

in accordance with Rule 7 of the Rules, 1978 and the candidates do possess the requisite essential qualification and the selection is made free and fair. In the present case, the selection has not been made free and fair inasmuch as three candidates had received envelopes containing blank papers sent by petitioner no.1 intimating the date for interview. If the Basic Shiksha Adhikari was not granting approval, petitioner no.1 could have approached the higher authorities or the Court against the alleged inaction of the Basic Shiksha Adhikari, but petitioner no.1 went ahead to advertise the posts. Therefore, I do not find any ground to interfere with the impugned orders.

47. In view thereof, the writ petition fails, which is hereby *dismissed*.

(2022)02ILR A890

**APPELLATE JURISDICTION
CIVIL SIDE**

DATED: LUCKNOW 14.02.2022

BEFORE

**THE HON'BLE MRS. SANGEETA CHANDRA, J.
THE HON'BLE MOHD. FAIZ ALAM KHAN, J.**

Special Appeal No. 38 of 2022

**Shivam Das Chandani & Ors. ...Appellants
Versus
Prabhu N Singh & Ors. ...Respondents**

Counsel for the Appellants:

Virendra Kumar Dubey

Counsel for the Respondents:

Ratnesh Chandra

A. Service Law - Maintainability of special appeal-no appeal is maintainable under Chapter VIII Rule 5 of this Rules of the Court against any order passed in proceedings under Contempt of Courts Act as it is

a self contained Code and it also provides for a remedy of appeal under section 19 though only against specific type of orders or decisions-In the present case also since the Hon'ble single Judge has refused to entertain contempt petition, the appeal is not maintainable under Chapter VIII Rule 5 of the Rules to such proceedings where an order dismissing an application for contempt is challenged would not be attracted except when the contempt court decides to pass orders issuing directions in exercise of powers beyond the Contempt of Courts Act, which order would be referable to the powers vested in the High Court under Article 226 of the Constitution of India rather than Contempt of Courts Act.(Para 1 to 23)

The writ petition is dismissed. (E-6)

List of Cases cited:

1. Pune Municipal Corp. & anr. Vs Harakchand Misirimal Solanki & ors. (2014) 3 SCC 183
2. St. of Har. & ors. Vs G.D. Goenka Tourism Corp. Ltd. & anr. (2018) 3 SCC 585
3. Indore Development Authority Vs Shailendra (Dead) thru LRs & ors. (2018) 3 SCC 412
4. Midnapore Peoples' Coop. Bank Ltd. & ors. Vs Chunilal Nanda & ors. (2006) 5 SCC 399
5. Roop Singh Vs Vinay Kumar Jauhari & ors. (2020) 142 ALR 144
6. Hub Lal Yadav Vs Mahendra & ors., Spl. Appeal No. 23 of 2017
7. Sheet Gupta Vs St. of U.P. & ors. (2020) AIR All 46 FB
8. Smt. Shubhawati Devi Vs R.K. Singh & anr.(2004) 3 AWC 2414

9. Chandra Shekhar Vs J.P. Rajpoot & ors. (2006) 3 AWC 2904

10. Vinita M. Khanolkar Vs Pragna M. Pai & ors. (1998) 1 SCC 500

11. J.S. Parihar Vs Ganpat Duggar (1996) 6 SCC 291

(Delivered by Hon'ble Mrs. Sangeeta
Chandra, J. &
Hon'ble Mohd. Faiz Alam Khan, J.)

1. Heard Mr. O.P. Srivastava, learned Senior Advocate assisted by Mr. Virendra Kumar Dubey, learned counsel for the appellant and Mr. Ratnesh Chandra, learned counsel for the respondent no. 1.

2. A preliminary objection regarding maintainability of the special appeal under Chapter VIII Rule 5 of the Rules of the Court has been raised on the ground that the order impugned dated 05.01.2022 has been passed in the Contempt Application (Civil) No. 1261 of 2017; Shivam Das Chandani and 3 others vs. Prabhu N. Singh posted as Vice Chairman and others; whereby the learned Contempt Judge finding that the judgment and order dated 07.10.2015 passed by the Division Bench in Review Petition No. 7291(MB) of 2005 has been complied with, has dismissed the contempt application and consigned it to record.

