IN THE HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

Reserved on:15.12.2020
Pronounced on:31.12.2020

CDLSW No.75/2018

State of J&K and another ...Appellant(s)

Through: - Mr. N. H. Shah, Sr. AAG.

Vs.

Mohammad Sidiq Lone & others …Respondent(s)

Through: - Mr. R. A. Jan, Sr. Advocate with Mr. Taha Khalil, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE.

JUDGMENT

Sanjeev Kumar 'J'

Application, for the reasons stated therein and also for the reason that the condonation has not been opposed by the learned counsel for the respondents, is allowed and the delay in filing the appeal is condoned and the main appeal, which is directed to be diarized, is taken on board. COD application is disposed of.

LPA No.166/2020
CM No.6466/2020

1) The appellants are in appeal in terms of Clause 12 of the Letters Patent against the order dated 23rd of May, 2018 passed by the learned Single Judge in CPSW No.233/2016 entitled Mohammad Sidiq Lone and others Vs. Mr. Shaleen Kabra and another, whereby

the learned Single Judge has held the appellants, prima facie, guilty of committing contempt of court and has issued show cause notice for punishment. The appeal is contested by the respondents both on merits as well as on its maintainability.

2) Before we advert to the rival contentions, it would be necessary to notice material facts shortly.

3) The respondents through the medium of SWP No.2649/2013, primarily, sought the following relief from the Writ Court:

> "A Writ order or direction in the nature of Mandamus directing the appellants to accord the respondents (writ petitioners) treatment in the matter of their regularization to the post of Headmaster/equivalent at par with those who were given similar benefit in terms of Government Order No.684-Edu of 2012 dated 04.06.2012."

4) This petition was allowed by the Writ Court vide its judgment dated 28th of July, 2015. The operative portion of the judgment reads as under:

> "This writ petition along with connected CMP(s) is disposed of and respondents are directed to accord consideration to the claim of the petitioners for being appointed by way of promotion on the post of Headmaster on regular and substantive basis from the date they have been promoted on officiating basis on the posts of Headmaster which treatment

> has been meted to other similarly circumstanced persons. The respondents are further directed to give all service benefits to the petitioners in consequence of passing of orders of promotion on regular basis in favour of the petitioners."

5) The judgment (supra) dated 28th of July, 2015, was not assailed by the appellants and, therefore, attained finality. However, when the same was not complied with, the respondents filed a petition for initiating contempt proceedings against the appellants for willful disobedience and non-compliance.

6) In response, the appellants filed their compliance report and placed on record a consideration order i.e. Government Order No.386-Edu of 2016 dated 05.10.2016, whereby claim of the respondents was rejected on the ground that a Committee constituted vide Government Order No.73-Edu of 2012 dated 04.02.2012 read with corrigendum dated 15.02.2012 for regularization of officers of the School Education Department had examined the issue and pursuant to its recommendation, the Government vide order No.618-Edu of 2012 dated 02.08.2012 had formulated a final seniority list of Masters (working/worked as I/C Headmasters) comprised of 3911 members and it was on the basis of this seniority, the Department regularized 2529 I/C Headmasters and equivalent as Headmasters vide Government Order No.684-Edu of 2012 dated 04.09.2012. It is further reasoned in the order that at the time of retirement of the

respondents, there was no clear vacancy of Headmaster or equivalent against which the respondents could have claimed regularization.

7) The compliance submitted by the appellants was not accepted by the learned Single Judge, who vide its order impugned framed rule against the appellants and issued a show cause notice for punishment. It is in this backdrop, the appellants who are facing a threat to be punished for committing contempt of the court are before us in this appeal.

8) Having heard learned counsel for the parties and perused the record, it is necessary to first deal with the preliminary objection of Mr. R. A. Jan, Sr. Advocate, with regard to maintainability of the appeal. It is argued by Mr. Jan that since the order impugned is not an order passed by the learned single Judge in the exercise of its jurisdiction to punish for contempt, as such, an appeal under Section 19 of the J&K Contempt of Courts Act, 1997 (the Act of 1997) is not maintainable.

