

27.06.2022

Item Nos.11+ 12

Crt. No.11.

KB

CPAN 1071 of 2021
Pankaj Kumar Sarkar
-Versus-
Eshita Deb Barma and ors.
in
FMA 1232 of 2021
with
IA No. CAN 1 of 2021
IA No. CAN 1 of 2021
with
CPAN 1069 of 2021
Pankaj Kumar Sarkar
-Versus-
Eshita Deb Barma and ors.

Mr. Pankaj Kumar Sarkar

.... For the appellant-in-person.

Mr. Kamal Kumar Chattopadhyay

.... For the Respondent/FCI.

Under consideration before this Court in this appeal is an application for contempt, being CPAN 1071 of 2021. The applicant is appearing in person in support of the contempt application. The applicant is also the appellant in the appeal being FMA 1232 of 2021. The appeal is directed against the Judgement and Order of the Hon'ble Single Bench dated 21st of February, 2020 in W.P. No. 1688 (W) of 2015 with CAN 4839 of 2019.

By the Judgement and Order impugned the Hon'ble Single Bench was, *inter alia*, pleased not to agree with the stand of the writ petitioner/the present appellant and thereby dismissed his writ petition. The appellant/the applicant in the contempt application/the writ petitioner earnestly submits that the contempt

application, being CPAN 1071 of 2021, be taken up for consideration at the outset before the appeal and its connected application is heard on merits. In view of the earnest submission made by the applicant/the writ petitioner, CPAN 1071 of 2021 is taken up for consideration at the threshold.

The application for contempt is contested by the Respondents/Food Corporation of India (*FCI*) represented by Mr. Chatterjee, Learned Counsel.

In supporting the contempt application the applicant/the writ petitioner draws the attention of this Court to paragraph 5 of the affidavit-in-opposition filed on behalf of the Respondents/*FCI* to CAN 1 of 2021 which is the interim application filed in connection with the appeal. Particular attention of this Court is drawn to Paragraph 16 of CAN 1 of 2021 which reads as follows:-

“16. With reference to paragraph No.11 of the stay application it is stated that the decision to issue charge sheet is based upon different factors and it is not practical to compare two different matters. The averments made by the appellant petitioner is thus denied.”

The applicant submits that paragraph 16 shows fraudulent conduct on the part of the *FCI*. In support of such submission the applicant relies upon paragraphs 5 and 6 of CPAN 1071 of 2021 which read as follows:-

“ 5) That Paragraph No. 11 of the stay application is reproduce as under:

That Appellant/Petitioner states that Shri A.K. Dubey, EX-Chairman & Managing Director, F.C.I. suppressed and deliberately withheld issuance of any chargesheet for 8 years upon Mr Abdur Rab against the investigation report dated 02/06/2005 of the appellant. In the circumstances said Shri A.K.Dubey, Ex-Chairman & Managing Director, F.C.I. cannot discriminate in the matter of issue of the charge sheet Memorandum dated 16.06.2006 on the complaint letter dated 18.06.2005 of Shri A.Rab without any financial loses upon your appellant 8 years before Shri A.Rab chargesheet Memorandum Dated 25 April 2013 against the investigation report dated 02/06/2005 of the appellant for pecuniary loss of Rs. 87 Lakh of FCI to prevent the appellant to get his promotion of General Manager (General) in the year 2006.

The photocopy of the chargesheet Memorandum No. Vig 4 (7)2013 / EZ/ Dated April 25, 2013 upon Shri A. Rab being Annexure “H” to the CAN 4839 of 2019.

6) That said Disciplinary Authority Shri A.K. Dubey, Ex-Chairman & Managing Director, not allowed to come in to the light for issue of any charge sheet Memorandum for imposing major

penalty for real pecuniary loss of Rs. 87 Lakhs by Shri A. Rab for corruption during the tenure of said Disciplinary Authority Shri A.K. Dubey, Ex-Chairman & Managing Director to protect Mr. Abdur Rab for indulging to continue the corruption in FCI with vested interest of Shri A.K. Dubey delayed for 8 years to issue the said Memorandum as per Serial 2 of Page 9 of petitioner Investigation report dated 2.6.2005 a reference No.PA/RM/WB/2005 dated 2.6.2005 conducted by a team head by Shri P.K. Sarkar the then Regional Manager (WB) Region along with Annexure for charge sheet Memorandum No. Vig 4 (7)/2013/EZ/Dated April 25, 2013 upon Shri A. Rab the then Senior Regional Manger (WB) Region just only 5 days before retirement of Shri A. Rab.

The Xerox copy of the charge sheet memorandum No. Vig 4 (7)/2013/EZ-Dated April 25, 2013 upon Shri A. Rab enclosed and marked as Annexure-“C”.

Further attention of this Court is drawn to Paragraph 25 of the Affidavit-in-Opposition of FCI to CAN 1 of 2021 (*supra*) which reads as follows:-

“25. The statements contained in paragraphs 1, 2 and 3 are true to my knowledge and the statements contained in paragraphs Nos. 5(i) to (x), 9 to 23 are based on the information derives from the office records and believed to be true and

the rest therein contained are my humble submissions before this Hon'ble Court."

This Court has heard the parties in detail.

This Court has perused the Judgement and Order of the Hon'ble Single Bench in the appeal dated 21st February, 2020, also in detail.

It transpires that the writ petition was filed challenging the award of a minor penalty in a departmental proceeding initiated against the writ petitioner/the present appellant. The claim of the writ petitioner/the present appellant to restoration of benefits denied as a consequence of the departmental proceeding was turned down by the Hon'ble Single Bench.

Challenging the findings expressed by the Hon'ble Single Bench, the present appeal has been filed. It does not therefore transpire to this Court that Paragraph 16 of the affidavit-in-opposition affirmed on the part of the Respondents/*FCI* discloses any contemptuous conduct.

From a plain reading of Paragraph 16 it transpires that the Respondents/*FCI* is entitled to take its stand on the conduct of departmental proceedings against severally situated individual employees which, *inter alia*, *would* include a comparative analysis of the steps to be taken in filing charge sheets in different situations. To the mind of this Court the point taken by the writ petitioner/the appellant *qua* Paragraph 16 of CPAN

1071 of 2021 is a point which can be addressed in the appeal itself on merits.

Accordingly, this Court does not find from a cumulative assessment of Paragraph 16 of the affidavit-in-opposition as dealt with at Paragraphs 5 and 6 of the Contempt Application (*supra*) to be in the nature of a wilful and deliberate disregard of any Order of the Court.

CPAN 1071 of 2021 stands accordingly **dismissed.**

However, the appeal survives to be heard subsequently on merits.

Since this Court is informed that the writ petitioner/the appellant has filed another contempt application being CPAN 1069 of 2021, let **CPAN 1069 of 2021** appear for consideration next under the same heading **“Application (Group-VI) (Contempt)”** on the **11th of July, 2022.**

All parties to act in terms of a copy of the order downloaded from the official website of this Court.

(Lapita Banerji, J.)

(Subrata Talukdar, J.)