

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CACP No. 20 of 2024 (O&M)
in COCP No. 585 of 2024
Reserved on: 22.10.2024
Pronounced on: 28.10.2024

T.V.S.N. Prasad and others
.....Appellants

Versus

Resham Singh
....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. Ankur Mittal, Additional A.G. Haryana,
Mr. Pradeep Prakash Chahar, Sr. DAG,
Mr. Saurabh Mago, DAG &
Ms. Kushaldeep Kaur, Advocate
for the appellants.

Mr. Paramjit Singh Jammu, Advocate
for the respondent.

SURESHWAR THAKUR, J.

1. The instant appeal has been directed against the order dated 13.9.2024, as passed by the learned Contempt Bench of this Court in COCP No. 585 of 2024.

Brief facts of the case.

2. Vide order dated 02.12.2023, the writ petition bearing No.CWP-27066-2023, was disposed of by this Court, whereby, the examination which was required to be cleared by the Kanungo(s) for promotion to the post of Naib Tehsildar, thus became directed to be held within a period of two months, from the date of passing of order (supra).

3. The operative portion of the said order becomes reproduced hereinafter.

“4. On asking of the Court, Mr. Pankaj Middha, Additional Advocate General, Haryana, appears and accepts notice on behalf of respondents-State and on instructions from Mr. Naveen, Inspector, Director Land Record, Panchkula, Haryana, submits that keeping in view the information received from the department concerned, the departmental examination which is required to be cleared by the kanungo for the promotion to the post of Naib Tehsildar will be held within a period of two months from today.

5. Learned counsel for the petitioner submits that keeping in view the statement of learned State counsel, the present petition may kindly be disposed of having been not pressed any further.

6. Ordered accordingly.”

4. A copy of the order dated 02.12.2023 was received in the office of Director, Land Records, on 01.01.2024 from the Registry of this Court. The department proposed to conduct departmental exam on 11.12.2023 to 15.12.2023. However, the same could not be conducted as the government decided to conduct the departmental exam, through the aegis of the Central Committee of Examinations, thus under the control of the Chief Secretary, Haryana, instead of the Director, Land Records. From the same, it is clear that the process for compliance being made to the order dated 02.12.2023, thus was initiated much prior to the passings of the order dated 02.12.2023. However, the exam had to be rescheduled rather for compelling circumstance(s), as became comprised in the then ongoing elections to the Union Parliament,

whereins, the staff concerned became deployed. Subsequently, the scheduled exam, as became ordered to be conducted by this Court, was infact conducted and therebys compliance became rendered to the order dated 02.12.2023.

5. Respondent Resham Singh preferred COCP No.585 of 2024 before this Court, alleging therein willful non-compliance by the appellants, qua the order dated 02.12.2023. It was also pleaded therein, that the action of the appellants in not conducting the departmental examination, despite passing of (supra) specific order, thus displays wilful disobedience becoming made vis-a-vis the order passed by this Court.

6. The appellants filed reply to the said Contempt Petition whereby they justified the causings of delay in the holdings of the departmental examination. The learned Contempt Court concerned, vide order dated 13.09.2024, adjourned the case for 24.09.2024, thus for the purpose(s) of consideration being made upon framing of charges against the appellants. The relevant paragraph of the verdict (supra) becomes extracted hereinafter.

“4. In view of above, any effort made by the respondents in explaining the delay to be unintentional cannot come to their rescue as the direction was issued by this Court for holding the departmental examination within two months being fully conscious of the fact that the petitioner was about to retire on 31.03.2024 and in such circumstances, it is plain and clear case of willful noncompliance of the specific and categoric undertaking furnished before this Court and, thus, prima facie case for proceeding against the respondents in terms of Sections 10

and 12 of the Contempt of Courts Act is made out. Therefore, for the purpose of consideration upon framing of charges against them, list on 24.09.2024.

5. The respondents to remain present in Court either in-person or through video-conferencing on the date fixed.”

7. The order (supra), passed by the learned Single Judge (Contempt Court) has caused pain to the appellants herein and has led them to file thereagainst the instant appeal before this Court.

Submission made by the learned counsel for the respondent that the instant appeal is not maintainable

8. The learned counsel appearing for the respondent has most vehemently contended, that the instant contempt appeal is not maintainable before this Court. In making the said submission, he refers to the provisions as embodied in Section 19 of the Contempt of Courts Act, 1971, (hereinafter referred to as ‘the Act of 1971’) provisions whereof become extracted hereinafter, wherein, it becomes mandated that an appeal against the order passed by the learned Contempt Bench concerned, is maintainable only when through the passings of an order or a decision rather by the learned Contempt Bench concerned, thus punishment becomes imposed vis-a-vis the contemnor.