9) *Per contra,* the contention of Mr. N. H. Shah, Sr. AAG, appearing for the appellants, is that the learned Single Judge has exceeded its jurisdiction and the impugned order has the effect of modifying/adding to the directions passed by the Writ Court and, therefore, a 'judgment' within the meaning of Clause 12 of the Letters Patent.

10) Indisputably an appeal under Section 19 of the Act of 1997 would lie as of right from an order or direction of the Single Bench to a Bench of not less than two Judges of the Court provided the order or decision has been made in the exercise of jurisdiction to punish for contempt.

11) What meaning is to be given to the expression "in the exercise of its jurisdiction to punish for contempt" was long back settled by the Supreme Court in the case of **D. N. Taneja** Vs. **Bhajan Lal**, **(1988) 3 SCC 26**. The Supreme Court after noticing the provisions of Section 19 of Contempt of Courts Act and Article 215 of the Constitution of India, in no unequivocal terms, opined that so long as no punishment is imposed by the High Court, it cannot be said that the High Court has exercised its jurisdiction or power to punish for contempt. The Hon'ble Supreme Court even went to the extent of holding that when the High Court acquits contemnor, it does not exercise its jurisdiction to punish for contempt and, therefore, the appeal in that eventuality too would not be maintainable before the Division Bench of the High Court.

12) Despite three Judge Bench judgment rendered in the case of **D. N. Taneja** (supra), the issue as to what is the true import and meaning of expression **"in the exercise of its jurisdiction to punish for contempt"** used in Section 19 of the Act of 1977 has been cropping up every now and then before various High Courts and even before the Apex Court and there are few subsequent judgments

rendered by the Supreme Court which have the effect of diluting the ratio laid down by the three Judge Bench of the Supreme Court in **D. N. Taneja.** Though we are convinced that the law laid down by the Supreme Court in **D. N. Taneja** still holds field despite there being contrary observations by the smaller Benches of the Supreme Court yet we find it appropriate to deal with the issue after having an overall view of all the relevant judgments rendered on the point.\

13) Way back in the year 1974, a three Judge Bench of the Supreme Court in the case of **Bardakanta Mishra** v. **Mr. Justice Gatikrushna Mishra, (1975) 3 SCC 535**, traced out origin of Section 19 of the Act, which provided for right of appeal against any order or decision passed in the exercise of jurisdiction to punish for contempt. The Supreme Court noticed that under the Contempt Law, as it stood prior to the enactment of Contempt of Courts Act, 1971, no appeal lay at the instance of a party moving the High Court for taking action for contempt, if the High Court in the exercise of its discretion refused to take action on the motion of such party. Even if the High Court took action and initiated a proceeding for contempt and in such proceeding, the alleged contemnor, being found guilty, was punished for contempt, the order being one made by the High Court in the exercise of its criminal jurisdiction was not appealable under clause 15 of the Letters Patent, and therefore, no appeal lay against it from a Single Judge to a Division Bench and equally, there was no appeal as of right from a Division Bench to this Court. The result

was that in cases of criminal contempt, even a person punished for contempt had no right of appeal and he could impugn the order only by way of appropriate certificate under Article 134 in fit cases or on the refusal of the High Court to do so, before the Supreme Court by seeking leaving to appeal under Article 136 of the Constitution of India.

14) This was highly unsatisfactory state of affairs and it was largely responsible for the criticism against the large powers of the Court to punish for contempt, observes the Supreme Court. Sanyal Committee in its Report dated 28th February, 1963, commented adversely on this unsatisfactory feature of the law of contempt. What was pointed out by Sanyal Committee in Paragraph 2.1 in Chapter XI of its Report reads thus:

> "The present state of the law relating to appeal in cases of criminal contempt appears to be more, the result of accidents of legal history than a matter of policy. That this is so clearly evident from the fact that in those cases of contempt for which specific provision is made in the Indian Penal Code and the Code of Criminal Procedure a right of appeal is provided for under section 486 of the Code of Criminal Procedure. In the case of contempt falling within the purview of inherent powers of the High Courts, no specific provision has been made in the Letters Patent of the High Courts and the only explanation for this seems to be that no such provision was made in England in regard to the English superior courts. Further, under the provisions of the Letters Patent, no appeal is ordinarily permissible where the order of the court is made in the exercise of the criminal jurisdiction. It has also been held that section 411A of the Code of Criminal Procedure does not afford any remedy by way of appeal in contempt cases. The result

