

CASE NO.:
Appeal (civil) 4065 of 2002

PETITIONER:
ZILA PARISHAD AURANGABAD & ANR

RESPONDENT:
MIRZA MAHMOOD (D) BY LRS. & ORS

DATE OF JUDGMENT: 28/02/2008

BENCH:
H.K. SEMA & MARKANDEY KATJU

JUDGMENT:
JUDGMENT

O R D E R

CIVIL APPEAL NO. 4065 OF 2002
WITH
C.A.NO.4069/2002

This appeal is preferred by Zila Parishad, Aurangabad against the judgment and order dated 29/09/2000 passed by the High Court in WP No.222/1988.

We have heard the parties.

This case illustrates a classic example as to how grave miscarriage of justice is being committed against the public interest. The deceased respondent was appointed as a teacher in the Zila Parishad Primary School. On 13/11/1964, he was given a show-cause notice which reads as under:-

"The nature of alleged association of Shri Mahmood Baig, s/o Hidyat Baig, Asstt. Primary School, PIRDAWADA Central Primary School, Wado Bazar Taluka Sillod Dist. Aurangabad, with the activities of the Jamate Islami (J.E.I.) organisation is as follows:
.....2.

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1. Shri Mahmood Baig s/o Hidyat Baig teacher Primary School Pribawada attended the quarterly conference of J.E.I. Aurangabad District held at Hakgavan on May 9 & 10.

2. He attended private meeting of J.E.I. held at the resident of Shri Hussein Khan Hasmat Khan at Naigaven (Aurangabad) 1964.

Sd/-
Chief Executive Officer
Zilla Parishad, Aurangabad"

Pursuant to show-cause notice, he proceeded on leave. Thereafter, his whereabouts was not known for about 16 years. It appears, for the first time, he filed writ petition in 1987 challenging the show-cause notice dated 13/11/1964, i.e. after a lapse of about 23 years. The said writ petition was subsequently withdrawn. In the meantime, the respondent expired on 3/1/1988. His legal representatives filed a second writ petition on 28/1/1988 praying the same relief which was prayed in the first writ petition. In the

second writ petition, the order dated 30/11/1987 compulsorily retiring the respondent from service was also challenged. The High Court, by its impugned order, allowed the writ petition. The High Court quashed the order dated 30/11/1987 compulsorily retiring the deceased respondent from service. The High Court also held3.

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that the deceased respondent was deemed to have continued in service from 14/6/1965 till 20/8/1982 and retired on attaining the age of superannuation on 20/8/1982. The High Court directed the appellant to pay full pay and allowances for the period from 14/6/1965 to 20/8/1982 including the arrears on account of revision of pay scales during the aforesaid period after adjusting the amount already paid to him.

The relief granted by the High Court, in our view, is unknown to law. Undisputed facts are that the deceased respondent was found absent from 13/11/1964 till he filed a writ petition in 1987 challenging the order of show-cause notice dated 13/11/1964 that was withdrawn. Subsequent writ petition filed by the legal representatives of the respondent was also based on the same cause of action, save and except, that in the second writ petition the order dated 30/11/1987 compulsorily retiring the respondent was also challenged. In our view, in the facts and circumstances as recited above, the writ petition was clearly not maintainable being barred by laches and negligence. The High Court ought not have entertained the writ petition much less granting such relief unknown to law. The relief granted under Article 226 of the Constitution is discretionary relief. This was not a fit case for the High Court to have exercised its discretion under Article 226 for granting relief.4.

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For the reasons afore-stated, the impugned order of the High Court is set aside. The appeals are allowed. No costs.