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

+ **CONT.CAS(C) 399/2011**

SWAMI NATH BAITHA & ORS.

..... Petitioners

Through: Ms. Geeta Luthra, Sr. Adv. with Ms.
Arpita Sahu, Advocate
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versus

GK PILLAI & ORS.

..... Respondents

Through: Mr. Ruchir Mishra, Mr. Mukesh Kr.
Tiwari, Ms. Reba Jena Mishra and
Ms. Poonam Shukla, Advocates
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Mr. Vardhman Kaushik, Mr. Nishant
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CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

16.04.2024

MINI PUSHKARNA, J:

1. The present petition has been filed alleging willful disobedience of the judgment dated 15th July, 2010 passed by the Division Bench of this Court in *W.P.(C) 9363/2009*. By way of the said judgment, the Division Bench had directed the respondents to consider the case of the petitioners for their entitlement to be regularized as Lower Division Clerks (“LDCs”)



considering the power under Rule 12(b) of the Central Secretariat Clerical Service Rules, 1962 (“CSCS Rules”). The Division Bench, thus, upheld the decision dated 24th July, 2007 passed by the learned Central Administrative Tribunal (“CAT”) in *O.A. 1538/2005* and *O.A. 1321/2005*, wherein directions had been given to the respondents to re-examine the case of the petitioners for regularization to the post of LDCs. The learned CAT had further directed that till the case of the petitioners was considered, *status quo* shall be maintained. Since the case of the petitioners for their regularization to the post of LDCs was rejected and they were reverted to Group ‘D’ post, the present petition had been filed praying for regularization of the petitioners as LDCs and to restore the petitioners as LDCs after setting aside their reversion to Group ‘D’ post.

2. Since the petition had been pending since long, in the meanwhile, the petitioners were promoted to the post of LDCs, whenever any vacancy arose. Thus, before this Court the only issue raised was with respect to the financial benefits payable to the petitioners from the year 2008, when their case for regularization was rejected by the respondents and they were reverted to their respective Group ‘D’ posts, till the year 2015, when they were promoted to the post of LDCs.

3.1 On behalf of the petitioners, it was contended that the petitioners could not have been reverted to Group ‘D’ posts, as categorical directions had been given by the learned CAT by its order dated 24th July, 2007 to consider the case of the petitioners for regularization the post of LDCs. Till the decision was not taken upon consideration of the case of the petitioners for regularization, *status quo* was to be maintained. The said decision passed by the learned CAT was upheld by Division Bench of this Court by order



dated 15th July, 2010, wherein the Division Bench had directed the respondents to consider the case of the petitioners afresh, as the earlier decision dated 26th August, 2008 passed by the respondents did not consider the case of the petitioners in view of decision of the Supreme Court in the case of ***Secretary, State of Karnataka and Others Versus Uma Devi and Others, 2006 (4) SCC 1*** and Rule 12 of the CSCS Rules.

3.2 Thus, it was contended by learned Senior Counsel for the petitioners that the petitioners are entitled to monetary benefits for the period from the time when they were reverted to Group 'D' posts, till their subsequent promotions as LDCs.

3.3 Directions for considering the case of the petitioners meant that the respondents had to regularize the services of the petitioners. Their appointments were irregular and not illegal.

3.4 On behalf of the petitioners, the following judgments were relied upon:

i. Secretary, State of Karnataka and Others vs. Uma Devi and Others, (2006) 4 SCC 1

ii. Bhikubhai Vithlabhai Patel and Others vs. State of Gujarat and Another, (2008) 4 SCC 144

iii. A.P. SRTC and Others Vs. G. Srinivas Reddy and Others, (2006) 3 SCC 674

iv. Employees' State Insurance Corpn. Vs. All India ITDC Employees' Union and Others, (2006) 4 SCC 257

4.1 Per contra, learned counsels appearing for respondents submitted that the seniority of the petitioners to the posts of LDCs shall be counted only from the date when they were appointed regularly to the said posts.



Therefore, no payments can be released to the petitioners for the period before their regular appointment to the posts of LDCs. Further, it is submitted that the earlier appointments of the petitioners as LDCs were on ad-hoc and officiating basis and all the petitioners had already been paid salaries as LDCs for the period, when they discharged their duties as LDCs on officiating basis.

