

ITEM NO.207

COURT NO.4

SECTION IVA

**S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S**

Petition(s) for Special Leave to Appeal (Civil) No(s).10656/2007

**(From the judgement and order dated 31/05/2007 and 11/06/2007 in CCC No.341/2006 of
The HIGH COURT OF KARNATAKA AT BANGALORE)**

JAGADGURU ANNADANISHWARA MAHA SWAMIJI

Petitioner(s)

VERSUS

V.C.ALLIPUR & ANR.

Respondent(s)

[With prayer for interim relief and office report][For final disposal]

Date: 20/03/2009 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE P. SATHASIVAM

For Petitioner(s) Mr. Shankar Divate, Adv.

**For Respondent(s) Mr. Shanth Kr. V.Mahale, Adv.for
Mr. Rajesh Mahale, Adv.**

Mr. R.J. Goulay, Adv.for

Mrs. S. Usha Reddy, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The Appeal is allowed in terms of the signed order. No costs.

(Parveen Kr. Chawla)

Court Master

[Signed Order is placed on the File]

(Pushap Lata Bhardwaj)

Court Master

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.1798 OF 2009
(Arising out of SLP(C) No.10656 of 2007)

**Jagadguru Annadanishwara
Maha Swamiji**

..Appellant

versus

V.C.Allipur & Another

..Respondents

ORDER

Leave granted.

Appellant is before us, aggrieved by and dissatisfied with the order dated 31st May, 2007 passed by a Division Bench of the High Court of Karnataka at Bangalore in CCC No.341 of 2006 and also the order dated 11th June, 2007.

Respondent No.1 was working as an Assistant Teacher in a school run by the appellant. In relation to his claim for promotion as a lecturer as he had obtained M.A. degree, he approached the school authorities. The management declined his request. Respondent No.1 then made a representation to the Deputy Director, Education who in turn asked the management to consider the case of the respondent No.1 for promotion. The Director, Pre-University, Education passed an order on 25th July, 2005 in his favour.

Appellant preferred an appeal before the appropriate authority which is still pending.

Respondent No.1, however, filed an application purported to be under Sections 11 & 12 of the Contempt of Courts Act, 1971 (for short 'the Act') before the Karnataka High Court praying, inter alia, for the following reliefs:

“WHEREFORE, the Complainant prays that this Hon'ble Court be pleased to call for relevant records and initiate contempt proceedings against the respondents for disobedience of the order of the Director, P.U. Education made in Appeal PUAP-51/2005 dated 25.7.2005 as per Annexure-A and to pass any other appropriate and suitable orders as deemed fit by this Hon'ble Court in the interest of justice and equity.”

The said application was entertained by reason of the impugned judgment and furthermore charges have also been directed to be framed.

The short question which arises for consideration in this appeal is as to whether the Director of the Pre-University, Education is a Court within the meaning of the provisions of the Act or not.

Indisputably, the Director of Pre-University, Education is a statutory authority. Contempt has been defined in Section 2(a) of the Act to mean a civil contempt or criminal contempt. Indisputably, the contempt

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proceedings initiated by the first respondent before the High Court was civil in nature. Civil contempt has been defined in Section 2(b) of the Act to mean wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.

It is now well settled principle of law and having regard to the definition of the Court contained in various statutes like Code of Civil Procedure or the Evidence Act would mean a Tribunal, whose decision shall be final and/or would be entitled to take evidence in terms of the provisions of the Evidence Act. It is also well settled that although a Tribunal may exercise some of its powers in terms of the Code of Civil Procedure or Code of Criminal procedure and have all the trappings of a Court but still would not be treated as a Court. In Bharat Bank Ltd. v. Employees of the Bharat Bank Ltd. [AIR 1950 SC 188 : 1950 SCR 459] this court opined:-

“7. Now there can be no doubt that the Industrial Tribunal has, to use a well-known expression, “all the trappings of a court” and performs functions which cannot but be regarded as judicial. [...]

