A J.S. PARIHAR

v.

GANPAT DUGGAR AND ORS.

SEPTEMBER 11, 1996

B [K. RAMASWAMY, FAIZAN UDDIN AND G.B. PATTANAIK, JJ.]

Service Law :

Rajasthan Civil Engineering Services (Public Health Branch)—Seniority list of Engineers—Prepared with retrospective effect—Quashed by the High Court with a direction to prepare the seniority list afresh—Fresh seniority list prepared—Contempt proceedings initiated—Single Judge giving directions—Appeal by State—Division Bench holding that appeal not maintainable under S.19 of the contempt of Courts Act but as a Letters Patent Appeal—Set aside the directions of Single Judge—On appeal, held the Single Judge was exercising his jurisdiction to consider the matter on merits in contempt proceedings, which is not permissible—Division Bench rightly exercised its power under S.18 of the Rajasthan High Court Ordinance to correct the mistake committed by the Single Judge—Since Division Bench already seized of the matter it was not necessary for the State to go in appeal.

Contempt of Courts Act. 1971.

Ss.12, 19—Contempt proceedings—Single Judge going into merits of the case and giving directions—Not permissible—Division Bench of High Court exercising power under S.18 of Rajasthan High Court Ordinance to correct the mistake committed by Single Judge—Held, the Division Bench justified in doing so, since appeal under S.19 not maintainable—Rajasthan High Court Ordinance—S.18.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12494-96 of 1996.

From the Judgment and Order dated 3.4.96 of the Rajasthan High Court in D.B.C.S.A. No. 1-2 of 1995 and D.B.C.L. to A. No. 40 of 1995.

Sushil K. Jain for the Appellant.

Aruneshwar Gupta for the Respondent.

The following Order of the Court was delivered : A

We have heard the counsel on both sides.

Leave granted.

These appeals by special leave arise from the order of the Division B Bench dated April 3, 1996 made in Special Civil Appeal Nos. 1 & 2 of 1995. The facts are not in dispute. The controversy relates to the preparation of the seniority list of the engineers in Rajasthan Civil Engineering Services (Public Health Branch). In W.P. No. 560/79 by order dated October 6, 1988 the Division Bench of the High Court declared the C seniority list prepared with retrospective effect in terms of the amended Rules as unconstitutional; it accordingly quashed the list and directed preparation of the seniority list afresh to determine the *inter se* seniority on that basis and to grant promotion to the appellants within the specified time. The same order came to be reiterated by order of another Division Bench dated September 9, 1989 made in W.P. No. 1074/80. It was further D reiterated in the order dated March 22, 1990. When the seniority list came to be prepared, the contempt proceedings were initiated under Section 12 of the Contempt of Courts Act, 1971 (for short the "Act"). The learned single Judge on consideration of the merits in the seniority held that the respondents had not wilfully disobeyed the orders of the Court and gave E directions as under :

> "In Gyaneshwar's case, only retrospectivity of these amendments was challenged and, therefore, it was felt by the learned Judges of the Division Bench that retrospectivity of these amendments has already been held to be *ultra vires* in *Kailash Chand Goyal's* case F and so, it had not been declared as such afresh. In that case, the notifications whereby amendments were introduced were not challenged but only their retrospectivity was challenged and, therefore, the decision of this Court in Gyaneshwar's case does not hold the field. The controversy raised in this case is squarely covered by the G decision of this Court in *Kailash Chand Goyal's* case (supra) and in *Kailash Chand Goyal's* case, the impugned notifications Annexures 5 to 6 have been quashed in their entirety and so,k the seniority of the petitioner has to be determined on the basis of the directions given by this Court in *Kailash Chand Goyal's* case (supra) and promotions have to be accorded accordingly. Of H

course, it appears quite just and reasonable that the non-petitioners did not intend to disobey the directions given by this Court on account of the legal advice that has been tendered to them and on account of certain interpretations put to the judgment rendered in *Kailash Chand Goyal's* case (supra) on the basis of *Gyaneshwar's* case (supra) and as some confusion prevailed with the non petitioners on account of that, they could not comply this order. However, the non- petitioners are directed to comply with the order of this Court dated 22.3.1990 by giving effect to the ratio of the decision that has been rendered by a Division Bench of this Court in *Kailash Chand Goyal's* case (supra) and the seniority list should be prepared as directed in the judgment in *Kailash Chand Goyal's case (supra) and promotions should be accorded accordingly. If this order is not complied with within a period of six months from today, the petitioner will be free to move a contempt petition afresh against the non-petitioners.*"

The State had filed appeal against these directions. A preliminary objection was taken on the maintainability of the appeal and also arguments were advanced. The Division Bench while holding the appeal as not maintainable under Section 19 of the Act, held that the appeal would be maintainable as a Letter Patent Appeal as the direction issued by the learned single Judge would be a Judgment within the meaning of Clause (18) of the Rajasthan High Court Ordinance. Accordingly the Division Bench set aside the directions issued by the learned single Judge. Thus these appeals by special leave.

The question is : whether an appeal against the directions issued by the learned single Judge is maintainable under Section 19 of the Act? Section 19 of the Act envisages that "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 where the order or decision is that of a single Judge, to a bench of not less than two Judges of the Court". Therefore, an appeal would lie under Section 19 then an order in exercise of the jurisdiction of the High Court punishing the contemner has been passed. In this case, the finding was that the respondents had not wilfully disobeyed the order. So, there is no order punishing the respondent for violation of the orders of the High Court. Accordingly, an appeal under Section 19 would not lie.

The question then is : whether the Division Bench was right in setting aside the direction issued by the learned single Judge to redraw the seniority list. It is contended by Mr. S.K. Jain, learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three Benches, the learned Judge cannot come to a conclusion whether or not the respondent had wilfully or deliberately disobeyed the orders of the Court as defined under Section 2(b) of the Act. Therefore, the learned single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2.7.1991 Subsequently promotions came to be made. The question is : whether seniority list is open to review in the contempt proceedings to find out, whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, afresh direction by the learned single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the single Judge, the Division Bench corrected the mistake committed by the learned single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned single Judge when the matter was already seized of the Division Bench.

The appeals are accordingly dismissed. It may be open to the aggrieved party to assail the correctness of the seniority list prepared by the State Government, if it is not in incomformity with the directions issued by the High Court, if they so advised, in an appropriate forum. No costs.

G.N. Appeals dismissed.