

(2016) 01 JH CK 0021
In the Jharkhand High Court
Case No : Cont. Appeal No. 2 of 2015

Zahid Hussain

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-01-2016

Acts Referred:

Constitution of India, 1950 — Article 136
Contempt of Courts Act, 1971 — Section 19, Section 19(1)

Citation : (2016) 1 AIRJharR 783 : (2016) CriLJ 2080 : (2016) 1 JBCJ 497 :
(2016) 2 JCR 138 : (2016) 1 JLJR 713

Hon'ble Judges : Rakesh Ranjan Prasad and Ravi Nath Verma, JJ.

Bench : Division Bench

Advocate : Nagendra Tiwari, for the Appellant; R.R. Mishra, A.K. Mehta and
Amit Sinha, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner/appellant-Zahid Hussain had filed a writ application bearing W.P. (S) No. 4101 of 2010 for a direction to the respondents to make payment of his retiral dues together with arrears of salary and other monetary benefits payable pursuant to the 6th Pay Revision. That writ application was disposed of vide order dated 14.09.2010, giving liberty to the petitioner to file a fresh representation before the concerned authorities of the respondents, stating his claim in detail together with supporting grounds and all requisite in-formations and within two months from the date of receipt of such representation so that the concerned authorities shall consider the claim of the petitioner and take an appropriate decision on the same by passing a reasoned and speaking order and shall effectively communicate such decision to the petitioner. Further it was observed that the respondents shall ensure that whatever payments by way of retiral dues to which the petitioner is found eligible, shall be paid to him together with interest at appropriate rate, within a period of two months of the date of final decision taken on the petitioner's representation.

2. When that order, according to the petitioner, was not complied with, a Contempt Petition bearing Cont. Case (Civil) No. 358 of 2011 was filed. On the day when that case was taken up, nobody appeared on behalf of the petitioner. However, counsel for the University submitted before the court that whatever dues were payable, the same have already been paid. In this regard, it was placed before the court that the petitioner has been paid a sum of Rs. 12,56,557/-. That apart, amount accruing as interest @ 5% per annum has also been paid.

3. Taking into account the said submission, the Court did find that the order passed by this court has been complied with and thereby, the aforesaid Contempt Petition was dismissed.

4. Being aggrieved with that order, this Contempt Appeal has been preferred, taking a plea that it was wrongly submitted on behalf of the University that the entire dues worth Rs. 12,56,557/- has been paid, rather that amount was towards arrears of salary and not the retiral dues.

5. At the threshold, question of maintainability over the Contempt Appeal has been raised.

6. Learned counsel appearing for the appellant, by referring to Section 19 of the Contempt of Courts Act, 1971, submits that the appeal is very much maintainable as the Contempt Appeal does not only against the decision of the court inflicting punishment for contempt but also against any order passed by the court in contempt petition and thereby this appeal is maintainable as the appeal is directed against the order by which contempt petition has been dismissed.

7. This was objected to by Mr. R.R. Mishra, learned counsel appearing for the State and also by Mr. Amit Sinha, learned counsel appearing for the Ranchi University, by submitting that the order by which Contempt Petition had been dismissed, never relates to the punishment for contempt and, thereby, the Contempt Appeal cannot be maintained.

8. Mr. R.R. Mishra, by elaborating his submission, did point it out that the Contempt of Courts Act, 1971, has been enacted to define and limit the powers of certain courts in punishing contempt of courts and to regulate their procedure thereto and under the procedure laid down, the aggrieved person is only obliged to bring to the knowledge to the Court that the certain order passed by this Court has not been complied with and thereafter, the issue remains in between the contemnor and the Court and, therefore, in this event, only when an order of punishment is passed in Contempt Petition, the appeal can be filed under Section 19 of the Contempt of Courts Act, 1971.

9. Further, by referring to Section 19 of the Contempt of Courts Act, 1971, Mr. Mishra, submits that the appeal would be maintainable against any order or decision by which punishment is inflicted upon the contemnor and, thereby since the order, under appeal, never relates with the punishment for contempt, it is not

maintainable.

10. In the context of the submissions advanced on behalf of the parties, it would be appropriate to refer Section 19 of the Contempt of Courts Act, 1971, which reads as follows:-

19. Appeals.-(1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt-

(a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court;

(b) where the order or decision is that of a Bench, to the Supreme Court:

Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union Territory, such appeal shall lie to the Supreme Court.

(2) Pending any appeal, the appellate Court may order that-

(a) the execution of the punishment or order appealed against be suspended;

(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).

(4) An appeal under sub-section (1) shall be filed-

(a) in the case of an appeal to a Bench of the High Court, within thirty days;

(b) in the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against.

11. From the perusal of Section 19(1) of the Contempt of Courts Act, 1971, one would find that only that order/decision would lead to appeal when it relates to punishment for contempt.

12. The aforesaid proposition has been laid down by the Hon''ble Supreme Court in a case of Midnapore Peoples' Co-operative Bank Ltd. v. Chunilal Nanda & Ors. (, AIR 2006 Supreme Court 2190), wherein one of the issues fell for consideration before the Hon''ble Supreme Court was as follows:

Where the High Court, in a contempt proceedings, renders a decision on the merits of a dispute between the parties, either by an interlocutory order or final judgment, whether it is appealable under section 19 of the Contempt of Courts Act, 1971? If not, what is the remedy of the person aggrieved?

13. Their Lordships after placing reliance on the several decisions of the Hon''ble Supreme Court, was pleased to hold as under delineated in para-11:

14. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarized thus:

(I) An appeal under section 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment, for contempt.

(II) Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

(III) In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

(IV) Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of "jurisdiction to punish for contempt" and therefore, not appealable under section 19 of the CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under section 19 of the Act, can also encompass the incidental or inextricably connected directions.

(V) If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases).

15. Thus, it is evident that any direction issued or decision made by the court on the merits of the dispute between the parties, will not be in the exercise of jurisdiction to punish for contempt and, therefore, that is not appealable under Section 19 of the Contempt of Courts Act, 1971.

16. Thus, we do find that this contempt appeal is not maintainable. Accordingly, it is dismissed, as not maintainable. It be reiterated that the Hon"ble Supreme Court has been pleased to observe that the aggrieved person is not without any remedy. If the Contempt Petition is disposed of, such an order is open to challenge in an intra-court appeal (if the order was of a learned single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India.