A SHAHU SHIKSHAN PRASARAK MANDAL AND ANR.

v.

LATA P. KORE & ORS.

(Civil appeal No. 5801 of 2008)

SEPTEMBER 23, 2008

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[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM SHARMA, JJ.]

Letters Patent Appeal – Appeal against dismissal of writ C *petition – Maintainability of – Held: Though petition filed under Article 226, from the grounds raised in the writ petition it is clear that petition is not only under Article 227 but also under Article 226 – The petition justified the appellant filing application both under Articles 226 and 227 – However, High Court while dismissing LPA did not consider the issues as also the* D *applicable provisions – Thus, matter remitted to High Court – Constitution of India, 1950 – Article 226 and 227.*

Aggrieved, appellant filed writ petition challenging the order of the tribunal. The Single Judge of High Court E **dismissed the petition on the ground that the same was not maintainable. Appellant then filed Letters Patent Appeal which was also dismissed. Hence the present appeal.**

Allowing the appeal and remitting the matter, the F **Court**

HELD: 1.1 In the instant case, apart from the fact that the petition is labeled under Article 226 of the Constitution of India, it is clear that the grounds raised in the peti- G **tion suggest that the petition is not only under Article 227 but also under Article 226 of the Constitution. It is to be seen that in the grounds raised against the order of the tribunal, it is specifically suggested that the order passed by the tribunal was arbitrary, unreasonable, unjust and**

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perverse. After reading the writ petition it is clear that the contentions raised and the facts stated in the petition justify the appellant to file an application both under Articles 226 and 227 of the Constitution of India. [Para 12] [811B-E] A

1.2 The effect of the provisions and the decisions referred to does not appear to have been considered by the High Court while holding that the Letters Patent Appeal was not maintainable. Therefore, the matter is remitted to the High Court to consider the issues, the applicable provisions and the decisions afresh. [Paras 13 and 14] [811-E-F] B C

Umaji Keshao Meshram v. Radhikabai, Widow of Anandrao Banapurkar and Anr. **1986 Supp. SCC 401;** *Sushilabai Laxminarayan Mudliyar and Ors. v. Nihalchand Waghajibhai Shaha and Ors.* **1993 Supp. (1) SCC 11;** *Mavji C. Lakum v. Central Bank of India* **2008(7) SCALE 32 – referred to.** D

Case Law Reference

1986 Supp. SCC 401	**Referred to.**	**Para 6, 10**
1993 Supp. (1) SCC 11	**Referred to.**	**Para 6, 10**
2008(7) SCALE 32	**Referred to.**	**Para 10**

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5801 of 2008

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From the final Judgment and Order dated 11/12/2003 and 13/1/2005 of the High Court of Judicature at Bombay in W.P. No. 6195/2003 and L.P.A. (Stamp) No. 10381/2004 respectively

Siddharth Bhatnagar, Pawan Kumar Bansal and T. Mahipal for the Appellants. G

Makarand D. Adkar, Vijay Kumar, Vishwajit Singh, Arun Pedneker, Sanjay V. Kharde, Asha G. Nair and V.N. Raghupathy for the Respondents.

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A The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order of a Division Bench of the Bombay High Court dismissing the Letters Patent B Appeal filed by the appellant. Writ Petition filed by the appellant was dismissed on the ground that the same was not maintainable.

3. Learned counsel for the appellant submitted that the impugned order of the Division Bench is clearly unsustainable. C Reference is made to Rules 3 & 18 of the Bombay High Court Appellate Side Rules, 1960 (in short the 'Rules') with the amended Letters Patent of the High Court of Bombay, 1865 (in short the 'Letters Patent'). It is submitted that the Division Bench did not take note of what has been stated by several judgments D of this Court.

4. Learned counsel for the respondent on the other hand supported the impugned judgment of the High Court.

5. Rules 3, 18(41) and the proviso 18(44) read as follows:

E "3. *Appeal to be placed before Division Bench for admission* – Appeals under Clause 15 of the Letters Patent shall be placed for admission before a Division Bench.

