

A MIDNAPORE PEOPLES' CO-OP. BANK LTD. AND ORS.
v.
CHUNILAL NANDA AND ORS.

MAY 25, 2006

B [B.P. SINGH AND R.V. RAVEENDRAN, JJ.]

Service Law:

C *Contempt of Courts Act, 1971; Section 19/Limitation Act, 1963;
Section 5:*

D *Employee—Suspension—Enquiry Proceedings—Challenge to—Single Judge of High Court ordered denovo enquiry—Delay in completion of enquiry—Filing of contempt petition by the employee—Single Judge of the High Court directing the employer-Bank to reinstate the suspended employee and to pay arrears of salary—Division Bench of the High Court dismissed the Letters Patent Appeal and also application for condonation of delay—On appeal, Held: Appeal under Section 19 of the Contempt Act lies only against the order of High Court imposing punishment for contempt—In a contempt proceeding, it is not appropriate to decide any issue on merits—*
E *Single Judge of the High Court erred in issuing directions for reinstating the employee and payment of arrears in a contempt proceeding—The order of Single Judge was appealable in Terms of Clause 15 of the Letters Patent—Moreover, there was no disobedience/breach/negligence on the part of the employer to provoke the Court to issue such directions—Hence set aside—*
F *Constitution of India, 1950—Article 136.*

Practice and Procedure:

G *Filing of appeal—Aggrieved persons—Since the Chairman and the Secretary were representatives of the Bank and directions were issued to them, they were the persons aggrieved and, therefore, could file an appeal against such directions.*

H *Letters Patent; Clause 15: In what circumstances, Letters Patent Appeal is maintainable against Interlocutory Order—Held: Though order of the Single Judge is interlocutory as it finally decided a collateral issue,*

Letters Patent Appeal could be filed against such order—Code of Civil Procedure, 1908 Section 2(9) Order 43 Rule 1.

The questions which arose for consideration in these appeals for determination by this Court were:

(i) whether the order passed by High Court in a contempt proceedings by rendering a decision on the merits of a dispute between the parties, either by an interlocutory order or final judgment, is appealable under Section 19 of the Contempt of Courts Act, 1971, If not, what is the remedy of the person aggrieved;

(ii) whether an inter-court appeal lies against the Interlocutory orders passed by a Single Judge under clause 15 of the Letters Patent;

(iii) whether the Court, in a contempt proceeding initiated by a delinquent employee against the Enquiry Officer as also the Chairman and Secretary in-charge of the employer-Bank, complaining of disobedience of an order directing completion of the enquiry in a time bound schedule could direct (a) that the employer shall reinstate the employee forthwith; (b) that the employee shall not be prevented from discharging his duties in any manner; (c) that the employee shall be paid all arrears of salary; (d) that the Enquiry Officer shall cease to be the Enquiry Officer and the employer shall appoint a fresh Enquiry Officer, and (e) that the suspension shall be deemed to have been revoked.

Allowing Civil Appeal No. 1727 of 2002 and dismissing SLP (C) Nos. 13045-46 of 2003 as infructuous, the Court

HELD : 1.1. An appeal under Section 19 of the Contempt of Courts Act is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt. [1000-B]

1.2. 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 Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution. [1000-C]

A 1.3. 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. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties. [1000-D]

B 1.4. 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 Contempt of Courts 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. [1000-E-F]

D 1.5. 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 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). The issue regarding appealability of order of the High Court in the Contempt proceeding is answered accordingly. [1000-G-H]

F *Baradakanta Mishra v. Justice Gatikrushna Misra*, AIR (1974) SC 2255; *Purushotam Dass Goel v. Justice B.S. Dhillon*, AIR (1978) SC 1014, *Union of India v. Mario Cabral e Sa*, AIR (1982) SC 691, *D.N. Taneja v. Bhajan Lal*, [1988] 3 SCC 26, *State of Maharashtra v. Mahboob S. Allibhoy*, [1996] 4 SCC 411 and *J.S. Parihar v. Ganpat Duggar*, [1996] 6 SCC 291, relied on.

