



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE MURALEE KRISHNA S.

MONDAY, THE 3RD DAY OF MARCH 2025 / 12TH PHALGUNA, 1946

CON.APP(C) NO. 1 OF 2025

AGAINST THE ORDER DATED 05.12.2023 IN CON.CASE(C) NO.2459
OF 2019 AND THE ORDER DATED 15.07.2024 IN I.A.NO.2 OF 2024 IN
CON.CASE(C) NO.2459 OF 2019 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS:

- 1 LT.GEN SUKHDEEP SANGWAN,
AGED ABOUT 45 YEARS, (NAME OF FATHER NOT KNOWN TO
THE PETITIONERS), THE DIRECTOR GENERAL, ASSAM
RIFLES, SHILLONG, MEGHALAYA, PIN-793010., PIN -
793010
- 2 ADDL.R2.LIEUTENANT GENERAL PRADEEPCHANDRAN NAIR
(AGE AND NAME OF THE FATHER NOT KNOWN TO THE
PETITIONERS) THE DIRECTOR GENERAL, ASSAM RIFLES,
SHILLONG, MEGHALAYA, PIN-793 011. ADDL.R2. IS
IMPLEADED AS PER ORDER DATED 20/07/2022 IN IA
1/2022 IN COC 2459/2019., PIN - 793011
- 3 LIEUTENANT GENERAL VIKAS LAKHERA, THE DIRECTOR
GENERAL, ASSAM RIFLES, SHILLONG, MEGHALALAYA, PIN
- 793001

BY ADVS. SHRI.T.C.KRISHNA, SCGC
SUVIN R MENON
ARL SUNDARESAN, ASGI



RESPONDENT/PETITIONERS:

- 1 BIJUKUMAR.S., AGED 50 YEARS
S/O. SIVADASAN PILLAI, DEVANANDANAM, KALPPADA,
MARUTHOOR VIA, KALLAYAM P O, THIRUVANANTHAPURAM
DISTRICT-695304, (DISCHARGED HAV/OPERATOR RADIO
AND LINES FROM ASSAM RIFLES), PIN - 695304

- 2 UNNIKRISHNAN K.V., AGED 50 YEARS, S/O.
VISWAMBHARAN, KULIKKANNA PARAMBIL HOUSE, AROOR P
O, CHERTHALA, ALAPPUZHA DISTRICT, KERALA,
(DISCHARGED HAV/OPERATOR RADIO AND LINES FROM
ASSAM RIFLES), PIN - 688524

- 3 HARIKRISHNAN K G., AGED 49 YEARS
S/O. GOPALAKRISHNAN NAIR, HARINIVAS, IMALI EAST,
OMALLOOR, PATHANAMTHITTA DISTRICT, KERALA,
(DISCHARGED HAV/OPERATOR RADIO AND LINES FROM
ASSAM RIFLES)

- 4 VASANT KUMAR P, AGED 49 YEARS
S/O. MADHAVAN NAIR, KOMENTHODUKAYIL HOUSE,
KARINGHAMANNA, THAMARASSERY P O, KOZHIKODE
DISTRICT, KERALA, (DISCHARGED HAV/OPERATOR RADIO
AND LINES FROM ASSAM RIFLES), PIN - 673573

- 5 AJITHKUMAR C., AGED 50 YEARS
S/O.CHELLAPPAN ACHARI, LAKSHMI BHAVAN,
KARITHAKKAM, BEACH P O, THIRUVANANTHAPURAM
DISTRICT, KERALA, (DISCHARGED HAV/OPERATOR RADIO
AND LINES FROM ASSAM RIFLES)

R BY SRI.JOHN K GEORGE,
SRI.P.P.BIJU
SRI.SANTHOSH MATHEW (SR.)

THIS CONTEMPT APPEAL (CIVIL) HAVING BEEN FINALLY HEARD ON
12.11.2024 AND THE COURT ON 03.03.2025 DELIVERED THE FOLLOWING:

**C.R.****JUDGMENT**Anil K. Narendran, J.

The respondents in Cont. Case (C)No.2459 of 2019 filed this Contempt Appeal, invoking the provisions under Section 19(1) of the Contempt of Courts Act, 1971, read with Section 5(i) of the Kerala High Court Act, 1958, to set aside the order dated 05.12.2023 in Cont. Case (C)No.2459 of 2019 and the order dated 15.07.2024 in I.A.No.2 of 2024 in Cont. Case (C)No.2459 of 2019 of the learned Single Judge. The said contempt case is one filed by the respondents herein, who are the petitioners in W.P.(C)No.24735 of 2013, invoking the provisions under Section 12 of the Contempt of Courts Act, alleging non-compliance of the directions contained in Annexure I judgment dated 05.06.2015 in W.P.(C)No.24735 of 2013. The said judgment is a common judgment rendered by the learned Single Judge in W.P.(C)No.24735 of 2013 and connected matters.