“19. Appeals.—(1) An appeal shall lie as of right from any order or decision of the 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;

(b) where the order or decision is that of a Bench, to the Supreme Court:

Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.

(2) Pending any appeal, the appellate Court may order that—

(a) the execution of the punishment or order appealed against be suspended;

(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).

(4) An appeal under sub-section (1) shall be filed—

(a) in the case of an appeal to a Bench of the High Court, within thirty days;

(b) in the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against.”

9. Furthermore, he also argues that since a reading of the impugned order, displays that neither an order acquitting or exonerating the contemnor becomes passed nor when an order, thus becomes passed wherebys punishment has been imposed upon the contemnor. Resultantly, he argues that the instant appeal is not maintainable before this Court.

10. Furthermore, he argues that the (supra), order is only challengeable through a motion under Article 136 of the Constitution of India, becoming made before the Hon’ble Apex Court, than through the filing of the instant appeal before this Court.

11. In addition, he also submits that in the proceedings for contempt, the High Court is required to be deciding whether any contempt of Court is committed and, if so, what should be the punishment and the matter incidental thereto. Therefore, he argues that

through the making of the impugned operative part (supra), the learned Contempt Bench concerned, thus has remained within the frontiers of the jurisdiction conferred upon it, thereby there is no justification for any interference therewith being made, by this Court.

12. Consequently, in the wake of the above submissions, the learned counsel for the respondent reiteratedly argues, that the instant contempt appeal directed against the impugned order (supra), passed by the Contempt Bench of this Court, is not maintainable, and as such the instant appeal as directed thereagainst, thus is required to be dismissed at the very threshold.

Reasons for rejecting the above submissions

13. Before proceeding to reject the above made submission, it is necessary to bear in mind the fact, which is of utmost importance, and, whereons may become banked the justifiability or unjustifiability of the above made arguments before this Court.

14. The said pivotal fact(s) but necessarily emerges from the above extracted portion of the operative part of the order, as became passed by the Writ Court, and for purported willful non compliance thereof, rather becoming made, thus the respondent proceeded to institute contempt petition bearing No.585 of 2024 before the learned Contempt Bench of this Court, thus headed by learned Single Bench of this Court.

15. The dispute, as set in the writ petition related to the non conducting of the departmental examinations by the appellants (herein) for thereby enabling the respondent (herein) to participate therein, so that, on his successfully passing the same, thereupon he may become

endowed the benefit of promotion from the post of Kanungo to the post of Naib Tehsildar. The said dispute did not become rested on merits, but as evident on a reading of the operative part of the decision, as became made on the writ petition, rather emphatically, the said writ petition was disposed of, on the then Law Officer concerned, on receiving instructions from Mr. Naveen, Inspector, Director Land Record, Panchkula, Haryana, instructions whereof also subsequently became successfully conveyed to this Court. The (supra) instructions embodied therein underlinings, qua the requisite departmental examination being decided to be held within a period of two months. Accordingly the writ petition was disposed of, but with a categorical mandate that the said departmental examination be held as intimated by the instructing officer to the Addl. Advocate General, thus within two months from the date of passing of the order.

16. Conspicuously, the said instructions were purveyed to the Addl. Advocate General, by Mr. Naveen, Inspector, Director Land Record, Panchkula, Haryana.

17. Now it is to be determined whether the said Inspector was authorized by the head of the department concerned, to impart the said apposite instructions, thus to the learned State counsel concerned.

18. The necessity of the said requisite valid authorizations becoming imparted to the Inspector concerned, who subsequently further imparted them to the Addl. Advocate General, whereafter the latter successfully conveyed them to this Court, thus to the objective mind of this Court rather is of profound importance.

19. The reason for stating so becomes sparked from the

provisions comprised in Order III Rule 1 and 2 of the Code of Civil Procedure, 1908, provisions whereof becomes extracted hereinafter. In the said provision, there exists a specific mandate that only an authorized officer of the government is to appear and represent the interests of the State. Though, the authorized agent of the State, who was to record a valid representation on behalf of the State of Haryana, in the lis (supra), was uncontrovertedly one Mr. Pankaj Middha, Addl. Advocate General. But the instructions which became imparted to him wherebys, this Court was led to pass the (supra) directions rather became so imparted by Mr. Naveen, Inspector, Director Land Record, Panchkula, Haryana.