G 2.1. The term 'judgment' occurring in clause 15 of the Letters Patent will take into its fold not only the judgments as defined in section 2(9) CPC and orders enumerated in Order 43 Rule 1 of CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Interlocutory orders which finally decide a question/issue in controversy in the main

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case, orders which finally decide an issue which materially and directly affects the said decision in the main case, and orders which finally decide a collateral issue or question which is not the subject matter of the main case, are therefore, 'judgments' for the purpose of filing appeals under the Letters Patent. On the other hand, routine orders and orders which do not finally determine the question/issue are not 'judgments' for the purpose of filing appeals provided under the Letters Patent.

[1004-A-B-C]

Shah Babulal Khimji v. Jayaben D. Kanta & Anr., AIR (1981) SC 1786; *Central Mine Planning and Design Institution Ltd. v. Union of India*, [2001] 2 SCC 588; *Mithailal Dalsangar Singh v. Annabai Deveram Kini*, [2003] 10 SCC 691 and *Subal Paul v. Malina Paul*, [2003] 10 SCC 361, relied on.

2.2. The Division Bench of the High Court committed a serious and obvious error in holding that the appeal was not maintainable under clause 15 of the Letters Patent. Though the order of the Single Judge by which several directions to the Bank with reference to first Respondent were issued, is not a final 'judgment', it is an 'interlocutory judgment' which finally decides several rights and obligations of the employee *vis-à-vis* the employer and therefore, appealable under clause 15 of the Letters Patent. [1004-G-H]

2.3. Proceedings having been impleaded *eo nomine* as respondents 1 and 4 respectively. The 'Bank' as such was not a party to the contempt proceedings. The single Judge proceeded on the basis that the Chairman and the Secretary-in-Charge represented the 'Bank' by referring to them as 'Respondent Bank' and directing them to reinstate the complainant and to pay all salary arrears to him. If the Chairman and Secretary-in-Charge were considered as representing the Bank for issuing such directions, certainly they could file an appeal against such directions. The directions were issued to them and they were the persons aggrieved. [1004-C-F]

3.1. As Enquiry officer was not a party to the writ petition, and as he did not conduct the enquiry, there was no question of his disobeying any order. After perusing the records, the court came to the conclusion that a *prima facie* case was made out for issuing show cause notice only against the present Enquiry Officer. This means that no case

A was made out for issue of show cause notice to the Chairman and Secretary-in-Charge of the Bank. In fact, it was not the case of the first respondent that after the appointment of the Enquiry Officer, there was any disobedience by the Bank. In the circumstances, the court ought to have proceeded to consider whether there was any wilful disobedience of the order of the High Court, on the part of the Enquiry Officer, and if so, punish him for contempt. As he was nowhere in the picture when the order was passed in the writ petition, and as he was appointed as an independent Enquiry Officer only by subsequent order and as there was a complaint about the non-cooperation by the first respondent, (delinquent employee), it is doubtful whether there was any case for even issuing a show cause notice to him. [1005-D-E-F-G]

D 3.2. The Single Judge could not have made an order in the contempt proceedings, that the Enquiry Officer, by his conduct, disqualified himself to be the Enquiry Officer and that he shall cease to be the Enquiry Officer and that another Enquiry Officer shall be appointed. [1005-H, 1006-A]

E 3.3. There was also no justification for the further direction by the Single Judge in the contempt proceedings, that too by an interlocutory order, that the complainant should immediately and forthwith be reinstated into the service of the Bank, and shall be deemed to be in the service of the Bank all through, that the employee shall not be prevented in any manner from discharging his duties and that he shall be paid all arrears of salary, and that the suspension order shall be deemed to have been revoked and amounted to adjudication of rights and liabilities not in issue in the contempt proceedings. At all events, on the facts and circumstances, there was no disobedience, breach or neglect on the part of the Bank and its President and Secretary, to provoke the court to issue such directions, even assuming that such directions could be issued in the course of the contempt proceedings. Hence such directions of Single Judge and the direction relating to revocation of suspension are set aside. [1006-B-C-D]

H 4. Since the Enquiry Officer has completed the enquiry and submitted his report, and no action has been taken thereon in view of

the pendency of this civil appeal and the interim order dated 25.2.2002 passed earlier, the Bank is at liberty to take further action in pursuance of the Inquiry Report in accordance with law. [1006-F-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1727 of 2002.

From the Judgment and Order dated 26.2.2001 of the High Court of Calcutta in F.M.A.T. No. 4975/1998.

