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A.F.R.

Court No. - 1

Case :- SPECIAL APPEAL DEFECTIVE No. - 40 of 2023

Appellant :- Anjali Chaurasiya

Respondent :- State Of U.P. Thru. Addl. Chief Secy. State Tax
Deptt. , Govt. Of U.P. Civil Sectr. Lko. And Others

Counsel for Appellant :- Avinash Chandra

Counsel for Respondent :- C.S.C.

Hon'ble Ramesh Sinha,J.

Hon'ble Subhash Vidyarthi,J.

**C.M. Application No. 1 of 2023 : Application for Condonation of
Delay**

- (1) This *intra Court* appeal has been filed beyond 25 days.
- (2) Heard Shri Vivek Raj Singh, learned Senior Advocate assisted by Shri Avinash Chandra, learned Counsel appearing on behalf of the appellant and Shri V.P. Nag, learned Standing Counsel appearing on behalf of the State/respondents.
- (3) Since cause shown in the affidavit filed in support of the aforesaid application is satisfactory, the application for condonation of delay is **allowed**. Delay in filing the instant appeal is condoned.

(Order on Memo of Appeal)

- (4) Feeling aggrieved and dissatisfied with the direction given in paragraph-14 of the interim order dated 28.11.2022 passed by Hon'ble Single Judge in Writ-A No. 7888 of 2022 : *Anjali Chaurasia Vs. State of U.P. and 5 others*, whereby Hon'ble

Single Judge granted liberty to the respondents/State to proceed with the disciplinary proceedings, without being influenced by the findings recorded in the order and also to post the writ petitioner at any place, considering the fact that disciplinary proceedings are pending against her, the appellant/writ petitioner has preferred the instant appeal.

(5) Placing reliance upon paragraphs 25, 27 and 36 of the Full Bench decision of this Court in **Ashutosh Shrotriya and others Vs. Vice-Chancellor, Dr. B.R. Ambedkar University and others** : AIR 2015 All 187 (FB), Shri V.P. Nag, learned Standing Counsel submits that the order under appeal passed by Hon'ble Single Judge does not fall within the meaning of 'judgment' but it is an interlocutory order, therefore, in view of the provisions of Rule 5 of Chapter VIII of the Allahabad High Court Rules, the instant *intra Court* appeal filed by the writ petitioner/appellant against the impugned interim order passed Hon'ble Single Judge while exercising the powers under Article 226 of the Constitution of India, is not maintainable.

(6) Shri Vivek Raj Singh, learned Senior Advocate, appearing on behalf of the appellant/writ petitioner, on the other hand, has placed reliance upon judgment of Division Bench of this Court in **Prof. Y.C. Simhadri, Vice-Chancellor, B.H.U. and others Vs. Deen Bandhu Pathak, Student** : 2001 (4) A.W.C. 2688 and **Hind Lamps Limited Vs. Deputy Labour Commissioner,**

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Agra and another : 2002 (3) AWC 1908 and has submitted that the order under appeal passed by Hon'ble Single Judge has trappings of finality since the Hon'ble Single Judge has granted liberty to the respondents to continue the disciplinary proceedings and also to post the writ petitioner at any place. His submission is that if the disciplinary proceedings initiated in pursuance of the order dated 21.04.2022 on the basis of anonymous complaint is completed and the appellant/writ petitioner is punished, the writ petition filed by the writ petitioner/appellant would ultimately become infructuous.

- (7) Elaborating his submission, Shri Vivek Raj Singh has contended that on 19.11.2022, the appellant, while working as Assistant Commissioner, Commercial Tax, Mobile Squad, Barabanki, intercepted a vehicle, bearing registration No. HR38AA6286 and found that there was metallic scrap of 2.5 M.T. goods, which was held undisclosed in the garb of the plastic scraps being transported through the aforesaid vehicle and as such, the appellant has exercised its quasi judicial powers and after due process of law, levied penalty of Rs.90,000/-. Thereafter, one Raj Kumar has made an anonymous complaint, alleging that metallic scrap was being transported by the said vehicle, but the appellant only levied penalty treating that to be only 2.5 MT of goods of metallic scrap rather than imposing penalty on the entire goods as metallic scrap.