> has been that before the Constitution came into force, an appeal in contempt cases from the decision of a High Court could lie only in special cases to the Judicial Committee. The Constitution did not alter this position very much for the effect of articles 134 and 136 of the Constitution is merely to substitute the Supreme Court for the Privy Council. In short, there is only a discretionary right of appeal available at present in cases of criminal contempt."

Ultimately, the Sanyal Committee in Para 3.1 of Chapter XI of its Report made its recommendations in the following manner:

> "we accordingly recommend that against 'an order of a single Judge, punishing for contempt, the appeal should lie, in the High Court, to a Bench of Judges and against a similar order of a Bench of Judges of a High Court, the appeal should lie as of right to the Supreme Court."

Chapter XII of the Report in Clause 25 contained following further recommendations:

> "Provision may be made for an appeal as of right from any order or decision of a High Court in the exercise of its jurisdiction to punish for contempt. The appeal should lie to a Bench of Judges of the High Court where the order or decision is of a single Judge. Where the order or decision is of a Bench the appeal should lie to the Supreme Court."

It was thus noticed that it was in pursuance of these recommendations made by the Sanyal Committee, the Parliament while enacting Contempt of Courts Act, 1971, introduced Section 19(1) in that Act providing appeal as of right, “from any order or decision of a High Court in the exercise of its jurisdiction to punish for contempt.”

After tracing out the genesis of Section 19(1) of the Contempt of Courts Act, the Hon'ble Supreme Court in Paragraph 7 of the judgment concluded as under:

> "Before we examine the language of section 19, sub-section (1) in order to arrive at its true interpretation, we may first look at sections 15, 17 and 20. Sub-section (1) of section 15 provides that in a case of criminal contempt other than contempt in the face of the Court, the Supreme Court or the High Court may take action 'on its own motion or on a motion made by the Advocate General or any other person with the consent in writing of the Advocate General and subsection (2) of that section-says that in case of criminal contempt of any subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate General or in relation to Union Territories, by such law officer as the Central Government may specify in this behalf. Section 17 lays down the procedure to be followed by the, Court when it decides to take action and initiates a proceeding for contempt under section 15. Sub-section (1) of that section provides that notice of every proceeding under section 15 shall be served personally on the person charged and according to subsection (2), such notice shall be accompanied, in case of a proceeding commenced, on a motion, by a copy of the motion as also copies of the affidavits, if any, on which such motion is founded, and in case of a proceeding commenced on a reference by a subordinate court, by a copy of the reference. Section 20 prescribes a period of limitation by saying that no court shall initiate any proceeding for contempt either on its own motion or otherwise after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. It will be seen from these provisions that the scheme adopted by the legislature is that the Court may initiate a proceeding for Contempt suo motu or on a motion made by the Advocate General or any other person with the consent in writing of the Advocate General or on a reference made by a subordinate court. Where the Court initiates a