4.2 The petitioners had rightly been reverted to the Group 'D' posts, as their case for regularization to the posts of LDCs was rejected. In terms of the order passed by the learned CAT, the petitioners were reverted only after consideration of their case for regularization. Therefore, there is no question of non-compliance of the directions passed by this Court or for payment of any monetary benefits to the petitioners to the posts of LDCs before their regular appointment to the said posts, for the period when they discharged their duties in Group 'D' posts.

5. I have heard learned counsels for the parties and perused the record.

6. Facts on record show that the petitioners were appointed to Group 'D' posts by the Union Public Service Commission ("UPSC"). Later, they were appointed as LDCs w.e.f. 31st March, 1989 on ad-hoc basis under Regulation 7 of UPSC (Staff) Regulations, 1958.

7. Subsequently, the petitioners submitted representation for regularization of their services to the posts of LDCs. Since their demand for regularization was not met, the petitioners approached the learned CAT by way of filing *O.A. 1538/2005* and *O.A. 1321/2005*. The said petitions were disposed of by learned CAT vide order dated 24th July, 2007, wherein directions were issued to the UPSC to examine the claim of the petitioners in the light of the observations made by the learned CAT and judgment of the



Supreme Court in the case of *Uma Devi (Supra)*. It was further directed that till the consideration of the case of the petitioners takes place, *status quo* shall be maintained. The relevant portion of the order dated 24th July, 2007 passed by the learned CAT, is extracted as below:

“xxx xxx xxx

36. In the result, for the foregoing reasons, we have no hesitation to rule that the aforesaid aspect of the matter, has not at all been taken into consideration by the respondents. Their view point and appreciation of the CSCS rules as well as the decision in Umadevi's case has not been well taken, by the respondents, rather misconceived.

37. It is trite that once the Government as an administrative authority in the exercise of the discretion acts non-judiciously, ignoring the Rules and the law on the subject, the only fall out action is to direct them to reconsider the entire matter in a right and legal perspective.

38. Accordingly, for the foregoing reasons, we dispose of these two OAs with a direction to the respondents to re-examine the claim of the applicants in the light of our observations made above for regularization as per Para 53 of the Umadevi's case (supra) by a detailed and speaking order to be passed within three months from the date of receipt of the copy of this order. It goes without saying that till this consideration takes place, the status quo as maintained shall continue. It also goes without saying that in the event, the applicants are so considered for regularization, consequences shall ensue. No costs.

xxx xxx xxx”

8. The UPSC challenged the aforesaid order dated 24th July, 2007 passed by the learned CAT by way of W.P.(C) 8243/2007, which was dismissed as withdrawn by seeking leave to pass a speaking order in terms of the directions issued by the learned CAT.

9. Pursuant thereto, the UPSC passed a speaking order dated 26th August, 2008, by which the claim of the petitioners for their regularization to the posts of LDCs was rejected and they were reverted to their respective Group ‘D’ posts. The relevant portion of the speaking order dated 26th



August, 2008 passed by the UPSC reads as under:

“xxx xxx xxx

28. Whereas under the Rules Chairman-UPSC has no authority to grant relaxation under CSCS Rules. The CSCS is an entirely different Service belonging to the Central Government.

29. Whereas the relevant Recruitment Rules for the post of LDC grade of Central Secretariat Clerical Service are CSCS Rules, 1962 and the Controlling authority of these Rules is DOP&T. The Appointments of the Officials in question were not made under these Recruitment Rules (i.e., CSCS Rules, 1962) as they have neither qualified the Limited Departmental Competitive Examination nor have acquired the requisite Seniority. The Appointments of the Officials in question were made by the Chairman, UPSC in exercise of powers vested in him vide Regulation 7 of UPSC (Staff) Regulations, 1958 for specific periods on ad hoc basis.

30. Whereas as far as question of regularization in terms of the judgment of the Hon'ble Supreme Court in the case of Secretary, State of Karnataka and Ors. Vs. Umadevi and Ors. is concerned, the claim of the officials in question for regularization to the LDC Post cannot be considered in absence of the officials in question being eligible for regular appointment to the LDC's post in terms of their seniority or failure on the part of the officials in question to clear the Limited Departmental Competitive Examination, as it would be flouting the rules and it would further lead to discrimination of other employees who are senior to the officials in question thus, violative of Article-14 & 16 of Constitution. In view of the same one time relaxation cannot be granted to the officials in question since, the Chairman, UPSC is not the Competent Authority under CSCS Rules, 1962, the exception laid down in Uma Devi's case for consideration of regularization would not apply to the present case.

