

IN THE HIGH COURT AT CALCUTTA

Special Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CPAN 621 of 2025

Baishakhi Bhattacharyya (Chatterjee) & Ors.

Vs.

**Shri Binod Kumar, The Principal Secretary, Department of School
Education & Ors.**

In

WPA 30649 of 2016

Baisakhi Bhattacharyya (Chatterjee) & Ors.

Vs.

The State of West Bengal & Ors.

For the Petitioners	: Mr. Bikash Ranjan Bhattacharyya, Sr. Adv. Mr. Sudipta Dasgupta, Adv. Mr. Bikram Banerjee, Adv. Mr. Arka Nandi, Adv. Mr. Sagar Dey, Adv. Mr. Sandwip Sutradhar, Adv. Mr. Baibhav Roy, Adv.
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For the Alleged Contemnor no. 1	: Mr. Partha Sarathi Sengupta, Sr. Adv. Mr. Jishnu Chowdhury, Sr. Adv. Mr. Sirsanya Bandopadhyay, Sr. Standing Counsel Mr. Debanjan Mandal, Adv. Mr. Sandip Dasgupta, Adv. Ms. Mahima Cholera, Adv.
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For the alleged Contemnor no. 2	: Mr. Kalyan Bandyopadhyay, Sr. Adv. Mr. Debanjan Mandal, Adv. Mr. Sandip Dasgupta, Adv. Ms. Mahima Cholera, Adv.
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For the alleged Contemnor no. 3	: Mr. Saptangsu Basu, Sr. Adv. Dr. Sutanu Kumar Patra, Adv. Mr. Supriya Dubey, Adv.
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For the alleged Contemnor no. 4	: Ms. Koyeli Bhattacharyya, Adv. Mr. Bibek Dutta, Adv. Ms. Keya Panja, Adv.
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For the CBI : Mr. Dhiraj Trivedi, DSGI

Hearing Concluded on : May 01, 2025

Judgement on : May 07, 2025

DEBANGSU BASAK, J.:-

1. Petitioners have complained of violation of the judgment and order dated April 22, 2024 passed by us in WPA 30649 of 2016 and in other writ petitions and appeals.

2. Learned Senior Advocate appearing for the petitioners has submitted that, the Hon'ble Supreme Court has affirmed the judgement and order dated April 22, 2024 on April 3, 2025 save and except one of the directions contained in the judgment and order dated April 22, 2024 being modified. He has pointed out that, one of the directions contained in the judgement and order dated April 22, 2024 was set aside by the Hon'ble Supreme Court, on April 8, 2025. All other directions have been affirmed by the Hon'ble Supreme Court. He has submitted that, petitioners are seeking implementation of such directions contained in the judgment and order dated April 22, 2024 which have not been set aside or modified by the Hon'ble Supreme Court, in this contempt petition.

3. Learned Senior Advocate appearing for the alleged contemnor no. 1 has raised the issue of maintainability of the contempt petition before this Hon'ble Court, at the threshold.

He has submitted that, since, Special Leave Petitions were filed against the judgment and order dated April 22, 2024 and since such Special Leave Petitions were admitted and the Hon'ble Supreme Court disposed of the appeals directed against the judgment and order dated April 22, 2024, by a judgment and order dated April 3, 2025, the judgment and order dated April 22, 2024 of the High Court has merged with the judgment and order dated April 3, 2025 of the Hon'ble Supreme Court. Consequently, the Court which has jurisdiction to consider an application for contempt of the judgment and order dated April 3, 2025, is the Hon'ble Supreme Court.

4. Learned Senior Advocate appearing for the alleged contemnor no. 1 has relied upon **2000 Volume 6 Supreme Court Cases 359 (Kunhayammed and Others vs. State of Kerala and Another)**, **2014 Volume 16 Supreme Court Cases 88 (Dineshan K.K vs. R.K. Singh and Another)**, **2023 SCC OnLine Cal 1152 (Sailesh Kumar vs. Smitha R. IAS and Another)** and **2025 Volume 3 Supreme Court Cases 543 (Balbir Singh and Another vs. Baldev Singh)** in support of his contention of merger.