18. Single Judge's powers to finally dispose of applica- F tions under Article 226 or 227 – Notwithstanding anything contained in Rule 1,4 and 17 of this Chapter applications under Article 226 or under Article 227 of the Constitution for applications styled as applications under Article 227 of the Constitution read with Article 226 of the Constitution arising out of :

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(41) The order passed under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977.

H (44) Orders passed by the different Committees

constituted by the State Government for verification of the claims of Scheduled Cast and Scheduled Tribe candidates, may be heard and finally disposed or by a single judge to be appointed in this behalf by the Chief Justice.

Provided when the matter in dispute is or relates to the challenge to the validity of any statute or any rules or regulations made thereunder, such applications shall be heard and disposed off by a Division Bench to be appointed by the Chief Justice."

6. In *Umaji Keshao Meshram v. Radhikabai* [1986 Supp. SCC 401], *Sushilabai Laxminarayan Mudliyar & Ors. v. Nihalchand Waghajibhai Shaha & Ors.* [1993 Supp. (1) SCC 11] and *Mavji C. Lakum v. Central Bank of India* [2008(7) SCALE 32] similar questions were considered.

7. In Sushilabai's case (supra) it was noted at paragraph 4 as follows:

"The Full Bench of the Bombay High Court wrongly understood the above *Umaji Kesho Meshram case (supra)*. In *Umaji case (supra)* it was clearly held that where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution of India and the party chooses to file his application under both these articles in fairness of justice to party and in order not to deprive him of valuable right of appeal the Court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the Court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226. Rule 18 of the Bombay High Court Appellate Side Rules read with clause 15 of the Letters Patent provides for appeal to the Division Bench of the High Court from a judgment of the learned Single Judge

A passed on a writ petition under Article 226 of the Constitution. In the present case the Division Bench was clearly wrong in holding that the appeal was not maintainable against the order of the learned Single Judge. In these circumstances we set aside the impugned B order of the Division Bench and direct that the Letters Patent Appeal filed against the judgment of the learned Single Judge would now be heard and decided on merits. In view of the fact that it is an old matter we request the High Court to decide the Letters Patent Appeal within six C months. It is further directed that till the final disposal of the Letters Patent Appeal the operation of the order of the Single Judge shall remain stayed. The appeals are allowed in part with no order as to costs."

8. In *Umaji's* case (supra) at paragraph107 it was noted D as follows:

"Petitions are at times filed both under Articles 226 and 227 of the Constitution. The case of *Hari Vishnu Kamath* v. *Syed Ahmad Ishaque[AIR 1955 SC 233]* before this Court was of such a type. Rule 18 provides that where E such petitions are filed against orders of the Tribunals or authorities specified in Rule 18 of Chapter XVII of the Appellate Side Rules or against decrees or orders of courts specified in that rule, they shall be heard and finally disposed of by a Single Judge. The question is whether F an appeal would lie from the decision of the Single Judge in such a case. In our opinion, where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution, and the party chooses to file his application under both these articles, in fairness and justice G to such party and in order not to deprive him of the valuable right of appeal the court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the court gives ancillary directions which may pertain to Article 227, this ought not to be held to H deprive a party of the right of appeal under clause 15 of

the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226. Such was the view taken by the Allahabad High Court in *Aidal Singh* v. *Karan Singh* [AIR 1957 All 414] and by the Punjab High Court in *Raj Kishan Jain* v. *Tulsi Dass* [AIR 1959 Punj 291] and *Barham Dutt* v. *Peoples' Cooperative Transport Society Ltd., New Delhi [AIR 1961 Punj 24]* and we are in agreement with it."

