

Serial No. 2

Reg. cause list

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

OWP No. 574/1999

University of Kashmir through Registrar

..... Appellant/petitioner(s)

Through: -
Mr. Asif Maqbool, Advocate

V/s

Prof. Gh. Nabi Sidiqi and Ors.

..... Respondent(s)

Through: -
Mr. M. Ashraf Bhat, Advocate

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

(ORDER)

07.12.2023

1. University of Kashmir through its Registrar has preferred the instant petition under Sections 103 and 104 of the erstwhile Constitution of Jammu and Kashmir (now Articles 226 and 227 of the Constitution of India), imploring for the following reliefs:-

“ Writ in the nature of certiorari, the Judgment dated 30.08.1997 delivered by Additional District Judge, Srinagar, in civil suit titled “Prof. G. N. Sidiqi Vs. University of Kashmir” be quashed.

Writ of prohibition, the respondent No. 2, be restrained from proceeding further in the execution proceedings titled “Prof. G. N. Sidiqi Vs. University of Kashmir” and be further directed to drop these proceedings.”

2. The facts under the cover of which the instant petition has been filed would reveal that the respondent 1, herein being plaintiff filed a civil suit for recovery of Rs. 1,10,000/- as also for issuance of a decree of declaration and injunction on the premise that the plaintiff/respondent 1, herein was working as permanent employee in the Education Department of the J&K Government

and while holding the post of Joint Director, on 30th August, 1987, on asking of the defendant University /petitioner herein, his services came to be lent to it by the Government whereupon he served in several capacities and reached to the position of Registrar on 20.07.1980 till the date of his superannuation on 30.01.1992 and that before his retirement, he came to be confirmed against the post of Registrar on 05.08.1983 and upon his retirement came to be granted pensionary benefits in terms of order dated 09.01.1992 by the defendant University /petitioner herein, however, on 20.08.1993, the order of grant of pensionary benefits came to be rescinded by the defendant University /petitioner herein without issuing any notice and hearing the plaintiff-respondent 1, herein and that in the matter of rendering of service in the petitioner University as also grant of pensionary benefits, the plaintiff/respondent 1, herein came to be discriminated vis-à-vis one similarly situated Government officer namely Prof. Saif-ud-Din Soz, whose services too had been lent by the Government for the University and after rendering lesser service than that of respondent 1, herein in the University, came to be granted pensionary benefits in the relaxation of rules.

3. Aggrieved of the rescinding of grant of pensionary benefits to the plaintiff-respondent 1, herein, in terms of order dated 20th August, 1993, the plaintiff/respondent 1, herein instituted the suit *supra* before the Court of Additional District Judge, Srinagar, (for short trial Court) on 24.11.1993.

4. The defendant University -petitioner herein after entering appearance in response to the summons issued by the trial Court, filed written statement to the suit whereupon the trial Court framed as many as eight issues and consequently the plaintiff/respondent 1, herein led evidence in support of the issues, onus whereof to prove was put on him, while as, on the contrary the

defendant University /petitioner herein did not lead any evidence and consequently did not prove the issues onus whereof to prove had been put on it.

5. The trial Court upon conclusion of the trial of the suit passed the impugned Judgment and decree dated 30.08.1997 and while decreeing the suit in favour of the plaintiff/respondent 1, herein and against the defendant University /petitioner herein declared the impugned order dated 20th August, 1993 as illegal and consequently passed a decree for an amount of Rs. 1,10,000/- along with interest of 6% from the date of institution of the suit till the date of satisfaction of the decree in favour of the plaintiff/respondent 1, herein, including a decree for grant of pensionary benefits @ Rs. 1500/- per month in favour of plaintiff/respondent 1, herein.

6. The defendant University /petitioner herein has called in question the said Judgment and decree in the instant petition.

7. Reply to the petition has been filed by respondent 1, herein, whereunder, *inter alia*, a preliminary objection has been raised *qua* the maintainability of the petition, on the premise that the Judgment and decree under challenge in the petition could have been challenged in an appeal and not in the instant petition.

Heard learned counsel for the parties and perused the record.

8. Learned counsel for the petitioner while making his submissions in line with the contentions raised and the grounds urged in the petition would contend that the impugned Judgment and decree has been wrongly passed by the trial Court, overlooking the facts and circumstances of the case, whereas on the contrary the counsel for the respondent 1, herein would reiterate the

preliminary objections that the petition is not maintainable in presence of the remedy of appeal available against the impugned Judgment and decree.