31. Whereas the Matriculation Certificate submitted [to UPSC] by two of the applicants in OA No. 1321/2005 namely S/Sh. Ramphool-II and Netrapal Singh i.e., applicants no.5 & 25 have been found to be forged, as verified from the institution these are purported to be issued-from. Therefore, Respondent no. 5 & 25 are no longer even educationally qualified to hold the post of LDC, but for the status quo orders issued by the Hon'ble Tribunal in its judgment dated 24th July, 2007. Both the said officials are also facing the disciplinary proceedings for submission of forged certificate(s).

32. Whereas for the foregoing reasons, the claim of the Officials in



question for regularization does not hold any merit and is hereby rejected. Consequently, the Respondents stand reverted to their respective substantive Group 'D' post with immediate effect.

xxx xxx xxx

10. Aggrieved by the aforesaid speaking order dated 26th August, 2008 passed by the UPSC, the petitioners approached the learned CAT again by moving an application therein. By its order dated 01st May, 2009, the learned CAT directed the UPSC to restore the petitioners to the posts of LDCs within fifteen days and re-examine their claim in its true letter and spirit. Against the said order passed by the learned CAT, UPSC filed W.P.(C) 9363/2009, which came to be disposed of by the Division Bench of this Court by its judgment dated 15th July, 2010, in the following terms:

“xxx xxx xxx

23. The order in question, rightly in our opinion, holds that the order under challenge has not considered the matter as was required to be considered in view of the decision in Uma Devi's case and Rule 12 of the CSCS Rules 1962.

24. Indeed, learned counsel for the petitioner concedes so, but makes the submission that UPSC has no role to play while deciding whether the power under the proviso to Rule 12 (b) of the CSCS Rules 1962 has to be exercised. Learned counsel submits that the power has to be exercised by the Central Government and the actual exercise of power has to be by the Secretary of the Concerned Nodal Ministry i.e. DOP&T.

25. It appears that everybody lost sight of the fact that there were two respondents before the Tribunal at the first stage of proceedings and even at the second. First respondent was the Union of India and the second respondent was UPSC.

26. Learned counsel for respondent no. 3 to 28 states that it is not the concern of the said respondents as to who complies with the directions issued by the Tribunal vide order dated 24.07.2007, but somebody has to comply with the directions issued by the said order.

27. Now, nobody can have a quarrel with the said proposition, for indeed somebody has to apply himself and pass the necessary order.



28. We thus dispose of the instant writ petition issuing a direction that the Secretary UPSC would immediately get in touch with his counterpart i.e. Secretary in the Ministry of Personnel, Public Grievances and Pension. The two would sort out the issue as to who has to exercise the power under the proviso to Rule 12 (b) of CSCS Rules 1962. This would be done by the two officers within a period of 4 weeks from today. Thereafter, whosoever is the person agreed upon, to take the necessary decision, would decide, within further 8 weeks, the entitlement of the respondents to be regularized as LDCs by considering the power under Rule 12 (b) of the CSCS Rules 1962 in light of the fact that with intermittent breaks respondents 3 to 28 have functioned for long as LDCs and would keep in mind the distinction drawn between irregular and illegal appointments brought out in Uma Devi's case. We clarify, it is not in dispute that the ad hoc posts held by the respondents were in respect of regular vacancies which then existed and were not filled up under either Clause (a) or Clause (b) of Rule 12 of CSCS Rules 1962, and that there is some dispute on whether these posts were subsequently abolished.

29. The authority concerned would also take note of the fact that the decision of the Tribunal dated 24.07.2007 in OA No. 1538/2005 and OA No. 1321/2005 has attained finality and would specifically take note of the observations of the Tribunal in paras 29-38 of the said order.

xxx xxx xxx”

11. Perusal of the aforesaid judgment dated 15th July, 2010 passed by the Division Bench shows that directions were given to the respondents to consider the case of the petitioners for their regularization as LDCs afresh, after deciding as to whether Secretary, UPSC or Secretary, Ministry of Personnel, Public Grievances and Pension, Government of India, had the authority to exercise power under CSCS Rules. Though directions had been issued by the learned CAT vide its order dated 01st May, 2009 to restore the status of the petitioners as LDCs, no such specific directions were given by the Division Bench of this Court. The only direction given by the Division Bench was to consider the case of the petitioners afresh by the respondents by taking note of the fact that the decision passed by the learned CAT vide



order dated 24th July, 2007 in O.A. 1538/2005 and O.A. 1321/2005 had attained finality. It was further directed that the concerned authority considering the case of the petitioners would take note of the observations of the learned CAT passed in the aforesaid order dated 24th July, 2007.

