
(2008) 08 AHC CK 0242

In the Allahabad High Court

Case No : Special Appeal No. 138 (S/B) of 2007

Pratap Narain Pandey

APPELLANT

Vs

State of U.P.And Others

RESPONDENT

Date of Decision : 26-08-2008

Acts Referred:

Citation : (2008) 08 AHC CK 0242

Hon'ble Judges : Anjani Kumar, J and Rajiv Sharma, J

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Heard Counsel for the appellant and the State Counsel.

2. This Special Appeal has been filed by Pratap Narain Pandey against the " judgment and order dated 7.12.2006 passed by brother S.S. Chauhan, J. in writ petition No. 9482 [SS] of 2006 thereby the learned Single Judge did not agree with the view expressed by brother S.N. Shukla, J. and observed that the matter requires reconsideration by a tarter Bench,

3. In short, the facts of the case are that large numberof persons participated in theexamination/interviewforthe post of Collection Amin/Seasonal Amin inthe year 1986, result of which was declared on 27.4.1986. On the basis of merit, a select list of 186 candidates was prepared and in due course, some of the candidates were given appointment. As some of the candidates, whose name find place in the select list and were not given appointment, filed writ petitions which were disposed .of finally with the following order:

"Accordingly, both the writ petitions are allowed. The order dated 19.9.2000 is hereby quashed and a writ of mandamus is issued to the respondents to allow the petitioner to work as regular collection amin as he was duly selected under the Uttar Pradesh Collection Amin"s Service Rules, 1974. It is made clear that the petitioner shall betreated asa regular Collection Amin in service since 5th June, 1986, for the purposes of seniority etc. except the salary for the period during which he did not work on the principle of "No work, No pay". There will be

no order as to costs."

4. Candidates, similarly situated, filed writ petition No. 8672 of 2006 (SS) and other writ petitions and the same were disposed of in terms of the aforesaid order dated 19.8.2005.

5. Dinesh Pratap Singh and another, petitioners in writ petition No. 9482 [SS] of 2006 claimed that the benefit of judgment and order dated 19.8.2005 passed in writ petition No. 4031 (SS) of 2001 may also be given to them.

6. When the aforesaid Writ Petition No. 9482 (SS) of 2006 came up for orders, brother S.S. Chauhan J., found himself unable to agree with the view expressed in writ petition No. 4031 (SS) of 2001 and formulated a question, which read says under:

"The question as to whether a waiting list/select list will remain valid beyond a period of one year is the moot question to be decided in this reference".

7. By the impugned order, the learned Single Judge directed the Registry to place the paperbook before Hon"ble the Senior Judge for constituting larger Bench for decision.

8. State Counsel has argued that against the order passed by the learned Single Judge, referring the matter to a larger Bench, is not a judgment and, there fore, the Special Appeal is not entertainable. It will remain as an interlocutory order and further it does not bring about the termination of the proceeding in which the adjudication has been made.

9. To decide the instant appeal, it would be apt to refer Section 2 (9) of the Code of Civil Procedure whereword "Judgment" has been defined. Section 2(9) of the Code of Civil Procedure reads as under:

"Judgment means the statement given by the Judge on the grounds of a decree or order."

10. The word "Judgment" as termed in Black's Law Dictionary Sixth Edition is as under:

"The official and authentic decision of a Court of justice upon the respective rights and claims of the parties to an action or suit therein litigated and submitted to its determination. The final decision of the Court resolving the dispute and determination the rights and obligations of the parties."

11. The word "Judgment" as interpreted in Words and Phrases Permanent Edition 23:

"A "Judgment" is the law's last word in a judicial contrivedrsy and may be defined as the final consideration and determination by a Court of the rights of the parties, as those rights presently exist, upon matters submitted to it in an action or proceeding."

12. The word "Judgment" as termed in Webster's Third New International Dictionary Unabridged and Seven Language Dictionary Volume II visas under;

"A formal utterance or pronouncing of an authoritative opinion after judging.

An official certificate evidencing such a decision or decree".