9. Having regard to the facts and circumstances of the case inasmuch as, the preliminary maiden objection raised by the counsel for the respondent 1, herein, it is deemed appropriate to address the said preliminary objection in the first instance.

10. Before proceeding further in the matter, it would be advantageous to refer to the following provisions of Code of Civil Procedure being relevant herein to the controversy.

“ 96. Appeal from original decree.— (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed ex parte.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed. [ten] thousand rupees.”

Section 96 CPC expressly confers a right of appeal from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decision of such Court. Whereas, the Order 41 of the Code of Civil Procedure provides for form of appeal and the documents required to be accompanying the memorandum of appeal inasmuch as the procedure and mechanism for deciding such appeals.

Law is well settled that an appeal is a continuation of suit and the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding, manifestly thus suggesting

that an appellate Court possess the same powers and discharges the same duties as that of the original Court, entitling the appellate Court to review the evidence as a whole subject to statutory limitations, if any, and to come to its own conclusions.

It is also well settled that a right of appeal is a substantive right which vests in a suitor at the time of institution of the suit or original proceedings. A right to file an appeal gets crystalized and no clog can be put on such right and right of appeal being substantive right carries with it all rights throughout, however, subject to two exceptions, firstly when by competent enactment such right of appeal is taken away expressly or impliedly with retrospective effect; and secondly when the Court to which appeal lay at the commencement of the suit stands abolished.

II. Keeping in mind the aforesaid position of law and reverting back to the case in hand, it is an admitted fact that respondent 1, herein instituted aforesaid civil suit before the trial Court and the trial Court consequently decreed the same after holding trial therein. It is also an admitted fact that the Judgment and decree passed by the trial Court in the suit *supra* could have been thrown challenge to in an appeal under Section 96 of the Code of Civil Procedure *supra*.

Ironically it is not coming forth from the record as to why the petitioner herein instead of assailing the impugned Judgment and decree in an appeal and chose to file the instant petition, invoking extraordinary and supervisory jurisdiction of this Court, despite the fact that a right of appeal being substantive right vests at the time of institution of the suit or original proceedings and such substantive right

could only be lost when by a competent enactment such appeal is taken away expressly and impliedly with retrospective effect or when the Court to which appeal lie at the commencement of the suit stands abolished. None of the aforesaid conditions have been shown by the petitioner to have existed, thus necessitating the invoking of the extraordinary and supervisory jurisdiction of this Court.

12. In view of aforesaid position, the instant petition cannot but said to be grossly misconceived and consequently not maintainable on the face of it in presence of the provisions of Section 96 of the Code of Civil Procedure.

13. It is significant to mention here that the counsel for the petitioner made a last attempt in support of the case of the petitioner herein by contending that the instant petition be converted and treated as a petition under Article 227 of the Constitution of India in view of law laid down by the Apex Court in case titled **Umaji Keshao Meshram and Ors. Vs. Radhikabai**, reported in 1986 (Supp) SCC 401, however, on a plain reading of the Judgment supra, it transpires that the same is quite distinguishable and not applicable to the facts and circumstances of the instant case.

Even otherwise also the exercise of supervisory jurisdiction of this Court enshrined under Article 227 of the Constitution in the facts and circumstances of the case is not warranted in view of law laid down by the Apex Court in case titled as *Shalini Shayam Shetty & Anr. Vs. Rajendra Shankar Pati*, reported in 2010 (8) SCC 3291 wherein, in paragraph 49 following has been noticed:-

“62. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh (supra) and the principles in Waryam Singh (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) *Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.*

(h) *In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.*

(i) *High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L. Chandra Kumar vs. Union of India & others, reported in (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.*

(j) *It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.*

(k) *The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo moto.*

(l) *On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.*

(m) *The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning*

of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality”.

14. Viewed thus what has been observed, considered and analyzed hereinabove, the preliminary objection raised by the counsel for the respondent 1, herein succeeds and consequently the instant petition is held to be not maintainable.

15. Resultantly, the petition fails and is **dismissed** with costs to the tune of Rs. 50,000/- to be paid by the petitioner herein to respondent 1, herein within one month's time from today.

**(JAVED IQBAL WANI)
JUDGE**

SRINAGAR
07.12.2023
“Mohammad Yasin Dar”

Whether judgment is speaking Yes/No
Whether judgment is reportable Yes/No