3. The learned Senior Counsel appearing on behalf of the appellants says that the order impugned is not a judgment dismissing the contempt application as no finding has been recorded regarding the compliance of the judgment and order dated 07.10.2015 passed by the writ Court. It has been submitted that the Hon'ble Contempt Judge has only mentioned the facts as argued by the learned counsel for

the appellants and as argued by the learned counsel for the contemnors and thereafter observed that no cause of action survives and the contempt application was accordingly consigned to record. He has read out the relevant portion of the order dated 05.01.2022 which is being quoted hereinbelow:

"3. This contempt application has been filed for wilful disobedience of judgment and order dated 07.10.2015 passed by this Court in Review Petition No.7291 (M/B) of 2005.

4. Learned Senior counsel for the applicants submitted that the opposite party has deliberately not complied with the aforesaid order of this Hon'ble Court.

5. On the other hand, learned counsel for the opposite party has opposed the submission of learned counsel for the applicants and drawn attention of this Court towards compliance affidavit filed on 27.09.2018, wherein in paragraphs 5 to 8 it has been mentioned that compliance of the order dated 07.10.2015 has been made.

6. In view of the above, no cause of action survives in the present contempt application.

7. The contempt application is, accordingly, consigned to record."

It has been submitted that by referring to "cause of action" and by referring to the expression by the Court "consigned to record", the contempt Judge has exercised writ jurisdiction and not the contempt jurisdiction.

4. It has been submitted that a writ petition was filed for compensation for land acquired by the respondents which writ petition was initially dismissed. Later on, on the basis of the judgment of the Apex Court in the case of *Pune Municipal Corporation and another vs. Harakchand*

Misirimal Solanki and others (2014) 3 SCC 183 a Review Petition was filed which was entertained and the writ petition eventually allowed and the acquisition proceedings relating to the plots of the appellants were held to have lapsed and a direction was issued that the respondents will make payment of compensation to the review-petitioners according to the provisions of the Act of 2013. Later on, a reference had been made to a Larger Bench of the Supreme Court to decide the question with regard to "whether if compensation is not actually paid to the tenure holder on acquisition of his land, Section 24 (2) of the New Act of 2013 would apply and it would mean that the entire acquisition would lapse?"

5. It has been submitted by the learned counsel for the appellants that when the compensation was not paid in accordance with the Act of 2013 a contempt application was filed, namely, Contempt Application (Civil) No. 1261 of 2017. A compliance affidavit was filed therein by the respondents wherein they stated that the compensation had been paid after constitution of a committee in this regard for the determination of such compensation and as per the decision taken in its meeting dated 14.08.2017. The appellants had filed objection to such compliance affidavit and this Court by its order dated 25.04.2018 granted time to the counsel for the respondents to place relevant documents to substantiate their claim that calculation has been done in accordance with the Act of 2013 and the appellants are entitled to get the compensation according to the circle rate prevalent at the time of acquisition in the year 1986.

Another affidavit of compliance was filed by the contemnors in which in

paragraph 5 to 8 the details of the Members of the Committee constituted for determining the compensation by the State Government were mentioned and also the preparing of calculation sheet by the ADM (Land and Acquisition) regarding the compensation to the affected persons. The calculation sheet was reconsidered in compliance of the Court's order passed in Contempt Application on 09.05.2018 and compensation for a total area of 1 bigha 2 biswa of the three plots in question was redetermined to the tune of Rs. 6,07,666.09.

6. It has been submitted by the learned counsel for the appellants that the compliance affidavit was refuted by filing another objection by the appellants. In the meantime, the Vice Chairman of the Lucknow Development Authority was transferred out and a new Vice Chairman came and an impleadment application was filed which was placed on record but no order for impleadment of the new incumbent was passed thereon. When the case came up before the Court on two subsequent occasions, the Contempt Judge deferred the hearing of the contempt application in view of the orders passed by the Supreme Court in the case of *State of Haryana and others vs. G.D. Goenka Tourism Corporation Limited and another; (2018) 3 SCC 585* and *Indore Development Authority vs. Shailendra (Dead) through Legal Representatives and Ors; (2018) 3 SCC 412* observing that an application for review of the judgment of the writ Court dated 07.10.2015 has been filed which was pending and directed the matter to listed in the month of January, 2022.

7. When the matter was listed on 05.01.2022, the contempt Judge relying upon the paragraphs 5 to 8 of the affidavit

of compliance filed on 27.09.2018 observed that the compliance has been made and no cause of action survives in the contempt application and the contempt application be consigned to record.