5. Learned Senior Advocate appearing for the alleged contemnor no. 1 has also drawn the attention of the Court to Articles 129, 141, 142 and 215 of the Constitution of India. He has submitted that, the Hon'ble Supreme Court by virtue of Article 129 of the Constitution of India is competent to issue contempt proceedings if, violation of its judgment and order is complained of.

6. Learned Senior Advocate appearing for the alleged contemnor no. 1 has submitted that, in the facts and circumstances of the present case, since the judgment and order dated April 22, 2024 passed by the High Court has merged with the judgment and order dated April 3, 2025 of the Hon'ble Supreme Court, the judgment and order dated April 22, 2025 ceases to exist either for the purpose of review or for the purpose of enforcement of such judgment and order.

7. Learned Senior Advocate appearing for the alleged contemnor no. 1 has drawn the attention of the Court to the order passed by the Hon'ble Supreme Court subsequent to April 3, 2025. He has submitted that, one of the directions contained in the judgment and order dated April 22, 2024 of the High Court was set aside by the Hon'ble Supreme Court on April 8, 2025. He has also pointed out that, time to perform

one of the directions of the judgment and order dated April 22, 2024 of the High Court stood modified by the Hon'ble Supreme Court by an order dated April 17, 2025.

8. Learned Senior Advocate appearing for the alleged contemnor no. 2 has submitted that, the judgment and order dated April 22, 2024 passed by the High Court is no longer available for enforcement by the High Court in view of the merger of such judgment and order with the judgment and order of the Hon'ble Supreme Court dated April 3, 2025. Moreover, Subsequent to April 3, 2025, two other orders have been passed by the Hon'ble Supreme Court which has the effect of either setting aside or modifying the judgment and order dated April 22, 2024 of the High Court. Consequently, this High Court should not exercise jurisdiction under the Contempt of Courts Act, 1971 or Article 215 of the Constitution of India to implement a judgement and order which stood merged on appeal.

9. Learned Senior Advocate appearing for the alleged contemnor no. 3 has relied upon **1974 Volume 2 Supreme Court Cases 453 (M/s. Gojer Bros. (Pvt.) Ltd. vs. Shri Ratan Lal Singh), 2019 Volume 4 Supreme Court Cases 376 (Khoday Distilleries Limited and Others vs. Sri**

Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal) and ***2024 SCC OnLine SC 1712 (State of Uttar Pradesh and Another vs. Virendra Bahadur Katheria and Others)*** on the issue of merger.

10. In response to the plea of non-maintainability of the contempt petition, learned Senior Advocate appearing for the petitioners has contended that, the petitioners are persons who have brought to the notice of the Court acts of contempt committed by the alleged contemnors. He has contended that once the act of contempt is brought to the notice of the Court, it is then a proceeding between the Court and the alleged contemnors.

11. Learned Senior Advocate appearing for the petitioners has relied upon ***2004 (73) DRJ 528 (Ram Phal & Another vs. B. S. Bhalla & Ors.)*** and ***2016 SCC OnLine Ker 41310 (Mariamma Thomas Vs. Vijayanand I.A.S.)*** for the proposition that, despite the initial order of the High Court having merged with the order of the Supreme Court, nonetheless, contempt petitions were initiated before the High Court and entertained.

12. Learned Senior Advocate appearing for the petitioners has contended that, the merger of the judgment and order of

the High Court with the judgment and order of the Hon'ble Supreme Court is one thing for the purpose of review and another for the purpose of execution. He has contended that, the merged judgement and order is required to be executed and that execution proceeding can be had at the Court of first instance. In the facts and circumstances of the present case, by virtue of a direction by the Hon'ble Supreme Court dated November 9, 2023, the writ petitions and the appeals have been heard by this Division Bench in which the judgment and order dated April 22, 2024 was passed. Consequently, the judgment and order dated April 22, 2024 passed by this Court is required to be executed, by this Court. He has pointed out that, contempt is an equitable mode of execution, in absence of appropriate rules existing for execution of orders passed in writ jurisdiction.

