

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.802 of 2017

IN

Miscellaneous Jurisdiction Case No. 9 of 2013

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1. The Union of India, through the General Manager E.C. Railway, Hajipur.
2. Shri Sanjay Kumar son of not known the Chief Secretary Commissioner, R.P.F., E.C., Hajipur.
3. Shri Birendra Kumar Singh son of not known The Deputy Chief Security Commissioner, E.C. Railway, Hajipur.
4. Shri Pranav Kumar son of not known the Divisional Security Commissioner, R.P.F., E.C. Railway, Danapur.

.... Appellants

Versus

Mukesh Kumar Sah son of Gajadhar Sah resident of village and P.O. Murera, P.S. Daruali, District Siwan.

.... Respondent

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Letters Patent of the Patna High Court - Clause 10- Contempt of Court Act-- Section 19- Railway Protection Force Rules, 1987- Rule 48.2(ii)-- Railway Servants (Discipline and Appeal) Rules, 1968-- Rule 14- challenge to order dated 20.03.2017 passed in MJC no. 9/2013 arising out of CWJC No. 5002/2012 wherein Appellant authorities were directed to issue order appointing and sending respondent-Petitioner for training-plea that that in contempt jurisdiction the learned Court cannot go behind the basic order passed by the Hon'ble Division Bench whereunder the appellants had been given liberty to reconsider the matter and upon reconsideration if the railway authorities found that the respondent-petitioner had a criminal antecedent, it was within their domain to refuse appointment and sending the respondent-petitioner for training.

Held: Once the Hon^{ble} Division Bench had directed the Appellant authorities to reconsider the case of the respondent-petitioner, even if the appellant authorities passed an illegal or wrong order, the same cannot be discussed or dealt with in the contempt jurisdiction- the learned Single Judge while sitting in contempt jurisdiction was not justified in going into the merit of the order or decision taken by the railway authorities whereunder they took a view that in view of the criminal antecedent the petitioner is not entitled to the appointment under the Railway Protection Force-impugned order set aside- petitioner-private respondent afforded liberty to challenge the decision of the railway authorities in accordance with law. (Para 12-15)

(2006) 5 SCC 399, (1981) 4 SCC 8, (2001) 2 SCC 588

.....Referred to.

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.... Respondent

Appearance :

For the Appellant/s : Mr. Devendra Kumar Sinha, Sr. Advocate
Mr. Kumar Priya Ranjan, Advocate
For the Respondent/s : Mr. Gautam Bose, Sr. Advocate
Mr. Ajay Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE**And****HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD****ORAL JUDGMENT****(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)****Date: 02-04-2018**

The present Letters Patent Appeal has been preferred for setting aside the order dated 20.03.2017 passed in MJC no. 9/2013 arising out of CWJC No. 5002/2012.

2. Earlier, vide order dated 10.05.2017, while issuing notice to the private respondent no.1, this Court took notice of the nature of the impugned order whereunder even though the order in question has been passed in a contempt jurisdiction but on going through the order in question, this court found that in a proceeding under Contempt of Court Act, the learned Single Judge had issued fresh directions which



were not part of the direction issued in the earlier writ petition, and the order is in the nature of a mandamus under Article 226 of the Constitution, therefore the Letters Patent Appeal was held to be maintainable.

3. The petitioner (private respondent no.1) moved this court initially in its writ jurisdiction in which vide order dated 26.04.2012 it was held that in terms of Rule 48.2(ii) of the Railway Protection Force Rules, 1987, a candidate for the post of constable by direct recruitment must have passed high school examination or its equivalent from a recognized board or university. Since the writ court found that the same requirement was included in the advertisement in question issued by the authorities of Railway on 06.03.2006, Madhyama degree obtained by the petitioner from the Bihar Sanskrit Siksha Board which is a government recognized institution will be held to be equivalent to matric/high school examination, and therefore, there was no occasion for the railway authorities to take a different view and debar the petitioner from training after passing the examination and after having been selected for the said post. Learned writ court quashed the order passed by the railway authority on 13.04.2011 and directed them to send the petitioner immediately for training in accordance with law treating him



to be legally and validly appointed.