WITH

SLP (C) Nos. 13045-46/2003.

Kailash Vasdev, Sr. Adv., Parijat Sinha, Snehasish Mukherjee, S.C. Ghosh and Satish Vig, Advs., with him for the Appellants.

Alok Kumar, Vikas Mahajan and R.C. Kohli, Advs., for the Respondents.

The Judgment of the Court was delivered by

RAVEENDRAN, J. : This civil appeal by special leave is against the judgment dated 26.2.2001 in M.A.T. No.4075 of 1998 passed by the High Court of Calcutta.

2. The first respondent was working as Secretary of the Midnapore Peoples' Co-op. Bank Ltd. [Appellant No.1 herein, for short the 'Bank']. Appellants 2 and 3 are respectively the Chairman and Secretary-in-Charge of the first appellant bank. The first respondent was kept under suspension pending initiation of disciplinary proceedings, in pursuance of a resolution of the Board of Directors of the Bank dated 16.4.1994. The respondent filed a writ petition [C.O. No. 8789(W) of 1995] challenging the suspension, *inter alia* on the ground that charge-sheet had not been issued. On 27.6.1995, the said writ petition was disposed of recording the submission that the bank was issuing a charge-sheet. The Bank was directed to deliver a copy of the charge-sheet and pay the arrears of subsistence allowance within one week. The first respondent was directed to file his written statement within 10 days. The Enquiry Officer was directed to conclude the enquiry within a period of three months from the date of communication of the order subject to first respondent rendering full cooperation for the conduct of the disciplinary

A proceedings.

3. A charge-sheet dated 1.7.1995 was issued to the first respondent containing nine charges. The first Respondent filed his written statement on 17.7.1995. The Enquiry Officer completed the enquiry and submitted his report dated 14.9.1995 finding the first respondent guilty of all charges. A copy of the said report was furnished to the first respondent under cover of bank's letter dated 25.9.1995 giving him an opportunity to submit his representation.

C 4. At that stage, the first respondent filed another writ petition [CO No. 20008 (W) of 1995] before the High Court for quashing the enquiry proceedings alleging bias against the Enquiry Officer (Asit Mahapatra). A learned single Judge of the Calcutta High Court allowed the said writ petition by order dated 9.4.1997 in the following manner :

D (i) The enquiry proceedings and the consequential action taken by the Bank were set aside.

E (ii) The Chairman of the Bank was directed to appoint someone who is not a member of the Bank's Board of Directors as Enquiry Officer by requesting the Registrar, Cooperative Societies to nominate a suitable officer preferably of the rank of Asst. Registrar of Cooperative Societies, to be the Enquiry Officer. A time bound schedule was indicated for appointment of the Enquiry Officer.

F (iii) The Enquiry Officer to be so appointed was required to conduct enquiry de novo by observing all the principles of natural justice and the applicable rules and regulations and submit his report within four months from the date of first sitting subject to first respondent fully cooperating in the enquiry. The Disciplinary Authority was directed to take suitable action on the basis of such Report.

G (iv) The Bank was directed to pay proper subsistence allowance to the first respondent during the period of suspension.

H 5. On the Bank's request, the Assistant Registrar of Cooperative

Societies, Midnapore-I appointed Sri H. K. Maiti, Cooperative Development Officer, as Enquiry Officer on 9.5.1997. Subsequently, the Assistant Registrar by communication dated 3.10.1997 revoked the appointment of Sri H.K. Maiti as Enquiry Officer being of the view that the tenor of the order of the High Court did not permit the appointment of Sri H.K. Maiti who was only a Development Officer, as the Enquiry Officer. Thereafter, the Bank wrote to the Registrar of Cooperative Societies on 24.10.1997 to nominate an officer of the rank of an Assistant Registrar for being appointed as Enquiry Officer. In view of the delay, the Bank also approached the High Court for suitable extension of time. On 19.12.1997, the court extended the time for appointment of Enquiry Officer by two weeks. By order dated 5.1.1998, the Registrar nominated Sri S. K. Das, Assistant Registrar of Cooperative Societies, Midnapore-I, for being appointed as the Enquiry Officer. He was accordingly appointed as the Enquiry Officer. He started a fresh enquiry.