8. The learned Senior Counsel appearing on behalf of the appellants stated before the Court that while on earlier two dates there was an observation that the writ Court's order has not been complied with, by the order dated 05.01.2022 the learned Contempt Judge dismissed the contempt application without recording any finding with regard to whether writ Court's order has been complied with and only observed that no cause of action survives and the application be consigned to record. Such an order could not have been passed in the contempt jurisdiction and was actually passed as if the Contempt Judge was sitting in the Writ jurisdiction and, therefore, the Special Appeal under Chapter VIII Rule 5 of the Rules of the Court shall lie against such an order.

9. The learned Senior Counsel has placed reliance upon the judgment of the Apex Court in the case of *Midnapore Peoples' Coop. Bank Ltd. & Others vs. Chunilal Nanda and others; (2006) 5 SCC 399* wherein the Supreme Court had observed that if any directions are given by the Contempt Judge that go beyond his jurisdiction, but not punishing the contemnors for contempt of the writ Court's order, no appeal would lie under Section 19 of the Contempt of Courts Act. However, the petitioner is not without remedy and an intra Court appeal under Clause 15 of the Letters Patent may be entertained.

10. The learned Senior Counsel read out the paragraphs 6, 7 and 8 of the judgment rendered in *Midnapore Peoples'*

Coop. Bank Ltd. & Others (supra) and also read out its paragraph 10.3 and paragraph 11 in their entirety to say that the Contempt Judge cannot make observations on the merits of the case, if such observations are made, but not punishing the contemnors in the contempt petition, the said order would be appealable under Chapter VIII Rule 5 of the Rules of the Court.

11. The learned Senior Counsel has also referred to the judgment rendered by the Division Bench of this Court in the case of *Roop Singh vs. Vinay Kumar Jauhari and others; 2020 (142) ALR 144* and read out paragraph 7 of the said judgment wherein paragraph 11 of the judgment in the case of *Midnapore Peoples' Coop. Bank Ltd. & Others (supra)* has been relied upon to say that if any directions are made by the Contempt Judge which go beyond the original order passed by the writ Court, then special appeal would lie in such a case.

12. Mr. Ratnesh Chandra, learned counsel appearing for the respondent no. 1 in reply to the said submissions of the learned counsel for the appellants has pointed out from the judgment rendered by the Supreme Court in *Midnapore Peoples' Coop. Bank Ltd. & Others (supra)* paragraph 4, and referred to the facts of the said case where an employee had been suspended and had approached the writ Court pending initiation of disciplinary proceedings against him. The employee had filed a writ petition challenging the suspension order on the ground that the charge-sheet had not been issued. The said writ petition was disposed of directing the Bank to deliver a copy of the charge-sheet which had been issued by the Bank and also directing the delinquent employee to

submit his reply and the Enquiry Officer to conclude the enquiry within a period of three months from the date of communication of the order, subject to the employee rendering full cooperation for the conduct of the disciplinary proceedings. The Bank in compliance issued the charge-sheet. The employee filed his reply. The Enquiry Officer concluded the enquiry and submitted his report holding the delinquent employee to be guilty on all the charges. A show cause notice was issued on the basis of the said report to the employee giving him opportunity to submit a representation.

At this stage, the employee filed another writ petition before the High Court for quashing the enquiry proceedings, which writ petition was allowed and the writ Court directed the enquiry proceedings and the consequential action taken by the Bank to have become non est and the same were set aside. A direction was issued to the Chairman of the Bank to appoint someone who is not a Member of the Bank's Board of Directors as Enquiry Officer, and to conduct the enquiry de novo and to complete the same within four months from the date of its first sitting and the disciplinary authority was directed to take suitable action on the basis of such report. The Bank was directed to pay suitable subsistence allowance to the employee during the period of suspension. No order was passed by the writ Court setting aside the suspension order. The Bank in its wisdom and on the basis of the legal advice complied with the writ Court order, however, the enquiry was not completed within four months.

The employee moved a contempt petition impleading the Officers of the Bank, the Enquiry Officer "eo-nominee" as respondents no. 1 to 4 in the said contempt petition. The contempt Judge summoned the enquiry report from the Enquiry Officer

and made observations that the Enquiry Officer had not proceeded with due diligence. The contempt Judge passed an order directing the Enquiry Officer to show cause as to why he should not be punished for committing contempt and that the respondents to remain present personally on all the dates thereafter and held him to be disqualified to be Enquiry Officer and directed that he shall cease to be Enquiry Officer and directed the Chairman of the Bank to appoint another persons as Enquiry Office. The contempt Judge further proceeded to direct immediate reinstatement in service of the delinquent employee by the Bank and the that he should be deemed to be in service and to be paid his salary including all arrears within four weeks from the date of passing of the order and revoking the suspension order with immediate effect.

