

# **HIGH COURT OF JAMMU AND KASHMIR**

**AT JAMMU**

LPAOW No.77/2014

CMA No.101/2014

Date of order:24.11.2014

---

Sanjeev Pargal

v.

Madhu Param Hans & anr.

---

## **Coram:**

**Hon'ble Mr. Justice M. M. Kumar, Chief Justice**

**Hon'ble Mr. Justice Tashi Rabstan, Judge**

---

## **Appearing counsel:**

For the appellant (s) : Mr. V.R.Wazir, Sr. Advocate with  
Mr. Inderjeet Gupta, Advocate.

For the respondent (s) :

---

i) Whether to be reported  
Press/Media : Yes/No

ii) Whether to be reported in  
Digest/Journal : Yes/No

---

## **M.M.Kumar, CJ**

1. Judgment and order dated 04.09.2014 rendered by a learned Single Judge dismissing a petition filed under Section 104 of the Constitution of Jammu and Kashmir has been made subject matter of challenge in the instant appeal by invoking Clause XII of the Letter patent.

2. At the outset we asked Mr. V.R.Wazir, learned senior counsel as to how against an order passed on a petition filed under Article 227 of the Constitution of India read with Section 104 of the Constitution of Jammu & Kashmir would be maintainable. In response to our query, Mr. Wazir has placed reliance on a Division Bench judgment rendered in the case of

*Sudershana Gupta and anr. v. Girdhari Lal, (2013) 3 JKJ 547*

and argued that the appeal would be maintainable.

2. Having heard the learned counsel, we are of the considered view that the matter is no longer *res integra*. Hon'ble the Supreme Court in categorical terms has opined in numerous judgments that letter patent appeal would not be maintainable against an order passed by a learned Single Judge in exercise of power of superintendence under Article 227. In that regard reliance may be placed on judgments rendered in the cases of *Ramesh Chandra Shankla v. Vikram Cement (2008) 14 SCC 58*, *Kesho Ram v. Hem Raj (2008) 17 SCC 96*, *Mohd. Saud and another v. Dr. (Maj) Shaikh Mahfooz & others (2010) 13 SCC 517* and *Shalini Shyam Shetty & another v. Rajendra Shankar Patil, (2010) 8 SCC 329*. In the case of *Ramesh Chandra Shankla (supra)*, it has been held as under:-

“48. In our considered opinion, however, on the facts and in the circumstances of the present case, the petitions instituted by the Company and decided by a Single Judge of the High Court could not be said to be original proceeding under Article 226 of the Constitution. We are clearly of the view that the learned Single Judge had decided the petitions in exercise of power of superintendence under Article 227 of the Constitution.

49. We have already referred to the facts of the case. According to the Company, voluntary retirement was accepted by the employees. They thereafter challenged the action on the ground that the acceptance was not voluntary but they were compelled to opt for the scheme and were paid some amount which was not in consonance with law and the action of not allowing them to continue in the employment amounted to removal from service. They, therefore, approached Labour Court for an appropriate

relief. The Labour Court entertained complaints and issued notice.

50. The Company appeared and raised preliminary objections. Issues were framed and a prayer was made by the Company to decide “issues of law” as preliminary issues which prayer was rejected by the Labour Court. The Company approached Industrial Court which also did not interfere with the order of the Labour Court. That order was again challenged by the Company by filing petitions in the High Court and the learned Single Judge dismissed the petitions. In view of the aforesaid facts, we have no doubt that the learned Single Judge was exercising power of superintendence over a Court/Tribunal subordinate to it under Article 227 of the Constitution. Obviously, a remedy of intra court appeal was not available. We, therefore, hold that the Division Bench was right in coming to the conclusion that intra court appeals filed by the Company were not maintainable. We see no infirmity in that part of the order. The contention of the appellant Company is, therefore, rejected.” (emphasis added)

In the case of Shalini Shyam Shetty’s case (supra), their lordships of the Supreme Court took the view that jurisdiction under Article 227 is neither original nor it is appellate. It is for both administrative and judicial superintendence. A proceeding under Article 227 could never be governed under the original side rules of the High Court. In the cases where the High Court exercises jurisdiction under Article 227, it is entirely discretionary and it cannot be claimed as a matter of right and no appeal would be maintainable from an order passed by a Single Judge of a High Court in exercise of power under Article 227, which remedy is available in respect of an order passed by learned Writ Court under Article 226 of the Constitution. (See paras 46 to 48).

Their lordships of Hon’ble the Supreme Court has taken a similar view in the case of Kesho Ram (supra) in which appeal

was filed against an order of the High Court of Jammu & Kashmir. A Division Bench of this Court had held that no letter patent appeal against an order passed in exercise of revisional jurisdiction would be available. Accordingly appeal was dismissed which led to the filing of further appeal to Supreme Court. The view of the Supreme Court is discernible from paras 6, 7 and 8, which read thus:-

“6. Dr. Singhvi, on the other hand, has pointed out that an order rejecting an application in review was not appealable and the only remedy for having such an order set aside was to file an application for review under order 47 Rule 7(2), but when such an application had been dismissed, no further application could be entertained by virtue of Order 47 Rule 9 CPC. He has also stressed that a perusal of Clause 12 of the Letters Patent also spelt out that an order in revision was not appealable under the said clause and that in any case, it was open to the appellant to challenge the order dated 8-9-1987, in appeal.

7. We have heard the learned counsel for the parties very carefully. We find substance in Mr. Singhvi’s argument based on Order 47 Rule 7(2) but as of today, the prime issue before us is with regard to the maintainability of the letters patent appeal. A bare perusal of Clause 12 reveals that an appeal against an order in revision is not maintainable.

8. We are, therefore, of the opinion that all the observations/findings recorded by the Letters Patent Bench were non est being completely unauthorized in law. We have therefore no hesitation in dismissing the present appeal as well. .....

..... We, however, dismiss the appeal. No costs.” (emphasis added)

3. The aforesaid authoritative pronouncements by Honb’le the Supreme Court have binding effect under Article 141 of the Constitution of India as it is law declared by the Supreme Court. Therefore, the conclusion is evident that the appeal is not maintainable. The judgment of the Division Bench or any other judgment to the contrary on which reliance has been placed by

Mr. Wazir are held to be *per incuriam* and cannot have a binding force. Accordingly, it is held that the appeal is not maintainable and on that account it is dismissed.

**(Tashi Rabstan)**  
**Judge**

**(M.M.Kumar)**  
**Chief Justice**

**Jammu**  
24.11.2014  
Vinod.