Court No. - 39

Case :- SPECIAL APPEAL DEFECTIVE No. - 600 of 2023

Appellant :- M. Devaraj
Respondent :- Rakesh Kumar Sharma And 5 Others
Counsel for Appellant :- Bipin Bihari Pandey
Counsel for Respondent :- Manu Mishra

Hon'ble Saumitra Dayal Singh,J.
Hon'ble Rajendra Kumar-IV,J.

1. Heard Sri. Manish Goyal, learned Additional Advocate General, assisted by Ms. Akansha Sharma, learned Standing Counsel for the respondent-appellant, Shri. Abhishek Srivastava, learned counsel for the U.P. Power Corporation Limited and Sri Manu Mishra, learned counsel for petitioner-respondent.

2. This intra-court appeal has been filed by Sri M. Devraj, Principal Secretary, Department of Technical Education, Government of U.P., Lucknow, being aggrieved by the order of learned single judge dated 7.8.2023, passed in Writ-A No. 12847 of 2023 (Rakesh Kumar Sharma v. U.P. Power Corporation Limited and 4 Others).

3. By that order, the learned single judge has required the present respondent-appellant (hereinafter referred to as the Revising Authority) to explain the circumstances in which he failed to notice the "gaping flaw in the proceedings before the Inquiry Officer" as described by the learned single judge. For ready reference, the entire order dated 7.8.2023, passed by the learned single judge is quoted below:

> *"Let M. Devraj, former Chairman Uttar Pradesh Power Corporation Limited, Shakti Bhawan, 14-Ashok Marg, Lucknow be impleaded as a party respondent during the course of the day.*
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> *M. Devraj, the then Chairman Uttar Pradesh Power Corporation Limited, Lucknow in an order passed by the Disciplinary Authority whereagainst an appeal was pending, intervened and exercised his*

revisional jurisdiction under Regulation 13 of the Uttar Pradesh Power Corporation Limited Employees (Discipline and Appeal) Regulations, 2020 and enhanced the punishment awarded to the petitioner to one of dismissal from service. It appears upon a reading of the inquiry report submitted in the matter that though the charges against the petitioner were very serious, and, if proved, would in all likelihood lead to the imposition of a major penalty, yet the establishment did not examine any witness or lead oral evidence to prove the charges.

The Chairman, who passed the impugned order pending the appeal seeking to exercise his revisional orders prima facie seems to have scant knowledge of the law and apparently is not legally trained. He did not notice prima facie this flaw in proceedings of the inquiry, which goes to the root of the matter and proceeded to enhance the punishment after a show cause notice on the basis of an inquiry report where the establishment had to establish the charges by leading oral evidence.

Let M. Devraj, former Chairman Uttar Pradesh Power Corporation Limited, wherever he is posted currently, explain the circumstances in which he failed to notice the aforesaid gaping flaw in the proceedings before the Inquiry Officer while passing the impugned order.

Let the incumbent Chairman, Uttar Pradesh Power Corporation Limited, Shakti Bhawan, 14-Ashok Marg, Lucknow file his affidavit indicating his stand in the matter on or before 18.08.2023.

The incumbent Chairman, Uttar Pradesh Power Corporation Limited, Shakti Bhawan, 14-Ashok Marg, Lucknow shall cause notice of this petition and the order made today to be served upon M. Devraj, former Chairman, Uttar Pradesh Power Corporation Limited, Shakti Bhawan, 14-Ashok Marg, Lucknow, wherever he is currently posted.

Lay this petition as fresh on 18.08.2023.

Let this order be communicated to M. Devraj, former Chairman Uttar Pradesh Power Corporation Limited thorugh the Chairman, Uttar Pradesh Power Corporation Limited, Shakti Bhawan, 14-Ashok Marg, Lucknow and to the Chairman, Uttar Pradesh Power Corporation Limited, Shakti Bhawan, 14-Ashok Marg, Lucknow by the Registrar (Compliance) within 24 hours."

