

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A. No. 23 of 2020**

Rajat Bhansal, Commissioner (Presently posted as Collector, Dhamtari),
Municipal Corporation, Raipur (C.G.)

---- Appellant**Versus**

1. Dr. Ashutosh Jha, S/o Shri Bansh Narayan Jha, aged about 45 years (now 52 years) presently posted and working as Shiksha Karmi Grade-II, at Dr. Shyama Prasad Mukharjee, Government Higher Secondary School, WRS Colony, Raipur (C.G.)
2. Ashok Narayan, District Education Officer of Municipal Corporation, Raipur (C.G.)

---- Respondents

(Cause-title taken from Case Information System)

For Appellant	:	Mr. H.B. Agrawal, Senior Advocate.
For Respondent No. 1	:	Ms. Smita Jha, Advocate.
For Respondent No. 2	:	Mr. V.V.S. Murthy, Senior Advocate.

Hon'ble Shri Arup Kumar Goswami, Chief Justice**Hon'ble Shri Justice N.K. Chandravanshi, Judge****Order on Board****Per Arup Kumar Goswami, Chief Justice****01.12.2021**

Heard Mr. H.B. Agrawal, learned senior counsel for the appellant. Also heard Ms. Smita Jha, learned counsel for respondent No.1 and Mr. V.V.S.

Murthy, learned senior counsel appearing for respondent No. 2.

2. This appeal under Section 19 of the Contempt of Courts Act, 1971 for short, Act of 1971, is presented against an order dated 26.02.2020 passed in Contempt Case (C) No. 387 of 2018.

3. The appeal was filed on 16.03.2020.

4. I.A. No. 2 of 2021 is an application for amendment of the memo of appeal, whereby, contending that order dated 26.02.2020 has been superseded by another order dated 18.10.2021, the appellant has, amongst others, sought to assail the order dated 18.10.2021.

5. The order dated 26.02.2020, reads as follows:

“Ms. Smita Jha, Advocate for the petitioner.

Shri H.B. Agrawal, Sr. Advocate along with Ms. Richa Dwivedi, Advocate for respondent No.1.

Shri Vipin Tiwari, Advocate for respondent No. 2.

The reply submitted by the respondent No.1 is totally unsatisfactory in the light of the directions given by this court vide order dated 28.02.2017 in WPS No. 7481 of 2010.

From the records obtained under the Right to Information Act which has been produced by the petitioner, it clearly reflects that a post of Sanskrit Teacher fell vacant on the retirement of one Shri G.P. Budhouliya from the school of respondent-corporation at Katora Talab Raipur. Similarly, there was a vacant post in the School at Atari, Raipur, even before the date on which the DPC that was held in November, 2018 in compliance of the order dated 28.02.2017.

In view of the aforesaid informations obtained under the RTI, the reply submitted by the respondent No.1 that for want of vacant post of Teacher Sanskrit the case of the petitioner was not considered, appears to be apparently a wrong submission. Therefore, this court prima facie is of the opinion that the affidavit is without due verification of facts. The respondent No.1 appears to have been misleading the court.

Accordingly, on the next date of hearing, the respondents are directed to remain present before the court for framing of charges for Contempt of Court.

List this case on 31.03.2020.”

6. In the order dated 18.10.2021, there is no reference to the order dated 26.02.2020, which, according to the appellant was superseded.
7. If the appellant is aggrieved by order dated 18.10.2021, that may give rise to a fresh cause of action and therefore, we are not inclined to allow amendment, as prayed for. In that view of the matter, I.A. No. 2 of 2021 is dismissed.
8. I.A. No. 3 of 2021 is an application for exemption of appearance on 03.12.2021 before the learned Single Judge. Since direction for personal appearance was given by order dated 18.10.2021 and since prayer for challenging the same in this appeal has been rejected, we decline to pass any order in I.A. No. 3 of 2021. We, however, reserve liberty to the appellant to pursue such remedy as may be available in law, if so advised. I.A. No. 3 of 2021 stands disposed of accordingly.
9. Mr. Agrawal submits that the content of the order dated 26.02.2020 would amply demonstrate that the learned Single Judge has concluded that the appellant is guilty of contempt and therefore, in terms of Section 19 of Act of

1971, this appeal is maintainable in law. In support of his contention Mr. Agrawal has placed reliance on a decision of the Hon'ble Supreme Court in the case of *Modi Telefibres Ltd. & Others v. Sujit Kumar Choudhary & Others*, reported in *(2005) 7 SCC 40*.

