

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

LPA-188-2022 (O&M)

Date of decision : 09.03.2022

Dharam Singh Yadav

.....Appellant

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Bikramjit S. Patwalia, Advocate,
for the appellant.

Mr. Deepak Balyan, Addl. Advocate General, Punjab.

RAVI SHANKER JHA, CHIEF JUSTICE (Oral)

This appeal has been filed by the appellant being aggrieved by the order dated 02.02.2022 passed by the learned Single Bench in CWP-3428-2020, vide which the interim order dated 07.02.2020 was clarified/modified as well as the order dated 22.02.2022 vide which CM-2126-CWP-2022 filed by the appellant for re-calling the order dated 02.02.2022 has been dismissed.

Learned counsel for the appellant submits that the appellant had filed the writ petition (CWP-3428-2020) against the promotions sought to be made by the respondents – authorities, wherein an interim order was passed in his favour staying the promotions. In the said writ petition, CM-1029-CWP-2022 was moved by respondent No.4 seeking preponement of the main case, which was allowed by the learned Single Bench vide order dated 02.02.2022 and the respondents – authorities were permitted to take a final decision qua the impending promotions, if they wish to do so, with the stipulation that the order of promotion, if

any, would not be implemented until CWP-7473-2021, wherein the seniority list of the appellant and respondent No.4 was subject-matter of dispute and challenge, was finally decided and adjudicated.

The appellant filed LPA-128-2022 against the aforesaid order dated 02.02.2022. However, when confronted with the decision of the Supreme Court rendered in ***Midnapore Peoples' Coop. Bank Ltd. and others Vs. Chunilal Nanda and others***, reported in (2006) 5 Supreme Court Cases 399, learned counsel for the appellant chose and was permitted to withdraw the appeal with liberty to move an appropriate application before the learned Single Bench. The appellant, thereafter, moved CM-2126-CWP-2022 before the learned Single Bench seeking recall of the order dated 02.02.2022, which has been dismissed vide order dated 22.02.2022 on the ground that the order dated 02.02.2022 was passed in the open Court after hearing the rival contentions of learned counsel for the parties.

Being aggrieved by the said two orders, the appellant has filed this appeal.

Learned counsel for the appellant, while arguing on the question of maintainability of the appeal, has taken this Court through paragraph 15 of the decision of the Supreme Court in ***Midnapore Peoples' Coop. Bank Ltd. and others Vs. Chunilal Nanda and others*** (supra). He submits that in view of category (ii) of paragraph 15, the appeal filed by the appellant is maintainable, as the impugned order dated 02.02.2022 finally decides an issue, which is materially and directly affecting the final decision of the main case. He further submits that in such circumstances, the impugned orders passed by the learned Single

Judge be set aside and the interim order granting stay in favour of the appellant be restored.

Having heard learned counsel for the appellant, it is observed that the impugned interim orders passed by the learned Single Bench are purely interim in nature and do not finally decide any issue which materially and directly affects the final decision of the main case. Admittedly and undisputedly, the issue involved in the main case is the issue of promotion vis-à-vis the appellant and respondent No.4 as well as their inter-se seniority, which is also pending adjudication in CWP-7473-2021.

From a perusal of the impugned order dated 02.02.2022, it is further evident that the learned Single Bench has not decided finally or otherwise any issue in respect of the right of the parties to promotion or the issue of seniority. On the contrary, learned Single Bench by taking into account the contention of learned counsel for respondent No.4 that he is going to retire in the year 2023 has simply granted liberty to the respondent – authorities to take a final decision in respect of the impending promotions, if they wish to do so, and has also directed that the promotion order, if any, issued by them would not be implemented till the impugned seniority list, which is subject matter of challenge in CWP-7473-2021, is finally adjudicated by the Court. Apparently, the order is purely interim in nature. It does not finally or otherwise decide any issue which materially and directly affects the final decision of the main case.

Paragraphs 15 and 16 of the decision of the Supreme Court in ***Midnapore Peoples' Coop. Bank Ltd. and others Vs. Chunilal Nanda and others*** (supra) read thus :

“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.**

16. 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.”

From a perusal of the aforesaid paragraphs, it is evident that

Letters Patent Appeal against an interim order which does not finally

decides any issue which materially and directly affects the final decision is not maintainable. As already held by this Court, the impugned orders passed by the learned Single Bench are purely interim in nature and do not finally decide any issue raised by the appellant in the writ petition pending before the learned Single Bench.

The appeal filed by the appellant being not maintainable is, accordingly, dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

March 09, 2022
ndj

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