proceeding for contempt suo motu, it assumes jurisdiction to punish for contempt and takes the first step in exercise of it. But what happens when a motion is made by the Advocate General or any other person with the consent in writing of the Advocate General or a reference is made by a subordinate court. Does the Court enter upon the jurisdiction to punish for contempt and act in exercise of it when it considers such motion or reference for the purpose of deciding whether it should initiate a proceeding for contempt? We do not think so. The motion or reference is only for the purpose of drawing the attention of the Court to the contempt alleged to have been committed and it is for the Court'. On a consideration of such motion or reference, to decide, in exercise of its discretion, whether or not to initiate a proceeding for contempt. The Court may decline to take cognizance and to initiate a proceeding for contempt either because in its opinion no contempt Prima facie appears to have been committed or because, even if there is prima facie contempt, it is not a fit case in which action should be taken against the alleged contemnor. The exercise of contempt jurisdiction being a matter entirely between the Court and the alleged contemnor, the Court, though moved by motion or reference, may in its discretion, decline to exercise its jurisdiction for contempt. It is only when the Court decides to take action and initiates a proceeding for contempt that it assumes jurisdiction to punish for contempt. The exercise of the jurisdiction to punish for contempt commence; with the initiation of a proceeding for contempt, whether suo motu or on a motion or a reference. That is why the terminus a quo for the period of limitation provided in section 20 is the date when a proceeding for contempt is initiated by the Court. Where the Court rejects a motion or a reference and declines to initiate a proceeding for contempt, it refuses to assume or exercise jurisdiction to punish for contempt and such a decision cannot be regarded as a decision in the exercise of its jurisdiction to punish for contempt. Such a decision would not, therefore, fall within the opening words of section 19, sub-section (1) and no appeal would lie against it as of right under that provision. This of course does not mean that there is no remedy available where the

> High Court on an erroneous view of the law or unreasonably and perversely refuses to take action for contempt on a motion or a reference. Though no appeal lies under section 19, sub-section (1) as of right against such order or decisions of the High Court, the Advocate General or any other person who has with the, consent in writing of the Advocate General moved the High Court can always come to this Court by a petition for special leave to appeal and the power of this Court to interfere with such order or decision in the exercise of its extraordinary jurisdiction under article 136 is unfettered. This Court can always in suitable cases set right any order or decision of the High Court refusing to take action for contempt against the alleged contemner, if the larger interests of administration of justice so require.

15) This three Judge Bench judgment of the Supreme Court has been followed by another three Judge Bench in the case of **D. N. Taneja** supra. Both these judgments by a Bench of three Judges are holding field as on date and the ratio laid down there has not been varied or modified by any Bench of the Hon'ble Supreme Court of the higher strength.

16) However, in the subsequent judgment rendered by a two Judge Bench of the Supreme Court in **R. N. Dey and others** v. **Bhagyabati Pramanik and others**, **(2000) 4 SCC 400**. The Hon'ble Supreme Court in Para 7 has held thus:

> "7.We may reiterate that weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the Court is to be exercised for maintenance of Courts dignity and majesty of law. Further, an aggrieved party has no right to insist that Court should exercise such jurisdiction as contempt is between a contemnor and the Court. It

> is true that in the present case, the High Court has kept the matter pending and has ordered that it should be heard along with the First Appeal. But, at the same time, it is to be noticed that under the coercion of contempt proceeding, appellants cannot be directed to pay the compensation amount which they are disputing by asserting that claimants were not the owners of the property in question and that decree was obtained by suppressing the material fact and by fraud. Even presuming that claimants are entitled to recover the amount of compensation as awarded by the trial court as no stay order is granted by the High Court, at the most they are entitled to recover the same by executing the said award wherein the State can or may contend that the award is nullity. In such a situation, as there was no willful or deliberate disobedience of the order, the initiation of contempt proceedings was wholly unjustified."

17) The observations of the Hon'ble Supreme Court in Para 10 of the same judgment are noteworthy and are reproduced here-under:

> "10.In our view the aforesaid contention of the learned counsel for the respondents requires to be rejected on the ground that after receipt of the notice, concerned officers tendered unconditional apology and after accepting the same, the High Court rejected the prayer for discharge of the Rule issued for contempt action. When the Court either suo moto or on a motion or a reference, decides to take action and initiate proceedings for contempt, it assumes jurisdiction to punish for contempt. The exercise of jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt and if the order is passed not discharging the Rule issued in contempt proceedings, it would be an order or decision in exercise of its jurisdiction to punish for contempt. Against such order, appeal would be maintainable."