2. The respondents herein, retired personnel of Assam Rifles, a Central Paramilitary Force, have approached this Court in W.P.(C)No.24735 of 2013 seeking parity in the pay scale as in the



case of their counterparts in other paramilitary forces. The petitioners in the writ petitions contended that the issue raised by them is no longer *res integra*, in view of the law laid down by a Division Bench of Gauhati High Court in Writ Appeal No.50 (SH) of 2010, which judgment was one rendered following the judgment of the Apex Court in **Union of India v. Dineshan K.K. [(2008) 1 SCC 586]**. In Annexure I judgment, the learned Single Judge, after considering the entire facts and circumstances, held that the writ petitioners are entitled to the benefit of the said judgment and hence to be redesignated with replacement scale of pay in the scale of Rs.3200-85-4900. Since all of them have retired from service, they are entitled to get their retirement benefits re-fixed on the basis of the pay fixed on such upgradation along with arrears of pensionary benefits. Seeking the benefit of the said judgment, they have already approached the Director General of Assam Rifles. In the light of the declarations, the learned Single Judge directed the Director General of Assam Rifles to consider the representations of each of the petitioners and grant them all benefits on the basis of the upgradation/restructuring and replacement of the scale of pay of the post from which they



retired, by re-fixation of their pay and pensionary benefits. They were directed to be granted the arrears of pensionary benefits, on the basis of such re-fixation of pay and pension, along with all other monetary benefits, within a period of 4 months from the date of receipt of a copy of Annexure I judgment.

3. Annexure I judgment of the learned Single Judge was under challenge in W.A.No.1671 of 2017 and connected matters. Those writ appeals ended in dismissal by Annexure II judgment dated 19.07.2019 of the Division Bench, in which the Division Bench had recorded the undertaking of the appellants therein that they have no objection in extending the benefits of Ext.P1 judgment rendered by the Gauhati High Court to the writ petitioners. In Annexure II judgment, the Division Bench had also made it clear that the question as to whether the benefits under Ext.P1 judgment have been extended to the writ petitioners or not has to be agitated in the proceedings for contempt, if any, initiated and not in those writ appeals. R.P.No.937 of 2019 filed in W.A.No.1062 of 2017 seeking review of Annexure II judgment ended in dismissal by Annexure III order dated 15.10.2019 on the ground that there is no error apparent on the face of the record.



4. In Cont. Case (C)No.2459 of 2019, the respondent therein filed an affidavit dated 10.01.2023, wherein it was stated that the directions contained in Annexure I judgment have already been complied with and the benefits in Ext.P1 judgment rendered by the Gauhati High Court have been extended to all writ petitioners by Annexure R1(a) order dated 03.02.2016. The respondents herein-writ petitioners filed a reply affidavit dated 05.02.2023, pointing out disobedience of Annexure I judgment, by not extending the writ petitioners the benefit under Ext.P1 judgment rendered by the Gauhati High Court. Along with the reply affidavit, Annexure V order dated 09.01.2009 and Annexure VI order dated 08.02.2019 issued by the appellants herein were placed on record.

5. After considering the submissions advanced by both sides, the learned Single Judge passed an order dated 11.09.2023 in Cont. Case (C) No.2459 of 2019, directing the learned Deputy Solicitor General of India to place on record the calculation sheet to enable the Court to conclude as to whether the amounts due to the writ petitioners in terms of Ext.P1 judgment rendered by the Gauhati High court has been disbursed or not. In terms of that



direction, an affidavit dated 24.11.2023 has been filed by the appellants herein.

6. In the order dated 05.12.2023 in Cont. Case (C) No.2459 of 2019, the learned Single Judge noticed that the directions issued in Annexure I judgment have not been complied with. In terms of Ext.P1 judgment of the Gauhati High Court, the appellants herein were bound to redesignate the rank of Havildar (RL) as Warrant Officer and were bound to disburse to the writ petitioners the pay scale as admissible to their counterparts in CRPF and BSF, which was in the pre-revised scale of Rs.4000-100-6000, as has been done as per Annexures V and VI orders. Therefore, the learned Single Judge, by the order dated 05.12.2023, directed the 2nd appellant herein to forthwith comply with the directions issued by the Division Bench and extend the benefits of the Ext.P1 judgment of Gauhati High Court, as done in Annexures V and VI orders. In the said order, it was made clear that any stand to the contrary cannot be countenanced. The learned Single Judge directed compliance without fail, within 8 weeks from 05.12.2023, failing which the 2nd appellant herein



shall appear in person and show cause why action shall not be taken for flouting the directions issued by the Court.

