IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE MURALEE KRISHNA S.

THURSDAY, THE 3RD DAY OF APRIL 2025 / 13TH CHAITHRA, 1947

WA NO. 617 OF 2025

AGAINST THE JUDGMENT DATED 24.03.2025 IN Con.Case(C) NO.2920 OF 2024 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER IN THE CONTEMPT OF COURT CASE:

N.PRAKASH,
AGED 61 YEARS,
PRAJITH VIHAR AYINI ROAD MARADU P.O
ERNAKULAM, PIN – 682304.

BY ADV N.PRAKASH(Party-In-Person)

RESPONDENT/RESPONDENT IN THE CONTEMPT OF COURT CASE:

BISWANATH SINHA IAS
ADDITIONAL CHIEF SECRETARY TO GOVERNMENT HOME (C)
DEPARTMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN – 695001.

OTHER PRESENT:

SMT. NISHA BOSE, SENIOR GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 03.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Anil K. Narendran, J.

The petitioner in Contempt Case (C)No.2920 of 2024 has filed this writ appeal, as an intra-court appeal, invoking the provisions under Section 5(i) of the Kerala High Court Act, 1958, challenging the judgment dated 24.03.2025 of the learned Single Judge in that contempt case, whereby that contempt petition was dismissed as not maintainable, with an observation that the petitioner is misusing the liberty and process of the court and that any non-maintainable petition filed by him in future shall be dismissed with heavy cost. Paragraphs 4 to 6 and also the last paragraph of that judgment read thus:

> "4. In compliance with the said judgment, the Government passed an order afresh on 18.11.2024 and the Government held that as per Rule 120 of the Kerala Service Rules, Part III, if the application for pension was not made within a period of three years after the date of retirement, the same could not be given retrospective effect without a special Government order.
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> 5. The said decision of the Government order dated 18.11.2024 came to be challenged by the petitioner in W.P(C) No.42443/2024 and this court vide the judgment dated 22.01.2025, was of the opinion that the petitioner is

not entitled for pension from 04.06.2009 till the date of application made on 23.11.2021. However, this court directed the Government to consider whether the pension to the petitioner can be granted for a period of three years prior to the date of his application, i.e. 23.11.2021, by special sanction by the Government. Aggrieved by the said judgment, the petitioner has approached the Division Bench in W.A No. 224 of 2025.

6.This court fails to understand that when the Government has already taken the decision in pursuance to the judgment dated 01.07.2024 passed in W.P(C) NO. 9508/2023, the said decision of the Government was challenged by the petitioner before this court in W.P(C) No.42443/2024, how the contempt of the judgment dated 01.07.2024 passed in W.P(C) No.9508/2023 could be maintainable.

In view of the aforesaid, the contempt petition is dismissed as not maintainable. I am of the considered view that the petitioner is misusing the liberty and process of the Court. Any nonmaintainable petition filed by him in future shall be dismissed with a heavy cost."

2. Heard the arguments of the appellant, who appeared in person and also the learned Senior Government Pleader for the respondent.

3. From the grounds raised in the memorandum of the writ appeal and also the submissions made by the appellant, who appeared in person, we notice that the appellant is feeling

aggrieved by the observations made by the learned Single Judge in the last paragraph of the judgment dated 24.03.2025 in Contempt Case (C) No.2920 of 2025.

4. The appellant filed W.P.(C)No.9508 of 2023 seeking a declaration that he is entitled for pension and Death-cum-Retirement Gratuity from the date of compulsory retirement, i.e., 07.04.2006 to the date of application for pension, i.e., 23.11.2021. The petitioner has also sought for other consequential reliefs including a writ of certiorari to quash Ext.P10 Government order dated 08.03.2023. The said writ petition was disposed of by Annexure A4 judgment dated 01.07.2024. The operative portion of that judgment reads thus;

> "In the result, Ext.P10 stands quashed, and the 2nd respondent is directed to reconsider the claim of the petitioner for pension and other reliefs based on Exts.P7 and P9. Orders in this regard shall be passed within three months from the date of receipt of a copy of this judgment."

5. 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.

6. 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.
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> (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)

7. In **Suni B.T. v. Vinayaka Granites [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.

8. 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."

9. In **Sukhdeep Sangwan (Lt. Gen) v. Bijukumar S. [2025 (2) KHC 384]**, a Division Bench of this Court in which both of us were parties held that 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.

10. In **Sukhdeep Sangwan (Lt. Gen) [2025 (2) KHC 384]**, on the facts of the case on hand, the Division Bench found that the Contempt Appeal filed by the appellants-respondents challenging 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 can only be 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.

11. In the instant case, as already noticed hereinbefore, the appellant is feeling aggrieved by the observations made by the learned Single Judge in the last paragraph of the judgment dated 24.03.2025 in Contempt Case (C) No.2920 of 2025. In the impugned judgment, while dismissing the contempt case as not maintainable, the learned Single Judge observed that the petitioner is misusing the liberty and process of the court and that any non-maintainable petition filed by him in future shall be dismissed with heavy cost.

12. The aforesaid observations made in the impugned judgment of the learned Single Judge cannot be challenged by filing an intra-court appeal under Section 5(i) of the Kerala High

Court Act, 1958 by contending that in the said judgment an issue is decided or direction is issued by the learned Single Judge on the merits of the matter, independent of the contempt proceedings, in order to maintain an intra-court appeal under Section 5(i) of the Act.

In such circumstances, this writ appeal fails on the ground of maintainability and the same is accordingly dismissed, without expressing anything on the legality or otherwise of such observations contained in the impugned judgment of the learned Single Judge.

Sd/-
ANIL K. NARENDRAN, JUDGE

Sd/-
MURALEE KRISHNA S., JUDGE

DSV/-

APPENDIX OF WA 617/2025

APPELLANT'S ANNEXURES

Annexure A13	**TRUE COPY OF THE INTERIM ORDER DATED 22.1.2025 IN CON.CASE (C) NO.2920 OF 2024**