13. The word "Judgment" as defined in P. Ramanatha Aiyer's Law Lexicon, the Encyclopaedia Law Dictionary with Legal Maxims, Latin Terms and Words and Phrases is as under:

"Judgment is the determination of a Court declaring the rights to be recognized and the remedies to be awarded between the parties upon facts found by the Court or jury, or admitted by the parties or upon their default in the course of proceedings instituted for the redress of a legal injury."

14. The word "Opinion" means as per "Words and Phrases Permanent Edition 29A" is as under:

"An "opinion" of the Court is the expression of the reasons by which the judge reaches his conclusion and is not a final act subject to appeal and may always be changed before final decree. [Van Gorden v. Schuller, 185 N.W. 604, 606, 192 Iowa, 853].

An "opinion" is a written statement by the Court of its reasons for the conclusion reached from an examination of the law and of the facts in controversy, but forms no part of the Judgment, though it may with propriety be consulted to explain an ambiguity therein. State of Gray, 71 P. 978, 979, 42 Or. 261, adopting defining in Houston v. Williams, 13, C.24, 73 Am. Dec. 565, Keane v. Fisher, 10 La Ann. 261.

15. Thus, from the aforesaid meanings, one would come to the conclusion that a Judgment adjudicates on the rights of the parties as they existed before the Court on the basis of the pleadings and the same is an affirmation of a relation between a particular predicate and a particular subject whereas the word "Opinion" means a statement by a Judge or Court of its reasons for the conclusion reached from examination of law and facts in controversy and may always be changed before final decree.

16. The term "Judgment" is also used to denote the reason which the Court gives for its decision; but this is more properly denominated an "opinion".

17. In Shah Babu Lal Khimji v. Jayaben, AIR 1981 SC 1786 their Lordships of the Supreme Court held as under:

"Thus, the only point which emerges from this decision is that whenever a trial Judge decides a controversy which affects valuable rights of one of the parties, it must be treated to be a Judgment within the meaning of the Letters Patent."

17. Their Lord ships further observed in paragraph 116 of the report as under: "Thus, in other words every interlocutory order cannot be regarded as a

Judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. Similarly, orders passed by the trial Judge deciding question of admissibility or relevancy of a document also cannot be treated as judgments because the grievance on this score can be corrected by the appellate Court in appeal against the final judgment."[e.s.]

19. In Sandeep Agarwal and another v. Adarsh Chaddha and others, [Special Appeal No. 122 (M/S) of 2002] a Division Bench of this Court after considering the principles laid down by the Apex Court in various cases held that if the interlocutory order amounts to disposal of a vital issue and in fact is affecting vital and valuable rights having trappings of the final orders, in that case only the Special Appeal is maintainable.

20. In the present case, the impugned order passed by the learned Single Judge cannot be treated to be a judgment as defined in the Code unless it fulfils the requirement of Section 2 (9) and the proposition of law laid down in above case, it will remain as an interlocutory order and further it does not bring about the termination of the proceeding in which the adjudication is yet to be made after answer is given by the Division Bench. Therefore, the reference order cannot be said to be non est

21. It has also been contended by the appellants Counsel that in view of the impugned order, the matter ought to have been referred to the larger Bench but Hon"ble Senior Judge has constituted a Division Bench for hearing the case. In this regard, it may be mentioned that Chapter Rule of the Allahabad High Court Rules, 1952 deals with the Reference to a larger Bench and reads as under:

"6. Reference to a larger Bench. The Chief Justice may constitute a Bench of two or more Judges to decide a case or any question of law formulated by a Bench hearing a case. In the latter event the decision of such Bench on the question so formulated shall be returned to the Bench hearing the case and that Bench shall follow that decision on such question and dispose of the case after deciding the remaining questions, if any arising therein."

22. From the reading of the aforesaid, it is abundantly clear that meaning of term "reference to a Larger Bench" means a Bench of two or more Judges. In the in stand case, the Hon"ble Senior Judge has constituted a Bench of two Judges to answer the question.

23. We find no infirmity or illegality in the order Hon"ble Senior Judge constituting a Bench of two Judges to answer the question.

24. In the wake of above discussions, the Special Appeal being not maintainable is hereby dismissed.