7. The appellants herein filed I.A.No.2 of 2024 seeking to vacate the order dated 05.12.2024. In the affidavit filed in support of the said application, it was stated that Ext.P1 judgment of Gauhati High Court relied on by the learned Single Judge in Annexure I judgment dated 05.06.2015 in W.P.(C)24735 of 2013 and connected matters is applicable only for personnel belonging to Radio Mechanics category in Assam Rifles, who are Diploma Holders and passed Technical Trade Test Class-I of Radio Mechanics, and the same has no application to the personnel belonging to Operator Radio Line category. Various other contentions were also raised in the said affidavit. The respondents herein opposed the relief sought for in I.A.No.2 of 2024. After considering the rival contentions, the learned Single Judge dismissed the said interlocutory application, by a detailed order dated 15.07.2024.

8. The order dated 05.12.2023 in Cont. Case (C)No.2459 of 2019 and the order dated 15.07.2024 in I.A.No.2 of 2024 in Cont. Case (C)No.2459 of 2019 of the learned Single Judge are



under challenge in this Contempt Appeal filed under Section 19(1) of the Contempt of Courts Act, 1971, read with Section 5(i) of the Kerala High Court Act, 1958.

9. This Contempt Appeal is one filed along with C.M.Appl. No.1 of 2025 for condonation of filing delay of 285 days. When that C.M.Application came up for consideration, the learned Senior Counsel for the respondents-petitioners raised the question of maintainability of the appeal under Section 19(1) of the Contempt of Courts Act, 1971 read with Section 5(i) of the Kerala High Court Act, 1958. By the order dated 17.01.2025, this Court allowed C.M.Appl. No.1 of 2025, by condoning the filing delay of 285 days; however, without prejudice to the contention raised by the learned Senior Counsel on the question of maintainability of the Contempt Case. In the said order it was made clear that the said question will be decided at the time of admission.

10. On 20.01.2025 when this Contempt Appeal came up for consideration, we heard the arguments of the learned Additional Solicitor General for the appellants and the learned Senior Counsel for the respondents. During the course of arguments, the learned Additional Solicitor General fairly



submitted that in view of the decision of the Full Bench of this Court in **Suni B.T. v. Vinayaka Granites [2025 (1) KLT 287 : 2025 KHC OnLine 4]** an appeal under Section 19(1) of the Contempt of Courts Act, 1971 is not maintainable against the impugned orders of the learned Single Judge.

11. Therefore, the issue that requires consideration is whether the appellants are entitled to challenge the aforesaid orders by invoking the provisions under Section 5(i) of the Kerala High Court Act, in a Contempt Appeal.

12. Section 19 of the Contempt of Courts Act deals with appeal. As per sub-section (1) of Section 19, an appeal shall lie as of right from any order or decision of the High Court in the exercise of its jurisdiction to punish for contempt (a) where the order or decision is that of a Single Judge, to a Bench of not less than two Judges of the Court; (b) where the order or decision is that of a Bench, to the Supreme Court. As per the proviso to sub-section (1) of Section 19, where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court. As per sub-section (2) of Section 19, pending any appeal, the appellate court may order that (a)



the execution of the punishment or order appealed against be suspended; (b) if the appellant is in confinement, he be released on bail; and (c) the appeal be heard notwithstanding that the appellant has not purged his contempt. As per sub-section (3) of Section 19, where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2). As per sub-section (4) of Section 19, an appeal under sub-section (1) shall be filed (a) in the case of an appeal to a Bench of the High Court, within thirty days; (b) in the case of an appeal to the Supreme Court, within 60 days from the date of the order appealed against.

13. In **Midnapore Peoples' Co. Op. Bank Ltd. v. Chunilal Nanda [(2006) 5 SCC 399]**, after referring to the law laid down in **Baradakanta Mishra [(1975) 3 SCC 535]**, **Purshotam Dass Goel [(1978) 2 SCC 370]**, **State of Maharashtra v. Mahboob S. Allibhoy [(1996) 4 SCC 411]** and **J.S. Parihar v. Ganpat Duggar [(1996) 6 SCC 291]** the Apex Court summarised the legal position emerging from those decisions in regard to appeals filed under Section 19(1) of the



Contempt of Courts Act against orders in contempt proceedings.