- (8) Shri Singh has further submitted that except the name of the complainant, the complaint did not disclose any other particulars so as to ascertain the identity of the complainant. The respondents took cognizance on the said anonymous complaint and initiated disciplinary proceedings against the appellant and suspended the appellant vide order dated 21.04.2022, which was challenged by the appellant before this Court by means of Writ-A No. 7888 of 2022.
- (9) Shri Singh submits that Government Orders dated 09.05.1997, 01.08.1997, 19.04.2012 and 06.08.2018 specifically provide that the purpose of issuance of these orders is not only to safeguard the government officers from unnecessary harassment but also to curb the tendency of making frivolous and anonymous complaint against the government servant. His submission is that the disciplinary proceedings initiated by the respondents on the basis of the said anonymous complaint are contrary to the aforesaid Government Orders.
- (10) Shri Vivek Raj Singh has next contended that before the Hon'ble Single Judge, the appellant has placed reliance upon the decision of the Apex Court in **Zunjarrao Bhikaji Nagarkar Vs. Union of India and others** : (1999) 7 SCC 409, wherein the Apex Court held that the disciplinary proceedings cannot be initiated against an officer on information which is vague and indefinite and suspicion has no role to play in such

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matter. The Hon'ble Single Judge, while passing the impugned interim order, though noted the aforesaid dictum of the Apex Court but erred in issuing direction in paragraph-14 of the impugned interim order, granting liberty to the respondents to continue the disciplinary proceedings and to post the appellant at any place.

(11) Making the aforesaid submissions, Shri Vivek Raj Singh, the learned Senior Advocate appearing on behalf of the appellant prays that the instant special appeal is maintainable and direction contained in paragraph-14 of the impugned interim order dated 28.11.2022 is liable to be set-aside.

(12) We have examined the submissions advanced by the parties and gone through the impugned order as well as material brought on record.

(13) The core issue for consideration is whether the direction issued by Hon'ble Single Judge in paragraph-14 of the impugned order dated 28.11.2022, granting liberty to the respondents to proceed with the disciplinary proceedings and post the appellant at any place, tantamounts to a "judgment" within the meaning of Chapter VIII Rule 5 of the Rules of Court making it amenable to special appeal under Chapter VIII Rule 5 of the Rules of Court.

(14) Chapter VIII Rule 5 of the Rules of Court reads as under :

"5. Special appeal.- An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of Appellate Jurisdiction) in respect of a decree or order made by a Court subject to the Superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of Superintendence or in the exercise of criminal jurisdiction or in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award-(a) of a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution or (b) of the Government or any Officer or authority, made or purported to be made in the exercise or purported exercise of Appellate or Revisional Jurisdiction under any such Act of one Judge."

- (15) A perusal of the aforesaid provision goes to show that appeal has been provided from a judgment or order of one judge of the High Court subject to excepted categories or exclusion where special appeal will not be maintainable. Thus, everything turns upon the meaning of expression "judgment" used in Chapter VIII Rule 5 of the Rules of Court.
- (16) The issue as to what constitute a judgment so as to make it amenable to special appeal under Chapter VIII Rule 5 of the Rules of the Court is no longer *res integra*.
- (17) The issue as to when a decision of the Hon'ble Single Judge could be regarded as a 'judgment' within the meaning and scope

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of Clause 15 of the Letters Patent of Bombay High Court came up for consideration before the Apex Court in the case of **Shah Babulal Khimji Vs. Jayaben D Kania** : 1981 (4) SCC 8, wherein the Apex Court has held that it would not be appropriate to project the definition appearing in Section 2 (9) of the Code of Civil Procedure, 1908 into the meaning of that expression for the purposes of the Letters Patent and the word "judgment" for the purposes of Clause 15 of the Letters Patent should receive a wider and more liberal interpretation than the expression "judgment" in the CPC. It was further held that 'judgment' imports a concept of finality in a broader and not in a narrower sense and can be of three kinds :

- (i) a final judgment;
- (ii) a preliminary judgment; and
- (iii) an intermediary or interlocutory judgment..