12. Subsequently, the petitioners filed contempt petitions being *CONT. CAS (C) 728/2010* and *CONT. CAS(C) 774/2010*, which were disposed of by judgment dated 17th February, 2011 by noting that a fresh order in terms of the directions of the Division Bench dated 15th July, 2010 shall be passed within a period of two months. The judgment dated 17th February, 2011 passed in *CONT. CAS (C) 728/2010* and *CONT. CAS(C) 774/2010*, reads as under:

"1. Learned counsel for the petitioners submits that while passing the order dated 12.10.2010, respondent no.3 did not take into consideration the directions passed by a Division Bench of this Court on 15.7.2010 in W.P.(C)No.9363/2009.

2. Present matters were adjourned to enable learned counsel for respondent no.3 to take instructions in the matter. Today, it is submitted by learned counsel for respondent no.3, on instructions from Mr. Minz, Under Secretary, who is present in Court, that a fresh order with reasons shall be passed by respondent no.3 within a period of two months from today on the basis of directions issued by the Division Bench. Respondent no.3 shall be bound by the statement made by the counsel in Court today.

3. In view of the stand taken by learned counsel for respondent no.3, learned counsel for the petitioners does not wish to press present contempt petition, however, he prays that in case the petitioners are aggrieved by the order so passed by respondent no.3, liberty may be granted to the petitioners to take recourse to such remedies, which may be available to the petitioners, in accordance with law.

4. Accordingly, contempt petitions are dismissed as not pressed. Liberty, as prayed for, is granted."

13. Pursuant thereto, a speaking order dated 18th April, 2011 was passed by the Ministry of Personnel, Public Grievances and Pension, Government



of India by which the claim of the petitioners for regularization was held to be without any merit and was thereby rejected. The relevant portion of the said speaking order dated 18th April, 2011 is extracted as below:

“xxx xxx xxx

16. Whereas the entitlement of the respondents for regularization has also been examined in the light of the observations of the Hon'ble Central Administrative Tribunal, Principal Bench, in its judgment dated 24.7.2007 in OA No 1538/2005 in para 29 to 39 and the respondents cannot be regularized under the CSCS Rules as the same de-hors the rules as aforementioned and their regularization in exercise of power conferred under proviso to Rule 12(i)(b) of the CSCS Rules is not feasible for the reasons aforementioned. Thus, the case of the respondents for regularization does not fall within the exception carved out in para 53 of the Judgment of the Hon'ble Supreme Court in the matter of State of Karnataka Vs. Uma Devi & Ors.

17. Whereas since the ad-hoc appointments of officials in question were illegal in nature in view of the fact that they were not appointed under CSCS Rules, the claim for regularization will be violative of CSCS Rules, 1962, which has been framed under the proviso of the Article 309 of the constitution.

18. Whereas for the forgoing reasons the claim of the officials in question for regularization does not hold any merit and it is ordered accordingly.

19. This issues with the approval of the Competent Authority.”

14. Thus, it is seen that pursuant to the directions passed by the learned Division Bench, the case of the petitioners was considered afresh by the respondents. Even after fresh consideration, no merit was found in the case of the petitioners for their regularization to the posts of LDCs. Therefore, the petitioners continued in the Group 'D' posts, till their promotion to the posts of LDCs.

15. In view thereof, when the petitioners have not worked in the posts of LDCs from the year 2008 to 2015, there is no question of passing any order



by this Court, in the present proceedings for granting any monetary benefits to the petitioners for the aforesaid period. The claim of the petitioners for grant of any monetary benefit to them for the aforesaid period, would be a fresh cause of action, which cannot be adjudicated in the present proceedings. Thus, in the case of ***J.S. Parihar Versus Ganpat Duggar and Others, (1996) 6 SCC 291***, Supreme Court has held as follows:

“xxx xxx xxx”

6. The question then is whether the Division Bench was right in setting aside the direction issued by the learned Single Judge to redraw the seniority list. It is contended by Mr S.K. Jain, the learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three Benches, the learned Judge cannot come to a conclusion whether or not the respondent had wilfully or deliberately disobeyed the orders of the Court as defined under Section 2(b) of the Act. Therefore, the learned Single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2-7-1991. Subsequently promotions came to be made. The question is whether seniority list is open to review in the contempt proceedings to find out whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act.....

xxx xxx xxx”

(Emphasis Supplied)

16. The respondents have considered the case of the petitioners in terms



of the directions passed by the learned CAT, and the Division Bench of this Court, whereupon no merit was found in their claim for regularization and orders have been passed, whereby the claim of the petitioners for their regularization has been categorically rejected by the respondents.

