

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

**LETTERS PATENT APPEAL NO. 214 OF 2012
WITH
CIVIL APPLICATION NO. 8599 OF 2012**

Ahmednagar Municipal Corporation,
Through its Commissioner
Ahmednagar

...APPELLANTS.

Versus

1. Shahar Palika Kamgar Union
"Shramik", Tilak Road,
Ahmednagar
(Through the President)

2. Nagar Parishad Prashasan Sanchanalay
Government Transport Service Building,
Sir Pochakhanwala Road, Police Camp,
Worli, Mumbai-400 018
Through its Director

...RESPONDENTS.

...
Mr. Subodh P. Shah, Advocate for appellant
Mr. A.S. Shelke, Advocate for respondents No.1.
...

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
DATED : 26/02/2019**

JUDGMENT :

1) The proceeding is filed against judgment of learned Single Judge of this Court given in Writ Petition No. 4115/2009. The petition was filed by present appellant to challenge the decision given in favour of present respondent, one Union by the Industrial Court in one complaint. Complaint was filed by the Union for it's

members that the benefits of 5th Pay Commission were not given to them when the benefits were given to the other employees of present appellant, Local Body. Prior to the said matter, another complaint was filed for members and in that matter, a direction was given by the Industrial Court to give permanency benefits to all those members of the Union. They were in permanent service of Local Body due to the order made by the Industrial Court and they were 506 such employees of the Local Body.

2) The 5th Pay Commission was applied for the employees of this Local Body with effect from 1.1.1996 and from prior to that day, these employees were holding permanent posts, though due to the order made by the Industrial Court. As the Local Body was Municipal Council at the relevant time, when the matter was referred to the District Collector, Ahmednagar for making order for implementation of 5th Pay Commission Report with effect from 1.1.1996, he held that only those employees who were holding substantive posts sanctioned by the Government were entitled to these benefits and other employees were not entitled to get the benefits of that revision of scales. This decision was taken before the Industrial Court. It appears that subsequently, by Government Resolution (G.R.) dated 5.3.2001 the Government sanctioned the posts for these employees and under that order, these employees were to be shown to be

absorbed with effect from the date of order i.e. 5.3.2001 and scales were to be fixed accordingly as per the 4th Pay Commission's Report. Prior to that day 4th Pay Commission was already made applicable in favour of these employees and Local Body had passed resolution on 9.7.1997 for giving benefits of 5th Pay Commission. In view of these circumstances, the Industrial Court held that it was unfair labour practice under Item No. 9 of Schedule IV of Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971. As there was already award in favour of the employees delivered in various complaints like ULP Nos.254/1985, 264/1987, 30/1988, 186/1988, 20/1988 and 240/1990 and the order had become final, these employees were required to be treated as permanent employees during the period from 1986 to 1991. Thus, as per the Industrial Court, they were entitled to get benefits of 5th Pay Commission which other employees were getting. The learned Single Judge has considered the contentions made for Local Body that the posts were not sanctioned and order of aforesaid nature was made by the Government and by the Collector.

3) In view of the aforesaid circumstances, it can be said that on merits also, the learned Single Judge has not committed any error. There is the point of tenability of the present proceeding. In view of Article 227 of Constitution of India, this High Court has

exercised supervisory jurisdiction over the orders made by the Industrial Court. The order of giving permanency benefits had already become final and in view of that order, the subsequent order was made by the Industrial Court. Thus, it needs to be presumed that the matter which was filed by Local Body in this Court which is decided by the learned Single Judge could have been considered only under Article 227 of the Constitution of India. There was no question of invoking jurisdiction under Article 226 of the Constitution of India. In view of Rule 18 of Chapter 17 of the Appellate Side Rules, the matter was placed before the learned Single Judge and it needs to be presumed that he dealt with the matter under Article 227 of the Constitution of India. The learned counsel for appellant placed reliance on some reported cases in support of his contention that L.P.A. is tenable. The cases are **(2002) 3 SCC 705 [Sharda Devi Vs. State of Bihar]**, **2002(4) ALL M.R. 512 [Mohammad Hasan Khan Vs. Mohammad Majidulla & Ors.] (BOMBAY HIGH COURT)**. This Court has carefully gone through the observations made by the Apex Court in the case of **Sharda Devi** cited supra. Different kind of jurisdiction was exercised by the High Court in that proceeding and that was appellate jurisdiction. At the relevant time, even this Court had provision of L.P.A. in respect of the orders made by the learned Single Judge by exercising appellate jurisdiction. This case is of no use to the petitioner. Second order of Bombay High

Court involved the decision of School Tribunal. In view of that matter, this Court had held that L.P.A. was tenable.