4. The learned Additional Advocate General states – the challenge raised in the writ petition was to an order passed by the Revising Authority, as he appellant-respondent then was i.e., Chairman of the U.P. Power Corporation Limited (for short "UPPCL"), arising from an internal disciplinary proceeding of UPPCL. By the original minor penalty order dated 4.9.2021, censure entry had been awarded to the original petitioner; his 5 increments were withheld with cumulative

effect and, another stipulation was made, to not give any sensitive posting to the original petitioner.

5. In the context of that punishment awarded, while exercising power vested under Rule 13(c) of the Uttar Pradesh Power Corporation Limited Employees (Discipline and Appeal) Regulations 2020, Sri M. Devraj, in his capacity as the Chairman of UPPCL had sought to revise and thus enhance the penalty, *suo motu*.

6. At that stage, a notice was issued by Sri. M. Devraj, in his capacity as the Revisional Authority, to enhance the penalty awarded to the original petitioner. At that stage the latter had filed **Writ-A No. 9330 of 2023, Rajesh Kumar Sharma v. U.P. Power Corporation Limited** to challenge the show cause notice. During the pendency of that writ petition, the final order came to be passed by Sri M. Devraj, enhancing the punishment awarded to the respondent-petitioner. This led to the second writ petition being filed by the respondent-petitioner being **Writ- A No. 12847 of 2023**. It has given rise to the present appeal. In the second writ petition, the petitioner has sought the following relief:

> *"i. Issue a writ order or a direction in the nature of certiorari quashing the impugned order dated 7.6.2023 passed by the respondent no.2 dismissing the petitioner from service in exercise of revisional power under Rule 13(c) of the Uttar Pradesh Power Corporation Limited Employees (Discipline and Appeal) Regulations 2020.*
>
> *ii.. Issue a writ order or a direction in the nature of mandamus directing the respondent no.3 to decide the appeal 8.10.2021 preferred by the petitioner against original order of punishment dated 4.9.2021 within stipulated time period as may be fixed by this Hon'ble Court."*

7. At the fresh stage itself, before inviting any counter affidavit, the learned single judge, has passed the order impugned in the present proceedings.

8. Learned Additional Advocate General would submit, in the first place, there are no pleadings made in the writ petition, as may be

contain any specific allegation made against Sri. M. Devraj. In any case, there is no allegation of personal *mala fide*, made against him. The impugned order (in the writ petition) was passed by Sri M. Devraj in his capacity as the Revising Authority/Chairman of the UPPCL. He was posted in that capacity on deputation by the State Government. He has since been repatriated to his parent cadre.

9. Thus, the learned single judge has needlessly called for a personal explanation from Sri M. Devraj. Referring to the order impugned in the present appeal, it has been submitted, disparaging remarks have been made as may lead to collateral consequences, though not intended by the Court. In any case, such conclusions have been drawn wholly *ex parte* and prematurely. The order impugned in the writ petition is to be defended by the UPPCL, which is yet to file its counter affidavit. In fact, that counter affidavit has not yet been called.

10. It has been next submitted, Sri M. Devraj has been impleaded, not at the instance of the petitioner, but on the own opinion of the Court. At the same time, by the same order, the learned single judge has made adverse observations against Sri M. Devraj requiring him to submit his explanation. In any case, the impleadment of Sri M. Devraj has no nexus or bearing to the dispute brought before the court. In support of his contention, Sri Goyal, has referred to the three decisions of the Supreme Court in the **Niranjan Patnaik v. Sashibhusan Kar and another, reported in (1986) 2 SCC 569, Manish Dixit and Others v. State of Rajasthan, reported in (2001) 1 SCC 596 and Neeraj Garg v. Sarita Rani and others, reported in 2021 SCC OnLine SC 527.**

11. On the other hand, Sri Abhishek Srivastava, learned counsel appearing for the UPPCL has adopted the submissions advanced by Sri Goyal. Yet, he would also submit, the present Chairman of the

UPPCL, whose explanation has been similarly called by the learned single judge, by means of the same order, would be filing his affidavit of compliance, before the learned single judge.

12. The matter has been taken up as a fresh case today, upon urgency pressed by the Learned Additional Advocate General, yesterday. The matter has been heard sufficiently, today. Yet, it has not been indicated to the Court, till now, that the UPPCL seeks to rectify its mistakes, if any, in the order dated 07.06.2023.