Aggrieved by the such directions passed by the contempt Judge the Bank approached the Division Bench in a Contempt Appeal which was rejected on the ground that the order of the contempt Judge did not punish the contemnors. The Division Bench directed the appellant to forthwith implement the order of the contempt Judge. It had also observed in its order that the appeal did not satisfy the requirements of Clause 15 of the Letters Patent and, therefore, could not be entertained as a Letters Patent Appeal. The Bank left with no other remedy approached the Supreme Court under Article 136 of the Constitution. The Supreme Court having considered the arguments raised by the Bank as well as the respondents therein, framed three questions for it to decide as mentioned in paragraph 9 of the judgment.

13. Paragraph 9 of the judgment has been read out and is being quoted hereinbelow:

"9. On the aforesaid facts and the contentions urged, the following questions arise for consideration :

(i) Where the High Court, in a contempt proceedings, renders a decision on the merits of a dispute between the parties, either by an interlocutory order or final judgment, whether it is appealable under Section 19 of the Contempt of Courts Act, 1971 ? If not, what is the remedy of the person aggrieved ?

(ii) Where such a decision on merits, is rendered by an interlocutory order of a learned Single Judge, whether an intra-court appeal is available under clause 15 of the Letters Patent ?

(iii) In a contempt proceeding initiated by a delinquent employee (against the Enquiry Officer as also the Chairman and Secretary in-charge of the employer-Bank), complaining of disobedience of an order directing completion of the enquiry in a time bound schedule, whether the court can direct (a) that the employer shall reinstate the employee forthwith; (b) that the employee shall not be prevented from discharging his duties in any manner; (c) that the employee shall be paid all arrears of salary; (d) that the Enquiry Officer shall cease to be the Enquiry Officer and the employer shall appoint a fresh Enquiry Officer; and (e) that the suspension shall be deemed to have been revoked ?"

14. It has been argued by Mr. Ratnesh Chandra that in **Roop Singh (supra)**, the Division Bench was considering whether a special appeal would be maintainable where the Contempt Judge did not decide the rights of the parties and only directed listing of the case by making certain observations with regard to charges having been framed, and directing the counsel for the respondents therein to take further instructions. The Court observed that under

Section 19 of the Contempt of Courts Act and also under Chapter VIII Rule 5 of the Rules of the Court, no direction on the merits of the case having been given, no appeal would lie and the appeal was held to be not maintainable and dismissed.

15. The learned counsel for the respondents, Mr. Ratnesh Chandra, has referred to several judgments of this Court given in the cases of **Hub Lal Yadav vs. Mahendra and 4 Others (Special Appeal No. 23 of 2017)** decided on 27.07.2017; **Sheet Gupta vs. State of U.P. & Others, AIR 2010 All 46 (FB)**; **Smt. Shubhawati Devi vs. R.K. Singh and another; (2004) 3 AWC 2414** and in the case of **Chandra Shekhar vs. J.P. Rajpoot and Ors; 2006 (3) AWC 2904**.

16. In response to the arguments raised by the learned counsel for the respondent no. 1, Mr. O.P. Srivastava, learned Senior Counsel in rejoinder has submitted that on earlier two occasions when the contempt petition was listed before the Contempt Judge and objection was raised that the order of the Writ Court has not been complied, the counsel for the respondents had been given time to seek instructions i.e., on 25.04.2018 and again by the order dated 13.07.2019. The learned counsel for the appellants has referred to the objection raised and filed before the Contempt Judge regarding the allegations that the Writ Court's order had not been complied with to say that the compensation should have been given in accordance with the Act of 2013 on the market value of the land determined in 2014 and 2015 and not as if the land had been acquired in 1986 as this Court sitting in the Writ jurisdiction had held that the earlier acquisition proceedings had lapsed due to non payment of compensation to the tenure

holder with respect to the alleged plots of land in question.

17. The Supreme Court in *Midnapore Peoples' Coop. Bank Ltd. & Others* (supra) while referring to question 1 made observations that the appeal as of right would lie under Section 19 of the Contempt of Courts Act if the High Court exercises its jurisdiction to punish for contempt. The jurisdiction of the High Court in a contempt petition is to punish. When no punishment is imposed by the High Court it is difficult to say that the High Court has exercised its jurisdiction or power as conferred on it by Article 215 of the Constitution. If no such jurisdiction is exercised a Contempt Appeal would not lie under Section 19 of the Act. It further observed in paragraph 11 with reference to the issues framed by it as follows:

"11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarized thus :

I. An appeal under section 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and

if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of 'jurisdiction to punish for contempt' and therefore, not appealable under section 19 of CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under section 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases). The first point is answered accordingly."