13. Learned Senior Advocate appearing for the petitioners has contended that, this Court does not lack inherent jurisdiction to entertain the contempt petition in view of provisions of Article 215 of the Constitution of India as well as Contempt of Courts Act, 1971. He has contended that, Article 215 of the Constitution of India being a constitutional

provision, it will override any prohibition or inhibition made by a statute such as the Contempt of Courts Act, 1971.

14. Learned Senior Advocate appearing for the petitioners has contended that, a judgment and a decree are separate. He has contended that, the judgment does not merge. However, the decree that is passed merges with the decree of the Superior Court if the initial decree is modified or set aside or upheld by the superior Court.

15. According to the learned Senior Advocate appearing for the petitioners, there is no impediment in the High Court exercising contempt jurisdiction to enforce its judgement and order notwithstanding the merger thereof with the judgement and order of the Supreme Court.

16. Learned Senior Advocate for the alleged Contemnor no.1 has contended that, the ***Ram Phal & Another (supra)*** had reached the Hon'ble Supreme Court where the initial order was set aside by an order dated September 2, 2015 passed in Civil Appel No. 3702 of 2007. He has relied upon ***2021 (4) Mh.L.J 718 (All India Adiwasi Employees Federation, Nagpur vs. Shaktikanta Das, Governor of RBI, Mumbai and others).***

17. Learned Senior Advocate for the alleged contemnor no. 2 has submitted that, as against binding precedents of the Hon'ble Supreme Court the petitioners are seeking to rely upon precedents which at best, are of persuasive value. He has also drawn the attention of the Court to the judgment and order dated August 1, 2023 passed by a Division Bench of the Kerala High Court in Contempt Case (C) No. 789 of 2023 (s).

18. In terms of the order dated November 9, 2023, passed by the Hon'ble Supreme Court, directing a batch of writ petitions and appeals to be heard by a Division Bench, we had heard such writ petitions and appeals and passed a judgement and order dated April 22, 2024 thereon.

19. In such judgement and order dated April 22, 2024, we had issued the following directions: –

“Directions

363. In view of the discussions above, we issue the following directions: -

(i) Writ petitions appearing in the monthly list of March, 2024 of this Bench, which are not filed and numbered in the years 2021 and 2022 are released from the list due to lack of jurisdiction/determination.

(ii) All appointments granted in the selection processes involved being violative of Articles 14 and 16 of the Constitution of India, are declared null and void and cancelled.

(iii) OMR sheets available in the three hard disks, if not already done or such portion not done, must be uploaded in the website of SSC forthwith and made available to the public for viewing.

(iv) Persons who had been appointed outside the panel, after expiry of the panel as also those who submitted blank OMR sheets but obtained appointments, must return all remunerations and benefits received by them to the State exchequer along with interest calculated at 12 percent per annum, from the date of receipt thereof till deposit, within a period of four weeks from date.

(v) In default, the District Magistrates under whose jurisdictions, such candidates reside, will take expeditious steps to realize such amount from such persons, as arrears of land revenue and shall ensure that recovery is made within a period of six weeks of the date of initiation of proceeding for recovery.

(vi) Respective District Inspectors of School will report to the respective District Magistrates as to whether money directed to be paid by the persons concerned have been paid to the State exchequer or not.

(vii) CBI will undertake further investigation in respect of all the four cases. CBI will interrogate all persons who had received appointments beyond the panel, after expiry of the panel and after submitting blank OMR sheets. If necessary, CBI shall undertake custodial interrogation in respect of each of them.

(viii) CBI will undertake further investigations with regard to the persons involved, in the State Government approving creation of supernumerary post to accommodate illegal appointments. If necessary, CBI will undertake custodial interrogation of such person involved.

(ix) CBI shall submit its reports with regard to further investigations as directed herein, preferably within three months from date, with the jurisdictional Court.

