

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7303 OF 2008
(Arising out of SLP [C] Nos.18008 of 2006)

Shiv Dutt Sharma (Shastri) ... Appellant

Vs.

State of Uttar Pradesh & Ors. ... Respondents

ORDER

Leave granted. Heard learned counsel.

2. The appellant had filed Writ Petition No.15156 of 1983 for quashing the order dated 13.6.1983 passed by the Director of Education and the consequential communications dated 18.8.1983 and 9.9.1983 issued by the District Inspector of Schools, Mathura and the Principal of the fifth respondent college, whereby the appellant was informed that he was not entitled to Lecturer grade pay-scale from the date of his appointment (17.7.1972). The respondents in the said writ petition were (i) Deputy Director of Education; (ii) District Inspector of Schools; and (iii) the Committee of Management

of the employer College. The writ petition was allowed with certain observations, after twenty years, on 15.12.2003.

3. Feeling aggrieved by the said order, an intra-court appeal was filed by respondents 1 and 2 in the writ petition (that is Deputy Director of Education and the District Inspector of Schools) along with two non-parties, namely the State of Uttar Pradesh and the Director of Education. One of the contentions urged by the appellant in the appeal was that no relief could have been granted to the writ petitioner, without the State being impleaded as a party to the writ petition. The said argument found favour with the Division Bench of the High Court. The appeal was therefore allowed by order dated 26.7.2006 on the ground that the state government was a necessary party and non-impleading of the State Government was fatal to the petition. The said order of the Division Bench is challenged in this appeal by special leave.

4. Learned counsel for the appellant submitted that the writ petition was filed in the year 1983; that the appellant on advice had proceeded on the assumption that he had to implead only those

authorities, whose orders were challenged by him; and that the respondents therein did not raise any objection that the writ petition was not maintainable for non-impleadment of the state government as a party. He contended that after 20 years of pendency the writ petition was allowed and if the Division Bench was of the view of that state government was a necessary party, it ought to have granted an opportunity to the appellant to implead the state government as a party, or heard the state government which was already an appellant, instead of rejecting the writ petition after 23 years on a technical ground.

5. The reliefs claimed were with reference to the orders/communications of respondents 1 to 3, denying him Lecturers' pay-scale from 17.7.1972. As respondents 1 and 2 in the writ petition were officers of the state government, and having regard to the nature of the relief sought, there is no doubt that state government was a necessary party. But the writ petition not having been dismissed on that ground by the learned Single Judge, and as 23 years had elapsed from the date of institution of the writ petition, interests of justice required that the High Court ought to have either given an

opportunity to the appellant to implead the state or heard the state on merits, as it was already a party to the appeal. The rigid principle applicable in regard to non-impleading of necessary parties in suits within the period of limitation, may not apply to writ proceedings, as the provisions relating to limitation for suits under Limitation Act, 1963 do not in terms apply to the writ proceedings.

6. The appeal before the Division Bench had been filed by the State Government and Director of Education along with Deputy Director of Education and District Inspector of Schools. Though they were not parties, they were permitted to file the appeal. They could have urged all their contentions on merits before the Division Bench in the appeal and such contentions could have been considered by the High Court, instead of dismissing the writ petition on the ground of non-joinder of parties.

7. We, therefore, allow this appeal, set aside the impugned order of the Division Bench, and restore Special Appeal No.401/2004 to the file of the High Court, for disposal on merits in accordance with law. It is needless to say that the state government and the Director of

Education will also be heard, on the merits, even though they were not respondents in the writ petition.

.....J.
(R V Raveendran)

New Delhi;
December 12, 2008.

.....J.
(D K Jain)