10. Ms. Jha submits that the contentions advanced by Mr. Agrawal is not tenable as no conclusion has been recorded by the learned Single Judge that appellant is guilty of contempt and therefore, this appeal is not maintainable. She places reliance on a judgment rendered by the Hon'ble Supreme Court in the case of *Midnapore Peoples' Coop. Bank Ltd. & Others v. Chunilal Nanda & Others*, reported in *(2006) 5 SCC 399*.

11. We have considered the submissions of the learned counsel for the parties and have perused the materials on record.

12. Section 19(1) of the Act of 1971 provides as follows:

“**19. Appeals.** - (1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt -

(a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court;

(b) where the order or decision is that of a Bench, to the Supreme Court: Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.”

13. In *D.N. Taneja v. Bhajan Lal*, reported in *(1988) 3 SCC 26*, the Hon'ble Supreme Court had observed as follows:

“8. The right of appeal will be available under sub-section (1) of Section 19 only against any decision or order of a

High Court passed in the exercise of its jurisdiction to punish for contempt. In this connection, it is pertinent to refer to the provision of Article 215 of the Constitution which provides that every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Article 215 confers on the High Court the power to punish for contempt of itself. In other words, the High Court derives its jurisdiction to punish for contempt from Article 215 of the Constitution. As has been noticed earlier, an appeal will lie under Section 19(1) of the Act only when the High Court makes an order or decision in exercise of its jurisdiction to punish for contempt. It is submitted on behalf of the respondent and, in our opinion rightly, that the High Court exercises its jurisdiction or power as conferred on it by Article 215 of the Constitution when it imposes a punishment for contempt. When the High Court does not impose any punishment on the alleged contemnor, the High Court does not exercise its jurisdiction or power to punish for contempt. The jurisdiction of the High Court is to punish. When no punishment is imposed by the High Court, it is difficult to say that the High Court has exercised its jurisdiction or power as conferred on it by Article 215 of the Constitution.”

14. A perusal of the above would go to show that the right of appeal is available under Section 19(1) of the Act of 1971 only against any decision or order of the High Court passed in the exercise of its jurisdiction to punish the

contemnor.

15. Right of appeal is a creature of the statute and the question whether there is a right of appeal or not will have to be considered on an interpretation of the provision of the statute and not on the ground of propriety or any other consideration.

16. In *Modi Telefibres Ltd.* (supra), for the alleged non-compliance with the award of the Labour Court in favour of the respondent-workmen, proceedings under the Act of 1971 were initiated. The learned Single Judge had clearly recorded his conclusion that all dues of the workmen including variable dearness allowances have not been paid by the appellant-employer and thus contempt was committed, and accordingly, direction was issued to the officer of the employer to remain present with bank drafts to be paid to the workmen. Challenging the order, an appeal was preferred before the Division Bench of the High Court, which dismissed the appeal on the ground that the matter arising out of the contempt proceedings was still pending before the learned Single Judge.

17. Having regard to the nature of the order, which was put to challenge in appeal before the Division Bench of the High Court, the Hon'ble Supreme Court held that such an order could not have been considered or treated as an interlocutory order and the right of appeal could not have been denied to the appellant-employer only on the ground that the learned Single Judge had adjourned the proceedings to enable the alleged contemnor to purge the contempt or else for deciding the quantum of punishment.

18. In *Midnapore Peoples' Coop. Bank Ltd.* (supra), the Hon'ble Supreme Court at paragraph 11 held as follows:

“11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarised 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 proceedings 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 the 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).

The first point is answered accordingly”

19. A perusal of the order dated 26.02.2020 would go to show that the appellant was directed to remain present before the Court for the purpose of framing of charge only. It is also evident that the Court had recorded only a *prima facie* opinion that the affidavit was filed without verification of the facts and thereby appearing to mislead the Court.

20. In that view of the matter, we hold that this appeal is not maintainable and accordingly, the same is dismissed.

21. At this juncture, Mr. Agrawal submits that he may be permitted to assail the order dated 18.10.2021 in an appropriate proceeding.

22. Without expressing any opinion on merits, we reserve liberty to the appellant to pursue remedy, if available, in accordance with law.

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(N.K. Chandravanshi)
Judge