(x) Leave granted to SIT to seek appropriate directions so that the investigations and trials come to their logical conclusions.

(xi) SSC shall undertake a fresh selection process in respect the declared vacancies involved in these selection processes preferably within a fortnight from the date of declaration of results of the ensuing elections.

(xii) Appointments for preparation, evaluation and scanning of OMR sheets shall be made by SSC by open tender and after declaring the eligibility criteria and other terms and conditions of the contract.

(xiii) SSC shall follow the Rules governing the selection processes in letter and spirit.

(xiv) SSC shall make available all policy decisions with regard to compliance of the Recruitment Rules governing any of the categories of the selection process in its website.”

20. Several Special Leave Petitions had been filed directed against the judgement and order dated April 22, 2024 passed by us. Several Special Leave Petitions admitted by the Hon’ble Supreme Court and treated as civil appeals had been disposed of by a judgement and order dated April 3, 2025.

21. Judgement and order dated April 3, 2025 of the Hon’ble Supreme Court had noted the directions passed by us on April 22, 2024. It has held as follows: –

“45. The last question relates to the relief and whether it requires any modification. We find no valid ground or reason

to interfere with the direction of the High Court that the services of tainted candidates, where appointed, must be terminated, and they should be required to refund any salaries/payments received. Since their appointments were the result of fraud, this amounts to cheating. Therefore, we see no justification to alter this direction.

46. For candidates not specifically found to be tainted, the entire selection process has been rightly declared null and void due to the egregious violations and illegalities, which violated Articles 14 and 16 of the Constitution. As such, the appointments of these candidates are cancelled. However, candidates who are already employed need not be asked to refund or retribute any payments made to them. However, their services will be terminated. Furthermore, no candidate can be appointed once the entire examination process and results have been declared void.

47. Some of the appointed candidates who do not fall within the category of tainted candidates may have previously worked in different departments of the State Government or with autonomous bodies, etc. In such cases, although their appointments are cancelled, these candidates will have the right to apply to their previous departments or autonomous bodies to continue in service with those entities. These applications must be processed by the respective government departments or bodies within three months, and the candidates will be allowed to resume their positions. Further, the period between the termination of their previous appointment and their rejoining will not be considered a break in service. Their seniority and other entitlements will be

preserved, and they will be eligible for increments. However, for the period they were employed under the disputed appointment, no wages will be paid by the State Government or autonomous bodies. Further, if required and necessary,

supernumerary posts may be created for persons appointed in the interregnum.

48. Lastly, we address the case of disabled candidates. Our attention has been drawn to one such case where the impugned judgment held that the appointee, Ms. Soma Das, shall be allowed to continue on humanitarian grounds. While we will not interfere with this finding, we make it clear that other differentlyabled candidates will not be entitled to the same benefit, as it would contradict legal principles and the rule of law. However, in consideration of their disability, these candidates will be permitted to continue and will receive wages until the fresh selection process and appointments are completed.

49. The disabled candidates mentioned in the previous paragraph will be allowed to participate in the fresh selection process, if required, with age relaxation and other concessions. Similarly, other candidates who are not specifically tainted will also be eligible to participate, with appropriate age relaxation. In our opinion, such a direction would be fair and just, as it would allow these candidates to take part in the fresh selection process, which should now be initiated to fill the vacancies.

50. Our observations and findings would not influence the criminal proceedings.

51. Accordingly, we uphold the impugned judgment cancelling en bloc / entire selection process but have made certain modifications in the directions issued by the High Court. The appeals are disposed of in aforesaid terms.

52. We, however, will independently take up the issue raised in the appeal(s) filed by the State of West Bengal with regard to the direction of investigation by the CBI on the decision taken to create supernumerary posts. The Special Leave Petition(s) to this extent will be listed for hearing on 08.04.2025.

53. All pending applications, including impleadment applications, also stand disposed of. No order as to costs.”

22. By a judgement and order dated April 8, 2025, the Hon’ble Supreme Court has set aside direction number (viii) appearing at paragraph 363 of our judgement and order dated April 22, 2024.