9. In *Mavji's* case (supra) this Court inter alia noted as follows:

"12. At the outset we shall consider the contention as to whether the Letters Patent Appeal was maintainable against the order of the learned Single Judge. It was contended by the counsel for the respondent-bank that the appeal was not maintainable since the learned Single Judge had exercised his jurisdiction under Article 227 of the Constitution of India and, therefore, there was no question of Letters Patent Appeal being maintainable against the same. We, therefore, went through the Special Civil Application, a copy of which is the part of the paperbook. The said writ petition clearly mentions on the very first page that the writ petition was being filed under Article 226 of the Constitution of India. Again para 10 of the writ petition mentions as under:

> "Being aggrieved by the order passed by the Industrial Tribunal, the petitioner begs to approach this Hon'ble court under Article 226 of the Constitution of India challenging the award on the following amongst other grounds...."

Ground (iv) on the same page says:

"That the order passed by the Tribunal is arbitrary, unreasonable, unjust and perverse."

Even prayer clause in para 15 is as under:

A "That by appropriate writ, direction and order, the impugned order of Industrial Tribunal (Central) Rajkot at Annexure B be quashed and/or set aside."

10. All this suggests that the writ petition was not only under Article 227 of the Constitution of India but there is a specific B mention of Article 226. In a reported decision of this Court in *Sushilabai Laxminarayan Mudliyar & Ors.* V. *Nihalchand Waghajibhai Shaha and others* [(1993) Supp. 1 SCC 11] a similar question fell for consideration. In para 4 of the said judgment this Court observed:

C "The Full Bench of the Bombay High Court wrongly understood the above *Umaji Kesho Meshram case*. In *Umaji case* it was clearly held that where the facts justify a party in filing an application either under Article 226 or D 227 of the Constitution of India and the party chooses to file his application under both these articles in fairness of justice to party and in order not to deprive him of valuable right of appeal the court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the court gives ancillary directions which E may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under Clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226. Rule 18 of the Bombay High Court Appellate Side Rules read F with clause 15 of the Letters Patent provides for appeal to the Division Bench of the High Court from a judgment of the learned Single Judge passed on a writ petition under Article 226 of the Constitution. In the present case the Division Bench was clearly wrong in holding that the appeal G was not maintainable against the order of the learned Single Judge. In these circumstances we set aside the impugned order of the Division Bench and direct that the Letters Patent Appeal filed against the judgment of the learned Single Judge would not be heard and decided on H merits...."

These observations were made by this Court after taking A into consideration the observations made in *Umaji Keshao Meshram & Ors. V. Radhikabai, Widow of Anandrao Banapurkar & Anr.* [1986 (Supp) SCC 401].

12. In the present matter apart from the fact that the petition is labeled under Article 226 of the Constitution of India, it is B clear that the grounds raised in the petition suggest that the petition is not only under Article 227 but also under Article 226 of the Constitution. It is to be seen that in the grounds raised against the order of the Tribunal, it is specifically suggested that the order passed by the Tribunal was arbitrary, unreasonable, C unjust and perverse. The further complaint made against the Tribunal's order pertain to failure on the part of the Tribunal to appreciate certain facts and eventualities thereby complaining non application of mind on the part of the Tribunal. Complaint has also been made against the approach of the Tribunal and it D is suggested that the said approach was perverse. After reading the writ petition we are convinced that the contentions raised and the facts stated in the petition justify the respondent herein to file an application both under Articles 226 and 227 of the Constitution of India." E

13. The effect of the provisions and the decisions referred to above does not appear to have been considered by the High Court while holding that the Letters Patent Appeal was not maintainable.

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14. We, therefore, remit the matter to the High Court to consider the issues, the applicable provisions and the decisions afresh.

15. We make it clear that we have not expressed any opinion on merits as regard the maintainability. Since the matter is pending since long, we request the High Court to dispose of G the matter as early as practicable preferably by the end of 2008.

16. Appeal is allowed to the aforesaid extent. Costs made easy.

N.J. Appeal allowed. H