13. Sri Manu Mishra, counsel for respondent no.1 has submitted that the present being an intra-court appeal, it is not maintainable in as much as the order impugned is a simple interlocutory order. The observations made in that order are only tentative, based on a *prima facie* opinion formed by the Court. No final decision has yet been made. Only an explanation has been called, to explain the circumstances in which the revisional authority may have itself enhanced the penalty, though at the oral enquiry no evidence was led to prove the guilt of the original petitioner.

14. Having heard the learned counsel for the parties and perused the record, in the first place the intra court appeal is a proceeding arising under Chapter IX Rule 5 of the Rules of the Court. It is settled law; such jurisdiction normally arises in the context of a final order. In **Ashutosh Shrotriya and Ors Vs Vice-Chancellor, Dr. B.R. Ambedkar University and others [2015(8) ADJ 248 (FB)]**, the following questions came to be referred to a full bench of this Court:

> *"(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."

15. Upon due consideration of the entire gamut of the law, a full bench of this Court, culled out the following essential principles from an earlier decision of the Supreme Court in **Shah Babulal Khimji Vs Jayaben D Kania (1981) 4 SCC 8**:

"20. The first principle which has been laid down by the Supreme Court is that though the Letters Patent did not make an attempt to define what is meant by the expression 'judgment', since the Letters Patent was a special law, it was not appropriate to project the definition of the expression 'judgment' appearing in Section 2(9) of the Code of Civil Procedure, 19089 into the meaning of that expression for the purposes of the Letters Patent. Under Section 2 (9), the expression 'judgment' is defined to mean 'a statement given by the Judge on the grounds of a decree or order.' In the view of the Supreme Court, the concept of a 'judgment' as defined in the CPC was rather narrow and the limitations which are contained in sub-section (9) of Section 2 while defining the expression 'decree' cannot be physically imported into the definition of the expression 'judgment' for the purposes of Clause 15 of the Letters Patent which has advisedly not used the term 'order' or 'decree'. Consequently, it was held that the word 'judgment' for the purposes of Clause 15 should receive a wider and more liberal interpretation than the expression 'judgment' in the CPC.

21. The second important principle which emerges from the judgment in Shah Babulal Khimji is that a 'judgment' imports a concept of finality in a broader and not in a narrower sense. A judgment can be of three kinds:

(i) a final judgment;

(ii) a preliminary judgment; and

(iii) an intermediary or interlocutory judgment.

22. The reference in the present case, essentially turns on what categories of interlocutory judgments would fall within the ambit of the expression 'judgment' for the purpose of Chapter VIII Rule 5. Interlocutory orders governed by Clauses (a) to (w) of Order XLIII Rule 1 CPC contain a quality of finality and would hence be judgments which would be appealable under the Letters Patent. But, in addition, there may be interlocutory orders which are not covered by Order XLIII Rule 1 but may also possess a characteristic of finality. Dealing with this aspect, the Supreme Court observed that :

> *"(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 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."

23. The third principle which was laid down in Shah Babulal Khimji is that in the course of a trial, the trial Judge may pass a number of orders of a procedural or routine nature. Some of these orders may even cause a degree of inconvenience to one party or the other, such as an order refusing an adjournment or an order refusing to summon a witness or document. Such orders, the Supreme Court held, are purely interlocutory and are not judgments because it would always be open to a party aggrieved to make a grievance against the order passed, in an appeal arising out of the final judgment of the trial Judge.

24. The fourth principle which emerges from the judgment of the Supreme Court in Shah Babulal Khimji is that every 'interlocutory order' is not a 'judgment'. Only certain categories of interlocutory orders can be regarded as judgments:

"...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) The Supreme Court ruled that an interlocutory order to be a judgment must contain traits and trappings of finality, either when it decides the questions in controversy in an ancillary proceeding or in the suit itself or in a part of the proceedings."

