

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6517 OF 2009
(Arising out of SLP (C) No.13319 of 2009)

State of U.P. & Ors.

...Appellants

VERSUS

Sandeep Kumar Balmiki & Ors.

...Respondents

ORDER

1. Leave granted
2. Heard learned counsel for the parties at length.
3. This appeal by Special Leave is directed against an interim order dated 23rd of October, 2008, passed by a Division Bench of the High Court of Allahabad at Lucknow Bench at Lucknow in a special appeal being SLP (C) 75 of 2009, affirming an interim order passed by a learned Single Judge of the High Court in a writ petition being W.P. No. 6516 (S/S) of 2008.

A writ application has been filed by the respondents challenging the orders of termination of their service before the High Court of Judicature at Allahabad at Lucknow Bench at Lucknow. By an interim order, a learned Single Judge of the High Court had stayed the order of termination of the respondents. An appeal was carried by the State of UP against that interim order before a Division Bench of the High Court, which, however, affirmed the interim order passed by the learned Single Judge in the pending writ application but directed the learned Single Judge to dispose of the pending writ application at an early date.

Feeling aggrieved, the State of UP has filed this Special Leave Petition, which on grant of leave, was heard in presence of the learned counsel for the parties.

We have heard Mr. S.R. Singh, learned senior counsel appearing for the State of UP and Mr. P.S. Patwalia, learned senior counsel appearing on behalf of the respondents. Having heard the learned senior counsel for the parties and after considering the impugned orders as well as the nature of relief claimed in the writ petition by the respondents, we are of

the view that the High Court had fallen in grave error in staying the order of termination during the pendency of the writ petition. In our view, the interim order granted by the High Court staying the order of termination could not be passed at this stage in view of the fact that if such relief is granted at this stage, the writ petition shall stand automatically allowed without permitting the parties to place their respective cases at the time of final hearing of the writ petition. In this case also, the appellants have not yet filed counter affidavit to the writ petition of the respondents.

That being the position and in view of the fact that the final relief could not be granted at the interim stage, we set aside the impugned order and vacate the interim order passed by the High Court.

We are informed that now the affidavits have already been exchanged and the matter is ready for hearing. That being the position, we request the learned Single Judge of the High Court to decide the writ petition at an early date, preferably within three months from the date of supply of a copy of this order to it.

For the reasons aforesaid, the impugned order is set aside. The appeal is allowed to the extent indicated above. There will be no order as to costs.

We make it clear that we have not gone into the merits of the appeal, which shall be gone into by the High Court at the time of disposal of the writ petition.

.....J.
[TARUN CHATTERJEE]

NEW DELHI:
September 18, 2009

.....J.
[R.M. LODHA]

JUDGMENT