regulation 30(1) of the Regulations.

Even otherwise, it is not open to the respondent-writ petitioner to contend that an appeal against an *ad interim* order is not maintainable when, in the previous round of litigation, he had preferred WA.No.1287 of 2016 not against an *ad interim* order but against hearing of the Writ Petition being deferred by the learned Single Judge issuing notice, without any order being passed. Reliance placed by Sri S.Satyam Reddy, Learned Senior Counsel, on the judgment of the Supreme Court in **Deoraj**¹ is misplaced. In the said judgment, the Supreme Court held that even an order, which tantamounts to allowing the Writ Petition itself, can be passed at the interlocutory stage, but the Court would be justified in doing so only if a very strong *prima facie* case is made out. The contention, urged on behalf of the appellants, is not that the learned Single Judge lacked jurisdiction to pass the interlocutory order, but is that the *ad-interim* order causes them serious injustice, and materially and directly affects them. We see no reason, therefore, to non-suit the appellants on this ground.

Sri G.Vidyasagar, learned Senior Counsel appearing on behalf of the appellants, would contend that the earlier order of reversion was found to be stigmatic by the Division Bench; and, consequently, the appellants herein had chosen to withdraw the earlier order of reversion, and to pass an order afresh, without making any observations on the performance of the respondent-writ petitioner; and the power to revert an employee, temporarily promoted earlier to a higher post, is available to the Corporation under Regulation 30(5) of the Regulations.

Regulation 30 of the Regulations provides for temporary promotion and, under sub-regulation (1)(i) thereof, where it is

necessary in administrative interest to emergently fill a vacancy, in a post borne on the cadre of a higher category in a service or class, by promotion from the lower category; and, if filling of such vacancy in accordance with the Regulations is likely to result in undue delay; the appointing authority may promote a person temporarily otherwise than in accordance with the Regulations. Regulation 30(4) stipulates that a person promoted under clause (1) shall not be regarded as a probationer in the higher category or be entitled by reason only of such promotion to any preferential claim to future promotion to such higher category. Regulation 30(5) stipulates that the appointing authority shall have the power to revert, to a lower category or post, any person promoted under clause (1) of Regulation 30 at any time without assigning any reason, and without notice. Regulation 30(6) stipulates that, if any person referred to in clause (4) is subsequently promoted to the higher category in accordance with the Regulations, he/she shall commence his/her probation in such category from the date of such subsequent promotion or from such earlier date as the appointing authority may in its discretion determine; he/she shall also be eligible to draw increments in the time scale of pay applicable to him/her, from the date of commencement of his/her probation, but shall not be entitled to arrears of pay unless otherwise ordered.

It is evident, from Regulation 30(1), that temporary promotion is effected only on administrative exigencies where it appears that a post, in a higher category of a service, is not likely to be filled up in the immediate future. The temporary promotee to the higher post has, in view of Regulation 30(4), no right over the

said post as he cannot even be regarded as a regular promotee nor can he, merely by reason of his having served in the temporary post, claim promotion to the said higher post in future. Regulation 30(5) confers on the appointing authority the power of reversion without assigning any reason and without notice. The impugned order does not assign reasons, as recording of reasons may result in casting a stigma on the employee concerned. The mere fact that a person, who was temporarily promoted earlier, is reverted can neither be held to be a punishment nor can any such an employee claim, as a matter of right, that, on his being temporarily promoted to a higher post, he should be continued in such post till he is regularly promoted to the said post.

Regulation 30(6), however, confer power on the competent authority, on regular promotion to the higher post being made, to confer on such promotee the benefit of an earlier date of promotion which may, possibly, extend to the date from which the employee was temporarily promoted earlier. The submission of Sri S.Satyam Reddy, learned Senior Counsel, is that the respondent-writ petitioner stands at Sl.No.3 in the list of Assistant Managers; if his juniors, who are still being continued as Depot Managers on a temporary basis, were to be regularly promoted as Depot Managers later and are given the benefit of the earlier service, which they had rendered on being temporarily promoted as Depot Managers, his regular promotion to the higher post of Depot Manager, may still render him junior in the cadre of Depot Managers to those who were juniors to him in the cadre of Assistant Managers. Learned Senior Counsel would also place reliance on certain averments made in the counter affidavit filed in WA.No.4 of 2017 wherein the

respondent-writ petitioner had alleged that, in the entire history of the appellant-Corporation all promotions, to the post of Depot Manager, have been made only under Regulation 30 of the Regulations, and their services have been made permanent from the date of temporary promotion. On the other hand Sri G. Vidyasagar, learned Senior Counsel appearing on behalf of the Appellant-Corporation, would submit that there is no such averment in the present writ affidavit; the appellant-Corporation has been effecting regular promotions to higher posts; not every temporary promotee, who was subsequently regularly promoted to the higher post, has been given the benefit of inclusion of the temporary service rendered by him in the higher post earlier; and the delay in effecting regular promotions, for the past two years, is only because of bifurcation issues consequent upon formation of the State of Telangana under the Andhra Pradesh Re-Organisation Act, 2014.

While we see no reason to interfere with the impugned order of reversion, as the said order does not cast any stigma on the respondent-writ petitioner, we deem it appropriate to make it clear that, in case employees who have been temporarily promoted along with the respondent-writ petitioner, are later promoted as Depot Managers on a regular basis and are given the benefit of the service rendered by them earlier on their temporary appointment as Depot Managers, which may result in persons juniors to the respondent-writ petitioner overtaking him in the seniority list of Depot Managers, neither the impugned order of reversion nor the order now passed by us, would disable the respondent-writ

petitioner from questioning the same in appropriate legal proceedings.

As we are satisfied that the power exercised by the Corporation is in accordance with the statutory regulations, governing employees of the Corporation, we consider it appropriate to set aside the ad-interim order passed by the Learned Single Judge. It is also made clear that the impugned order of reversion shall be subject to the result of the Writ Petition.

The Writ Appeal is, accordingly, disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.



(RAMESH RANGANATHAN, ACJ)

(T.RAJANI, J)

12th July 2017
RRB