16. Thereafter, in the context of the reference made to it, the full bench formulated the following valuable governing principles:

"We now formulate the governing principles:

(i) The expression 'judgment' was advisedly not defined in the Letters Patents of various High Courts which conferred a right of appeal against a judgment of a Single Judge to a Division Bench of that Court;

(ii) The expression 'judgment' is not to be construed in the narrower sense in which the expression 'judgment', 'decree' or 'order' is defined in the CPC, but must receive a broad and liberal construction;

(iii) Every order passed by a trial Judge on the Original side of a High Court exercising original jurisdiction or, for that matter, by a learned Single Judge exercising the writ jurisdiction, would not amount to a judgment. If every order were construed to be a judgment, that would result in opening a flood of appeals and there would be no end to the number of orders which could be appealable under the Letters Patent;

(iv) Any interlocutory order to constitute a judgment, must possess the characteristic of finality in the sense that it must adversely affect a valuable right of a party or decide an important aspect of the trial in an ancillary proceeding. In order to constitute a 'judgment', the adverse effect on a party must be direct and immediate and not indirect or remote;

(v) In order to constitute a judgment, an interlocutory order must: (a)

decide a matter of moment; or (b) affect vital and valuable rights of the parties and must also work serious injustice to the party concerned:

(vi) On the other hand, orders passed in the course of the proceedings of a routine nature, would not constitute a judgment even if they result in some element of inconvenience or hardship to one party or the other. Routine orders which are passed by a Single Judge to facilitate the progress of a case may cause some element of inconvenience or prejudice to a party but do not constitute a 'judgment' because they do not finally determine the rights or obligations of the parties. Procedural orders in aid of the progression of a case or to facilitate a decision are not judgments".

(emphasis supplied)

17. As to the reference, applying the principle propounded by it, the full bench then concluded:

"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".

18. At present, while passing the order impugned in the present appeal, the learned single judge has certainly not formed any firm opinion on the merits of the dispute or even as to the conduct of the Revising Authority. What has been noted by the learned single is the fact that is plainly highlighted in the impugned order, namely, *prima facie,* the penalty awarded to the original petitioner came to be enhanced to a major penalty by the Revising Authority on a *suo motu* exercise of his jurisdiction in the context of a domestic enquiry proceeding. Further, according to the tentative opinion of the learned single judge, no oral evidence had been led at the domestic enquiry proceedings, to prove the charge levelled against the original petitioner. Thereby *prima facie* pointing to a fundamental and perhaps, if facts be true, and inherent and incurable defect in the award of major penalty.

19. It must be noted, both for clarity and consequence - whether the facts (pertaining to the award of the major penalty to the original petitioner), as noted by the learned single judge are correct or not has not been contested as an issue to be addressed at present. Thus, there is no challenge pressed to the correctness of the facts noted by the learned single judge that no oral enquiry was conducted before enhanced penalty of dismissal was awarded to the original petitioner.

20. Hence, all that is required to be examined is, if the facts of the case as noted by the learned single judge merited impleadment of the respondent-appellant and if there is any error committed by the learned single judge in requiring the newly added respondent-appellant to submit his explanation, as may warrant exercise of the

Special Appeal jurisdiction.

21. A legal proceeding meets its fate or end after many twists and turns. Often, at the fresh or the admission stage, only a *prima facie* view is formed by Courts, as may take it closer to the final judgment to be reached. Unless, accompanied with a further order that has a bearing on the rights in contest in that proceeding, any observation or order made at such a preliminary stage has neither any binding force nor it may cause any injury, nor it may give rise to the right of an intra-Court appeal to a party.

22. Presently, the word "judgement" requires wider construction yet, undoubtedly being an interlocutory order, to be made appealable, it must also be seen to have decided a matter of moment or to have vitally affected the rights of any party as may work serious injustice to it. In any case, its effect must be direct and immediate and not remote. It is that consequence and effect of an interlocutory order that must be seen to have arisen, in *presenti* as may allow it to be tested at the intra-Court appeal forum and not a simple inconvenience caused to a party, that may allow it to maintain such a proceeding.