The Apex Court further went to observe that there may be such interlocutory orders which are not covered by Order XLIII Rule 1 C.P.C. but also possess a characteristic of finality. It was observed as under :

"(3) Intermediary or Interlocutory judgment.- Most of the interlocutory orders which contain the quality of finality are clearly specified in clause (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

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party or decide an important aspect of the trial in an ancillary proceeding. 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."

The Apex Court further went to observe that every interlocutory order is not a judgment. Only certain categories of interlocutory orders can be regarded as judgments. In this connection, it was held as under :

"...every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned."

(emphasis supplied)

(18) In the case of **Central Mine Planning and Design Institute Ltd. Vs. Union of India:** 2001 (2) SCC 588 while laying down the test when interlocutory order would fall within the meaning of 'judgment' for the purposes of Letters Patent, the Apex Court has observed as under :

"...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."

(19) In Midnapore Peoples' Cooperative Bank Ltd Vs Chunilal

Nanda : 2006 (5) SCC 399, the Apex Court has examined following two questions : -

(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 that would be appealable under Section 19 of the Contempt of Courts Act, 1971 and if not, what would be the remedy to the person aggrieved; and

(ii) Where such a decision on merits is rendered by an interlocutory order of a learned Single Judge, whether an intra-court appeal would be maintainable under Clause 15 of the Letters Patent of the High Court of Calcutta.

The Apex Court, thus, observed that interlocutory or interim orders which are passed during the pendency of a case would fall under one or the other of the following categories :-

"(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 obligations of the parties."

(20) In Ashutosh Shrotriya and others Vs. Vice-Chancellor, Dr.

B. R. Ambedkar University and others (supra), upon which

learned Standing Counsel has placed reliance, noticing conflict in two Division Bench's judgment, following questions were referred for decision to the Full Bench :

"(1) Where a learned Single Judge while hearing a writ petition calls for counter and rejoinder affidavits, but does not pass any order on the stay application either granting or refusing a stay, will the order amount to a refusal of interim relief to the petitioner either temporarily or impliedly and a 'judgment' within the meaning of Chapter VIII Rule 5 of the Rules of the Court, 1952;

(2) Does an order which adversely affects the valuable rights of a party by a temporary or implied refusal of interim relief have the trappings of a judgment."

(21) After discussing the law on the subject, Full Bench answered the questions as under :

"44. We, accordingly, are of the view that a direction issued by the learned Single Judge in the course of the hearing of a writ petition, calling for the filing of a counter and a rejoinder or, in other words, for the completion of pleadings is a direction of a procedural nature, in aid of the ultimate progression of the case. The object and purpose of such a direction is to enable the Single Judge to have the considered benefit of a response to the petition so as to enable the Court to deal with an application of an interlocutory nature upon a fair consideration of the rival perspectives and eventually for the purpose of the disposal of the case at the final stage. A purely procedural direction of this nature would ordinarily not be amenable to the remedy of a special appeal even if the consequence of the issuance of such a direction is to cause some inconvenience or prejudice to one or other party. The Court, in order to decide a lis, either at the interlocutory or at a final stage, would generally require the benefit of a response filed by a party which would be affected by the order which is

