

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

**LPA No. 1861 of 2019 (O&M)**

**Reserved on: 23.03.2023**

**Date of Decision: 29 .03.2023**

***UNION OF INDIA AND OTHERS***

. . . . Appellants

**Vs.**

***BALRAJ***

. . . . Respondent

**CORAM:**    **HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO.**  
**HON'BLE MRS.JUSTICE SUKHVINDER KAUR.**

Present: -    Mr. Anil Chawla, Advocate  
                     for the appellants.

Mr. Varun Gupta, Advocate,  
                     for the respondent.

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**M.S. RAMACHANDRA RAO, J.**

In this Letter's Patent Appeal, the appellants have challenged the judgment dt.12.09.2019 passed in CWP-25571-2019.

**The background facts**

The respondent-Balraj had participated in the selection process for post of Sailor in the Indian Navy at New Delhi, and had qualified in the written examination conducted on 27.02.2019 by the appellants. He also qualified in the physical fitness examination, and qualified for the interview conducted by appellant No.3 at New Delhi.

However, in a medical examination conducted by the appellants, he was declared unfit and referred to the Review Medical Board for medical examination.

The Review Medical Board declared the respondent unfit on account of "Left Ear Audio Logical Fualuation" vide Annexure P-3 dt. 10.04.2019.

The respondent then got himself examined from the PGIMER, Chandigarh and also from the PGIMS, Rohtak for treatment of the said disease, but both of them certified that the respondent was not suffering from the said disease as per Annexure P-4 medical reports issued by them.

The respondent then filed CWP-25571-2019 to quash the decision of the appellants by which he had been declared medically unfit by them vide Annexure P-3 dt.10.04.2019, having regard to the medical reports obtained from the respondent PGIMER, Chandigarh and from the PGIMS, Rohtak. He also sought a direction to the appellants to conduct re-medical examination of the respondent in view of Annexure P-4 and to consider the respondent for selection as an Airmen.

By order dt.12.09.2019, the learned Single Judge allowed the Writ Petition observing that there were conflicting medical reports and so the appellants should conduct a fresh medical examination on the respondent by constituting a medical board of experts at any hospital of their choice, preferable at Army Research and Referral Hospital, New Delhi within three months from the date of receipt of certified copy of that order.

Challenging the same, this Appeal is filed.

Learned counsel for the appellants contended that the learned Single Judge had erred in granting relief to the respondent in the Writ Petition. According to the counsel for the appellants, the medical record of a Civilian authority/hospital cannot be taken into consideration when the respondent had been medically examined twice by different Medical Officers and found unfit on both occasions.

Counsel for the appellants sought to rely on Annexure A-2 which is said to be another review medical report issued by a medical board of the base hospital after examining the respondent on 02.05.2019 mentioning that the respondent is suffering from “Chronic Otitis Media (Lt.) Effects Of”.

No reason is assigned by the appellants as to why this document was not produced before the learned Single Judge because this document was available with the appellants when the CWP-25571-2019 was decided on 12.09.2019.

Counsel for the respondent relied on a decision rendered by this Court on 03.12.2019 in LPA-632-2018 titled as **Union of India and Another Vs. Bhagat Singh and Others** where in a similar situation akin to the instant case, a Division Bench of this Court had directed the candidate who had sought appointment for the post of Sailor in the Indian Navy, for medical examination to the Army Research and Referral Hospital, New Delhi in view of the conflicting reports produced by the appellants therein and respondent No.1 therein.

**Consideration by the Court**

In **Shah Babulal Khimji Vs. Jayaben D. Kania and Another**<sup>1</sup>, the Supreme Court had held that the term ‘judgment’ used in Letters Patent could not be given a narrower meaning as is given to the term ‘judgment’ used in CPC and that it should receive a much wider and more liberal interpretation. It held that in spite of the same, each and each and every order passed by the trial judge could not be construed to be a ‘judgment’ and only those orders would amount to ‘judgment’ which have a

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<sup>1</sup> (1981) 4 SCC 8

concept of finality attached to it i.e., only where an order vitally affects valuable rights of the respondents it should be treated as a ‘judgment’ within a domain of Letters Patent so as to be appealable to a larger Bench.

