

PETITIONER:
V. KANAKARAJAN

Vs.

RESPONDENT:
GENERAL MANAGER, SOUTH EASTERN RAILWAY & ORS.

DATE OF JUDGMENT: 13/08/1996

BENCH:
VENKATASWAMI K. (J)
BENCH:
VENKATASWAMI K. (J)
SINGH N.P. (J)

CITATION:
JT 1996 (7) 517 1996 SCALE (5)822

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

VENKATASWAMI. J.

A Division Bench of the Calcutta High Court by its judgment and order dated 16.3.1982 declined to entertain a application for contempt dated 29.6.1981. Aggrieved by that, the present appeal has been preferred by the appellant.

In as much as the scope of the present appeal, which is directed against the dismissal of contempt application, is very limited, we are not inclined to go into other contentions raised by the appellant challenging the validity of certain related orders passed by the authorities. As a matter of facts the High Court by the judgment under appeal held as follows while rejecting the contempt application :

"It was not directed by us that the question of promotion of the petitioner should be considered only on the basis of the confidential reports. It may be that the effect of the confidential reports being in favour of the petitioner, the respondents should have granted him promotion. But we are not considering the merits of the report of the competent authority in not recommending the promotion of the petitioner. We are also unable to consider whether the competent authority was justified in observing that the petitioner is not a suitable candidate for promotion as per rules. The remedy of the petitioner, in our opinion, lies not in an application for contempt but in a separate writ petition against the order that was communicated to him by the Chief

Personnel Officer dated May 18, 1981.

In the circumstances, we do not think that the petitioner has been able to make out a case for contempt against the respondents. The petitioner will, 'however, be at liberty to move against the said Order of the Chief Personnel Officer by writ application."

We are of the view that the High Court was right in declining to entertain the application for any contempt and reserving the right of the petitioner by separate proceedings to challenge the consequential orders passed by the authorities.

When the appeal was pending, the attention of the Court was drawn to a Memorandum dated December 28, 1982 issued from the office of the Chief Personnel Officer, South Eastern Railway. According to the appellant, the said Memorandum clothes him with certain rights and the authorities are not extending the benefits arising out of that Memorandum. This Court by Order dated 10.4.1996 directed the learned counsel appearing for the respondents to seek instructions on that contention. In the additional counter affidavit filed on behalf of the respondents on 23.4.1996 inter alia, it is stated as follows :

"Even though the Committee did not recommend his promotion, the General Manager taking a lenient view and decided to give him an opportunity to work in Senior Scale on condition that a special report should be called for on his working and a review made. His performance was reviewed on the basis a special report on his working in Senior Scale for the period 21.8.1985 to 20.2.1986. The Report did not support his continuance in Senior Scale and decision was, therefore, reached to revert him to group B/AEN. He was reverted w.e.f. 21.5.1986.

Shri Kanakrajan filed an application (O.A.No. 765 of 1990) in the Central Administrative Tribunal, Madras Bench against the orders of his reversion as AEN. The Tribunal, in its order dated 23.6.1986, dismissed the application. A copy of the order of the Tribunal is attached as Annexure II."

No doubt a rejoinder has been filed to this additional counter affidavit by the appellant. Be that as it may. As pointed out earlier, the arguments now raised and decisions sought on that will be beyond the scope of the present appeal which arises out of dismissal of an application for contempt. In the circumstances, we do not find any ground to interfere with the judgment and order of the High Court except reaffirming the liberty reserved to the appellant to agitate by separate proceedings if he is so advised against any proceeding which has gone against him. In other words, the dismissal of this appeal will not stand in the way of the appellant from challenging orders passed by the

respondents subsequent to the disposal of the main case by the High Court. In the result, the appeal fails and is accordingly dismissed. No costs.

JUDIS