4. The order passed by the writ court was challenged in Letters Patent Appeal before this Court. The Hon'ble Division Bench vide its judgment dated 20.02.2014 passed in the LPA modified the order of the learned writ court and directed the respondent authorities to reconsider the case of the private respondent no. 1 in view of the fact that the respondent admittedly obtained higher qualification after Madhyama soon thereafter and prior to coming into force of the new Rules.

5. It is at this stage of reconsideration pursuant to the order of the Hon'ble Division Bench in the LPA, the railway authorities found that the petitioner was having a criminal antecedent bearing Darauli P.S. Case No. 42/2010 dated 29.04.2010 under Section 147, 148, 149, 302 and 307 of the Indian Penal Code read with Section 27 of the Arms Act. Since the petitioner was having criminal antecedent, he was not entitled to seek appointment under the Railway Protection Force. It is for this reason that the order of the learned writ court was not complied with.

6. In the aforementioned background when a contempt application being MJC No. 9/2013 was filed by the petitioner-private respondent no.1, the learned Single Judge of



this Court vide order dated 20.03.2017 took note of the submissions made at the bar and after taking notice of Rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968, came to a conclusion that the antecedent report sought later is nothing but a device to debar the petitioner. The learned Single Judge is of the view that if convicted for the charges as levelled in the said case, the railway authorities are well empowered to pass appropriate orders but there arose no occasion at this stage why the order appointing and sending the petitioner for training be not issued. The learned Single Judge therefore adjourned the matter directing listing on 10th of April, 2017 with an expectation that the authority of the railway shall pass appropriate order and send the petitioner for training as has been directed by the order of the writ court.

7. Mr. Devendra Kumar Sinha, learned senior counsel representing the Union of India (railways) submits that the learned Single Judge while sitting in the contempt jurisdiction has gone beyond it's jurisdiction and has in fact issued a fresh mandamus which is not there in the order of the Hon'ble Division Bench. It is submitted that in contempt jurisdiction the learned Court cannot go behind the basic order and in the present case the order passed by the learned Single Judge in the writ application had merged with the judgment



dated 20.02.2014 passed by the Hon'ble Division Bench whereunder the appellants had been given liberty to reconsider the matter and upon reconsideration if the railway authorities found that the petitioner had a criminal antecedent, it was within their domain to refuse appointment and sending the petitioner for training.

8. On the other hand, learned counsel representing the private respondent no. 1 submits that the criminal case has been lodged at much belated stage after the recruitment process was already completed. It is further submitted that the petitioner has not been convicted in any criminal case and only because a criminal case has been lodged, he cannot be deprived of his appointment which he succeeded pursuant to a selection process.

9. We have heard learned senior counsel for the appellant as well as learned counsel representing petitioner-private respondent no. 1.

10. The scope and ambit of Section 19 of the Contempt of Courts Act, 1971, has been considered by the Hon'ble Supreme Court in the case of *Midnapore Peoples' Cooperative Bank Limited and Others Vs. Chunilal Nanda and others* reported in (2006) 5 SCC 399. The Hon'ble Apex Court also considered as to whether an Intra-Court Appeal