18) Then came the judgment of the Supreme Court in the case of **Midnapore Peoples' Coop. Bank Ltd. and others** v. **Chunilal Nanda and others, (2006) 5 SCC 399**. This was also a judgment by two

Judge Bench. The Supreme Court in this case formulated following questions for consideration:

> *(i)* Where the High Court, in a contempt proceeding, 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?
>
> *(ii)* Where such a decision on merits is rendered by an interlocutory order of a learned Single Judge, whether an intra-court appeal is available under clause 15 of the Letters Patent?
>
> *(iii)* Whether in the present contempt proceedings the Court could direct (a) that the employer should reinstate the employee forthwith; (b) that the employee should not be prevented from discharging his duties in any manner; (c) that the employee should be paid all arrears of salary; (d) that the enquiry officer should cease to be the enquiry officer and the employer should appoint a fresh enquiry officer; and (e) that the suspension should be deemed to have been revoked?

The Supreme Court after discussing the case law including the judgment in the case of **Bardakanta Mishra** and **D. N. Taneja,** gave its reply to the questions formulated in the following manner:

> "11. 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 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).

19) From a careful perusal of sub-para (iv) of Paragraph 11 of the judgment, it clearly transpires that the Hon'ble Supreme Court carved out an exception by providing that where a direction or decision of the Court hearing a contempt petition is **"incidental to or inextricably connected with the order punishing for contempt**", the same would be appealable under Section 19(1) of the Act. However, what are such directions and decisions which can be treated or

deemed "**incidental to or inextricably connected with the order punishing for contempt**" has not been elaborated in the judgment. Absence such elaboration, we are left with no option but to fall back upon the ratio laid down in **D. N. Taneja's** case where a three Judge Bench has unequivocally held that when the High Court acquits the contemnor, the High Court does not exercise its jurisdiction for contempt. For such exercise of jurisdiction, the High Court should act in a particular manner, that is to say, by imposing punishment for contempt. So long as no punishment is imposed by the High Court, the High Court cannot be said to be exercising its jurisdiction or power to punish for contempt under Article 215 of the Constitution. The judgment further goes on to say that it should not mean that when the High Court erroneously acquits a contemnor guilty of criminal contempt, the petitioner who is interested in maintaining the dignity of the Court will be without any remedy. Even though no appeal is maintainable under Section 19(1) of the Act, the petitioner in such a case can move the Supreme Court under Article 136 of the Constitution.

20) In the later case of **Tamilnad Mercantile Bank Shareholders Welfare Association** vs. **S. C. Sekar and others**, **(2009) 2 SCC 784**, the two Judge Bench of the Supreme Court though declined to go into larger question of maintainability of appeal in view of the fact that the matter, at the relevant time, had been referred to three Judge Bench in **Dharam Singh vs. Gulzari Lal [SLP(Civil) No.18852 of**

2005), which was later on dismissed as withdrawn, yet the Bench was of prima facie view that as held in the case of **Purshotam Dass Goel vs. Justice B. S. Dhillon, (1978) 2 SCC370**, where an order has been passed adverse to the interests of the alleged contemnor, an appeal would be maintainable, particularly where the judgment has been passed by a Court which is beyond its jurisdiction.

21) On the conspectus of judicial opinion on the issue, we summarize the legal position as under:

1. In view of authoritative pronouncement of three Judge Bench rendered in the case of **D. N. Taneja** (supra) and the genesis of Section 19(1) of the Contempt of Courts Act traced out by a three Judge Bench to the recommendations of Sanyal Committee in **Bardakanta Mishra's** case, the appeal under Section 19 is maintainable only against an order or decision of the High Court in the exercise of its jurisdiction to punish for contempt and the Court would exercise such jurisdiction only when it imposes punishment for contempt;

2. The contempt being a matter strictly between the Court and the contemnor and, therefore, an order declining to initiate proceedings for contempt or an order dropping the proceedings for contempt and acquitting or exonerating the contemnor are not the orders passed in the exercise of jurisdiction to punish for contempt and, therefore, not appealable under Section 19 of the Act;

3. In the situation covered by clause (2), the aggrieved party is not without remedy. It may file an appeal before the Supreme Court after obtaining a certificate of fitness from the High Court under Article 134 of the Constitution of India or may directly approach the Supreme Court with an application for leave to appeal under Article 136 of the Constitution;

4. In a proceeding for contempt, the High Court is enjoined only to decide whether any contempt of court has been committed or not and what should be the punishment to be awarded in a given case. it is, however, not open to the Court hearing a contempt petition to adjudicate or decide any issue relating to the merits of the dispute between the parties;

