

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.2258 of 2016

T.Jayaraman

.. Petitioner

vs

1.The Chief General Manager Telecom
BSNL Tamil Nadu Telecom Circle
Anna Salai
Chennai - 600 002

2.The Registrar
Central Administrative Tribunal
Madras Bench
Chennai - 600 108

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, calling for the records relating to order dated 30.04.2014 in C.A.No.62 of 2012 passed by the 2nd respondent Tribunal and to quash the same and direct the 1st respondent to implement the order dated 20.10.2011 of the 2nd respondent Tribunal in T.A. 59 of 2009.

For Petitioner : Mr.Giridhar & Sai
for P.V.S.Giridhar Rao

For Respondents : Mr.K.Anbarason - for R1

O R D E R

(Order of the Court made by M.DURAISWAMY, J.)

Heard Mr.Giridhar, learned counsel appearing for the petitioner and Mr.K.Anbarason, learned counsel appearing for the 1st respondent.

2. The petitioner has filed the above Writ Petition to issue a Writ of Certiorarified Mandamus to call for the records relating to the order dated 30.04.2014 in C.A.No.62 of 2012 passed by the 2nd respondent, to quash the same and direct the 1st respondent to implement the order dated 20.10.2011, passed by the 2nd respondent made in T.A. No. 59 of 2009.

3.1 It is the case of the petitioner that he filed the Contempt Petition in C.A.No.62 of 2012 to punish the respondent for Contempt of Court for alleged wilfull disobedience of the order dated 20.10.2011 passed in T.A.No.59 of 2009. T.A.No.59 of 2009 was filed for quashing the order dated 03.05.2006 and to promote the petitioner to the post of Joint Telecom Officer with effect from 08.07.2002 with all consequential benefits including arrears of pay and allowances in the said post.

3.2 The Tribunal, by order dated 20.10.2011, directed the 1st respondent, Chief General Manager, BSNL Telecom, Tamil Nadu Circle, Chennai, to convene a review DPC to consider the promotion of the petitioner to the post of Joint Telecom Officer in the category of failed SC candidates, as per instructions contained in the DG's letter dated 04.05.1981 and if the petitioner is found fit, an appropriate order to that effect be passed.

3.3 The case of the respondent before the Tribunal was that in the departmental examination after awarding 45 grace marks, the petitioner's aggregate mark came to only 110, which is less than the cut-off mark of 159. That apart, in Paper III, his score was less than 20%. Hence, no SC vacancy was left out after promotion of the 46 candidates after review/award of grace marks.

3.4 The Tribunal, dropped the Contempt Proceedings observing that there has been compliance of the order of the Tribunal in T.A.No.59 of 2009 and there was no contumacious conduct or willful disobedience on the part of the respondent. Against this order, the petitioner has filed the Writ Petition.

4. It is pertinent to note that under Section 19 of the Contempt of Courts Act, an appeal shall lie as of right from any order or decision of the High Court in exercise of its jurisdiction to punish for contempt. In other words, if the High

Court passes an order in exercise of its jurisdiction to punish any person for Contempt of Court, then only an appeal shall be maintainable under sub-section (1) of Section 19 of the Act. As sub-section (1) of Section 19 provides that an appeal shall lie as of right from any order, an impression is created that an appeal has been provided under the said sub-section against any order passed by the High Court while exercising the jurisdiction of contempt proceedings. The words 'any order' has to be read with the expression 'decision' used in said sub-section which the High Court passes in exercise of its jurisdiction to punish for contempt. 'any order' is not independent of the expression 'decision'. They have been put in an alternative form saying 'order' or 'decision'. In either case, it must be in the nature of punishment for contempt.

5. In the judgment reported in 2006 SCC 399 [Midnapore Peoples' Co-Op. Bank Ltd. v. Chunilal Nanda & Others], the Hon'ble Supreme Court has held as follows:

" 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).

6. From the above judgment, it is clear that 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 Contempt of Courts Act. In special circumstances, the Hon'ble Supreme Court may entertain a petition challenging any order passed in the Contempt Proceedings.

7. It is needless to say that Article 136 of the Constitution is not applicable to this Court. Therefore, following the dictum laid down by the Hon'ble Apex Court in the judgment cited supra, we are of the considered view that the Writ Petition is not maintainable for the reason that the petitioner has challenged the dropping of Contempt Proceedings against the respondent.

8. In these circumstances, the Writ Petition is devoid of merits and the same is dismissed. No costs.

Sd/-
सत्यमेव जयते
Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

Rj

To

1.The Chief General Manager Telecom
BSNL Tamil Nadu Telecom Circle
Anna Salai
Chennai - 600 002

2.The Registrar
Central Administrative Tribunal
Madras Bench
Chennai - 600 108

+1cc to Mr.Giridhar & Sai, Advocate, S.R.No.57571

+1cc to Mr.K.Anbarasan, Advocate, S.R.No.57537

W.P. No.2258 of 2016

GSP(04/09/2018)



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