

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS.1140-1141 OF 2009

[Arising out of SLP(C) Nos.4282-4283 of 2008]

ISTAK MOHD.

... **Appellant(s)**

Versus

STATE OF U.P. & ORS.

... **Respondent(s)**

ORDER

Leave granted.

These appeals are directed against the order passed by the Division Bench of the Allahabad High Court on 21st September, 2007 in Writ Petition 1330/SS/2007. Since there were contradicting views of two Single Judges of the said High Court, the matter was referred by the learned Single Judge hearing the matter to the larger Bench to answer the following question:-

“Whether the government order dated 24.4.2006 is a clarificatory order and amount to issue in continuance of earlier order dated 10.10.2005 as held by this court, in the case of Shravan Kumar Yadav (supra) and Gyan Prakash (supra) copies of which have been filed collectively as Annexure-5 to the writ petition or it is an independent order and has not prospective application as held by other Hon'ble Single Judge of this court in the case of Sharad Kumar Srivastava (supra)? The Photostat copy of order dated 24.8.2005 supplied by Shri S.N. Mishra learned

counsel for the respondents is taken on record.”

The matter was taken up by the larger Bench, which while answering the reference, also dismissed the writ application.

The procedure adopted by the Referral Court is irregular since it was required only to answer the question and send back the matter to the Writ Court for disposal. In that view of the matter, we modify the impugned order of the larger Bench to the extent of setting aside the dismissal of the writ petition and direct that the matter be remitted back to the learned Single Judge with the opinion of the larger Bench for final disposal.

The appeals are disposed of, accordingly.

(ALTAMAS KABIR)

.....J.

.....J.
(CYRIAC JOSEPH)

New Delhi,
February 20, 2009.

JUDGMENT