

A

UNION OF INDIA AND ORS.

v.

RAM KUMAR THAKUR
(Civil Appeal No.6112 of 2008)

B

OCTOBER 15, 2008

[DR. ARIJIT PASAYAT AND DR. MUKUNDKAM
SHARMA, JJ.]

Service Law:

C

Re-instatement – Single Judge of High Court ordered re-instatement of employee – Employer filed writ appeal challenging the order but at the same time implemented the order by re-instating the employee – Division Bench of High Court dismissed the writ appeal as infructuous – Propriety of – Held:

D

Not proper – Writ appeal to be heard by Division Bench on merits.

E

The Division Bench of the High Court dismissed writ appeal filed by the Appellants as infructuous on the ground that Respondent-employee had been reinstated in service pursuant to the judgment of the Single Judge which was impugned in the writ appeal.

F

In appeal to this Court, it was contended that merely because the order of the Single Judge was implemented to avoid possible contempt proceedings that did not take away the right of the appellants to question the correctness of the said order and file appeal thereagainst.

G

Allowing the appeal, the Court

HELD:1.1. Even in cases where interim relief is not granted in favour of the applicant and the order is implemented that does not furnish a ground for not entertaining the appeal to be heard on merits. [Para 4] [496-D]

H

1.2. The impugned order of the High court cannot be maintained and is set aside. The writ appeal shall be heard by the High Court on merits. [Para 7] [497-8]

Nagar Mahapalika v. State of U.P. (2006) 5 SCC 127; Nagesh Datta Shetti v. State of Karnataka (2005) 10 SCC 383 and Union of India v. Narender Singh (2005) 6 SCC 106 – relied on.

CASE LAW REFERENCE

(2006) 5 SCC 127	relied on	Para 4
(2005) 10 SCC 383	relied on	Para 4
(2005) 6 SCC 106	relied on	Para 6

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 6112 of 2008

From the final Judgment and Order dated 30.11.2006 of the High Court of Jammu and Kashmir at Jammu in CDLSW No. 150 of 2006 in Rest (CDLSW) No. D-114/2004 C/W Rest (LPA) No. 13 of 2006

A. Sharna, ASG., Binu Tamta and Sushma Suri for the Appellants.

Om Prakash Mishra, Prathibha Shukla and Ghan Shyam Vasisht for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Jammu and Kashmir High Court dismissing the appeal filed by the present appellants on the ground that the respondent had been reinstated in service pursuant to the judgment of the learned single Judge which was impugned in the

A writ appeal filed before the Division Bench. The High Court held that the appeal had therefore become infructuous.

2. Learned counsel for the appellant submitted that the impugned order of the High Court has no legal basis. Merely because the impugned order before the High Court was implemented to avoid possible contempt proceedings that did not take away the right of the appellants to prefer an appeal and question correctness of the impugned order.

3. Learned counsel for the respondent on the other hand supported the judgment.

4. It has been noted by this Court that if even in cases where interim relief is not granted in favour of the applicant and the order is implemented that does not furnish a ground for not entertaining the appeal to be heard on merits. (See : *Nagar Mahapalika v. State of U.P.* [2006(5) SCC 127]. Similar view was also taken in *Nagesh Datta Shetti v. State of Karnataka* [2005(10) SCC 383].

5. In *Union of India v. G.R. Prabhavalkar & Ors.* [1973(4) SCC 183] it was observed at para 23 as follows:

“Mr Singhvi, learned counsel, then referred us to the fact that after the judgment of the High Court the State Government has passed an order on March 19, 1971, the effect of which is to equate the Sales Tax Officers of the erstwhile Madhya Pradesh State with the Sales Tax Officers, Grade III of Bombay. This order, in our opinion, has been passed by the State Government only to comply with the directions given by the High Court. It was made during a period when the appeal against the judgment was pending in this Court. The fact that the State Government took steps to comply with the directions of the High Court cannot lead to the inference that the appeal by the Union of India has become infructuous.”

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6. Above position was also noted in *Union of India v. A
Narender Singh* [2005(6) SCC 106].

7. Above being the position the impugned order of the High
Court cannot be maintained and is set aside. The writ appeal
shall be heard by the High Court on merits about which we ex- B
press no opinion. The appeal is allowed to the aforesaid ex-
tent. No costs.

B.B.B.

Appeal allowed.