

CASE NO.:
Appeal (civil) 677 of 2008

PETITIONER:
Education Society and Anr

RESPONDENT:
The Education Officer (Secondary) & Anr

DATE OF JUDGMENT: 23/01/2008

BENCH:
S.B. SINHA & V.S.SIRPURKAR

JUDGMENT:
JUDGMENT

ORDER

CIVIL APPEAL NO. 677 /2008
(@SLP(C) No. 4362 /2006)

Leave granted.

The Division Bench as also the learned Single Judge of the High Court by reason of the impugned orders allowed the respondent No.2 to continue in service which is challenged before us by the appellant No.1 which manages the school known as "Haidariya Urdu High School".

Respondent No.2 was appointed as Assistant Teacher for the academic session 1996-97 till the end thereof. He was appointed as Incharge Head Master on 28.6.1997. He was allegedly put on probation for a period of two years. His services were terminated by an order dated 3.4.1988 with effect from 9.5.1988 on the ground that his appointment was for a specific period.

The contention of the appellant, however, is that the performance of respondent No.2 during the period of probation was found to be unsatisfactory and on that ground alone his services were terminated.

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Be that as it may. Respondent No.2, admittedly, preferred an appeal before the School Tribunal thereagainst and an order of Status-quo was passed on 24.4.1998. Indisputably, pursuant to or in furtherance of the said order, the respondent No.2 continued to work in the appellant's school. However, the said appeal preferred by the respondent no.2 was dismissed by the School Tribunal on 22.8.2005.

Aggrieved by and dis-satisfied therewith, respondent No.2 filed a writ application wherein the learned Single Judge of the High Court by and order dated 27.10.2005 directed as under:

" It is apparent that post of assistant teacher was available and appointment of petitioner against it from 1.7.1996 till session end is approved. On 28.6.1997 management chose to appoint on probation on post of in-charge headmaster. There is no justification as to why he could not be appointed on probation on 1.7.1996 when post was available and he was also duly qualified. Contention of respondent management that he was appointed as in-charge

Headmaster without following procedure is not accepted by School Tribunal and Tribunal has treated his appointment as on probation. Petitioner has continued in service during last seven years after the termination and even today is in service. Till then the respondent No.1 and 2 shall continue petitioner in service."

The Division Bench of the High Court by reason of the impugned judgment has dismissed an intra-Court appeal preferred by the appellants herein.

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Learned counsel appearing on behalf of the appellant would submit that the High Court committed a serious error in passing the impugned judgments in so far as a final relief which could be granted to respondent No.2 has been granted by reason of the impugned order.

Learned counsel appearing on behalf of the respondent no.2 would support the impugned order.

We have been addressed on the merit of the matter but keeping in view the order proposed to be passed by us, we need not go thereinto. We may place on record that while issuing notice in this matter, this Court by an order dated 22.3.2006 stayed the operation of the impugned orders. Indisputably, pursuant thereto the services of respondent No.2 has been terminated.

We, therefore, are of the opinion that in the facts and circumstances of this case the interest of justice would be subserved if the High Court is requested to hear out and dispose of the writ petition filed by respondent No.2 as expeditiously as possible and preferably within a period of three months from the date of receipt of a copy of this order.

We, furthermore, grant liberty to respondent No.2 to file additional affidavit before the High Court bringing this fact to its notice in the main matter so that in the event the writ petition succeeds, appropriate relief may be granted in his favour.

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The appeal is allowed.

The interim order passed by this Court shall continue till disposal of the writ petition before the High Court.

We, however, make it clear that this order may not be taken to be one which is passed on the merit of the matter.