

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

LPA No. 20/2021

Union Territory of JK

...Petitioner(s)

Through: Mr Aseem Sawhney, AAG

Vs.

Shahnaza Parveen & Ors.

...Respondent(s)

Through: Mr. Jahangir Iqbal Ganai, Sr. Adv. with Ms Humera Shafi, Adv. &
Mr. Sheikh Umar Farooq, Adv.

Coram:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR JUSTICE SANJAY DHAR, JUDGE

ORDER

24.08.2021

1. This Letters Patent Appeal under Clause 12 of the Letters Patent has been filed by B. K. Singh, IFS, Administrative Secretary to Government, Department of School Education, J&K, challenging the orders dated 19th October 2020, 20th November 2020 and 11th December 2020 passed by the learned Single Judge dealing with the contempt petition CPSW No. 380/2018 arising out of judgment and order dated 12th February 2015 passed by the writ court.
2. The appellant has also brought on record the subsequent orders passed by the contempt court dated 1st March 2021, 8th March 2021, 27th April 2021 and 10th August 2021.
3. Heard Shri Aseem Sawhney, learned AAG appearing on behalf of the appellant and Mr. Jahangir Iqbal Ganai, Sr. Adv. with Ms Humera Shafi and Mr. Sheikh Umar Farooq, learned counsel for the respondents.
4. Shri Sawhney has argued that the contempt proceedings are wholly without jurisdiction inasmuch as the scheme for appointment on the post of Rehbar-i-Taleem has been abandoned by the Government in the year 2018. Therefore, it is not possible to conclude the selection for the

- post under the said scheme. The contempt proceedings have been initiated beyond the period of limitation of one year prescribed and as such are barred by time. The Robkar issued is in violation of the Contempt Rules of the High Court.
5. Notwithstanding the above arguments of the counsel for the appellant, a preliminary objection has been raised with regard to the maintainability of the appeal. It is contended that the appeal under Section 19 of the Contempt of Courts Act 1997 lies only against the order of punishment for contempt of court and not otherwise. The Letters Patent Appeal is maintainable only against the final judgment and not against the interlocutory orders which do not decide any rights of the parties.
 6. Mr. Sawhney, learned counsel to counter the above preliminary objections accepts that the appeal is not under Section 19 of the Contempt of Courts Act, 1997, therefore he has preferred it under Clause 12 of the Letters Patent. He submits that the Letters Patent Appeal would lie even against certain interlocutory orders of the nature as passed in the present case. He has placed reliance upon a decision of the Supreme Court dated 26th July 2021 passed in Civil Appeal Nos. 4433-4436 of 2021 **Commissioner/Secretary to Government, Education Department J&K & ors vs. Mohammad Amin and Anr.** on the basis of which it is alleged that there is no bar in interfering with the orders of the contempt court in appeal.
 7. In the case at hand, it is important to refer to the order dated 5th August 2011 passed by the writ court deciding SWP No. 1908/2010 Shahnaza Parveen & Anr. v. State of JK & Ors. The said writ petition was disposed of by the court with the direction to the respondents therein to take the selection process to the logical end in accordance with the rules and the guidelines governing the matter having due regard to the case set up by the petitioners and the objections to the tentative select list.
 8. Subsequently another writ petition SWP No. 2159/2011 was filed by the same parties Shahnaza Parveen & others for completing the process of selection for engagement as Rehbar-i-Taleem, Zonal Gender

Coordinator for newly upgraded SSA School under the SSA Scheme as their names figured in the notification published in the newspaper Srinagar Times on 2nd October 2010. The said writ petition was a continuation of the earlier cause of action referred to in the previous petition which was disposed of vide judgment and order dated 3rd December 2011 by observing that the judgment and order of the court dated 5th August 2011 passed in SWP No. 1908/2010 has not been complied with and the Executive Authorities are duty bound to implement the same. Accordingly, respondent No. 3 therein was called upon to show cause as to why he should not be dealt with in law for not complying with the judgment of the court.