23. Here we find, though that the learned Additional Advocate General may right in his submission to some extent that specific pleadings have not been made in the writ petition - to assail the order of the appellant-respondent - on the ground of complete lack of jurisdiction or excess of jurisdiction, at the same time, what transpired during hearing is not in dispute. Thus, certainly the issue of excess of jurisdiction exercised by the Revising Authority clearly appears to have been discussed during the proceedings, that have led to the impugned order being passed.

24. Once the learned single judge was seriously considering if the Revising Authority had exceeded his jurisdiction, it fell within his discretion to seek impleadment of the Revising Authority. Without

forming any opinion as to that, since the matter is pending before the learned single judge, we only observe that the discretion exercised by the learned single judge does not call for interference, at this preliminary stage. What may follow, after the explanation called for is submitted, is not for us to foresee, at present. In so far as neither personal attendance has been enforced nor any harsh consequence has arisen, there is no serious injustice seen to have been caused to the Revising Authority.

25. In **Wander Ltd. Vs Antox India P. Ltd. 1990 (Supp) SCC 727**, in an appeal arising from an interlocutory injunction, the Supreme Court disapproved the approach of the division bench of the High Court, in interfering with the interlocutory order of the learned single judge. In that, it was laid down:

> ***"14.*** *The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph [(1960) 3 SCR 713 : AIR 1960 SC 1156] : (SCR 721)*
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> *"... These principles are well established, but as has been observed by Viscount Simon in Charles Osenton & Co. v. Jhanaton [1942 AC 130] '...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'."*
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> *The appellate judgment does not seem to defer to this principle".*

26. That principle was then applied by the Supreme Court to intra

court appeals arising in writ jurisdiction, in **Roma Sonkar v. M.P. State Public Service Commission, (2018) 17 SCC 106**. It was observed:

> *"3. We have very serious reservations whether the Division Bench in an intra-court appeal could have remitted a writ petition in the matter of moulding the relief. It is the exercise of jurisdiction of the High Court under Article 226 of the Constitution of India. The learned Single Judge as well as the Division Bench exercised the same jurisdiction. Only to avoid inconvenience to the litigants, another tier of screening by the Division Bench is provided in terms of the power of the High Court but that does not mean that the Single Judge is subordinate to the Division Bench. Being a writ proceeding, the Division Bench was called upon, in the intra-court appeal, primarily and mostly to consider the correctness or otherwise of the view taken by the learned Single Judge. Hence, in our view, the Division Bench needs to consider the appeal(s) on merits by deciding on the correctness of the judgment of the learned Single Judge, instead of remitting the matter to the learned Single Judge".*

27. Therefore, we find no good grounds to interfere in the discretion exercised by the learned single judge requiring the impleadment of the present respondent-appellant, in the facts noted by him. Yet, no issue has been decided and, in any case, no vital right has been adjudicated or altered, less so to the prejudice of the Revising Authority, before us.

28. Here it may be noted, even before this Court, it has not been urged, let alone admitted, that there was any inadvertent error committed by the respondent-petitioner, in appreciating the basic facts that had led to the major penalty being imposed by the Revising Authority upon a *suo motu* exercise of his jurisdiction, in a case where no oral evidence may have been led during the domestic enquiry proceedings.

29. Though, no conclusion is being drawn as to that, in face of the writ proceedings being pending before the learned single judge, and also since the current Chairman of the U.P. Power Corporation has expressed his desire to furnish his explanation, we observe, the interests of justice may be better served, if the present respondent-appellant were to comply with the impugned order, at this stage.

30. As to the *prima facie* observation made by the learned single judge, though the learned Additional Advocate General would contend that the observations are premature and too harsh and therefore, not warranted, it remains a fact that all observations made, and expressions used by the learned single judge are only tentative. Perhaps they only express the deep anguish that the Court may have felt at the plight of the original petitioner who may be *prima facie* perceived to have suffered such a harsh consequence of enhancement of a minor punishment to a major punishment that too at the hands of the highest departmental authority, in circumstances, that prima facie appeared to indicate, a fundamental flaw in the domestic enquiry proceeding i.e., the most severe punishment of dismissal being handed down in absence of the mandatory oral enquiry, that too in exercise of *suo moto* jurisdiction.