“ORDER III

1. *Appearances, etc., may be in person, by recognized agent or by pleader.*—Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader *1* [appearing, applying or acting, as the case may be,] on his behalf:

Provided that any such appearance shall, if the Court so directs, be made by the party in person.

2. *Recognised agents.*—The recognised agents of parties by whom such appearances, applications and acts may be made or done are—

(a) *persons holding powers-of-attorney, authorising them to make and do such appearances, applications and acts on behalf of such parties;*

(b) *persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with*

such trade or business only, where no other agent is expressly authorised to make and do such appearances, applications and acts.”

20. Therefore, unless there was material on record suggestive that the said Inspector was either respectively orally authorized or became authorized through scribed instructions becoming made, thus by the head of the department concerned, thereby alone he became obviously validly authorized to subsequently convey the said validly received instructions to the learned Addl. Advocate General, instructions whereof, also successfully became conveyed to this Court.

21. Be that as it may, especially when evidently no such valid authorizations became bestowed upon the concerned, by the head of the department concerned, thereupon the hereinafter inferences, do become sparked.

a) That the said instructions, as became received by one Mr. Naveen, Inspector, Director Land Record, Panchkula, Haryana, were not received by him from the head of the department concerned.

b) That the said officer was, thus not authorized to convey them subsequently to the learned Addl. Advocate General, nor the learned Addl. Advocate General, unless he had thoroughly verified them to be emanating from the head of the department concerned, rather became authorized to subsequently successfully convey them to this Court.

22. Therefore, extreme care was required to be employed by the then Addl. Advocate General, to believe the instructions and to

thereafter successfully convey them to this Court. Necessarily, besides reiteratedly when there is no material, at this stage existing on record, suggestive that one Mr. Naveen, Inspector, Director Land Record, Panchkula, Haryana, was validly authorized to impart the requisite instructions to the then Addl. Advocate General. Consequently, the said instructions were not required to be assigned any credence nor thereafter the Addl. Advocate General was to be successfully conveying them to this Court, thus for this Court passing the order (supra).

23. If so, the consequence thereof, is that, thus for lack of evident endowment of any valid authorizations upon the Inspector, one Mr. Naveen, Inspector, Director Land Record, Panchkula, Haryana, by the head of the department concerned, qua therebys the (supra), becoming disrobed to impart the instructions (supra), to the Addl. Advocate General, who also unless he had thoroughly verified them to be emanating from the head of the department concerned, verification whereof did not evidently become made by him, thereupons he was also not required to be assigning any credence thereto nor was thereafter required to be successfully conveying to this Court, thus for this Court proceeding to pass the order (supra).

24. As such, there has been lack of exercise of due care and caution. Resultantly, the omission of exercisings of due care and caution vis-a-vis the (supra), has led to the extant ill situation, inasmuch as, despite there being a change in the Regulatory Body, thus relating to the conducting of the departmental examination concerned, inasmuch as, the Regulatory Authority becoming altered from the Director Land Records to the Central Committee of Examinations, thus headed by the

Chief Secretary, Haryana, yet the respondent (herein) despite therefroms thus emerging valid (supra) extenuating circumstance(s), rather making an ill capitalization therefroms.

25. The effect of the above transition, when becomes combined with the prima facie (supra) conclusion, relating to complete lack of valid authorization(s) becoming bestowed upon the Inspector concerned, to impart instructions, besides the lack of verification(s) being made by the Addl. Advocate General concerned, appertaining to the said imparted instructions, hence emanating from the head of the department concerned, thus fosters a conclusion, that the said change obviously comprised an able extenuation, besides a justifiable reason for the delay, if any, which occurred in the holding of the departmental examination. Resultantly, therebys neither any willful nor any intentional disobedience became caused to the order (supra), which otherwise for reasons (supra) is prima facie banked upon flawed instruction(s) becoming received and thereafters also becoming successfully thereonwards, thus becoming conveyed to this Court, but without evident exercisings of care and caution.

26. The effect of the above rather has prima facie remained completely undelved into nor rather became adjudicated upon, by the learned Contempt Bench concerned. Contrarily, the learned Contempt Bench concerned, appears to in a short shift manner rather ride roughshod, over the tenacity of the said justifiable reason as became displayed in extenuation of the purported attribution qua purported willful disobedience being made to the order (supra). Resultantly, it has ill proceeded to record that any “*any purported effort, as made by the*

appellants (herein) thus explaining the delay to be unintentional rather cannot come to their rescue as the direction was issued by this Court for holding the departmental examination within two months besides the appellants (herein) being fully conscious of the fact that the petitioner was about to retire on 31.03.2024 and in such circumstances, it is plain and clear case of willful noncompliance of the specific and categoric undertaking furnished before this Court, and that too said that for the purpose of consideration upon framing of charges against them, list on 24.09.2024". Further it also ill proceeded to conclude that, thus a prima facie case for proceeding against the respondent in terms of Section 10 and 12 of the Contempt of Courts Act, rather is made out. Moreover, the learned Contempt Court also subsequently ill ordered for the listing of the contempt petition on 24.09.2024, thus for the framing of a charge against the contemnor (present appellants).

