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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 270/2020

S.P. RANA

..... Appellant

Through: Mr. N. Bhushan, Adv. for Mr. Rajiv
Agarwal, Adv.

Versus

THE CHAIRMAN, CENTRAL BOARD OF
SECONDARY EDUCATION

..... Respondent

Through: Mr. M.A. Niyazi, Ms. Anamika
Niyazi, Ms. Kumud Nijhawan, Ms.
Neymat Sethi and Ms. Kirti Jaswal,
Advs.

AND

+ LPA 6/2021

THE CHAIRMAN, CENTRAL BOARD OF
SECONDARY EDUCATION

..... Appellant

Through: Mr. M.A. Niyazi, Ms. Anamika
Niyazi, Ms. Kumud Nijhawan, Ms.
Neymat Sethi and Ms. Kirti Jaswal,
Advs.

Versus

S.P.RANA

..... Respondent

Through: Mr. N. Bhushan, Adv. for Mr. Rajiv
Agarwal, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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07.01.2021

[VIA VIDEO CONFERENCING]

CM No.509/2021 in LPA No.6/2021 (for exemption)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

**LPA No.270/2020 & LPA No.6/2021 & CM No.508/2021 in LPA
No.6/2021 (for condonation of 116 days' delay in preferring the appeal)**

3. Both appeals, filed invoking Section 10 of the Delhi High Court Act, 1966 and the Letters Patent of this Court, arise out of the order dated 11th September, 2020 in W.P.(C) No.13109/2019 filed by Central Board of Secondary Education (CBSE) impugning the order dated 14th August, 2019 of the Appellate Authority under the Payment of Gratuity Act, 1972 of dismissal as barred by time of the appeal preferred by the CBSE against the order dated 25th February, 2019 of the Controlling Authority under the said Act. Vide the impugned order in both the appeals, the Single Judge, after hearing the counsels, held that there was no error in the order of the Appellate Authority insofar as dismissing the appeal of the CBSE as barred by time and holding that under the said Act, there is no power in the Appellate Authority to condone the delay in filing the appeal. However after holding so, the Single Judge, from a reading of the impugned order it appears, also heard the counsels on the contention of the counsel for CBSE, relying on the recent dicta of the Supreme Court in ***Chairman-cum-Managing Director, Mahanadi Coalfields Limited. Vs. Rabindranath Choubey*** 2020 SCC OnLine SC 470, that gratuity can be withheld during the pendency of the disciplinary proceedings, under Section 4(6) of the said Act and after partly hearing the counsels on the said aspect, adjourned further hearing to 17th November, 2020.

4. We are informed that in view of pendency of LPA No.270/2020 (LPA No.6/2021 has come up today for the first time), the Single Judge, on 17th November, 2020, has adjourned the hearing to 15th January, 2021.

5. S.P. Rana aforesaid, has filed LPA No.270/2020 contending that the Single Judge erred in, after holding against the CBSE on the aspect of condonation of delay in filing the appeal, which was the only point

pleaded/urged in the writ petition, not dismissing the writ petition and keeping the same pending. The said appeal came up first before this Court on 28th September, 2020, when notice thereof was ordered to be issued and pleadings ordered to be completed.

6. CBSE, after appearing in LPA No.270/2020 filed by S.P. Rana, has today brought its own LPA, being LPA No.6/2021 impugning the order of the Single Judge to the extent holding against CBSE on the aspect of power of the Appellate Authority under the said Act to condone the delay in filing the appeal.

7. We have heard the counsels.

8. We are of the view that LPA No.270/2020 preferred by S.P. Rana is not maintainable, as the order dated 11th September, 2020 does not qualify as a 'judgment' or decides 'matters of moment' and does not affect vital or valuable rights of S.P. Rana and does not work serious injustice to S.P. Rana, within the meaning of the judgment of the Full Bench of this Court in *Jaswinder Singh vs. Mrigendra Pritam Vikram Singh Steiner* 196 (2013) DLT (1). Reference in this regard may also be made to *Life Insurance Corporation of India vs Sanjee Builders Pvt. Ltd.* (2018) 11 SCC 722. The matter is still at large before the Single Judge and the powers of the Single Judge to hear the counsels, before finally deciding, cannot be so curtailed, as is being sought to be done by S.P. Rana.

9. LPA No.270/2020 is thus dismissed as not maintainable.

10. As far LPA No.6/2021 preferred by CBSE is concerned, though there is indeed a finding in the impugned order against CBSE on the aspect of powers of the Appellate Authority under the Act to condone delay in preferring the appeal but since the writ petition filed by CBSE is still

pending, it cannot be said that it has been decided against CBSE. If the writ petition, notwithstanding the finding on the aspect of powers of the Appellate Authority under the Act, is ultimately allowed, the finding qua powers of the Appellate Authority under the Act to condone the delay in preferring the appeal will remain a mere finding and against a mere finding no appeal lies, if the final order is in favour of the party against whom a finding is returned. Reference if any required may be made to *State of Andhra Pradesh vs P. Ranga Reddy* MANU/SC/1074/2019.

11. Be that as it may, even if there were to be any doubt on the said aspect, we clarify that in the event of the writ petition being finally also decided against CBSE, CBSE, in the appeal, if any preferred against the final order, shall also be entitled to challenge the finding against it in the order dated 11th September, 2020 and the said challenge will not be treated as barred by time, as long as the remedy against the final order is taken within the prescribed time.

12. LPA No.6/2021 is disposed of with the said direction.

13. With the aforesaid, both the appeals stand disposed of.

RAJIV SAHAI ENDLAW, J.

SANJEEV NARULA, J.

JANUARY 7, 2021

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