23. By an order dated April 17, 2025, the Hon’ble Supreme Court, on an application filed in the appeal resulting in the order dated April 3, 2025, has extended the time to complete the fresh selection process and permitted teachers who have not been specifically found to be tainted to work till December 2025.

24. The issues that have fallen for consideration before us are as follows: –

(i) has our judgement and order dated April 22, 2024 merged in the judgement and orders dated April 3, 2025, April 8, 2025 and April 17, 2025 of the Hon’ble Supreme Court or not?

(ii) Is a contempt petition maintainable before the High Court to implement an order which merged with the order/orders of the Hon’ble Supreme Court?

(iii) to what relief or reliefs are the parties entitled to?

25. M/s. Gojer Bros. (Pvt.) Ltd. (supra), after considering the relevant authorities on the subject of merger of the judgment of Trial Court in the judgement of the Superior Court has observed as follows: –

“11. The juristic justification of the doctrine of merger may be sought in the principle that there cannot be, at one at the same time, more than one operative order governing the same sub-matter. Therefore the judgment of an inferior court, if subjected to an examination by the superior court, ceases to have existence in the eye of law and is treated as being superseded by the judgment of the superior court in other words, the judgment of the inferior court loses its identity by its merger with the judgment of the superior court.”

26. In Kunhayammed and Others (supra), Hon’ble Supreme Court has discussed the issue of merger in the context of whether a review petition is maintainable before the High Court subsequent to a Special Leave Petition being disposed of by the Hon’ble Supreme Court. It has held as follows: –

“42. “To merge” means to sink or disappear in something else; to become absorbed or extinguished; to be combined or be swallowed up. Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve a loss of identity and individuality. (See Corpus Juris Secundum, Vol. LVII, pp. 1067-68.).

44. To sum up, our conclusions are:

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court

was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC.”

27. Dineshan K.K (supra) has noticed that, the order passed by the High Court merged with the order passed by the Hon’ble Supreme Court. It has however, requested the High Court to look into the grievance of the complainant, if a

petition was filed before the High Court for disobedience of the order. In the facts of that case, the order of the Hon'ble Supreme Court was an order of dismissal simpliciter.

28. *Khoday Distilleries Limited and Others (supra)* has considered the issue as to whether the review petition is maintainable before the High Court seeking review of a judgement against which the Special Leave Petition has already been dismissed by the Hon'ble Supreme Court or not. It has answered such issue by observing that, the view expressed in ***Kunhayammed and Others (supra)*** lays down the correct law.

29. On the issue of merger of orders, ***Virendra Bahadur Katheria and Others (supra)*** after noticing various authorities including ***Kunhayammed and Others (supra)*** has held as follows: –

“43. These decisions indubitably hold if Special Leave was not granted and the petition was dismissed by a reasoned or unreasoned order, the order against which such Special Leave Petition is filed would not merge with the order of dismissal. However, once leave has been granted in Special Leave Petition, regardless of whether such appeal is subsequently dismissed with or without reasons, the doctrine of merger comes into play resulting merger of the order under challenge with that of the appellate forum, and only the latter would hold the field. Consequently, it is the

decision of the superior court which effective, enforceable, and binding in the eyes of the law, whether the appeal is dismissed by the speaking order or not.”

30. Doctrine of merger of a decree passed by the trial Court with that of the decree passed by the High Court and Second appeal has been dwelt upon in ***Balbir Singh and Another (supra)***. It has held as follows: –

“33. Thus, once the High Court allows the second appeals in favour of the plaintiffs, there was evidently a merger of the judgments of the trial court with the decision of the High Court. Once the High Court as an appellate court in second appeal renders its judgment, it is decree of the second appellate court which becomes executable hence, the entitlement of the decree-holder to execute the decree of the second appellate court cannot be defeated.”