6. As the enquiry was not completed within four months from the date of first sitting, the first respondent moved a contempt application [CPAN 2233 of 1997]. The Chairman of the Bank, the Enquiry Officer (S. K. Das), the previous Enquiry Officer (Sri H. K. Maiti) and the Secretary-in-Charge of the Bank were impleaded *eo nomine* as respondents 1 to 4 in the said contempt petition. The learned Single Judge summoned the enquiry records from the Enquiry Officer. On perusing the records, he was of the view that the Enquiry Officer had not proceeded with due diligence. Therefore, the learned Single Judge made an order dated 20.11.1998, the operative portion of which is extracted below :

“1. Let a Rule be issued against the respondent no.2 Sri S. K. Das, Assistant Registrar, Cooperative Societies, Midnapore I, (charging him ?) with committing contempt of this Court (and ?) for directing him to show cause as to why he should not be punished for committing contempt. The Respondent no. 2 shall remain present personally on all the dates of hearing in this Court. He shall file his affidavit in opposition within two weeks from today.

2. Since the respondent no. 2 has by his conduct, disqualified himself to be the Enquiry Officer, I direct that he shall cease to be the Enquiry Officer. It shall be open to the respondents, however,

A in the light of the aforesaid two orders of the Court, to appoint any other person as the Enquiry Officer and to proceed with the matter once again in the light of the aforesaid directions.

B 3. The petitioner shall immediately and forthwith be reinstated in the service of the respondent Bank and shall be deemed to be in their service all through. He shall not be prevented in any manner from discharging his duties and shall be paid all arrears of salary within four weeks from today.

C Let the contempt application appear two weeks hence. The suspension order shall be immediately deemed to have been revoked."

D 7. Feeling aggrieved, respondents 1 and 4 in the contempt petition (Chairman and Secretary-in-Charge of the Bank) filed M.A.T. No.4075 of 1998. A Division Bench of the High Court dismissed the said appeal as not maintainable by the impugned judgment dated 26.2.2001, on the following two grounds :

E (i) The order of the learned Single Judge did not punish any contemnor. Therefore, the appeal could not be entertained under section 19 of the Contempt of Courts Act, 1971 which provided for appeals only against orders punishing a contemnor.

(ii) The appeal did not satisfy the requirements of clause 15 of the Letters Patent, and, therefore, could not be entertained as a Letters Patent Appeal.

F While so dismissing the appeal, the Division Bench directed the appellants therein to forthwith implement the order of the learned Single Judge. The said judgment is challenged in this civil appeal by special leave. This Court, while granting leave on 25.2.2002, stayed the operation of the order dated 26.2.2001 in M.A.T. No.4075 of 1998, as also the further proceedings in the contempt petition (CPA No.2233/1997) with a condition that the Enquiry Officer appointed in pursuance of the order dated 9.4.1997 shall complete the enquiry within six months.

H 8. In view of the observations of the Division Bench that the appeal by the Chairman and Secretary-in-Charge *eo nomine* was not maintainable,

and to avoid any technical objections, the Bank and its Board of Directors filed M.A.T. No.1102 of 2001 on 4.4.2001 challenging the order dated 20.11.1998 along with an application for condonation of delay. A Division Bench of the High Court dismissed the application for condonation of delay by merely stating that the delay of 728 days had not been properly explained, and consequently dismissed the appeal. The said order dismissing the application under section 5 of Limitation Act, 1963 and consequently, dismissing the appeal, is challenged in SLP(C) Nos.13045-46 of 2003.

9. On the aforesaid facts and the contentions urged, the following questions arise for consideration :

- (i) 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 ?
- (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) In a contempt proceeding initiated by a delinquent employee (against the Enquiry Officer as also the Chairman and Secretary in-charge of the employer-Bank), complaining of disobedience of an order directing completion of the enquiry in a time bound schedule, whether the court can direct (a) that the employer shall reinstate the employee forthwith; (b) that the employee shall not be prevented from discharging his duties in any manner; (c) that the employee shall be paid all arrears of salary; (d) that the Enquiry Officer shall cease to be the Enquiry Officer and the employer shall appoint a fresh Enquiry Officer; and (e) that the suspension shall be deemed to have been revoked ?