18. In *Hub Lal Yadav* (supra), the Court was considering the order passed by the Contempt Judge dated 05.12.2016 dismissing the contempt application as not maintainable and observing that the applicant had remedy under Order XXXIX Rule 2A of the Code of Civil Procedure. The Division Bench referred to the judgments rendered by the Supreme Court in *Baradakanta Mishra Vs. Justice Gatikrushna Misra; (1975) 3 SCC 535, Purshotam Dass Goel Vs Justice B.S.*

Dhillon; (1978) 2 SCC 370, *Union of India Vs. Mario Cabral e Sa*; (1982) 3 SCC 262, *D.N.Taneja Vs. Bhajan Lal*; (1988) 3 SCC 26, *State of Maharashtra Vs. Mahboob S. Allibhoy*; (1996) 4 SCC 411 and *J.S. Parihar Vs. Ganpat Duggar*; (1996) 6 SCC 291 and observed that in all the aforesaid cases, it has been held that if the contempt Court refuses to initiate contempt proceedings, an appeal would not be maintainable under Section 19 of Contempt of Courts Act. It referred to the judgment in the case of ***Midnapore Peoples' Coop. Bank Ltd. & Others (supra)*** and quoted paragraph 11 thereof and also the judgment rendered in ***Vinita M. Khanolkar vs. Pragna M. Pai and others***; (1998) 1 SCC 500 to say that no appeal even under Chapter VIII Rule 5 of the Rules of the Court would be maintainable. It observed that the contempt proceedings are quasi criminal in nature and, therefore, provisions of Chapter VIII Rule 5 of the Rules of the Court to such proceedings where an order dismissing an application for contempt is challenged would not be attracted except when the contempt court decides to pass orders issuing directions in exercise of powers beyond the Contempt of Courts Act, which order would be referable to the powers vested in the High Court under Article 226 of the Constitution of India rather than the Contempt of Courts Act.

19. In ***Sheet Gupta (supra)***, the Larger Bench observed in paragraph 18 as follows:

"18. Having given our anxious consideration to the various plea raised by the learned counsel for the parties, we find that from the perusal of Chapter VIII Rule 5 of the Rules a special appeal shall lie before this Court from the judgment passed by one Judge of the Court.

However, such special appeal will not lie in the following circumstances:

1. *The judgment passed by one Judge in the exercise of appellate jurisdiction in respect of a decree or order made by a Court subject to the Superintendence of the Court;*

2. *the order made by one Judge in the exercise of revisional jurisdiction;*

3. *the order made by one Judge in the exercise of the power of Superintendence of the High Court;*

4. *the order made by one Judge in the exercise of criminal jurisdiction;*

5. *the order made by one Judge in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution of India in respect of any judgment, order or award by*

(i) the tribunal,

(ii) Court or

(iii) statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution of India;

6. *the order made by one Judge in the exercise of jurisdiction conferred by Article 226 or 227 of the Constitution of India in respect of any judgment, order or award of*

(i) the Government or

(ii) any officer or

(iii) authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act, i.e. under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution of India."

20. In *Smt. Shubhawati Devi* (supra), this Court observed in paragraph 38 and 39 as follows:

"38. There may be another ground for holding that an appeal under Chapter VIII. Rule 5 of the Rules against an order discharging the contempt notice is not maintainable, in law. A Division Bench of this Court in *Sheo Charan v. Naval and Ors.*, 1997 (2) UPLBEC 1215 : 1997 AWC 1909, has held that Section 19 of the Act has created a right of appeal from an order or decision of the Court imposing punishment for contempt. There is no provision for appeal under the Act against the decision discharging the notice of contempt and/or dismissing the contempt petition. In view of the fact that the Act provides for appeal and also lays down the orders/decisions against such an appeal can be filed, the intention of the Legislature must be said to be that an appeal cannot be filed under Clause 10 or under Clause 15 read with Chapter VIII, Rule 5 of the Rules as the Contempt of Courts Act is a complete Code wherein provision for appeal has been specifically provided.