sought and the reliefs which are claimed. Compliance with the principles of natural justice is as much a safeguard for the parties as it is for the Court of having considered the matter in all its perspectives before rendering a final decision. If a party to the proceeding seeks to press an application for ad interim relief even before a reply is filed on grounds of extreme urgency or on the ground that the situation would be irreversibly altered or that irretrievable injustice would result unless a protective order is passed, such a submission must be urged before the Single Judge. If such a submission is urged, it must be recorded and dealt with however briefly to obviate a grievance that an application for ad interim relief was pressed but not dealt with. A purely procedural direction of calling for a counter affidavit and rejoinder would not be amenable to a special appeal since it decides no rights and does not affect the vital and substantive rights of parties. However, the appellate court has the unquestioned jurisdiction to decide whether the direction is of a procedural nature against which a special appeal is not maintainable or whether the interlocutory order decides matters of moment or affects vital and valuable rights of parties and works serious injustice to the party concerned. Where the Division Bench in a special appeal is of the view that the order of the learned Single Judge is not just a procedural direction but would result in a grave detriment to substantive rights of an irreversible nature, the jurisdiction of the Court is wide enough to intervene at the behest of an aggrieved litigant. The Rules of Court are in aid of justice. We, therefore, affirm the principle that a purely processual order of the nature upon which the reference is made would not be amenable to a special appeal not being a judgement. The Division Bench will have to decide in the facts of each case, the nature of the order passed by a Single Judge while determining whether the appeal is maintainable.

44. In view of the aforesaid discussions, we answer the question of law referred to the Full Bench by holding that, an order of a learned Single Judge upon a petition under Articles 226 or

227 of the Constitution only calling for counter and rejoinder affidavits is merely a procedural order in aid of the progression of the case. An order of this nature which is purely of a procedural nature in aid of the progression of the case and to enable the Court to form a considered view after a counter affidavit and a rejoinder are filed would not be amenable to a special appeal under Chapter VIII Rule 5. Such an order does not decide anything nor does it have the trappings of finality. If a party to the proceedings seeks to press an application for ad interim relief of a protective nature even before a counter affidavit is filed, on the ground that a situation of irretrievable injustice may result or that its substantive rights would be adversely affected in the meantime, such an argument must be addressed before the Single Judge. If such an argument is urged, it should be dealt with however briefly, consistent with the stage of the case, by the Single Judge. **It is for the Division Bench hearing the special appeal to consider whether the order decides matters of moment or is of such a nature that would affect the vital and valuable rights of the parties and causes serious injustice to the concerned party."**

(emphasis supplied)

- (22) Keeping in mind the aforesaid settled law on the subject, what we find in the instant case is that a disciplinary proceeding under U.P. Government Servant (Discipline and Appeal) Rules, 1999 was initiated against the appellant by placing her under suspension by means of order dated 21.04.2022 on the pretext that the appellant, while working as Assistant Commissioner, Commercial Tax, Mobile Team Unit, Barabanki, has violated provisions of the Goods and Service Tax Act as she, by arranging wrong facts, evidences and fabricated documents at

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her own convenience as well as with the collusion of traders, declared less valuable and less taxable plastic scraps in place of more valuable and more taxable metal/non-metal items and deposited very less amount in the State treasury instead of required tax/penalty, which causes revenue loss to the Government. The appellant has challenged the aforesaid order of suspension dated 21.04.2022 by filing Writ-A No. 7888 of 2022. By means of the impugned order, Hon'ble Single Judge, after noting the submissions advanced by the learned Counsel for the parties as well as judgment of the Apex Court in **Zunjarrao Bhikaji Nagarkar (supra)** relied by the appellant/writ petitioner, stayed the operation and implementation of the order of suspension dated 21.04.2022, however, liberty has been granted to the respondents to proceed with the disciplinary proceedings.

(23) In the instant case, it transpires from the impugned order that the direction given by the Hon'ble Single Judge in paragraph-14 of the impugned order, granting liberty to the respondents to continue disciplinary proceedings, has the traits and trappings of finality and also such a nature that would cause serious injustice to the appellant. Thus, the instant special appeal is maintainable and the preliminary objection raised by the learned Standing Counsel is not sustainable under the facts and circumstances of the case.