Re : Point No. (i) :

10. Section 19 of the Contempt of Courts Act, 1971 ['CC Act' for short] provides for appeals. Relevant portion of sub-section (1) thereof is extracted below :

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

C The scope of Section 19 has been considered by this Court in *Baradakanta Mishra v. Justice Gatikrushna Misra*, AIR (1974) SC 2255, *Purushotam Dass Goel v. Justice B.S. Dhillon*, AIR (1978) SC 1014, *Union of India v. Mario Cabral e Sa* AIR (1982) SC 691, *D.N. Taneja v. Bhajan Lal*, [1988] 3 SCC 26, *State of Maharashtra v. Mahboob S. Allibhoy*, [1996] 4 SCC 411 and *J.S. Parihar v. Ganpat Duggar*, [1996] 6 SCC 291. These cases dealt with orders refusing to initiate contempt proceedings or initiating contempt proceedings or acquitting/exonerating the contemnor or dropping the proceedings for contempt. In all these cases, it was held that an appeal was not maintainable under section 19 of CC Act as the said Section only provided for an appeal in respect of orders punishing for contempt.

E 10.1. In *Baradakanta Mishra*, a three Judge Bench of this Court held that an order declining to initiate a proceeding for contempt amounts to refusal to assume or exercise jurisdiction to punish for contempt and therefore, such a decision cannot be regarded as a decision in the exercise of its jurisdiction to punish for contempt. The question as to whether an appeal would be maintainable under section 19 where the court initiates a proceeding for contempt but after due consideration and hearing finds the alleged contemnor not guilty of contempt, or having found him guilty declines to punish him, was left open.

F 10.2. In *Purushotam Dass Goel* (supra), certain aspects of Section 19 were left open. This relevant portion is extracted below :

G The (contempt) proceeding is initiated under Section 17 by issuance of a notice. Thereafter, there may be many interlocutory orders passed in the said proceeding by the High Court. It could not be the intention of the legislature to provide for an appeal to this Court as a matter of right from each and every such order made by the High Court. The order or the decision must be such that it decides

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some bone of contention raised before the High Court affecting the right of the party aggrieved. Mere initiation of a proceeding for contempt by the issuance of the notice on the *prima facie* view that the case is a fit one for drawing up the proceeding, does not decide any question... It is neither possible, nor advisable, to make an exhaustive list of the type of orders which may be appealable to this Court under Section 19. A final order, surely, will be appealable.

If the alleged contemnor in response to the notice appears before the High Court and asks it to drop the proceeding on the ground of its being barred under Section 20 of the Act but the High Court holds that the proceeding is not barred, it may well be that an appeal would lie to this Court under Section 19 from such an order although the proceeding has remained pending in the High Court. We are not called upon to express our final opinion in regard to such an order, but we merely mention this type of order by way of an example to show that even orders made at some intermediate stage in the proceeding may be appealable under Section 19."

10.3. While *Baradakanda Mishra* and *Purushotam Das* left open the question whether an appeal under section 19 would be maintainable in certain areas, in *D. N. Taneja* (supra), a three-Judge Bench of this Court, categorically held that appeals under section 19 would lie only against the orders punishing the contemnor for contempt and not any other order passed in contempt proceedings. We extract below the relevant portions from the said decision :

"The right of appeal will be available under sub-section (1) of Section 19 only against any decision or order of a High Court passed in the exercise of its jurisdiction to punish for contempt.... When the High Court does not impose any punishment on the alleged contemnor, the High Court does not exercise its jurisdiction or power to punish for contempt. *The jurisdiction of the High Court is to punish. When no punishment is imposed by the High Court, it is difficult to say that the High Court has exercised its jurisdiction or power as conferred on it by Article 215 of the Constitution.*

It is true that in considering a question whether the alleged contemnor is guilty of contempt or not, the court hears the parties

A and considers the materials produced before it and, if necessary, examines witnesses and, thereafter, passes an order either acquitting or punishing him for contempt. When the High Court acquits the contemnor, the High Court does not exercise its jurisdiction for contempt, for such exercise will mean that the High Court should
 B 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.

C The aggrieved party under section 19(1) can only be the contemnor who has been punished for contempt of court.”

