

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA-184-2020 (O&M)
Date of decision:- 26.02.2020

Dr. Sukhwinder Kaur

...Appellant

Versus

Guru Nanak National College for Women, Nakodar,
District Jalandhar, Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present:- Mr. Sameer Sachdeva, Advocate,
for the appellant.

Mr. Animesh Sharma, Advocate,
for the caveator-respondent No. 1.

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RAVI SHANKER JHA, C.J. (ORAL)

This appeal has been filed by the appellant being aggrieved by an order dated 13.01.2020 by which the application for vacating stay filed by the appellant has been dismissed.

At the outset, the appellant on being confronted with a question of maintainability of the present appeal against an interim/interlocutory order had sought time and has now addressed this Court on the question of maintainability. The learned counsel appearing for the appellant has relied upon a decision of the Supreme Court rendered in the case of ***Midnapore Peoples' Coop. Bank Ltd. and others Vs Chunilal Nanda and others (2006) 5 SCC 399***. The Supreme Court while dealing with the question of maintainability of a Letters Patent Appeal against interim/interlocutory orders has recorded its conclusion in this regard in paragraph 15 which is in the following terms:-

"15. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories:

(i) Orders which finally decide a question or issue in controversy in the main case.

(ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case.

(iii) Orders which finally decide a collateral issue or question which is not the subject-matter of the main case.

(iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.

(v) 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.

The term "judgment" occurring in clause 15 of the Letters Patent will take into its fold not only the judgments as defined in Section 2(9) CPC and orders enumerated in Order 43 Rule 1 CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Interlocutory orders which fall under categories (i) to (iii) above, are, therefore, "judgments" for the purpose of filing appeals under the Letters Patent. On the other hand, orders falling under categories (iv) and (v) are not "judgments" for the purpose of filing appeals provided under the Letters Patent."

In view of the law laid down by the Supreme Court in the aforesaid case, the issue required to be considered by this Court regarding maintainability of the appeal is as to whether

the interim order has finally decided the question or issue in controversy involved in the main case or has finally decided the issue which materially and directly affects a decision in a case. The learned Single Judge by the impugned order has dismissed the application for vacating stay filed by the appellant.

Before we appreciate the fact as to whether the order in question is interim in nature or has finally decided the question or issue in controversy involved in the main case, it is necessary to refer to the background of facts leading to the passing of the impugned order.

The appellant was an employee of the respondent No. 1 - College. The appellant was suspended and thereafter was removed from service on account of allegations relating to misappropriation of funds etc. after an enquiry in which she had been found guilty. The appellant moved an application before the Educational Tribunal, Punjab (in short the Tribunal) which by an interim order dated 09.05.2019 stayed the order of removal of the appellant restraining the respondent No. 1 - College from taking any further action against the appellant and permitting the appellant to continue in service as Principal till further orders. It is informed by learned counsel for the appellant that initially the appellant had been suspended in 2016. Thereafter, she had approached the Tribunal and the order of suspension had been stayed by the Tribunal vide order dated 02.06.2016 on the strength of which the appellant was continuing in service.

The respondent No. 1 - College being aggrieved by the interim order staying the order of termination approached this Court by filing CWP-13514-2019 and the learned Single Judge by

an interim order dated 20.05.2019 stayed the operation of the order passed by the Tribunal as well as the proceedings before the Tribunal on the ground that prima-facie it appeared that a Single Member of the Tribunal was not competent to pass such an interim order. The appellant filed an application for vacation of the order bringing to the notice of the Court an order dated 27.04.2017 passed by the Tribunal under Section 7-A (10) of the Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974 (in short the 1974 Act) according to which a Member sitting singly could also entertain the petition, grant interim relief and receive pleadings, but could not finally decide the petition. The learned Single Judge by taking up the aforesaid aspects into consideration and while issuing notice on a subsequent application filed by the respondent No. 1 - College for amending the petition seeking to assail the order dated 27.04.2017 passed by the Tribunal under Section 7-A (10) of the 1974 Act, has dismissed the application for vacating stay and affirmed the interim order.

The learned counsel appearing for the appellant submits that the order passed by the learned Single Judge results in finally deciding the issue regarding the power and authority of the Single Member of the Tribunal to pass interim orders and in such circumstances amounts to final adjudication of the question involved in the main case and is, therefore, appealable.

We have heard learned counsel for the parties at length and have carefully perused the order passed by the learned Single Judge.

From a perusal thereof, it is apparent that the learned Single Judge after taking into consideration the facts on record has clearly stated that "prima facie" the decision of

the Tribunal is without jurisdiction as the Single Member had no power to pass such an order. From the aforesaid, it is evident that the order passed by the learned Single Judge does not finally adjudicate or decide the issue regarding the power and authority of the Single Member of the Tribunal to pass interim orders or to take a decision in cases before the Tribunal. The issue regarding the power and authority of the Single Member to do so is still open to be considered, adjudicated and decided by the learned Single Judge. It is to be noted that the order passed by the learned Single Judge is in the backdrop of the fact that the Single Member of the Tribunal had proceeded to grant stay of the order terminating the appellant's services directing the respondent No. 1 - College not to interfere in her working and permitting her to continue to work on the post of Principal. Thereby practically by the impugned order the petition filed by the appellant was allowed, although as per the order dated 27.04.2017 relied upon by the appellant herself, the final adjudication in the matter or final decision in the petition before the Tribunal could not have been taken by the Single Member. The learned Single Judge in the backdrop of the aforesaid facts has passed the interim order and has rejected the application for vacating stay.

We are of the considered opinion that the order passed by the learned Single Judge is of an interim nature and does not result in finally deciding the question or issue in controversy involved in the main case or any issue which materially and directly affects the final decision in the main case. It is apparent from the order that the issue as to whether the Single Member of the Tribunal could have considered and decided the matter or passed the interim order is still open for adjudication before the learned Single Judge as final

decision thereon has not yet been taken. In the circumstances, the impugned order passed by the learned Single Judge does not fall within paragraph 15 (i) to (iii) of the decision of the Supreme Court in *Midnapore Peoples’ Coop. Bank Ltd. and others* (supra) and being of an interim nature, we are of the considered opinion that the appeal under clause X of the Letters Patent against the same is not maintainable.

Before parting with the order, we feel it necessary to observe that the contention of the learned counsel for the appellant that the learned Single Judge could not have passed any orders in the matter in view of the challenge to the constitutional validity of the order passed by the Tribunal under Section 7-A (10) of the 1974 Act is also of no consequence, as the learned Single Judge has only issued notice on the application for amending the petition and no final orders have been passed therein.

The appeal filed by the appellant being meritless is accordingly dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

26.02.2020
Amodh

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No