
(2001) 07 GAU CK 0023
In the Gauhati High Court
Case No : LPA No. 9 of 2000

Sashi Prakash

APPELLANT

Vs

Government Pensioner's Association

RESPONDENT

Date of Decision : 24-07-2001

Acts Referred:

Constitution of India, 1950 — Article 136, 215, 226
Government of India Act, 1915 — Section 107, 108

Citation : (2001) CriLJ 4123 : (2001) 2 GLT 526

Hon'ble Judges : Ranjan Gogoi, J;B.B. Deb, J

Bench : Division Bench

Advocate : B. Bhattacharjee, A.G. and S. Chakraborty, for the Appellant; D.K. Biswas and S. Lodh, for the Respondent

Final Decision : Dismissed

Judgement

Ranjan Gogoi, J.—This Letters Patent Appeal has been filed against the judgment and order dated 11.8.2000 passed by a learned Single Judge of this Court in Review Petition No. 12 of 1999 arising out of original Contempt Case No. 17 of 1999. The learned Single Judge by the aforementioned judgment and order was pleased to recall the order dated 14.12.1999 passed in the aforesaid original Contempt Case No. 17 of 1999 holding that no case of contempt was made out. By the impugned order, the learned Single Judge has been pleased to direct that the contempt proceedings registered as Original Contempt Case No. 17 of 1999 be re-heard with due opportunities to both the parties.

2. The brief facts necessary for appreciation of the controversy that has arisen in the instant Letters Patent Appeal are enumerated hereunder.

3. Civil Rule No.259 of 1995 was instituted by the respondent No. 1 herein, namely, the Tripura Government Pensioner's Association claiming Dearness Allowances at the rate applicable to the Central Government Pensioners. The said writ petition was allowed by judgment and order dated 22.4.1997 passed by this Court. Though Writ Appeal No. 330 of 1997 was filed by the State Government,

at the time of hearing of the appeal, the learned Advocate General conceded to the prayers made in the writ petition and prayed for extension of time for payment of arrears. Pursuant thereto, the writ appeal was closed and the State Government paid a part of the arrears. However, as certain balance remained unpaid and also the amount payable in every month was withheld, C.O.P.(C) No. 32 of 1997 was filed. On the basis of the stand taken by the respondents in the said contempt proceedings to the effect that the respondents had inadvertently misinterpreted the directions of this Court, this Court by order dated 4.11.1997 disposed of C.O.P.(C) No. 32 of 1997 granting an extension of 6 (six) months time to the concerned authority to comply with the orders of the Court by tendering payments in accordance with the judgment and order dated 22.4.1997 passed in Civil Rule No. 259 of 1995. As no payment was forthcoming even after expiry of time stipulated by this Court by judgment and order dated 4.11.1998, another contempt proceeding namely, C.O.P.(C) No. 17 of 1999 was instituted before this Court. In the said proceedings, the respondents (Contemnors) took up the plea that as the Pension Rules had been amended by the State Government in the meantime, i.e. by notification dt.,27.10.1998 and as such amendment had been given retrospective effect, the orders of payment passed by this Court cannot be complied with. Thereafter C.O.P.(C) No. 17 of 1999 was heard on 13th and 14th December, 1999 in circumstances enumerated in details In the order dated 11.8.2000 of the learned Single Judge and by order passed on 14.12.1999 the contempt proceeding was ordered to be closed. Against the aforesaid order dated 14.12.1999, Review Petition No. 12 of 1999 was filed by the petitioner-Association seeking review of the order dated 14.12.1999 and for re-hearing of the case on merits. The learned Single Judge by the presently impugned order dated 11.8.2000, on a consideration of the rival submissions advanced as regards the maintainability of the review application, reviewed the order dated 14.12.1999 and directed for re-hearing of the case as already stated. Aggrieved, the respondents in C.O.P. (C) No. 17 of 1999 has instituted the present appeal and under the provisions of Clause 15 of the Letters Patent for the High Court of Calcutta which has been adopted insofar as to this Court is concerned by the Assam High Court Orders, 1948.

4. We have heard Mr. B. Bhattacharjee, learned Advocate General, Tripura assisted by Mr. S. Chakraborty on behalf of the appellant and Mr. D.K. Biswas and Mr. S. Lodh on behalf of the respondents.