Recently the Supreme Court considered this aspect in **Shyam Sel Power Ltd. and Another Vs. Shyam Steel Industries Ltd.**<sup>2</sup> and observed as under:-

*“18. It has been held that most of the interlocutory orders which contain the quality of finality are clearly specified in clauses (a) to (w) of Order XLIII Rule 1 CPC and would be ‘judgments’ within the meaning of the letters patent and, therefore, appealable. However, there may be interlocutory orders which are not covered by Order XLIII Rule 1 CPC but which also possess the characteristics and trappings of finality inasmuch as such orders may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding. It has further been held that however, for such an order to be a ‘judgment’, an adverse effect on the party concerned must be direct and immediate rather than indirect or remote. Various illustrations of interlocutory orders have been given by this Court in para (120), which could be held to be appealable. This Court held that though any discretion exercised or routine orders passed by the trial Judge in the course of the suit may cause some inconvenience or, to some extent, prejudice to one party or the other, they cannot be treated as a ‘judgment’ unless they contain the traits and trappings of finality. This Court has expressed in para (122) that though it had, by way of sample, laid down various illustrative examples of an order which may amount to a judgment, it would not be possible to give such an exhaustive list as may cover all possible areas. This Court, in the facts of the said case, held that an order of the Single Judge refusing appointment of a receiver and grant of an ad-interim injunction was undoubtedly a ‘judgment’ within the meaning of Letters Patent, both because Order XLIII Rule 1 CPC applies to internal appeals in the High Court and that such an order even on merits contains the quality of*

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<sup>2</sup> Order dt.14.03.2022 in Civil Appeal No.1984 of 2022 arising out of SLP (C) 4080 of 2020

*finality and would therefore be a 'judgment' within the meaning of Clause 15 of the Letters Patent.*

*19. Justice A.N. Sen, while holding that the order in question was appealable under Section 104(1) read with Order XLIII CPC, did not find it necessary to go into the question as to whether such an order would be appealable under Clause 15 of the Letters Patent. It will be apposite to refer to the following observations of the learned Judge:*

*“151. ....In my opinion, an exhaustive or a comprehensive definition of 'judgment' as contemplated in Clause 15 of the Letters Patent cannot be properly given and it will be wise to remember that in the Letters Patent itself, there is no definition of the word 'judgment'. The expression has necessarily to be construed and interpreted in each particular case. It is, however, safe to say that if any order has the effect of finally determining any controversy forming the subject-matter of the suit itself or any part thereof or the same affects the question of court's jurisdiction or the question of limitation, such an order will normally constitute 'judgment' within the meaning of Clause 15 of the Letters Patent.....*

*20. Justice Sen reiterated that it was safe to say that if any order has the effect of finally determining any controversy forming the subject-matter of the suit itself or any part thereof or the same affects the question of court's jurisdiction or the question of limitation, such an order will normally constitute 'judgment' within the meaning of Clause 15 of Letters Patent. He however observed that the expression has necessarily to be construed and interpreted in each particular case.*

*21. It could thus be seen that both the judgments of Justice S. Murtaza Fazal Ali as well as Justice A.N. Sen have a common thread that, as to whether an order impugned would be a 'judgment' within the scope of Clause 15 of Letters Patent, would depend on facts and circumstances of each case.*

However, for such an order to be construed as a 'judgment', it must have the traits and trappings of finality. To come within the ambit of 'judgment', such an order must affect vital and valuable rights of the parties, which works serious injustice to the party concerned. Each and every order passed by the Court during the course of the trial, though may cause some inconvenience to one of the parties or, to some extent, some prejudice to one of the parties, cannot be treated as a 'judgment'. If such is permitted, the floodgate of appeals would be open against the order of Single Judge.

37. We find that it is high time that this Court should take note of frivolous appeals being filed against unappealable orders wasting precious judicial time. As it is, the courts in India are already over-burdened with huge pendency. Such unwarranted proceedings at the behest of the parties who can afford to bear the expenses of such litigations, must be discouraged. We therefore find that the present appeal deserves to be allowed with token costs. The respondent-plaintiff shall pay a token cost of Rs.5 lakhs to the Supreme Court Middle Income Group Legal Aid Society (MIG).”

Thus, in order to come within the ambit of the term ‘judgment’, an order passed by the learned Single Judge must affect vital and valuable rights of the party or cause serious prejudice to the party concerned.

Each and every order passed by the learned Single Judge, though may cause some inconvenience to one of the parties, or to some extent some prejudice to one of the parties, cannot be treated as a ‘judgment’ appealable under the Letters Patent. If such is permitted, the floodgate of appeals would be open against the order of Single Judges.

In our considered opinion, the direction of the learned Single Judge while deciding the Writ Petition in the instant case cannot be said have trappings of finality, and cannot be said to come within the ambit of the term

‘judgment’ under the Letters Patent as it does not affect vital and valuable rights of the parties or cause any serious injustice to the appellant.

So in our considered opinion this Appeal is itself not maintainable and the same is accordingly dismissed with a cost of ₹10,000/- to the respondent by the appellants within 4 weeks.

**(M.S. RAMACHANDRA RAO)**  
**JUDGE**

**(SUKHVINDER KAUR)**  
**JUDGE**

**March 29, 2023**  
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|-------------------------------|---|-----|
| 1. Whether speaking/reasoned? | : | Yes |
| 2. Whether reportable?        | : | Yes |