[Emphasis supplied]

D 10.4. In *Mahboob S. Allibhoy* (supra), this Court reiterated the above position thus :

E “On a plain reading Section 19 provides that an appeal shall lie as of right from any order or decision of the High Court in exercise of its jurisdiction to punish for contempt. In other words, if the High Court passes an order in exercise of its jurisdiction to punish any
 F person for contempt of court, then only an appeal shall be maintainable under sub-section (1) of Section 19 of the Act. As sub-section (1) of Section 19 provides that an appeal shall lie as of right from any order, an impression is created that an appeal has been provided under the said sub-section against any order passed by the High Court while exercising the jurisdiction of contempt proceedings. The words ‘any order’ has to be read with the expression ‘decision’ used in said sub-section which the High Court passes in exercise
 G of its jurisdiction to punish for contempt. ‘Any order’ is not independent of the expression ‘decision’. They have been put in an alternative form saying ‘order’ or ‘decision’. In either case, it must be in the nature of punishment for contempt. If the expression ‘any order’ is read independently of the “decision” then an appeal shall lie under sub-section (1) of Section 19 even against any interlocutory order passed in a proceeding for contempt by the High Court which
 H shall lead to a ridiculous result.”

10.5. *J. S. Parihar v. Ganpat Duggar* (supra) is nearest to this case, on facts. A contempt petition was filed alleging that the seniority list drawn pursuant to the order of the High Court was not in conformity with the said order. The High Court found it to be so, but held that the disobedience was not willful and, therefore, did not punish for contempt. But the High Court gave a direction to redraw the seniority list. The State Government challenged the said direction in an intra court appeal. The Division Bench held that the appeal was not maintainable under section 19 of the CC Act, but was maintainable as an intra-court appeal as the direction issued by the single Judge would be a "judgment" within the meaning of that expression in section 18 of Rajasthan High Court Ordinance. Accordingly, the Division Bench set aside the direction of the learned Single Judge to re-do the list. The said order was challenged before this Court. This Court confirmed the decision of the Division Bench and held as follows :

"Therefore, an appeal would lie under section 19 when an order in exercise of the jurisdiction of the High Court punishing the contemnor 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 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 act on 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, a fresh 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..."

A 11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarized thus :

B 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.

C 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.

D 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.

E 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.

G 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).

H The first point is answered accordingly.

Re : Point No. (ii) :

12. We will next consider as to whether an intra-court appeal under clause 15 of the Letters Patent was available against the interlocutory order dated 20.11.1998 containing the directions on merits of the dispute. Clause 15 of the Letters Patent provides for an appeal from a 'judgment' of a single Judge in exercise of original jurisdiction, to a Division Bench. In *Shah Babulal Khimji v. Jayaben D. Kania & Anr.*, AIR (1981) SC 1786, the scope of clause 15 of the Letters Patent was considered. This Court held :

"The concept of a judgment as defined by the Code of Civil Procedure seems to be rather narrow and the limitations engrafted by sub-section (2) of section 2 cannot be physically imported into the definition of the word 'judgment' as used in Cl. 15 of the Letters Patent because the Letters Patent has advisedly not used the term 'order' or 'decree' anywhere. The intention, therefore, of the givers of the Letters Patent was that the word 'judgment' should receive a much wider and more liberal interpretation than the word 'judgment' used in the Code of Civil Procedure. At the same time, it cannot be said that any order passed by a trial Judge would amount to a judgment; otherwise there will be no end to the number of orders which would be appealable under the Letters Patent. It seems to us that the word 'judgment' has undoubtedly a concept of finality in a broader and not a narrower sense. In other words, a judgment can be of three kinds — (1) A final Judgment (2) A preliminary Judgment (3) Intermediary or interlocutory judgment - Most of the interlocutory orders which contain the quality of finality are clearly specified in clauses (a) to (w) of Order 43, Rule 1 and have already been held by us to be judgments within the meaning of the Letters Patent and, therefore, appealable. There may also be interlocutory orders which are not covered by Order 43, Rule 1 but which also possess the characteristics and trappings of finality in that, the orders may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceedings. Before such an order can be a judgment the adverse effect on the party concerned must be direct and immediate rather than indirect or remote... in other words every interlocutory order cannot be regarded as a judgment but only those orders would be

A judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned.”

