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

Judgment delivered on: 29.08.2023

+ **CONT.APP.(C) 46/2023 & CM APPL. 44519-20/2023**

SWATI SHARMA

..... Appellant

versus

ASHWANI KUMAR KANSAL AND ANR.

..... Respondents

Advocates who appeared in this case:

For the Appellant: Mr. Pankaj Kumar, Advocate (through VC)

For the Respondents: Mr. Shivendra Singh with Mr. Bikram Dwivedi,
Advocates

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant impugns order dated 03.07.2023 whereby the petition filed by the appellant seeking initiation of proceedings of contempt against the respondents has been dismissed.

2. Learned Single Judge has opined that the Court is unable to conclude that the action of the respondents in discontinuing with the contractual services of the petitioner upon appointment of regular incumbent through direct recruitment is wilful disobedience of order dated 07.04.2022. The petition seeking initiation of contempt



proceedings has been dismissed.

3. Learned counsel appearing for the respondents on advance notice raises a preliminary objections with regard to maintainability of the subject appeal. Learned counsel submits that an appeal under Section 19 of the Contempt of Courts of Act, 1971 (hereinafter referred to as the Act) would lie only in case the Court were to exercise its jurisdiction to punish for contempt.

4. Learned counsel submits that since the Court has held that no contempt is made out and has dismissed the petition, no appeal lies under Section 19 of the Act.

5. Section 19 of the Act reads as under:

19. Appeals.

(1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt— (1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt—"

(a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court;

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6. The Supreme Court in *D.N. Taneja v. Bhajan Lal* (1988) 3 SCC 26 has held as under:-

"10. There can be no doubt that whenever a court,



tribunal or authority is vested with a jurisdiction to decide a matter, such jurisdiction can be exercised in deciding the matter in favour or against a person. For example, a civil court is conferred with the jurisdiction to decide a suit; the civil court will have undoubtedly the jurisdiction to decree the suit or dismiss the same. But when a court is conferred with the power or jurisdiction to act in a particular manner, the exercise of jurisdiction or the power will involve the acting in that particular manner and in no other. Article 215 confers jurisdiction or power on the High Court to punish for contempt. The High Court can exercise its jurisdiction only by punishing for contempt. It is true that in considering a question whether the alleged contemnor is guilty of contempt or not, the court hears the parties and considers the materials produced before it and, if necessary, examines witnesses and, thereafter, passes an order either acquitting or punishing him for contempt. When the High Court acquits the contemnor, the High Court does not exercise its jurisdiction for contempt, for such exercise will mean that the High Court should act in a particular manner, that is to say, by imposing punishment for contempt. So long as no punishment is imposed by the High Court, the High Court cannot be said to be exercising its jurisdiction or power to punish for contempt under Article 215 of the Constitution.

11. It does not, however, mean that when the High Court erroneously acquits a contemnor guilty of criminal contempt, the petitioner who is interested in maintaining the dignity of the court will not be without any remedy. Even though no appeal is maintainable under section 19(1) of the Act, the petitioner in such a case can move this Court under Article 136 of the Constitution. Therefore, the contention, as advanced on behalf of the appellant, that there would be no remedy against the erroneous or perverse decision of the High Court in not exercising its jurisdiction to punish for contempt, is not correct. But, in



such a case there would be no right of appeal under section 19(1), as there is no exercise of jurisdiction or power by the High Court to punish for contempt. The view which we take finds support from a decision of this Court in Paradakanta Mishra v. Mr. Justice Gatikrushna Mishra, (1975) 1 SCR 524.

12. Right of appeal is a creature of the statute and the question whether there is a right of appeal or not will have to be considered on an interpretation of the provision of the statute and not on the ground of propriety or any other consideration. In this connection, it may be noticed that there was no right of appeal under the Contempt of Courts Act, 1952. It is for the first time that under section 19(1) of the Act, a right of appeal has been provided for. A contempt is a matter between the court and the alleged contemnor. Any person who moves the machinery of the court for contempt only brings to the notice of the court certain facts constituting contempt of court. After furnishing such information he may still assist the court, but it must always be borne in mind that in a contempt proceeding there are only two parties, namely, the court and the contemnor. It may be one of the reasons which weighed with the Legislature in not conferring any right of appeal on the petitioner for contempt. The aggrieved party under section 19(1) can only be the contemnor who has been punished for contempt of court.”

7. The Supreme Court in *D.N. Taneja (Supra)*, has categorically held that when the High Court acquits the contemnor and the High Court does not exercise its jurisdiction for contempt, no appeal would lie. The exercise of jurisdiction of contempt would mean imposition of punishment for contempt. Where no punishment is imposed by the High Court, the High Court cannot be said to be exercising its power



under Article 215 of the Constitution of punishing for contempt.

8. The Supreme Court has further held in *D.N. Taneja (Supra)* that in a case where the High Court erroneously acquits a contemnor guilty of contempt, though no appeal would lie under Section 19 of the Act, petitioner can move the Supreme Court under Article 136 of the Constitution.

9. In view of the decision in *D.N. Taneja (Supra)* that no appeal would lie under Section 19 of the Act, we are of the view that the preliminary objections raised by the respondents is sustainable and the appeal is held to be not maintainable as the learned Single Judge has held that no contempt is made out and has refused to exercise the power to punish for contempt.

10. Consequently, the appeal is held to be not maintainable under Section 19 of the Act and is accordingly dismissed.

11. It is clarified that this Court has neither considered nor commented upon the merits of the contentions of either party. All rights and contentions of the parties are reserved.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

AUGUST 29, 2023

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