31. The Nagpur Bench of the Bombay High Court in ***All India Adiwasi Employees Federation, Nagpur (supra)*** has noticed various authorities of the Supreme Court and the doctrine of merger including ***Kunhayammed and Others (supra)*** and held that, the power to punish under Article 215 is limited to the contempt of the High Court or Courts subordinate to the High Court and that it does not extend to punishing for contempt of a Superior Court.

32. Special Bench of the Calcutta High Court in ***Sailesh Kumar (supra)*** has considered the following issues: –

(a) Will the doctrine of merger be applied to confer an exclusive jurisdiction on a Division Bench to entertain contempt application where the order of the Single Bench is either upheld in toto and/or the appeal against an order of the Single Bench is dismissed simplicitor?

(b) Is the jurisdiction of the Division Bench and a Single Bench in such cases co-extensive insofar as contempt applications are concerned?

33. Sailesh Kumar (supra) has answered such reference as follows: –

“22. The Calcutta High Court Contempt of Courts Rules, 1975 was promulgated in exercise of power conferred under Section 23 of the Contempt of Courts Act, 1971 and Article 215 of the Constitution of India to regulate the procedures of contempt of courts matter may be seen in this regard. The said Rules having a statutory backing have to be understood and applied and no departure can be presumed therefrom. Rule 15 of the Contempt Rules postulates that all petitions with regard to the civil contempt grounded on the wilful disobedience to the judgment, decree, the directions, order or other process of Court or wilful breach of an undertaking given to the Court shall be heard by the Judge or Judges who passed the judgment or a decree or gave the directions or the orders or issued the writ or other process or before whom the undertaking was given. The statutory provision has to be understood on the basis of the intention purposes and object it sought to achieve and segregation and/or compartmentalization has to be eschewed. The

provisions contained in Rule 15 cannot be dissected nor segregated in the event of an undertaking, the contempt would lie to the Judge before whom the undertaking is given from rest of the express eventualities provided therein. It is explicit from Rule 15 of the Contempt Rules that the contempt would lie before a Judge or Judges who passed the judgment or decree and not before the Appellate Court which confirms the decree. The position would have been different when the judgment, decree, directions or orders passed by the Single Bench is modified and/or reversed by the Division Bench exercising the appellate jurisdiction and in such event, the contempt may lie before the same Judges constituting the Division Bench as there is no express provision in the said contempt rules that of Section 37 of the Code of Civil Procedure. Any other interpretation to the provision contained under Rule 15 of the Contempt Rules would not only burden the Division Bench of the High Court with slew of the contempt applications but also have the ramification on docket explosion. Although the doctrine of merger is not a rigid rule but certainly depends upon the statutory provisions applicable in relation to the maintainability of the contempt application before a forum. The contempt jurisdiction is not only exercised to punish the person having found guilty of wilful and deliberate violation of the order/direction of the Court but can further be exercised in due implementation and/or execution of the said order. It stands to reason that the statutory provision contained in the Rules is strictly applicable and therefore, the answer to the references is as follows:

(i) In case of an affirmation of an order of Single Bench passed in exercise of the original jurisdiction either in Original Side or the Appellate Side, the contempt would lie before the Single Bench alleging the violation of the directions of orders passed by him.

(ii) In case of reversal, modification and setting aside the order of the Single Bench in an appeal under Clause 15 of the Letters Patent by the Division Bench, the contempt application would lie before the Judges constituting a Division Bench who passed the order.

(iii) In the event, an undertaking is given by the party to the proceeding before the Single Judge to do or not to do a certain thing and challenge to an order could not yield in reversal and/or modification of the original order is recorded the contempt would lie to a Judge before whom such undertaking was given.”

34. Sailesh Kumar (supra) has therefore, neither considered the second issue taking for consideration herein nor answered it.

35. A Single Judge of the Delhi High Court in **Ram Phal and another (supra)** has enforced an order passed by the Division Bench, in a contempt petition filed before the Single Judge. However, the issue as to whether an order of the learned Single Judge having merged with the order of the Division Bench can be enforceable by the learned Single Judge was not raised and not answered therein.