(24) The Hon'ble Single Judge has recorded that in case where there is no infirmity in the order of penalty, weight etc., or it lacked in quantum of quality of the goods, the respondents should have adhered to the provisions of the U.P. Goods and Services Tax Act and revised the said order in accordance with Section 108 of the U.P. Goods and Service Tax Act. However, the order passed by the appellant, which has formed the basis for her suspension and initiation of disciplinary proceedings against her, has not been revised or cancelled by the respondents. Rather, a conscious decision was taken not to take any action against the order passed by the appellant. When the respondents themselves have allowed the order passed by the appellant to attain finality and they have taken a conscious decision not to challenge the order, the disciplinary proceedings initiated on the basis of a mere suspicion raised on the basis that the assessee has deposited the penalty within a very short span of time after passing of the order, appears to be no good ground for initiation of disciplinary proceedings against the appellant.

(25) The Hon'ble Single Judge has quoted the following passage from the case of **Zunjarrao Bhikaji Nagarkar Vs. Union of India and others (supra)** :-

“41. When penalty is not levied, the assessee certainly benefits. But it cannot be said that by not levying the penalty the officer has favoured the assessee or shown undue favour to him. There has to be some basis for the disciplinary authority to reach such a conclusion even prima facie. Record in the present case does not show if the disciplinary authority had any information within

its possession from where it could form an opinion that the appellant showed 'favour' to the assessee by not imposing the penalty. He may have wrongly exercised his jurisdiction. But that wrong can be corrected in appeal. That cannot always form basis for initiating disciplinary proceedings for an officer while he is acting as quasi judicial authority. It must be kept in mind that being a quasi judicial authority, he is always subject to judicial supervision in appeal.

42. Initiation of disciplinary proceedings against an officer cannot take place on an information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. Merely because penalty was not imposed and the Board in the exercise of its power directed filing of appeal against that order in the the Appellate Tribunal could not be enough to proceed against the appellant. There is no other instance to show that in similar case the appellant invariably imposed penalty.

43. If, every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi judicial authority. The entire system of administrative adjudication whereunder quasi judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings.”

(26) The disciplinary proceedings against the appellant have been initiated merely because the assessee has deposited the penalty within a very short span of time which raised a suspicion with regard to the penalty order passed by the appellant. In **Zunjarrao Bhikaji Nagarkar (Supra)**, the Hon'ble Supreme Court has categorically held that the disciplinary proceedings against an officer cannot take place on information, which is vague and indefinite and suspicion has no role to play in such matters when the department has taken a conscious decision not to challenge the order passed by the appellant and has allowed the same to attain finality. *Prima facie*, it appears at this stage that the disciplinary proceedings cannot be drawn against the appellant to punish her for having passed the aforesaid order.

(27) In view of the aforesaid discussion, we are of the view that the respondents ought not to have been given liberty to proceed with the disciplinary proceedings against the appellant and to post her anywhere considering the facts that the disciplinary proceedings are pending against her.

(28) Accordingly, the instant special appeal is **allowed**. The order dated 28.11.2022 passed by the Hon'ble Single Judge in Writ-A No. 7888 of 2022 : *Anjali Chaurasia Vs. State of U.P. and 5 others*, so far as it provides that “*Respondents are at liberty to proceed with the disciplinary proceedings, without being influenced by the findings recorded in this order. The*

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respondents are also at liberty to post the petitioner at any place, considering the fact that disciplinary proceedings are pending against her” is hereby set-aside.

(29) It is clarified that while deciding the case on merits, Hon’ble Single Judge shall not be guided or influence by any observations made hereinabove, which have been made only for the purposes of disposal of the instant appeal.

(Subhash Vidyarthi, J.) (Ramesh Sinha, J.)

Order Date :- 1.2.2023

Ajit/-