39. Under Chapter VIII, Rule 5 of the Rules appeal is provided before the Division Bench of this Court from a judgment not being a judgment specified therein, of one of the learned Judges of this Court. Therefore, the question that needs to be decided as to whether an appeal from a decision of the learned Judge made in the exercise of his power under the Act is maintainable even though the Act itself has provided for an appeal from such a decision. We are in full agreement with the views expressed by the Division Bench of this Court in *Sheo Charan* (supra), in which it has been clearly established that if the Statute, which has conferred the jurisdiction on the Court, itself lays down

*the procedure, and provides for appeal from its decision, the appeal can be filed only under and in accordance with such a statute. In such a case general right of appeal from a decision of the Court stands excluded by the statute, which has conferred the jurisdiction on the Court. Such being the position, we are, therefore, of the view that an appeal against a decision rejecting the contempt petition was not maintainable also under Chapter VIII. Rule 5 of the Rules. The same view has been expressed by a Division Bench of this Court in *A.P. Verma and Ors v. U.P. Laboratory Technicians Association, Lucknow and Ors.*, 1998 (3) AWC 2264 : (1998) 3 UPLBEC 2333, wherein it has been held that no appeal is maintainable under Chapter VIII, Rule 5 of the Rules of the Court against any order passed in a proceeding under the Contempt of Courts Act as it is a self contained Code."*

21. In *Chandra Shekhar* (supra), the Division Bench observed in paragraph 10 and 11 as follows:

"10. In *A. P. Verma* (supra) also the Division Bench of this Court agreeing with the view taken in the aforesaid case has held that under Chapter VIII, Rule 5 such an appeal is not maintainable and in para 6 this Court has observed as under:

... We are in respectful agreement with the view taken in the aforesaid decisions that no appeal is maintainable under Chapter VIII. Rule 5 of this Rules of the Court against any order passed in proceedings under Contempt of Courts Act as it is a self contained Code and it also provides for a remedy of appeal under Section 19 though only against specific type of orders or decisions.

11. In the present case also since the Hon'ble single Judge has refused to

entertain contempt petition, the appeal under Chapter VIII, Rule 5 of the Rules of the Court, is not maintainable and the contention of the learned Counsel for the appellant, therefore, is rejected."

22. This Court having heard the learned counsel for the parties and having gone through the judgments referred to by the learned Senior Counsel for the appellants and also Mr. Ratnesh Chandra, learned counsel appearing for the respondent no. 1, finds that the Contempt Judge has expressed a definite opinion in his judgment dated 05.01.2022 that the Writ Court order dated 07.10.2015 has been complied with, even though not in so many words, by observing that no cause of action survives and by consigning the contempt application to record. Such an order dismissing the contempt application would not be amenable to intra Court appeal under Chapter VIII Rule 5 of the Rules of the Court and there is no observation at all in the exercise of writ jurisdiction under Article 226 of the Constitution as argued by the learned Senior Counsel. In view of the judgment in the case of *J.S. Parihar Vs. Ganpat Duggar; (1996) 6 SCC 291*, it will always be open for the appellants to challenge the orders passed by the respondents before the appropriate Forum.

23. The preliminary objection raised regarding maintainability of the special appeal is sustained and the special appeal is *dismissed* as not maintainable with a cost of Rs. 50,000/- which is to be paid by the appellants in the Registry of this Court within four weeks from today. In case of failure to deposit the cost as directed by this Court within the time prescribed, it shall be the duty of the Senior Registrar of this Court to inform the District Magistrate,

Lucknow of the order passed by this Court and the District Magistrate shall proceed to collect the cost as arrears of land revenue from the appellants and to deposit it in this Court.

(2022)02ILR A899

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 09.11.2021

BEFORE

THE HON'BLE SURYA PRAKASH

KESARWANI, J.

THE HON'BLE VIKAS BUDHWAR, J.

Writ-A No. 15873 of 2021

Anand Bihari

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Counsel for the Petitioner:

Sri Vineet Kumar Singh, Sri Risabh Srivastava,
Sri H.N. Singh (Sr. Adv.)

Counsel for the Respondents:

C.S.C., Sri Avانش Mishra, Sri M.N. Singh, Sri
Nipun Singh

A. Service Law - Medical Council of India Minimum Qualification for Teachers in Medical Institutions Regulations, 1998-challenge to-appointment-unexplained delay of 4 years in filing the writ petition-post of lecturer-cum-Statistician is a specialized post in a medical fraternity and the prescription of qualification is a specialized task of the experts being academicians which cannot be made a subject matter of a judicial review, particularly when there is nothing on record to show that the rule making authority has no legislative competence to lay down the qualification-limitation does not strictly apply to proceedings under Article 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time-delay defeats equity-it is a trite law