5. Mr. Bhattacharjee, learned Advocate General appearing on behalf of the appellant in his short and precise argument has contended that it will be open for the appellate Bench of this Court to interfere with the judgment and order dated 11.8.2000 passed by the learned Single Judge reviewing the order dated 14.12.1999 passed in C.O.P.(C) No. 17 of 1999 in the present appeal filed under Clause 15 of the Letters Patent granted to the High, Court of Calcutta. According to the learned Advocate General, the order dated 11.8.2000 passed by the learned Single Judge is totally without jurisdiction inasmuch as the review of an order dropping a contempt proceeding is neither contemplated under the

provisions of the Contempt of Courts Act, 1971 nor under the provisions of Article 215 of the Constitution . According to the learned Advocate General, the only remedy available against an order directing closure of a contempt petition on the ground that no case for contempt is made out is by way of an application before the Apex Court under Article 136 of the Constitution. The learned Advocate General has further submitted that no power to review an order passed in a contempt proceeding has been conferred by the statute and hence, the learned Single Judge was patently wrong in exercising such a power in the instant case. The jurisdiction under Article 215 of the Constitution is a jurisdiction to punish for contempt, contends the learned Advocate General. As no punishment was imposed in the original contempt proceeding namely, C.O.P.(C) No. 17 of 1999 the power of review under Article 215 of the Constitution was also not available in order to enable the learned Single Judge to recall the earlier order and to direct re-hearing of the aforesaid contempt proceeding.

6. Mr. D.K. Biswas, learned counsel appearing on behalf of the respondents has argued that the instant appeal is clearly not maintainable in law. Firstly, because, no appeal under the Letters Patent of the Calcutta High Court, as adopted, contemplates and authorises the filing of an appeal against the order of the learned Single Judge passed in a contempt proceeding. It has also been argued by the learned counsel for the respondents that the pronouncement of the learned Single Judge on 11.8.2000 recalling the earlier order dated 14.12.1999 and fixing the case for re-hearing, is not a "judgment" within the meaning of Clause 15 of the Letters Patent and hence, the present appeal is not maintainable. The learned counsel has in fact, advanced the aforesaid two contentions as preliminary objections to the maintainability of the instant appeal. The learned counsel has further argued that in any case, there is no infirmity in the order of the learned Single Judge dated 11.8.2000 requiring correction by the appellate Court even if the appeal be held to be maintainable in law.

7. On the basis of the rival contentions of the parties, the following issues arise for determination in the present appeal:-

(1) Whether the present appeal field under Clause 15 of the Letters Patent of the Calcutta High Court, as applicable to the Gauhati High Court, is maintainable in law.

(2) If the appeal is so maintainable, whether the learned Single Judge had the jurisdiction to review/recall the earlier order passed in C.O.P.(C) No. 17 of 1999 and direct the contempt proceeding to be heard afresh.

(3) If the power of review is available in law to review an earlier order dropping a contempt proceeding, whether the power and jurisdiction has been rightly exercised by the learned Single Judge.

8. Clause 15 of the Letters Patent granted to the High Court of Calcutta has been adopted insofar as this High Court is concerned by the Assam High Court Orders, 1948. Clause 15 is in the following terms:-

"15. Appeal from the Courts of original jurisdiction to the High Court in its appellate jurisdiction.-And we do further ordain that an appeal shall lie to the said High Court of Judicature at Madras, Bombay, Fort William in Bengal from the judgment (not being a Judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a court subject to the superintendence of the said High Court and not being an order made in the exercise of a revisional jurisdiction and not being a sentence or order passed or made in exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act. or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act. and that notwithstanding anything hereinbefore provided, an appeal shall lie to the said High Court from a judgment of one Judge of the said or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, on or before the first day of February, 1929 in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to us, our heirs or successors in our or their Privy Council, as hereinafter provided."

9. Mr. Biswas, learned counsel for the respondents raising the preliminary objections to the maintainability of the instant appeal has very strenuously argued that the instant appeal purported to be under Clause 15 of the Letters Patent of the Calcutta High Court is ex facie not maintainable inasmuch as the aforesaid clause 15 does not contemplate the filing of any appeal against an order passed by the learned Single Judge in a contempt proceeding. The learned counsel has attacked the maintainability of the present appeal from another standpoint. According to Mr. Biswas, the pronouncement of the learned Single Judge under challenge in the present appeal does not amount to a "judgment" within the meaning of Clause 15 of the Letters Patent. In support of the later proposition, Mr. Biswas has cited a decision of the Apex Court in the case of Employer in Relation to Management of Central Mine Planning and Design Institute Ltd. Vs. Union of India and Another, We have perused the contents of the said judgment. The decision cited by the learned counsel not only does not assist him on the point for which it has been cited namely, that the pronouncement of the learned Single Judge impugned in the present appeal is not a "judgment" within the meaning of Clause 15 of the Letters Patent but the judgment of the Apex Court in the case of Central Mine (supra) negatives the first preliminary objection advanced on behalf of the respondent namely, that the instant appeal is not authorised by the provisions of Clause 15 of the Letters Patent. In the case of Central. Mine (supra), the Apex Court has clearly held that all the judgments except those falling under the excluded categories mentioned in para-10 of the judgment would be amenable to the appellate jurisdiction of the High Court

under Clause 15 of the Letters Patent. An order passed by the learned Single Judge in a contempt proceeding does not come within the categories of judgments excluded from the appealable judgments as held by the Apex Court. Therefore, following the ratio of law laid down by the Apex Court in the case of *Centra] Mine (supra)*, we have no hesitation in holding that the first limb of the preliminary objections raised by the learned counsel for the respondents must fail.

