

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.08.2020

PRONOUNCED ON : 02.09.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Contempt Petition No.570 of 2020

All India Union Bank Officer
Staff Association Rep. by its General
Secretary AIBOA House II Floor No. 109
Angappan Naicken Street Chennai - 600 001. Petitioner

-Vs-

Brajeshwar Sharma
The Chief General Manager(HR) Union Bank
of India No.239 Vidhan Bhawan Marg
Nariman Point Mumbai - 400 021. Respondent

Prayer : Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971 for deliberately and willfully disobeying the final order of this Hon'ble Court dated 06.02.2020 in W.P.No.820 of 2020.

For Petitioner : Mr.NGR Prasad
For Respondent : Mr.Sathish Parasaran

ORDER

This contempt petition has been filed on the ground that the respondent has deliberately and willfully disobeyed the order passed by this Court in W.P.No.820 of 2020 dated 06.02.2020.

3.The counsel appearing on either side raised various contentions touching upon the purport of the order passed by this Court and which was subsequently modified by the Division Bench while passing final orders in W.A.No.252 of 2020 dated 09.03.2020.

4.In the considered view of this Court, this Court need not venture into rendering its findings on the contentions raised on either side since the very maintainability of the Contempt Petition is in question.

5.After the final orders were passed in the writ petition on 06.02.2020, the respondent took the matter on appeal in W.A.No.252 of 2020 and the Division Bench dealt with the case on merits and partly allowed the Writ Appeal. The operative portion of the order is extracted hereunder.

“17. The learned Single Judge has failed to appreciate the peculiar circumstances which exist in this year namely, the merger of banks and the consequent fitment of officers from the banks which will be merging including the appellant bank. It would be impossible to conduct a fresh examination for these officers before 31.03.2020 which might have an effect of breaking down the entire merger process.

18. The learned Advocate General has given a concession only for the five representations of the petitioner's association who would be affected by their non-inclusion and that they can be considered for being eligible to be appointed on vacancies rises on 01.04.2020. On the other hand, Mr.N.G.R.Prasad would contend that 10 members would be affected. We do not find any infirmity in the order of the

learned Single Judge, but we however modify the order of the learned Single Judge to the effect that such of the members of the petitioner's association who are entitled and who according to the bank belong to the specialist category and have been deprived of the chance to take examination may be permitted to take the examination and be considered for appointment for the vacancies arising on 01.04.2020 treating them to be eligible for promotion. The bank shall ensure that the order of the Court is complied with in letter and spirit without any further delay so as not to cause any disadvantage to the petitioner as against their counterparts. The order of the learned Single Judge is modified and accordingly, the Writ Appeal is partly allowed. No Costs. Consequently, C.M.P.No.4228 of 2020 is closed.”

6. Once an order has been passed in the Writ Appeal and the order passed by the Single Judge is modified and the Writ Appeal is partly allowed, the order of the Single Judge merges with the order passed in the Writ Appeal. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation.

7. Useful reference can be made to the following judgments of the Supreme Court in this regard.

(a) Kunhayammed v. State of Kerala , (2000) 6 SCC 359 page

370 12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subjectmatter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and

binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either way — whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below.

(b) *Shanthi v. T.D. Vishwanathan*, (2019) 11 SCC 419

7. The aforementioned question raised by the learned advocate for the appellant is no more res integra, inasmuch as the very question is decided by a three-Judge Bench of this Court, in Chandi Prasad v. Jagdish Prasad [Chandi Prasad v. Jagdish Prasad, (2004) 8 SCC 724] wherein it was observed that in terms of Article 136, Limitation Act, 1963, a decree can be executed when it becomes enforceable. A decree is defined in Section 2(2) CPC, 1908 to mean the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. A decree within the meaning of Section 2(2) CPC would be enforceable irrespective of whether it is passed by the trial court, the first appellate court or the second appellate court. When an appeal is prescribed under a statute and the appellate forum is invoked and entertained, for all intents and purposes, the suit continues. When a higher forum entertains an appeal and passes an order on merit, the doctrine of merger would apply. The doctrine of merger is based on the principles of the propriety in the hierarchy of the justice delivery system. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation passed by the appellate authority. The said doctrine postulates that there cannot be more than one operative decree

governing the same subject-matter at a given point of time.

8. In view of the settled position of law, the Contempt Petition filed before the Single Judge is not maintainable since the order of the Single Judge has merged with the order passed by the Division Bench in the Writ Appeal. If the petitioner feels that the order has been violated or disobeyed, a Contempt Petition can be maintained only before the Division Bench and not before the Single Judge. Except giving such liberty, no further orders can be passed by this Court.

9. In the result, this Contempt Petition is closed. Registry is directed to return back the Certified copy of the order passed in the writ petition to the learned counsel for the petitioner.

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

kst

//Certified to be true copy//

Dated at Madras this the day of 2020.

COURT OFFICER(O.S.)

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SMI/25.09.2020

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