B “.....any discretion exercised or routine orders passed by the trial Judge in the course of the suit which may cause some inconvenience or, to some extent, prejudice one party or the other cannot be treated as a judgment, otherwise the appellate court (Division Bench) will be flooded with appeals from all kinds of orders passed by the trial Judge. the interlocutory order in order to be a judgment must contain the traits and trappings of finality either when the order decides the questions in controversy in an ancillary proceeding or

C in the suit itself or in a part of the proceedings.”

14. Clause 10 of the Letters Patent of Patna High Court (corresponding to clause 15 of Letters Patent of Calcutta High Court) was considered by this Court in *Central Mine Planning and Design Institute Ltd. v. Union of India*, [2001] 2 SCC 588. In that case, the award of an Industrial Tribunal directing reinstatement and payment of partial backwages was challenged in a writ petition before the High Court of Patna. The workman 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 workman during the pendency of the writ petition. That was challenged in a 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 I.D. Act was not a ‘judgment’. Reversing the said decision, this Court held that an interlocutory order passed in a writ proceeding directing payment under section 17B of 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. The following observations are relevant :

G “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 to determine the question whether an interlocutory order passed by one Judge of a High Court

H 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.”

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15. The above principle was reiterated in *Mithailal Dalsangar Singh v. Annabai Devram Kini*, [2003] 10 SCC 691 and *Subal Paul v. Malina Paul*, [2003] 10 SCC 361. In the latter case, this Court held :

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“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. ...Clause 15 of the Letters Patent confers a right of appeal on a litigant against any judgment passed under any Act unless the same is expressly excluded. Clause 15 may be subject to an Act but when it is not so subject to the special provision the power and jurisdiction of the High Court under clause 15 to entertain any appeal from a judgment would be effective.”

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16. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories :

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- (i) Orders which finally decide a question or issue in controversy in the main case.
- (ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case.
- (iii) Orders which finally decide a collateral issue or question which is not the subject matter of the main case.
- (iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.
- (v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and

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A obligations of the parties.

B The term 'judgment' occurring in clause 15 of the Letters Patent will take into its fold not only the judgments as defined in section 2(9) CPC and orders enumerated in Order 43 Rule 1 of CPC, but also other orders which, though
C may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Interlocutory orders which fall under categories (i) to (iii) above, are, therefore, 'judgments' for the purpose of filing appeals under the Letters Patent. On the other hand, orders falling under categories (iv) and (v) are not 'judgments' for purpose of filing appeals provided under the Letters Patent.

D 17. The next question is whether the appeal was not maintainable because, it was filed by the Chairman and the Secretary-in-Charge of the Bank *eo nomine*, and not by the "Bank" itself. The order dated 20.11.1998 against which the appeal was filed, was passed by the learned single Judge in the course of contempt proceedings. The Chairman and the Secretary-in-Charge were parties to such proceedings having been impleaded *eo nomine*
E as respondents 1 and 4 respectively. The 'Bank' as such was not a party to the contempt proceedings. The learned single Judge proceeded on the basis that the Chairman and the Secretary-in-Charge represented the 'Bank' by referring to them as 'Respondent Bank' and directing them to reinstate the complainant (first respondent herein) and to pay all salary arrears to him. If the Chairman and Secretary-in-Charge were considered as representing the
F Bank for issuing such directions, certainly they could file an appeal against such directions. The directions were issued to them and they were the persons aggrieved.

G 18. The Division Bench, therefore, committed a serious and obvious error in holding that the appeal [MAT 4075/1998] was not maintainable under clause 15 of the Letters Patent. Though the order of the learned Single Judge dated 20.11.1998, by which several directions to the Bank with reference to first Respondent were issued, is not a final 'judgment', it is an 'interlocutory judgment' which finally decides several rights and obligations of the employee *vis-à-vis* the employer and therefore, appealable under
H clause 15 of the Letters Patent.