36. Supreme Court in **Civil Appeal No. 3822 of 2007 (B. S. Bhalla and another vs. Ram Phal and Another)** by an order dated September 2, 2015 after noticing that the order of the High Court stood complied with, had set aside order of the High Court and disposed of the contempt proceedings.

37. A Single Judge of the Kerala High Court in ***Mariamamma Thomas (supra)*** has held that, doctrine of merger is not available in contempt proceedings. However, it has noticed that, if the Appeal Court materially modifies or varies the order of the Single Judge then, the Appeal Court needs to be approached.

38. A Division Bench of the Kerala High Court in ***Contempt Case (C) No. 789 of 2023 (Amod Mathew vs. A P M Mohammed Hanish and Another)*** has subscribed to view expressed in ***Mariamamma Thomas (supra)*** that, principle of merger applies to contempt proceedings only if it means the ends of justice.

39. Records made available to this Court have established that, Special Leave Petitions directed against the judgement and order dated April 22, 2024 have been dealt with in 2 categories. One civil appeal directed against the judgement and order dated April 22, 2024 being Civil Appeal No. 4800 of 2025 had considered the issue with regard to the direction for investigation by the Central Bureau of Investigation for the decision to create supernumerary post. Such civil appeal No. 4800 of 2025 had been disposed of by the order dated April 18, 2025 setting aside such a direction as contained in the

judgement and order dated April 22, 2024. Therefore, one of the directions contained in judgement and the order dated April 22, 2024 does not survive the order dated April 18, 2025 passed by the Hon'ble Supreme Court.

40. So far as the other directions that are contained in the judgement and order dated April 22, 2024 are concerned, the same are governed by the judgement and order dated April 3, 2025 passed by the Hon'ble Supreme Court in the civil appeals directed against the judgement and order dated April 22, 2024. Subsequent to the order dated April 3, 2025, Hon'ble Supreme Court has, on an application filed in such civil appeals, passed an order dated April 17, 2025. Such order has been passed in Miscellaneous Application No. 709 of 2025 filed in Civil Appeal No. 4805 2025.

41. Both the sets of the Special Leave Petitions directed against the judgement and order dated April 22, 2024 had been admitted by the Hon'ble Supreme Court and disposed of as Civil Appeals.

42. On the strength of the ratio of the judgements on merger cited on behalf of the parties, in this proceeding, we have no hesitation in holding that, the judgement and order dated April 22, 2024 had merged in the judgement and order

dated April 3, 2025, April 8, 2025 and April 17, 2025 of the Hon'ble Supreme Court.

43. In view of the discussions above, the first issue is answered in the affirmative by holding that, the judgement and order dated April 22, 2024 has merged with the judgement and orders of the Hon'ble Supreme Court passed on April 3, 2025, April 8, 2025 and April 17, 2025.

44. Provisions of execution particularly those enumerated under Order 21 of the Code of Civil Procedure, 1908 are not available for executing an order passed in writ jurisdiction. However, it is judicially recognised that, contempt is an equitable mode of execution of an order passed in writ jurisdiction.

45. Ordinarily, in case of a civil suit, should the decree be carried in appeal or a Second Appeal is filed or a Special Leave Petition directed against the decree passed in the Second Appeal is decreed, then the ultimate decree passed by the Superior Court is put into execution. Executing Court then, is identified by the provisions of the Code of Civil Procedure, 1908 notwithstanding the hierarchy of the Courts which passed the ultimate decree. It is the ultimate decree, that is to say, the final decree of the last Court which is put into

execution. In such perspective, a decree passed by a civil Court, either affirmed or modified ultimately by the Hon'ble Supreme Court is not put into execution before the Hon'ble Supreme Court but before the Court having requisite jurisdiction to execute such decree, at the first instance.

46. In view of the absence of similar provisions akin to the Code of Civil Procedure, 1908 relating to execution of a decree, for an order passed in writ jurisdiction, to be executed, proceedings under the Contempt of Court Act, 1971 are accepted modes of execution of the order passed by a writ Court.