27. The import of the above, is that, the learned Contempt Bench did evidently ill maneuver itself to not only ride roughshod over the apposite extenuating circumstance, wherebys the said justifiable extenuating circumstance but in a most slipshod manner, thus became completely overlooked, but subsequently also proceeded to make an ill categorical finding that the order (supra) became willfully disobeyed. The above orientations, to the considered mind of this Court, apart from the fact that they are made, in a slipshod manner, besides are made through makings of overlookings of a justifiable cause for the occurrence of the relevant delay, but naturally lead to a further inference, that as such, such directions or decisions "*were incidental to or inextricably connected with order punishing for contempt*".

28. In other words, the said orientation but displays the inclination of the learned Contempt Bench concerned, to ultimately proceed to, after framing of a charge against the contemnor, to subsequently punish him, despite there existing a justifiable cause, thus in extenuation of any purported willful non compliance being made to the order (supra), which even otherwise for reasons (supra) rather became banked, upon, a vitiated undertaking/instructions rather becoming successfully conveyed to this Court.

29. Consequently, the said directions or decisions besides the proclivity(ies) thereof, thus ultimately moving towards punishing the contemnor concerned, thus thereby rather render “*such directions or decisions to be naturally incidental to or is inextricably connected with the order of punishing for contempt*”. Resultantly, such directions were to be avoided as thereby not only for reasons (supra) the valid apposite extenuating circumstance, rather has been in a post haste manner completely overlooked, but besides thereby in the event of the impugned order becoming not quashed and set aside, thereby the contemnor upon, facing the charge would become ill subjected to harassment. Emphatically when prima facie, even on the charge being drawn against them, drawings whereof when for reasons (supra), thus would be completely flawed, yet when upon the well explanation (supra), or the (supra) supervening well extenuating circumstance, thus may ultimately become well banked, rather for discharging the present appellants vis-a-vis the contempt proceedings, as drawn against them. Necessarily, the ill prolongations of the trauma and agony, which the appellants would face, thus is required to be ebbed at this very stage.

30. Ultimately, the preponderant reason for this Court concluding, that the above submission addressed before this Court, by the learned counsel for the respondent, regarding the maintainability of the present appeal, thus requiring rejection, and, that the instant appeal rather is maintainable, is based, upon the hereinafter principles, relating to the maintainability of contempt appeals by the Appellate Court concerned. The said principles become engrafted in paragraph No.11 of the verdict made by Hon'ble Apex Court, in case titled as "**Midnapore Peoples' Coop. Bank Ltd. And others V. Chunilal Nanda and others**" reported in **(2006) 5 SCC 399**, paragraph whereof becomes extracted hereinafter.

"11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarized thus :

I. An appeal under section 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be

in the exercise of 'jurisdiction to punish for contempt' and therefore, not appealable under section 19 of CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under section 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases).

The first point is answered accordingly.”

31. Exceptions to the arguments (supra) raised by the learned counsel for the respondent against the maintainability of the present appeal, become grooved in principle No.IV, wherein, it is expounded that the “*directions or decisions incidental to or inextricably connected with the order punishing for contempt thus do make the contempt appeal maintainable*”. Conspicuously also when for all the reasons (supra), the learned Contempt Bench concerned, through the makings of an order for the framing of a charge, thus has rendered a said decision which ultimately becomes maneuvered towards punishing the contemnor. Therefore, the said directions also encompass therein, thus the exception (supra), inasmuch as, the said directions, thus *in tandem* with principle No.IV (supra), is/are incidental to or are inextricably connected with the order punishing for contempt, whereby it is permissible for a contempt appeal raised under Section 19 of the Contempt of Courts Act, thus being construable to also encompass “*the*

towards ultimately punishing the contemnor, as the impugned directions passed in the instant case do become so maneuvered.

32. Hence, there is merit in the instant appeal and the same is allowed, and the impugned order of 13.09.2024, as becomes drawn by learned Single Bench is quashed, and, set aside, and, the present appellants are discharged accordingly.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

October 28, 2024
Ithlesh

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