17. In terms of the order dated 24th July, 2007 passed by the learned CAT for maintaining *status quo* till consideration of the cases of the petitioners, *status quo* was maintained by the respondents till the passing of order dated 26th August, 2008 passed by the UPSC. It was only after consideration of the case by the UPSC that the petitioners were reverted to Group 'D' posts. Though, the Division Bench of this Court by its judgment dated 15th July, 2010 directed the respondents to consider the case of the petitioners afresh in light of the observations made by the learned CAT in its order dated 24th July, 2007, there were no directions passed by the Division Bench for restoring the status of the petitioners as LDCs.

18. Thus, when there were no specific directions passed by the Division Bench of this Court for either restoring the status of the petitioners as LDCs or for payment of any monetary benefits to the petitioners for the period when they were discharging their functions in Group 'D' posts, no further or additional directions can be passed by this Court in the present contempt proceedings.

19. It is also to be noted that the petitioners have duly accepted their subsequent promotions to the post of LDCs and have not challenged the same. Once the petitioners have accepted their subsequent promotions as LDCs, there is no occasion for the petitioners to claim monetary benefits to the post of LDCs, before the period when they were so promoted and were discharging their functions in respective Group 'D' posts. Law in this regard



is very clear that no monetary benefits can be granted to any person for a post to which he has not discharged his functions. Undisputedly, the petitioners have been granted salary in accordance with the posts to which they were discharging their functions.

20. The claim of the petitioners whether or not they were entitled for regularization, cannot be considered in the present proceedings. This Court cannot enter into the merits of the disputes raised by the petitioners. It is undisputed that the petitioners have been paid salaries in accordance with the date of their promotion to the posts of LDCs. Therefore, any other claim raised by the petitioners cannot be adjudicated in the present proceedings. Thus, in the case of *Snehasis Giri and Others Versus Subhasis Mitra, 2023 SCC OnLine SC 107*, Supreme Court has held as follows:

“xxx xxx xxx

11. Furthermore, this court, in lawful exercise of contempt jurisdiction, cannot examine the merits of a decision, whether the state or the madrasa's stand that any of the petitioners is entitled to the benefits of being treated as an employee, having regard to the concerned rules and regulations. In *J.S. Parihar v. Ganpat Duggar*³ this court explained the limited scope of contempt proceedings, as follows, in the facts of the case:

“6. The question then is whether the Division Bench was right in setting aside the direction issued by the learned Single Judge to redraw the seniority list. It is contended by Mr. S.K. Jain, the learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three Benches, the learned Judge cannot come to a conclusion whether or not the respondent had wilfully or deliberately disobeyed the orders of the Court as defined under Section 2(b) of the Act. Therefore, the learned Single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2-7-1991. Subsequently promotions came to be made. The question is whether seniority list is open to review in the contempt proceedings



to find out whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the Single Judge; the Division Bench corrected the mistake committed by the learned Single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned Single Judge when the matter was already seized of the Division Bench.”

12. In a later decision, *Midnapore Peoples' Coop. Bank Ltd. v. Chunilal Nanda*⁴ this court explained the limitations of a court exercising contempt jurisdiction:

“11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarised 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 the 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).”

13. It is thus, apparent, that if this court were to pronounce upon the merits of the respondents' position, it would necessarily have to consider the facts of each case, and decide whether the stand of the alleged contemnors - wherever a decision adverse to the petitioners is taken, is correct on its merits. That exercise, plainly is not admissible in proper exercise of contempt jurisdiction.

xxx xxx xxx”

(Emphasis Supplied)

21. Considering the detailed discussion hereinabove, this Court finds no merit in the present petition. The same is accordingly dismissed.

(MINI PUSHKARNA)
JUDGE

APRIL 16, 2024/au