Re : Point No. (iii) :

19. As noticed above, by order dated 9.4.1997 in C.O. No.200008(W)/1995, the first inquiry proceedings were set aside and the Chairman of the Bank was directed to appoint an outsider, preferably an officer from the Co-operative Department, as the Enquiry Officer, with a further direction that such Enquiry Officer should conduct the enquiry *de novo*, and submit the report within four months (from the date of first sitting), and a direction to the first respondent to fully co-operate in the enquiry. The time stipulated for appointment of the Enquiry Officer was extended by two weeks on 19.12.1997. The new Enquiry Officer was appointed by the Registrar of Co-operative Societies, on 5.1.1998. The inquiry was not completed within four months and that led to the initiation of the contempt proceedings by the employee (first respondent). The Chairman of the Bank, the Enquiry Officer, the previous Enquiry Officer (H. K. Maiti, whose appointment was revoked on 3.10.1997) and the Secretary-in-Charge of the Bank were shown as contemnors/respondents 1 to 4. As H.K. Maiti was not a party to the writ petition, and as he did not conduct the enquiry, there was no question of his disobeying any order. After perusing the records, the court by order dated 20.11.1998 came to the conclusion that a *prima facie* case was made out for issuing a show cause notice only against Sri S.K. Das (Enquiry Officer). This meant that no case was made out for issue of show cause notice to the Chairman and Secretary-in-Charge of the Bank. In fact, it was not the case of the first respondent that after the appointment of S.K. Das as Enquiry Officer, there was any disobedience by the Bank.

20. In the circumstances, the court ought to have proceeded to consider whether there was any wilful disobedience of the order dated 9.4.1997, on the part of S K Das and if so, punish him for contempt. As S.K. Das was nowhere in the picture when the order dated 9.4.1997 was passed in the writ petition, and as he was appointed as an independent Enquiry Officer only by an order dated 5.1.1988 and as there was a complaint about the non-cooperation by the first respondent, (delinquent employee), it is doubtful whether there was any case for even issuing a show cause notice to him. Be that as it may. We are not concerned with the issue of show cause notice to S.K. Das in this appeal. What is relevant to be noticed is that the learned Single Judge could not have made an order in the contempt proceedings, that Sri S.K. Das had, by his conduct, disqualified himself to be the Enquiry

- A Officer and that he shall cease to be the Enquiry Officer and that another Enquiry Officer shall be appointed.

- B 21. There was also no justification for the further direction by the learned Single Judge in the contempt proceedings, that too by an interlocutory order, that the complainant should immediately and forthwith be reinstated into the service of the Bank, and shall be deemed to be in the service of the Bank all through, that the employee shall not be prevented in any manner from discharging his duties and that he shall be paid all arrears of salary within four weeks, and that the suspension order shall be deemed to have been revoked. These were totally outside the scope of the proceedings for contempt and amounted to adjudication of rights and liabilities not in issue in the contempt proceedings. At all events, on the facts and circumstances, there was no disobedience, breach or neglect on the part of the Bank and its President and Secretary, to provoke the court to issue such directions, even assuming that such directions could be issued in the course of the contempt proceedings. Hence, directions (2) and (3) and the direction relating to revocation of suspension are liable to be set aside.
- D

Re : SLP (c) Nos. 13045-46/2003

- E 22. These SLPs. arise out of the order dated 3.9.2001 in MAT No. 1102/2001 filed by the Bank against the order dated 20.11.1998 in CPAN No. 2237/1997. As we have held that the appeal filed by the Chairman and Secretary on behalf of the Bank [MAT No. 4075/1998] against the said order was maintainable, these SLPs. have become infructuous.

- F Conclusion :

- G 23. During the pendency of this appeal, the Enquiry Officer has completed the enquiry and submitted his report dated 18.7.2002. No action has been taken thereon in view of the pendency of this civil appeal and the interim order dated 25.2.2002 which permitted only the completion of the enquiry. In view of this decision, there will now be no impediment for the Bank to take further action based on such Inquiry Report.

24. In view of the above, we dispose of these matters as follows :

- H (i) CA No. 1727/2002 is allowed. The order dated 26.2.2001 of the Calcutta High Court in MAT No. 4075/1998 is set aside. Directions

(2) and (3) as also the direction that “the suspension shall be immediately deemed to have been revoked” contained in the order dated 20.11.1998 of the learned Single Judge passed in CPAN No.2233/1997 (arising from C.O. No. 20008(W) of 1995) are deleted.

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(ii) SLP (C) Nos. 13045-46/2003 are dismissed as infructuous.

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(iii) The appellant-Bank is at liberty to take further action in pursuance of the Inquiry Report dated 18.7.2002, in accordance with law.

(iv) Parties to bear their respective costs.

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S.K.S.

C.A. No. 1727/02 allowed and
SLP(c) Nos. 13045-46/2003
dismissed as infructuous.