9. Thereafter, another writ petition SWP No. 2542/2012 was filed again by Shahnaza Parveen and others seeking consideration for being selected and engaged as Rehbar-i-Taleem at zonal level. The said writ petition was disposed of on 12th February 2015 with the direction to the official respondents therein to implement the earlier court judgment and pass the requisite order in light of observation made in the earlier judgment. This reference to the earlier judgment obviously refers to the judgment dated 3rd December 2011 and 5th August 2011 as referred to above.
10. In short, the direction of the court to conclude the process of selection and to bring it to its logical end was sought to be implemented by initiating proceedings for contempt.
11. It may be noted that though the basic order against which contempt has been filed is dated 12th February 2015 but it relates back to the order dated 5th August 2011 wherein for the first-time directions were issued to the official respondents to conclude the selection process in accordance with the rules and guidelines governing the matter. The scheme for appointment of Rehbar-i-Taleem has been done away with in the year 2018, meaning thereby that it remained in operation upto 2018. There appears to be prima facie no justification for not implementing the orders of the court so as to complete the process of selection during the period 2011 to 2018 or even from 2015 to 2018.

12. Notwithstanding the above, a glance to the various orders passed by the contempt court would reveal that by the first order dated 19th October 2020, the contempt court directed to array the present Commissioner/Secretary to the Government School Education Department as a party to the contempt proceedings and to apprise him with the status of the case. The 2nd order dated 20th November 2020 impleads the Commissioner/Secretary to Government, School Education Department B.P. Singh as respondent No. 4 in the array of parties. The 3rd order impugned in the appeal is dated 11th December 2020 wherein he has been directed to remain personally present before the court on the next date of hearing to explain his position along-with other alleged contemnors. None of the above orders passed by the contempt court decides any lis between the parties or adjudicates upon any rights of the parties so as to bring the above orders within the periphery of a “judgment” to enable the appellant to maintain the Letters Patent Appeal. Even the subsequent orders passed in the contempt proceedings and brought on record by means of a miscellaneous application nowhere decides any right of the parties.
13. In **State of J&K & Ors vs. Mohd. Tayoub Leharwal and Anr. 2018 (1) JKJ 627 (HC)** a Division Bench of this court held that under Section 19 of the Contempt of Courts Act 1997 Right to Appeal is available only against an order or decision of the High Court to punish for contempt. It has further relied upon a decision of the Supreme Court in the case of **Midnapore People’s Cooperative Bank Ltd. vs. Chuni Lal Nanda 2006 (5) SCC 399** to hold that under Clause 12 of Letters Patent, an appeal would lie to the Division Bench only from the “judgment” of the learned Single Judge passed in exercise of original jurisdiction. The word “judgment” in terms of Clause 12 is undoubtedly a concept of finality in broader sense. It would either be a final judgment, a preliminary judgment or intermediary judgment or interlocutory judgment, but it should be a judgment in the sense that it decides some issue or right between the parties finally. The intermediary and interlocutory orders passed during the course of the proceedings which do not determine any right or issue between the

parties cannot be said to be a “judgment” amenable to available jurisdiction of the Division Bench under Clause 12 of the Letters Patent.

14. In view of the above decision of the Coordinate Bench of this Court, as in the case at hand, all the orders passed in proceedings for contempt are of interlocutory nature which does not determine any right or issue between the parties finally, we are of the considered opinion that the Letters Patent Appeal under Clause 12 of the Letters Patent is not maintainable.
15. Learned counsel for the appellant has placed reliance upon a decision of the Supreme Court dated 26th July 2021 passed in Civil Appeal Nos. 4433-4436 of 2021 **Commissioner/Secretary to Government, Education Department J&K and Ors. vs. Mohd Amin Waza & Anr.** to contend that in the said case, the interlocutory order passed by the contempt court was interfered with in appeal. In the aforesaid case, the High Court had given direction to consider the case of Mohammad Amin Waza for appointment on the post of Teacher against the available vacancy which came to be rejected. On the contempt petition filed by him, the High Court decided to initiate the contempt proceedings and went on to issue fresh direction. The Supreme Court held that the direction was simply to consider Mohammad Amin Waza for appointment on the post of Teacher against the available vacancy and the Department having done so, no further action at its end was required. Accordingly, it was held the High Court could not have improved upon the direction or give additional direction to the Department beyond the original direction issued on the writ side.
16. The case with which we are dealing is quite distinct on facts from the aforesaid case. In the present case, the High Court on contempt side has not issued any additional direction and has not improved upon the earlier direction issued by the writ court vide its order dated 12th February 2015 passed in SWP No. 2542/2012 Shahnaza Parveen & Ors. v. State of JK & Ors. Accordingly, the aforesaid decision is not applicable to the facts and circumstances of the case. Moreover, the above decision of the Supreme Court nowhere lays down as of principle