5. Any order passed by the High Court in any proceeding for contempt, which has the effect of amplifying, varying or modifying the judgment alleged to have been violated by the contemnor, the remedy to the aggrieved party is an intra-court appeal under relevant clause/provision of the Letters Patent. Similarly, if an order, direction or decision is made by the High Court on the merits of the dispute between the parties, the same cannot be said to be in the exercise of jurisdiction to punish for contempt and, therefore, no appeal would lie under Section 19 of the Act. The aforesaid order or decision, if amounts to judgment, would be subject to challenge in an intra-court appeal, if it is passed by a Single Bench.

22) As is axiomatic that right of appeal is a creature of Statute and the question whether or not there is right of appeal will have to be considered on the interpretation of the provisions of the Statute and not on the grounds of propriety or any other consideration. The right of appeal has been provided under Section 19 of the Act of 1997 and is available only against an order of a Single Bench which it passes in the exercise of its jurisdiction to punish and not otherwise. In that view of the matter, any order passed by a Single Bench in a contempt petition short of an order for punishing the contemnor is not appealable. However, we cannot lose sight of the fact that on some occasions the Court issues orders and directions in the contempt petitions which have the effect of adding to or modifying the judgment passed by the Writ Court, for the violation of which the contempt petition has been moved. That portion of the order, passed by the Court while hearing the contempt petition, which is in excess of or in modification of the original judgment and is tantamount to issuing fresh directions, would be a 'judgment' within the meaning of Clause 12 of the Letters Patent and, therefore, appealable.

23) In this legal background, when we examine the case on hand, we find that the order impugned is neither in amplification nor in modification of the judgment rendered by the Writ Court on 28th of July, 2015 in SWP No.2649/2013. From a perusal of the judgment passed by the Writ Court, it clearly transpires that the Writ Court accepted the case set up by the respondents (writ petitioners) in the

writ petition for the reason that the appellants had not contested the same by filing any written reply affidavit and the averments made in the writ petition had gone unrebutted. The observations of the Writ Court made in the judgment which are very pertinent are noteworthy and are reproduced here-under:

> "Denial of regular promotion to the post of Headmasters on regular basis has infringed the rights of the petitioners guaranteed under Article 16 of the Constitution of India. The respondents are under Constitutional and Statutory obligation to accord consideration to the claim of regularization of services of the Headmasters from the date they have become eligible in terms of recruitment rules."

24) These observations of the Writ Court leave very little scope for the appellants to deny the benefit of retrospective regularization to their services as Headmaster except and unless it is found by the appellants that the respondents were not eligible in terms of Recruitment Rules to be appointed by way of promotion as Headmasters on the dates they were made to officiate as such. When the Writ Court judgment is appreciated in this context, it becomes abundantly clear that the consideration order passed by the appellants was not in strict compliance of the judgment of the Writ Court and, therefore, learned Single Judge was correct in rejecting the consideration and framing the rule for committing the contempt of court. The consideration order which is primarily based on the

Government Orders passed prior to the passing of the judgment is fundamentally flawed. That apart, the learned Single Judge has also provided an opportunity to the appellants to strictly comply with the judgment and pass a fresh order which is in tune with and in compliance to the judgment of the Writ Court. Needless to say that other than determining the eligibility of the respondents to hold the post of Headmaster under the J&K Education (Gazetted) Service Recruitment Rules, 1992 from a particular date, there is no option with the appellants other than regularizing services of the respondents retrospectively from such date/dates. This is the import of the judgment of the Writ Court and this is what the learned Single Judge in terms of the impugned order seeks to comply with.

25) With the aforesaid observations, we, having found nothing wrong in the impugned order, dismiss this appeal as not maintainable under Section 19 of the Contempt of Courts Act, 1997.

(Rajnesh Oswal)
Judge

(Sanjeev Kumar)
Judge

Srinagar
31.12.2020
"Bhat Altaf, PS"

Whether the order is speaking: ***Yes/No***
Whether the order is reportable: ***Yes/No***