(2013) 12 AP CK 0008

Andhra Pradesh High Court

Case No: W.A. No. 136 of 2014

Andhra Pradesh Public Service Commission		APPELLANT
	Vs	
K. Suresh		RESPONDENT

Date of Decision: Dec. 16, 2013

Citation: (2014) 3 ALT 73

Final Decision: Dismissed

Judgement

G. Chandraiah, J.
This writ appeal is directed against the interim order dated 02-08-2013 in W.P. No. 22841 of 2013 passed by learned Single Judge of this Court. W.P. No. 22841 of 2013 is filed seeking to declare:

(1) the action of the 5th respondent in that writ petition i.e. the appellant herein in not recognizing the degree course offered by the Jawaharlal Nehru Technological University, Hyderabad through School of Continuation and Distance Education, as illegal and arbitrary (2) declare that the graduation in Engineering degree acquired from Jawaharlal Nehru Technological University, Hyderabad through School of Continuation and Distance Education is valid for the purpose of employment and recruitment made through A.P. Public Service Commission.

2. This Court, while ordering Notice before Admission in W.P. Nos. 22841 and 22834 of 2013, made the following common order:

Whether the degrees obtained by the petitioners from the 1st respondent-University through distance education, which have been approved by the Distant Education Council, are valid for the purpose of employment requires consideration. Prima facie, in the light of Section 22 of the University Grants Commission Act, 1956 read with Serial No. 37 of Appendix-1 of the Act and the judgment of the Apex Court in Bharathidasan University and Another Vs. All India Council for Technical Education and Others, , which has held that Universities are out of the purview of All India Council for Technical Education Act,

1987 (AICTE), I deem it appropriate to direct the 5th respondent-Andhra Pradesh Public Service Commission, Hyderabad to consider the cases of the petitioners for appointment without disqualifying them on the ground that the degrees obtained by them were through correspondence-cum-contact made pending further orders.

Post after four weeks.

3. Being aggrieved by the interim order passed in the writ petition, the present Writ Appeal is filed.

4. The main contention of the learned Standing Counsel for Andhra Pradesh Public Service Commission appearing for the appellant is that in view of Section 15(1)(a) of the A.P. Administrative Tribunals Act, 1985, the writ petition itself is not maintainable.

5. The learned counsel for respondent Nos. 1 to 6-writ petitioners has contended that as the order passed by the learned Single Judge is in the nature of an interim order and has not attained its finality, the appeal is not maintainable under Clause 15 of the Letters Patent. In support of his contention he placed reliance on the decision reported in Midnapore Peoples" Co-op. Bank Ltd. and Others Vs. Chunilal Nanda and Others, .

6. Heard the learned counsel for both the parties and perused the material on record.

7. As the counsel for respondent Nos. 1 to 6 raised the ground of maintainability of writ appeal relying on the judgment of the Apex Court in Midnapore"s case, the relevant portion of the Apex Court judgment at paragraph Nos. 12, 15 and 16 are extracted as under for better appreciation:

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 Vs. Jayaben D. Kania and Another, the scope of clause 15 of the Letters Patent was considered. This Court held:

The concept of a judgment as defined by the CPC 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 clause 15 of the Letters Patent because the Letters Patent has advisedly not used the terms "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 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. (SCC pp. 55-56, para 113)

.... In other words 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. (SCC p. 57, para 115)

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.... 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 to 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 in the suit itself or in a part of the proceedings. (SCC p. 58, para 119)

15. Interim orders/interlocutory orders passed during the pendency of a case, 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.

16. 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 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 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 the purpose of filing appeals provided under the Letters Patent.

(Emphasis added)

8. Admittedly, in the writ petition no counter affidavit has been filed by the 5th respondent, who is the appellant herein, but straightaway it has chosen to file the Writ Appeal before this Court. More so, it is brought to the notice of this Court that respondent Nos. 1 to 6 herein have filed C.C. No. 1615 of 2013 against the appellant for non-compliance of the interlocutory order under appeal.

9. Even though the learned Standing Counsel has strenuously contended that in view of the provisions u/s 15(1)(a) of the A.P. Administrative Tribunals Act, the writ petition itself is not maintainable for the reason that the Administrative Tribunal for a State (except the Supreme Court) shall exercise, all the jurisdiction, powers and authority in relation to recruitment, and matters concerning recruitment, to any civil service of the State, but by virtue of the principle laid down by the Apex Court in the above referred judgment regarding the maintainability of the appeal against interlocutory order, it is clear that the writ appeal itself is not maintainable inasmuch as the interim order/interlocutory order passed by the learned Single Judge is a routine order which has not attained its finality but to facilitate the progress of the case till its culmination in the final judgment. More so, the view expressed by the learned Single Judge in the order may cause some inconvenience or some prejudice to a party, be it the Government or the individual, but the rights and obligations of the parties are not finally determined. Therefore, it can be safely concluded that the interim order passed by the learned Single Judge falls under categories (iv) and (v) of paragraph 15 of the above referred judgment which does not affect the rights and obligations of any of the parties since the learned Single Judge expressed only a prima facie view in the matter which requires further consideration. The proper course for the appellant is to make its submissions and state the facts and law before the learned Single Judge and the merits of the respective contentions need to be gone into during the course of hearing the writ petition. Therefore, the interim order falling under categories (iv) and (v) is not a "judgment" for the purpose of filing appeal as provided under the Letters Patent.

10. Under these circumstances, we are of the considered view that the writ appeal is not maintainable since it is only an Appeal against the interim order particularly which was passed at the admission stage pending further orders.

11. Hence, the Writ Appeal is dismissed. However, any of the observations made in this judgment will not come in the way of the appellant, who is the 5th respondent in W.P. No. 22841 of 2013, to take further action in the matter. No order as to costs. As a sequel to the dismissal of the Writ Appeal, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.