47. An order passed in writ jurisdiction is enforced through a contempt proceeding primarily on the principle that, non-adherence or non-compliance with the writ issued tends to degrade his dignity and majesty of the Court issuing the writ. In the facts and circumstances of the present case the ultimate writ was issued by the Hon'ble Supreme Court and therefore a contempt petition would not lie before this Court to enforce such order, unless specifically empowered by the Hon'ble Supreme Court to do so akin to ***Dineshan K.K (supra)***.

48. Consequently, in view of the absence of such provisions of the Code of Civil Procedure, 1908 to execute an order passed by a writ Court, the analogy or the principle that, even if, the ultimate decree is modified or altered or affirmed by the Superior Court, the same needs to be executed by the Court as delineated in the Code of Civil Procedure, 1908 is not attracted to a contempt proceeding to implement an order passed by the writ Court.

49. Article 215 of the Constitution of India has empowered the High Court to punish for its contempt. In our view, such provisions of the Constitution cannot be read to mean that, a High Court has the power to punish for contempt of orders of the Hon'ble Supreme Court, without the Hon'ble Supreme Court requesting it to do so, more so in view of the provisions of Article 129 of the Constitution of India.

50. Doctrine of merger propounded by the authorities as noted above, have made a review petition not maintainable before the High Court subsequent to the Hon'ble Supreme Court admitting a Special Leave Petition directed against the order of the High Court. Review petition is not maintainable before the High Court in the scenarios as have been noted by the authorities of the Hon'ble Supreme Court, in view of the

fact that, the judgement and order of the High Court ceases to exist on merger.

51. On merger of the judgement and order of the High Court with that of the Hon'ble Supreme Court, it ceases to exist for the purpose of a review before the High Court, then, and on the parity of the same reasoning, it ceases to exist for the High Court to enforce it through a contempt petition.

52. Consequently, we are unable to subscribe to the view that, doctrine of merger is not absolute and that, in certain circumstances, the High Court can entertain an application for contempt of an order passed by the Hon'ble Supreme Court, notwithstanding the order of the High Court having merged in the order of the Hon'ble Supreme Court.

53. In the facts and circumstances of the present case, there are three orders of the Hon'ble Supreme Court subsequent to our judgement and order dated April 22, 2024. Judgement and order dated April 3, 2025 and April 8, 2025 of the Hon'ble Supreme Court dealt with two sets of civil appeal directed against the judgement and order dated April 22, 2024. The third order dated April 17, 2025 was passed by the Hon'ble Supreme Court and a miscellaneous application filed in one of the sets of the appeals before it.

54. The last order dated April 17, 2025 of the Hon'ble Supreme Court contains certain directions with regard to assistant teachers for the classes IX, X, XI and XII who were not found to be tainted. Some of the parties to the civil appeals were directed to file affidavits by May 31, 2025 in closing there with documentary evidence of compliance of the directions issued by the Hon'ble Supreme Court. Such order also contains a default clause in the event of non-compliance of the directions contained therein.

55. Although, the two sets of appeals as also the miscellaneous application in which, the 3 orders of the Supreme Court as noted above were passed stood disposed of, nonetheless, by the tenor of the last order dated April 17, 2025, it is apparent that, the Hon'ble Supreme Court order proceed to issue further directions in the event of non-compliance of the directions contained in such order.

56. In view of such directions contained in the order dated April 17, 2025, it would be safe to infer that, the Hon'ble Supreme Court is still in seisin of non-compliance of the directions, if there be any.

57. We therefore, answer the second issue by holding that a contempt petition is not maintainable before the High Court

to implement an order which merged with the order of the Hon'ble Supreme Court.

58. In view of the discussions above, CPAN 621 of 2025 is dismissed as not maintainable. The third issue is answered accordingly.

[DEBANGSU BASAK, J.]

59. I agree.

[MD. SHABBAR RASHIDI, J.]