31. In any case, all observations made by the learned single judge are purely tentative and not such as may have any lasting effect. Such observations made would have life till the proceedings are concluded and/or till the explanation of the Revising Authority is considered by the learned single judge. They are not and cannot be read as strictures passed by the learned single judge as may warrant any interference at this premature stage. Being *ex parte* in the context of an explanation called, those are more to sensitize and make aware the Revising Authority, the consequence of the "fundamental flaw" if any.

32. We are also mindful of the fact that the learned single judge has called for an explanation to be furnished by the Revising Authority to ascertain what may have led to the exercise of that power. Neither any contempt proceeding has been drawn up nor the personal appearance of the Revising Authority has been enforced. Therefore, it remains perfectly open to it, if he so desires to make a clean breast of the situation before the learned single judge or to plead ignorance or even

inability to furnish any reply on merits, as per his choice and legal advice.

33. While offering corrections, the Court always maintains the balance and proportionality required in that function – to remain within the four corners of the law, in dealing with an erring litigant or official. Thus, we have no hesitation to observe that in case the respondent-appellant were to furnish an honest explanation, whatever that be and howsoever unsustainable in law that may appear to be, the learned single judge would certainly consider the same according to the law and offer only that much correction, if required, as may be warranted, to serve the interests of justice and good administration. In the absence of any allegation of personal *mala fide* pleaded, it is premature to imagine any other consequence may arise.

34. The fact that the respondent-appellant may have been posted out and may no longer be able or required to go into the record of the case is not an issue that may detain us. For that purpose, the explanation appears to have been called from the Chairman of the UPPCL. As stated by Sri Abhishek Srivastav, that explanation is being furnished.

35. Issue of jurisdictional error being involved, it further appears that the learned single judge may have felt necessary to ascertain the basic facts to consider offering only that much correction, if warranted as may be necessary so that those mistakes, if found true on record, may not recur.

36. In any event, at this stage no legal injury is seen to have been caused to the Revising Authority, upon an explanation being called, during a judicial proceeding. In so far as the explanation called cannot be described as extraneous to the “fundamental flaw” noted by the learned single judge, we leave every aspect of the matter to be considered by the learned single judge. The mere inconvenience that may have arisen to the Revising Authority may never be enough to

maintain this appeal, at this stage.

37. So far as the decisions relied upon by the learned Additional Advocate General are concerned, no doubt the principles are well settled in our jurisprudence. In the first place, no strictures may be passed *ex parte*. Second, no stricture may be offered more than that required by way of a correction or otherwise and, third no disparaging remarks or harsh language may be used, without prior notice.

38. The order of the learned single judge, though inconvenient and not to the personal like of the Revising Authority, it neither contains any final observation nor it is a stricture made nor does it contain any conclusion reached. What the learned single judge has pointed out are his own doubts that the order passed by the respondent-appellant appears to be wholly contrary to law and impermissible as per the rule of law.

39. However, the order may be worded, it may not persuade us to entertain the present appeal. In view of the facts noted above, we observe, the views expressed by the learned single judge are only a *prima facie* opinion that *per se* are not expressed in an intemperate language as may be seen to have caused any injury to the Revising Authority.

40. Accordingly, we decline to exercise our limited jurisdiction in this matter to entertain the present appeal, at this stage. At present, we leave it to the best judgment of the learned single judge to consider the explanation to be furnished by the respondent-appellant, on its own merits and to offer a measured correction, if required, as may be enough in the facts of the present case.

41. At the end, the learned Additional Advocate General prays - the appellant-respondent may be granted two days' time to file his explanation before the learned single judge. That explanation is stated

to be under preparation.

42. Since this order was completed today, at the stroke of 4:00 p.m., that discretion we grant, purely in the interest of justice and fair play. Accordingly, subject to the appellant-respondent placing a copy of this order before the learned single judge, we express our self-assurance that that prayer for time would be duly considered.

43. With the above observation, present appeal stands **disposed of**. No order as to costs.

Order Date :- 17.08.2023
Akram/Faraz

(Rajendra Kumar-IV) (S.D. Singh, J.)