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MAT 1464 of 2023

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IA No.: CAN 1 of 2023 [Sec. 5]

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IA No.: CAN 2 of 2023 [Stay]

Subhajit Bayen

– *Versus* –

Union of India & Others

Mr. Uttam Kumar Bhattacharyya

... for the Appellant.

Mr. Baidurya Ghosal

... for the Respondent nos.2-5.

The present appeal has been preferred challenging an order dated 10th August, 2022 passed by the learned Single Judge in a contempt application, being WPCRC 112 of 2022 arising out of a writ petition being WPA 3116 of 2021.

As we have invited Mr. Bhattacharyya, learned advocate appearing for the appellant to advance his arguments on merits of the matter, the delay in filing the present appeal is condoned and the application for condonation of delay, being CAN 1 of 2023 is disposed of.

Records reveal that the appellant's father died on 28th June, 2017 when he was working in a Group – 'D' post in Bangiya Gramin Vikash Bank (in short, the said bank). To tide over the financial distress due to the loss of the sole bread earner, the appellant submitted a representation to the said bank on 8th April, 2019 for consideration of his claim towards compassionate appointment. The appellant's

representation was rejected by the said bank on 16th November, 2019. Challenging the said decision the appellant earlier filed a writ petition, being WPA 3116 of 2021 which was allowed by an order dated 15th March, 2021 and the order impugned in the writ petition dated 16th November, 2019 was set aside. Challenging the said order, the said bank preferred an appeal, being FMA 122 of 2021 and the Hon'ble Appeal Court affirmed the order of the Hon'ble Single Bench with an observation that *'the directions passed by the Hon'ble Single Bench as affirmed by this Court, stand restricted to the facts of this case and cannot be treated to be in the nature of a general precedent.'* During pendency of the appeal, the appellant preferred a contempt application alleging violation of the order dated 15th March, 2021. After disposal of the appeal on 13th April, 2022, the bank passed the final order on 20th June, 2022. Subsequent thereto, the contempt application was taken up for hearing and by an order dated 10th August, 2022 the same was disposed of observing *inter alia* that *'the petitioner has been given a fair consideration for compassionate employment and the bank has found that he is not entitled to the same. The decision of the bank is sustainable in law'*. Thereafter, the appellant preferred an application for modification of the order dated 10th August, 2022 and

the same was disposed of without any orders on 9th June, 2023.

Mr. Bhattacharyya, learned advocate appearing for the appellant submits that while deciding the contempt application, the learned Single Judge ought not to have considered the merits of the order dated 20th June, 2022 passed by the General Manager (HR) of the said bank and as such, the impugned order deprives him of the opportunity to avail the remedy to test the sustainability of the order dated 20th June, 2022 before the appropriate forum.

Per contra, Mr. Ghosal, learned advocate appearing for the respondent nos.2-5 submits that the reason as to why the learned Single Judge decided the petitioner's claim on merits would be explicit from the order dated 10th August, 2022 itself wherein the Court has observed *inter alia* that '*however, this Court in consideration of the fact that the petitioner is seeking employment on compassionate grounds and may not have sufficient means to test the propriety of the decision taken by the bank in a fresh litigation and in the interest of both the parties, the propriety of the decision of the bank is considered and decided upon hereunder.*'

Mr. Ghosal further submits that having submitted to the jurisdiction of the learned Single Judge and having not raised any objection against the

decision on merits of the order dated 20th June, 2022, the appellant cannot turn back and challenge the order dated 10th August, 2022.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

That contempt is a matter between the Court and the contemnor. In such application, the scope of adjudication is limited to the issue as to whether the alleged contemnors had deliberately violated the order passed by the Court. Once an order is passed by a party to a proceeding on the basis of the direction issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum [*See the judgment delivered by the Hon'ble Supreme Court in the case of J.S. Parihar vs. Ganpat Duggar & Ors.*]. The order dated 20th June, 2022 passed by the General Manager (HR) of the said bank gives rise to a fresh cause of action and as such, in our opinion, the learned Single Judge ought not to have considered the merits of the order dated 20th June, 2022 in the contempt application.

In view thereof, the part of the order dated 10th August, 2022 by which the merits of the order dated 20th June, 2022 passed by the General Manager (HR) of the said bank has been decided by the learned Single Judge, is set aside. The other part of the order

disposing of the contempt application is not interfered with.

The appellant would be at liberty to challenge the order dated 20th June, 2022 before the appropriate forum, in accordance with law.

With the above observations and directions the appeal and the connected application, being CAN 2 of 2023 are disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(V. M. Velumani, J.)

(Tapabrata Chakraborty, J.)