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(2017) 4 ADJ 496 : (2017) 3 ESC 1149

ALLAHABAD HIGH COURT (LUCKNOW BENCH)

DIVISION BENCH

RAMESH KUMAR — Appellant

Vs.

STATE OF U.P. — Respondent

(Before : Shri Narayan Shukla and Anant Kumar, JJ.)

Special Appeal Defective No. 144 of 2013

Decided on : 14-09-2016

A. Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1919 — Section 20 — Appeal — Where the High Court's single judge dismisses a writ petition challenging a departmental punishment order (like dismissal from service) and the subsequent dismissal of a departmental appeal, a special appeal against the single judge's order is not maintainable. This is because the departmental appeal, even if heard by an appellate authority within the department (DIG against an SSP's order), constitutes an exercise of appellate jurisdiction under an Uttar Pradesh Act (the 1919 Rules), thereby falling within the exclusionary clause of Rule 5, Chapter VIII of the Rules of the Court. (Paras 4, 5, 7)

B. Rules of the Court — Chapter VIII, Rule 5 — Special Appeal — Maintainability — A special appeal is not maintainable from a judgment of a single judge in the exercise of jurisdiction under Article 226 or 227 of the Constitution in respect of any judgment, order, or award of the government, an officer, or authority, made or purported to be made in the exercise of appellate or revisional jurisdiction under any Uttar Pradesh Act or Central Act. This applies even if the appellate or revisional powers are conferred by an order issued under delegated provisions of the Act. (Paras 3, 5, 6, 7)

C. Judicial Precedent — Applicability — The principles laid down by the Supreme Court and a Full Bench of the High Court regarding the non-maintainability of special appeals under Rule 5, Chapter VIII of the Rules of the Court are to be strictly followed. These principles affirm that if a writ petition challenges an order passed in the exercise of appellate jurisdiction under a state act, no special appeal lies to the Division Bench. (Paras 5, 6, 7)

Counsel for Appearing Parties

Sunder Lal, Rakesh Chandra Rastogi, Advocates, for the Appellant; C.S.C, for the Respondent

Cases Referred

- Sheet Gupta Vs. State of U.P., AIR 2010 Allahabad 46
- [State of Uttar Pradesh Vs. Madhav Prasad Sharma, \(2011\) 2 SCC 212](#)

Final Result : Dismissed

JUDGMENT

1. Heard Mr. Rakesh Chandra Rastogi, learned counsel for the appellant as well as Mr. Q.H.Rizvi, learned Additional Chief Standing Counsel for the respondents.

2. This intra court appeal has arisen out of order dated 9 March 2010, passed by the learned Single Judge in **writ petition No.4119 (SS) of 2008:Ramesh Kumar v. State of U.P. and others.**

3. Mr. Q.H. Rizvi, learned Additional Chief Standing Counsel has raised objection against the maintainability of the appeal in view of Rule 5 Chapter VIII of the Rules of the Court. We quote the Rule 5 Chapter VIII as under:-

"5. Special appeal.- An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of Appellate Jurisdiction in respect of a decree or order made by a Court subject to the Superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of Superintendence or in the exercise of criminal jurisdiction [or in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award (a) of a tribunal, Court or 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 or (b) of the Government or any Officer or authority, made or purported to be made in the exercise or purported exercise of Appellate or Revisional Jurisdiction under any such Act] of one Judge.]

4. Mr. Rizvi, learned Additional Chief Standing Counsel has submitted that it was a case of

dismissal of one Constable (appellant) from service. Being aggrieved with the order of punishment dated 17 December 2007 the appellant had filed an appeal to the departmental authority, who had dismissed the appeal on 5.5.2008. Aggrieved appellant had challenged the order of punishment as well as the order passed in appeal in writ petition No.4119 (SS) of 2008. Learned Single Judge dismissed the writ petition. In the result the present appeal has been filed.

5. In support of his submission Mr. Rizvi has cited a case decided by the Hon'ble Supreme Court i.e. **State of Uttar Pradesh and others v. Madhav Prasad Sharma, (2011) 2 SCC 212**. In this case the respondent who was appointed as Police Constable was put under departmental inquiry for his unauthorized absence from duty. Ultimately the Senior Superintendent of Police terminated his services. Being aggrieved with the order of termination the respondent had preferred departmental appeal before the Deputy Inspector General of Police, who rejected the appeal. Aggrieved respondent had filed a writ petition before the High Court which was allowed by learned Single Judge. Against the order passed by the learned Single Judge the State-appellant had preferred a Special Appeal before the Division Bench of the High Court. The Division Bench of the High Court dismissed the Special Appeal on the ground of maintainability. Then the State-appellant had preferred an appeal before the Supreme Court by way of Special Leave. The Supreme Court had considered the question of maintainability of appeal in light of the provisions of Rule 5 of Chapter VIII of this Court and observed as under:-

"13. It is fairly admitted that in view of the fact that against the order of termination the delinquent availed departmental appeal to the DIG, after the order of the learned Single Judge no further appeal by way of special appeal before the Division Bench would lie. The materials placed and in view of the fact that the order of the SSP was considered and disposed of by the appellate authority i.e. the DIG and also of the fact that the order impugned in the writ petition was passed in exercise of appellate jurisdiction in terms of the Uttar Pradesh Subordinate Police Officers/Employees (Punishment and Appeal) Rules, 1991, we concur with the conclusion arrived at by the Division Bench of the High Court in the impugned order."

6. The next decision cited by him is **Sheet Gupta v. State of U.P. and others AIR 2010 Allahabad 46** Full Bench. In this case the Full Bench of this Court had considered the following question referred to it:-

"Whether a special appeal under the provisions of Rule 5 of Chapter VIII of the Rules of the Court lies in a case where the judgment has been given by a learned single Judge in a writ petition directed against an order passed in an appeal under paragraph 28 of the U.P. Scheduled Commodities Distribution Order, 2004"

The Full Bench of this Court answered the question in the following manner:-

"A special appeal would not lie under the provisions of Rule 5 of the Chapter VIII of the

Rules where the judgment has been given by a learned single Judge in a writ petition directed against an order passed in an appeal under paragraph 28 of the Distribution Order, 2004."

The aforesaid answer of the Full Bench is based on the observations made therein that if the appellate or revisional powers has been conferred by the Government through an order issued under the delegated provisions of the Act then it is definitely a power exercised under the Act and in that event no special appeal under Chapter VIII Rule 5 of the Rules would lie against the judgment and order passed by the learned single Judge.

7. In the case on hand definitely under Section 20 of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1919 the provision of appeal against an order of punishment is provided. The appellant had filed an appeal before the DIG against the order of punishment passed by the SSP, therefore, in view of the law laid down by the Full Bench of this Court in the Case of **Sheet Gupta v. State of U.P. and others** (Supra) as well as by the Supreme Court in the case of **State of Uttar Pradesh and others v. Madhav Prasad Sharma** (Supra) we are of the considered view that the present appeal does not lie.

In the result it is dismissed as not maintainable.