under Article 15 of the Letters Patent of Hon'ble Calcutta High Court was available against the interlocutory order passed by the learned Single Judge in contempt jurisdiction if contained a the direction on the merits of the dispute. Referring to the judgment of the Hon'ble Supreme Court in the case of *Shah Babulal Khimji Vs. Jayaben D. Kania* reported in (1981) 4 SCC 8; whereunder the scope of Clause 15 of the letters patent was considered, the Hon'ble Apex Court quoted the relevant paragraphs and went on to take note of Clause 10 of the Letters Patent of the Patna High Court (corresponding to Clause 15 of the Letters Patent of the Calcutta High Court). Clause 10 of the letters patent of Patna High Court was considered by the Hon'ble Apex Court in the *Central Mine Planning and Design Institute Limited vs. Union of India* reported in (2001) 2 SCC 588. In the said case, the workmen claimed interim relief under Section 17-B of the Industrial Disputes Act, 1947. The learned Single Judge directed the employer to pay full wages to the workmen during the pendency of the writ petition. That was challenged in the Letters Patent Appeal. The Division Bench held that the Letters Patent Appeal was not maintainable as the order directing payment under Section 17-B of the Industrial Disputes Act was not a "judgment". Reversing the said



decision the Hon'ble Apex Court held that in interlocutory order passed in a writ proceeding directing payment under Section 17-B of the Industrial Disputes Act, 1947 was a final determination affecting the vital and valuable rights and obligations of parties and, therefore, would fall under the category of "intermediary or interlocutory judgment" against which a Letters Patent Appeal would lie.

11. The following observations from para 12 and 14 of the said judgment are quoted hereunder for ready reference.

"It is now well settled that the definition of 'judgment' in Section 2(9) of the Code of Civil Procedure has no application to Letters Patent

* * *

..., it follows that that to determine the question whether an interlocutory order passed by one Judge of a High Court falls within the meaning of 'judgment' for purposes of Letters Patent the test is: whether the order is a final determination affecting vital and valuable rights and obligations of the parties concerned. This has to be ascertained on the facts of each case."

14. The above principle was reiterated in *Mithailal Dalsangar Singh v. Annabai Devram Kini and Subal Paul v. Malina Paul*. In the latter case, this Court held: (SCC pp. 370-71, paras 32 & 35)

32. While determining the question as regards clause 15 of the Letters Patent, the court is required to see as to whether the order sought to be appealed against is a judgment within the meaning thereof or not. once it is



held that irrespective of the nature of the order, meaning thereby whether interlocutory or final, a judgment has been rendered, clause 15 of the Letters Patent would be attracted.”

12. In the present case, we find that the learned Single Judge has gone behind the basic judgment dated 20.02.2014 passed by the Hon’ble Division Bench in the Letters Patent Appeal. Once the Hon’ble Division Bench had directed the respondent authorities to reconsider the case of the respondent, even if the respondent authorities passed an illegal or wrong order, the same cannot be discussed or dealt with in the contempt jurisdiction. The petitioner-private respondent no. 1 could have been well advised to apply for appropriate remedy against such decision of the authority but we find is that the learned writ court has went on Rule 14 of the Disciplinary Rules and the Railway Protection Force Rules, 1987, thereafter the learned court came to a conclusion that the antecedent report sought later is but a device to debar the petitioner.

13. With all respect to learned Single Judge, we are of the considered opinion that the learned Single Judge while sitting in contempt jurisdiction was not justified in going into the merit of the order or decision taken by the railway authorities whereunder they took a view that in view of the



criminal antecedent the petitioner is not entitled to the appointment under the Railway Protection Force.

14. In the circumstances stated above, we set aside the impugned order dated 20.03.2017 passed by the learned Single Judge in MJC No. 9/2013 as also we dismiss the contempt application taking note of the submission of the appellant that the petitioner has not been appointed because of a decision taken by the railway authorities based on the fact that the petitioner has been found involved in a criminal case. On record we find that there is an office order dated 22.01.2016 by which the railway authorities have rejected the case of the petitioner for appointment taking note of sub-rule 52.2 of the Railway Protection Force Rules, 1987. The petitioner-private respondent no. 1 shall be at liberty to challenge the said decision dated 22.01.2016 in accordance with law.

15. The Letters Patent Appeal is allowed to the extent indicated hereinabove.

(Rajendra Menon, CJ.)

Rajeev/-

(Rajeev Ranjan Prasad, J.)

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	05.04.2018
Transmission Date	NA

