

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA No. 203 of 2022 (O&M)

Date of decision:- 11.03.2022

Dr. Mohammad Afaq Alam

.....Appellant

Versus

Union of India and others

...Respondents

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

Present:- Mr. R.S.Bains, Sr. Advocate with
Ms. Aarushi Garg, Advocate, for the appellant.

Mr. Salil Sablok, Advocate, for respondent-UGC.

Mr. Ashwani Talwar, Advocate, for respondent-PEC.

Mr. Arun Gosain, Sr. Panel Counsel for respondent-UIO.

(The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual Court).

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RAVI SHANKER JHA, CHIEF JUSTICE (oral)

This appeal has been filed by the appellant being aggrieved by an interim order dated 04.03.2022 passed by the Single Bench of this Court in Civil Writ Petition No. 12227 of 2021 and other connected matters wherein the interim order granted on earlier occasion permitting the appellant and others like the appellant to continue in service up to the age of 65 years has been vacated and withdrawn.

Learned senior counsel appearing for the appellant submits that the issue involved in the present case is regarding the age of superannuation applicable to the appellant and others. It is submitted that in view of the orders passed by the respondent-authorities, the age of superannuation has been increased to 65 years whereas the authorities are superannuating the appellant at the age of 62 years.

In the petition filed by the appellant and others, the Single Bench vide order dated 17.08.2021 had granted an interim order permitting the petitioner (appellant herein) and others to continue in service till the decision of the petition. The interim order was reaffirmed on 29.10.2021. However, vide the impugned order dated 04.03.2022, the said interim order has been vacated by the Single Judge.

Learned senior counsel appearing for the appellant submits that the impugned order dated 04.03.2022 passed by the Single Bench vacating the interim order is contrary to the decision of a Division Bench of this Court rendered in Civil Writ Petition No. 20447 of 2020 *Dr. Jogender Pal Singh and others vs. Union of India and others* wherein the Single Judge wrongly relied upon a decision of a Division Bench of this Court rendered in Civil Writ Petition No. 15738 of 2018 *Aditya Singh Barget (minor) through his father Vikram Singh vs. Union of India and others*.

When confronted with the fact of maintainability of the present appeal on the ground that it has been filed against an interim order, learned senior counsel for the appellant has relied upon various decisions of the Supreme Court rendered in *Midnapore Peoples' Coop. Bank Ltd. and others vs. Chunilal Nanda and others 2006(5) SCC 399*, *Shah Babulal Khimji vs. Jayaben D.Kania and another, 1981 (4) SCC 8*, *Mithailal Dalsangar Singh and others vs. Annabai Devram Kini and others 2003(1) SCC 691* and *Subal Paul vs. Malina Paul and another 2003(1) SCC 361*.

Having heard learned senior counsel for the appellant on this issue, it is observed that Supreme Court in paragraphs 15 and 16 of the judgment relied upon by the appellant rendered in *Midnapore Peoples'*

Coop. Bank Ltd. and others vs. Chunilal Nanda and others (supra) has summarized the law 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.

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 of 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 purpose of filing appeals provided under the Letters Patent.”*

Though learned senior counsel for the appellant submits that the impugned order falls within clauses (i) (ii) and (iii) of paragraph-15 of the judgment *Midnapore Peoples'* (*supra*), it is observed that the impugned order passed by the Single Judge is purely interlocutory in nature. It is further evident from a perusal of the impugned order that the Single Judge has not decided any collateral issue or the controversy/question involved in the petition finally or any issue which materially and directly affects the final decision in the main petition even though it is not the subject matter of the main petition.

We are constrained to say so as the issue as to whether the appellant is entitled to continue in service up to the age of 65 years or not is still pending adjudication before the Single Bench of this Court. Mere withdrawal or vacation of the interim order does not in any manner decide the issue or the right of the appellant to continue in service up to the age of 65 years finally. More so in case the petition is ultimately allowed by the Single Bench, the petitioner (appellant herein) would be entitled to all the benefits flowing therefrom. On the other hand, in case the petition is ultimately dismissed, any benefit derived by the appellant or the petitioners pursuant to the interim order passed earlier would be difficult to recover.

In the circumstances, as the order passed by the Single Bench is purely interim in nature and does not decide any issue which in our considered opinion is left open to be raised and decided by the Single Judge as and when the matter is finally heard, the appeal filed by the appellant is not maintainable in view of the law laid down in *Midnapore Peoples'* (*supra*). The appeal filed by the appellant is accordingly dismissed permitting the appellant to take up all the issues before the Single Bench at

the time of final hearing of the case including the issue raised and considered by the Single Bench while passing the interim order. It goes without saying that the Single Judge while hearing the matter would decide all the issues raised by the appellant.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

11.03.2022
ravinder

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