27.[...] There can be no doubt that to be a Court, the person or persons who constitute it must be entrusted with judicial functions, that is, of

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deciding litigated questions according to law. However, by agreement between parties arbitrators may be called upon to exercise judicial powers and to decide a dispute according to law but that would not make the arbitrators a Court. It appears to me that before a person or persons can be said to constitute a Court it must be held that they derive their powers from the State and are exercising the judicial powers of the State. In *R. v. London County Council* [[1931] 2 K.B. 215], Saville L.J. gave the following meaning to the word "Court" or "judicial authority" :-

‘It is not necessary that it should be a Court in the sense that this Court is a Court, it is enough if it is exercising, after hearing evidence, judicial functions in the sense that it has to decide on evidence between a proposal and an opposition; and it is not necessary to be strictly a Court if it is a tribunal which has to decide rightly after hearing evidence and opposition.’

28. As pointed out in picturesque language by Lord Sankey L.C. in *Shell Co. of Australia v. Federal Commissioner of Taxation*, [[1931] A.C. 275], there are tribunals with many of the trappings of a Court which, nevertheless, are not Courts in the strict sense of exercising

judicial power. [...] It was pointed out in the above case that a tribunal is not necessarily a Court in this strict sense because it gives a final decision, nor because it hears witnesses on oath, nor because two or more contending parties appear before it between whom it has to decide, nor because it gives decisions which affect the rights of subjects nor because there is an appeal to a Court, nor because it is a body to which a matter is referred by another body [...].”

In the context of Section 29(2) of the Limitation Act, 1963 the term ‘court’ must be held to be of wide import. However, again there exists a distinction between a court and the civil court.

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In P. Sarathy v. State Bank of India, [(2000) 5 SCC 355] this Court has held :-

“12. It will be noticed that Section 14 of the Limitation Act does not speak of a “civil court” but speaks only of a “court”. It is not necessary that the court spoken of in Section 14 should be a “civil court”. Any authority or tribunal having the trappings of a court would be a “court” within the meaning of this section.

13. ... in order to constitute a court in the strict sense of the term, an essential condition is that the court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement.”

We may, however, notice that in the context of applicability of Section 5 of the Limitation Act in regard to Arbitration Tribunal which was constituted in terms of a statutory provision, the matter has been referred to a three Judge Bench in State of Madhya Pradesh and another v. Anshuman Shukla [(2008) 7 SCC 487].

Be that as it may, the word 'civil court' vis-à-vis a court must be construed having regard to the text and context of the statute.

As indisputably the Director of Pre-University, Education is an authority created under a statute and not a Court, by no stretch of imagination, it can not be described

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as a Court so as to enable the first respondent to file an application for initiation of proceedings under the Contempt of Courts Act against the appellant herein for wilful disobedience of the order of the Director, Pre-University, Education, especially when an appeal against the said order is still pending. The order of the statutory authority, thus, would not alleviate the provisions of the Contempt of Courts Act. The impugned orders, thus, are wholly illegal. The High Court, therefore, in our opinion, had no jurisdiction to initiate any proceeding under the said Act. Learned counsel for the first respondent, however, submits that such a contention had not been raised before the High Court.

Since, the Director, Pre-University, Education was not functioning as a Court within the provisions of the Act, in our opinion, the impugned order of the High Court taking cognizance of the said application as also directing to frame charge is wholly without jurisdiction and non est in the eyes of law and therefore is unsustainable. It was *Coram-non-judice*. Such a contention can be raised at any stage.

For the reasons aforementioned, the impugned orders cannot be sustained and they are set aside accordingly. The Contempt Petition filed by the first

respondent before the

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High Court is dismissed. However, we make it clear that the other remedies available to the first respondent under any other law for the time being inforce shall remain open for redressal of his grievance.

The Appeal is allowed. No costs.

.....J.
[S.B.SINHA]

NEW DELHI;
MARCH 20, 2009.

.....J.
[P.SATHASIVAM]