Paragraph 11 of that decision reads thus;

“11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarised 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 Contempt of Courts 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 the Contempt of Courts 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).” (underline supplied)

14. In **Suni B.T. [2025 (1) KLT 287]** a Full Bench of this Court considered the issue of maintainability of an appeal under Section 19(1) of the Act and it was held that for an appeal to lie under Section 19(1), the impugned order must be inextricably connected with the order punishing for contempt and cannot be independent of it. It must flow from the order punishing for contempt. All procedural steps leading to the order of punishment



cannot be termed as incidental to the order punishing for contempt. For the second part of clause (IV) in **Midnapore Peoples' Co. Op. Bank Ltd. [(2006) 5 SCC 399]** to apply, there must be first an order punishing for contempt. This position of law is expounded also by earlier decisions on the subject by the Apex Court referred to earlier. An order proceeding to frame and framing charges being merely a stage prior to the order of punishment cannot be considered as inextricably connected to or incidental to the order punishing for contempt. The order inextricably connected to such orders can be direction to purge the contempt, which also can be challenged under Section 19(1) along with the order punishing for contempt. It also has to be kept in mind that the judge decides whether contempt of the "court" is committed. The contempt proceedings are between the court and the contemnor and are not a lis between the parties. When the court declares that contempt is committed and passes an order in its contempt jurisdiction, an appeal will lie. The contempt proceedings are not complete or final until the punishment is rendered. The proceedings are concluded only after the Court renders a final decision, which includes determining a sentence



upon finding the party guilty of contempt. If any positive direction is given that is incidental to and connected with the order of punishing for contempt, then under an appeal filed under Section 19 can be filed challenging both the order of punishing for contempt and the order that is incidental to it. When any issue is decided or a direction is issued on the merits of the matter, independent of the contempt proceedings, then an intra-court appeal (wherever such a provision exists) would be maintainable. Hence, the scheme of Section 19 of the Contempt of Courts Act, 1971, the Rules framed thereunder, and the decisions of the Apex Court, particularly in the case of **Midnapore Peoples' Co. Op. Bank Ltd.**, indicate that only those orders which are inextricably connected to and incidental to the order of punishment can be the subject matter of an appeal along with the order imposing punishment. To reiterate the phrase inextricably connected or incidental "to the order imposing punishment" mean that there must first be an order of punishment. Proceeding to framing charges for contempt is thus not appealable under Section 19(1) of the Act.

15. In **Suni B.T. [2025 (1) KLT 287]** the Full Bench



answered the reference as under;

“An appeal filed under Section 19(1) of the Contempt of Courts Act, 1971, challenging the order when the Court, after forming a prima facie opinion, proceeds to frame a charge under Rule 14(b) of the Contempt of Courts (High Court of Kerala) Rules framed under the Contempt of Courts Act, 1971 is not maintainable.”

16. In view of the law laid down by the Full Bench in **Suni B.T. [2025 (1) KLT 287]**, the appellant cannot invoke the provision under Section 19(1) of the Contempt of Courts Act, in order to challenge the impugned orders dated 05.12.2023 in Cont.Case (C)No. 2459 of 2019 and order dated 15.07.2024 in I.A.No.2 of 2024 in Cont.Case (C)No.2459 of 2019 of the learned Single Judge, as those orders would not fall under the category of orders which are inextricably connected to and incidental to the order of punishment. Then the question that requires consideration is as to whether those orders would fall under the category of orders in clause (V) of the judgment of the Apex Court in **Midnapore Peoples' Co.op.Bank Ltd. [(2006) 5 SCC 399]**, for maintaining an intra-court appeal from the orders of a learned Single Judge, under Section 5(i) of the Kerala High Court Act. In view of the law laid down by the Apex Court in the aforesaid



decision and followed by the Full Bench in **Suni B.T. [2025 (1) KLT 287]** when an issue is decided or direction is issued on the merits of the matter, independent of the contempt proceedings, then an intra-court appeal would be maintainable under Section 5(i) of the Kerala High Court Act. Such an intra-court appeal has to be filed as a writ appeal, which has to be listed before the Division Bench as per the roster, and not before the Division Bench dealing with contempt appeals.

17. In such circumstances, this contempt appeal filed by the appellants-respondents challenging the aforesaid orders of the learned Single Judge is dismissed as not maintainable; however without prejudice to the right of the appellants to challenge those orders of the learned Single Judge in an intra-court appeal filed under Section 5(i) of the Kerala High Court Act, in case those orders fall under the category of appealable orders, i.e., orders in which any issue is decided or a direction is issued on the merits of the matter, independent of the contempt proceedings.

We make it clear that we have not expressed anything on the question as to whether the impugned orders of the learned



Single Judge are orders appealable under Section 5(i) of the Kerala High Court Act, in an intra-court appeal.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

MURALEE KRISHNA S., JUDGE

AV