
(1972) 01 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : F.A.O. No. 11 of 1971

Shri Dharam Vir Puri

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 03-01-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90, Order 39 Rule 1, 151

Citation : (1972) 1 ILR HP 301

Hon'ble Judges : D.B. Lal, Acting C.J.; C.R. Thakur, J

Bench : Division Bench

Advocate : P.N. Nag and Romesh Chand, for the Appellant; Sarvshri A.S. Bhatnagar, C.L. Kapila and S. Malhotra, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Lal, A.C.J.

1. This first appeal has been directed against the order dated 31-3-1971 of my Lord the Chief Justice of this High Court. The circumstances that gave rise to this order may briefly be stated.

2. Shri Dharam Vir Puri, Principal, Government Basic Training School, Hamirpur, filed a writ petition in this Court whereby he questioned the legality of a certain seniority list which was issued by the Respondent 1 to 3, who represent the Education Department of the Government of Himachal Pradesh. According to the Petitioner, although he was senior to Respondents 4 to 32 in the previous seniority list, yet was shown junior to them in the second seniority list. According to the Petitioner, the second seniority list was liable to be quashed and the Petitioner was to be declared senior to these Respondents. In the said writ petition, the Petitioner filed an application under Order 39, Rule 1 read with Section 151 of the Code of Civil Procedure, which was CMP No. 26 of 1971. He asked for an injunction restraining the Respondents from releasing the selection grade pay scales to the Respondents 4 to 32. The learned Chief Justice while

admitting the writ petition on 3rd March, 1971 ordered for the status quo to be maintained. In other words, he granted interim injunction prayed for so that the scales of pay are not released in favour of the Respondents. The learned Chief Justice further ordered that the stay matter was to be made final on 7th of April, 1971. In the mean time, on 31st March, 1971, certain persons appeared before the learned Chief Justice and prayed for their being impleaded in the writ petition. According to them, they had previously filed a writ petition against the Respondents and as a result of the decision arrived at in that writ petition, the scales of pay were released in their favour. These persons, accordingly stated before the learned Chief Justice that they were very much affected by the order maintaining status quo that was passed ex parte against the Respondents. The learned Counsel for the Petitioner was available in the Court and he stated that he would implead these persons who had thus appeared before my Lord the Chief Justice and made the request for the vacation of the interim order maintaining status quo. The learned Chief Justice, accordingly, gave his order on 31st March, 1971, wherein he stated that these persons were to be impleaded in the writ petition for which the learned Counsel for the Petitioner also agreed and further observed that the question of passing any interim order will only arise after they are so impleaded. Besides this, he also observed that no irreparable injury would be caused to the Petitioner if the interim stay is vacated. Accordingly, my Lord the Chief Justice vacated the interim order maintaining status quo. It is against this order that the present appeal has been filed.

3. At the preliminary stage, the learned Counsel for the Respondents urged, that no appeal lay under Clause 10 of the Letters Patent, because the impugned order of the learned Chief Justice could not be considered to be "judgment" within the meaning of Clause 10 of the Letters Patent. There was formerly a cleavage of opinion amongst High Courts as to whether an order granting or refusing interim injunction, would or would not amount to "judgment" for the purpose of appeal under Clause 10 of the Letters Patent. However, a Full Bench of Delhi High Court in *Begum Aftab Zamani v. Lal Chand Khanna* 1969 DLT 5 15 and a Division Bench of the same Court in *M/s Narsingh Film Distributors and Lala Lal Chand v. Lotus Productions and Ors. F.A.O. (OS. 3) No. 22 of 1969* decided on October 9, 1969, have laid down certain principles which are useful to remove this controversy. In the Full Bench decision (*supra*), the following observation was made:

In order to decide whether an adjudication should be treated as a "judgment" within the meaning of Clause 10 of the Letters Patent, we feel that regard should be had not to the form of the adjudication but to its effect upon the suit or the civil proceeding in which it is made. If its effect; whatever its form and whatever the nature of the proceedings in which it is made, is to put an end to the suit or proceeding, or if its effect, if not complied with, is to put an end to the suit or proceeding, the adjudication is indisputably a "judgment" within the meaning of this clause. Other decisions of determinations adjudicating upon a disputed controversy on the merit in a suit or proceedings may also appropriately fall within the contemplation of the word "judgment". It is not possible to lay down

any definite rule which would meet the requirements of all cases and all that we may say is that in determining whether an order or decision constitutes a "judgment" or not, the Court has to take into consideration the nature of the order and its effect upon the suit or the civil proceeding in which it is made. Each case would thus depend on its own peculiar facts and circumstances.

4. In the other Division Bench case of that Court, the request for temporary injunction was refused and the application to that effect was dismissed. An appeal was filed u/s 10 of the Delhi High Court Act, against that order. It may incidentally be stated that Section 10 also contains the word "judgment" as is found specified in Clause 10 of the Letters Patent. It was held that an order refusing interim injunction neither determined any disputed controversy on the merits in the suit or proceeding nor did it put an end either in whole or part to the suit or proceeding. As such, the said order was not "judgment" and hence the appeal u/s 10 of the Delhi High Court Act was considered incompetent.

5. In our opinion, in the instant case as well, it cannot be stated that the order of my Lord the Chief Justice has really determined any rights between the parties. It is not a decision on merits of any point of controversy. It is manifest, the order has not resulted in termination of the proceedings in any manner. The mere fact that a prima facie observation has been made as to irreparable injury likely or not likely to accrue to the Petitioner is neither here nor there, and at any rate, does not signify that any real point of controversy has been determined between the parties. The order, would, therefore, in our opinion, not amount to "judgment" within the meaning of Clause 10 of the Letters Patent.

6. There is a recent case of Supreme Court reported in 1970 (2) S.C. cases 405, where the question arose in respect of an order of a Single Judge of High Court setting aside auction sale under Order XXI, Rule 90, Code of Civil Procedure. On the facts of that case, it was held that the order was "judgment" because the determination was made in respect of a valuable right, in that, upon such confirmation the sale would have become absolute and the right of ownership in the property would have become vested in one of the parties. Apparently, the instant case is governed by entirely different considerations. Here the learned Judge has only refused to grant status quo so that certain scales of pay are likely to be released. This would not affect the legality or otherwise of the second seniority list with which the Court may be concerned while deciding the writ petition. If the said seniority list is quashed, ipso facto, the Petitioner gets the relief of selection grade. Therefore, granting or refusing selection grade to the Respondents, during the interim period, does not affect the real question of controversy between the parties.

7. We are, therefore, of opinion that the order of the learned Chief Justice is not a "judgment" within the meaning of Clause 10 of the Letters Patent and the present appeal is not competent. In the result, the appeal is dismissed. No order is made as to costs.

Chet Ram Thakur, J.

8. I agree.