10. In the same case, namely, *Central Mine (supra)*, the Apex Court following an earlier decision in the case of *Shah Babulal Khimji Vs. Jayaben D. Kania and Another*, has pointed out that "judgment" within the meaning of Clause 15 of the Letters Patent may be of three kinds namely, (i) a final judgment, (ii) a preliminary Judgment and (iii) an intermediary or interlocutory judgment. All the three kinds of judgment would be amenable to the appellate jurisdiction of the High Court under Clause 15 and insofar as the intermediary or interlocutory judgments are concerned the crucial test would be whether the order or judgment is a final determination effecting vital and valuable rights and obligations of the parties concerned. The Apex Court has been further pleaded to observe that the said question has to be ascertained on the facts of each case. Applying the aforesaid law to the facts of the present case, we find that the pronouncement of the learned Single Judge dated 11.8.2000 Impugned in the present appeal finally determines the rights of the parties to have their respective cases in the contempt proceeding namely, C.O.P.(C) No. 17 of 1999 heard afresh and, therefore, there has been a final determination of rights of the respective parties. The impugned pronouncement would, therefore, be a judgment within the meaning of the said expression as appearing in Clause 15 of the Letters Patent. The second limb of the preliminary objection of the learned counsel for the respondents, therefore, also has to fail.

11. This takes us to the next question involved in appeal namely, whether in the absence of any specific provision enabling the exercise of the power of review, it was competent for the learned Single Judge to recall the earlier order dated 14.12.1999 and direct a *denovo* hearing, of the case in question. There is no dispute that the power of review has not been expressly conferred by the statute i.e. by the Contempt of Courts Act, 1971. The learned Single Judge while passing the impugned order dated 11.8.2000 was aware of the said limitation. Nevertheless, he proceeded to exercise jurisdiction and recalled the earlier order dated 14.12.1999 by invoking powers conferred under Article 215 of the Constitution. We have carefully perused the relevant part of the judgment of the learned Single Judge dated 11.8.2000 dealing with this aspect of the matter. We have also perused the judgment of the Apex Court in the case of *M.M. Thomas v. State of Kerala*, also reported in AIR 2000 SC 540 relied upon by the learned Single Judge. The ratio of judgment in the case of *M.M Thomas (supra)*, as we have understood, is that *dehors* the power of review conferred by the statute, the High Court as a Court of record exercising plenary jurisdiction would always have an inherent power to review its earlier orders under the provisions of Article

215 of the Constitution, We are, therefore, in respectful agreement with the view of the learned Single Judge and we also draw assistance in coming to our aforesaid conclusion on the ratio of law laid down by the Apex Court in the case of Shivdeo Singh and others v. State of Punjab and others, reported in AIR 1963 SC 1909, To confer on the High Court the power of review in a proceeding under Article 226 of the Constitution on the ground that such a power of review is inherent in the High Court being a Court of plenary jurisdiction and to deny and/or refuse a similar power in a case of Contempt Proceeding under Article 215 of the Constitution would in our view, be wholly inconsistent. In the backdrop of the above discussion, we are of the view that acceptance of the argument advanced by the learned Advocate General to the effect that the order dated 14.12.1999 having dropped the contempt proceeding the power under Article 215 could not have been exercised to review the said order as the power vested by Article 215 is a power only to punish for contempt, would lead to in wholly incongruous and undesired effects. The argument, therefore, is rejected.

12. We have also noted the grounds on which the learned Single Judge, after holding that the power to review is available, we inclined to review the previous order dated 14.12.1999. As the said power has been exercised to prevent miscarriage of justice and to enable the Pensioner's Association to have their say in the matter which appears to have been denied by the earlier order dated 14.12.1999, we do not find any reason to doubt the correctness of the exercise of power of review by the learned Single Judge in the facts of the case.

13. For the foregoing reasons, there is no merit in this appeal and the same is, therefore, dismissed. However, keeping in mind the totality of the facts and circumstances of the case, there shall be no order as to costs.