4) On the other hand, the learned counsel for respondent Union placed reliance on the ratio of **(2015) 5 SCC 423 [Radhey Shyam and Anr. Vs. Chhabi Nath and Ors.]**, AIR 2015 (SC) 3623 **[Sh.Jogendrasinhji Vijaysinghji Vs. State of Gujrat]** and the decision of this Court in **L.P.A. No. 108/2012 [Yuvraj s/o. Suka Mahajan and Anr. Vs. Bajirao s/o. Martand Mali and Anr.] decided on 6.2.2019**. In the recently decided case, this Court had an occasion to consider both the cases of **Radhey Shyam and Sh. Jogendrasinhji** cited *supra* and relevant observations are at para Nos. 13 and 14 :-

“13 The decision of the Apex Court in the case of *Jogendrasinhji Vijaysinhji Vs. State of Gujarat and others* (*supra*) shows that all the cases, which were decided in the past by the Apex Court on tenability of letters patent appeal under Clause 15 of Letters Patent are considered. The Apex Court has made it clear that when the matter comes from Civil Court to High Court, it can be only under Article 227 of the Constitution of India and that observation is in paragraph 18, which is as under:

"18. The aforesaid authoritative pronouncement makes it clear as day that an order passed by a civil court can only be assailed under Article 227 of the Constitution of India and the parameters of challenge have been clearly laid down by this Court in series of decisions which have been referred to by a three-Judge Bench in *Radhey Shyam*, which is a binding precedent. Needless to emphasise that once it is exclusively assailable under Article 227 of the Constitution of India, no intra-court appeal is maintainable."

The observations made in paragraph 30 are as under:

"30. From the aforesaid pronouncements, it is graphically clear that maintainability of a letters patent appeal would depend upon the pleadings in the writ petition, the nature and character of the order passed by the learned Single Judge, the type of directions issued regard being had to the jurisdictional perspectives in the constitutional context. Barring the civil court, from which order as held by the three-Judge Bench in *Radhey Shyam* that a writ

petition can lie only under Article 227 of the Constitution, orders from tribunals cannot always be regarded for all purposes to be under Article 227 of the Constitution. Whether the learned single Judge has exercised the jurisdiction under Article 226 or under Article 227 or both, needless to emphasise, would depend upon various aspects that have been emphasised in the aforestated authorities of this Court. There can be orders passed by the learned Single Judge which can be construed as an order under both the articles in a composite manner, for they can co-exist, coincide and imbricate. We reiterate it would depend upon the nature, contour and character of the order and it will be the obligation of the Division Bench hearing the letters patent appeal to discern and decide whether the order has been passed by the learned Single Judge in exercise of jurisdiction under Article 226 or 227 of the Constitution or both. The Division Bench would also be required to scrutinise whether the facts of the case justify the assertions made in the petition to invoke the jurisdiction under both the articles and

the relief prayed on that foundation. Be it stated, one of the conclusions recorded by the High Court in the impugned judgment pertains to demand and payment of court fees. We do not intend to comment on the same as that would depend upon the rules framed by the High Court.”

14. In view of the aforesaid observations of the Apex Court and the facts of the present matter, this Court has no hesitation to hold that there is nothing in the decision of the learned Single Judge to show that original jurisdiction, jurisdiction under Article 226 of the Constitution of India was required to be used by the learned Single Judge. Even if it is presumed that the petition was filed under Articles 226 and 227 of the Constitution of India, due to nature of relief claimed and decision given by the learned Single Judge, it needs to be presumed that the supervisory jurisdiction available under Article 227 of the Constitution of India is used by the learned Single Judge. For these reasons, this Court holds that on merits and also on tenability, the Appellants have no case. In the result, the letters patent appeal stands dismissed. Pending civil application also stands disposed

of.”

In the present matter also, the petition was filed under Article 226 and 227 of Constitution of India, but it needs to be presumed that the proceeding could have been decided by the learned Single Judge by exercising jurisdiction under Article 227 of Constitution of India. So, this Court holds that L.P.A. is not tenable.

5) On merits, the learned counsel for respondent placed reliance on the observations made in **(2008) 13 SCC 463 [Union of India and Anr. Vs. S. Thakur]**. That matter was also involving the decision of Administrative Tribunal and the Apex Court held that judicial review of such decisions is not possible unless it is unreasonable, unjust and prejudicial to a section of the employees. In the result, following order :-

ORDER

The appeal stands dismissed. Civil Application stands disposed of.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/