

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).4362/2006  
(From the judgement and order dated 19/01/2006 in LPA No. 1/2006 in WP No. 4537/2005 of The  
HIGH COURT OF BOMBAY AT NAGPUR)

Haidariya Urdu Education Society & Anr.

Petitioner(s)

VERSUS

Education Officer (Secondary) & Anr.

Respondent(s)

(With appln(s) for exemption from filing O.T. and prayer for interim relief and office report  
) (For  
final disposal)

Date: 23/01/2008 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE V.S. SIRPURKAR

For Petitioner(s) Mr. Manish Pitale, Adv.

Mr. Chander Shekhar Ashri, Adv.

For Respondent(s) Mr. S.S. Shinde, Adv.

Mrs. Asha G. Nair, Adv.

Mr. V.N. Raghupaty, Adv.

Mr. Shivaji M. Jadhav, Adv.

UPON hearing counsel the Court made the following  
ORDER

Leave granted.

The appeal is allowed in terms of the signed order.

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

[ Meenu Sethi ]  
Court Master

[ Pushap Lata Bhardwaj ]  
Court Master

Signed order is placed on the filer  
IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 677 /2008  
(@SLP(C) No. 4362 /2006)

Haidariya

Urdu

Education Society ...Appellants  
and Anr.

Versus

The Education Officer  
(Secondary) & Anr.

...Respondents

ORDER

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.

.....J.

[ S.B. SINHA ]

.....J.

[ V.S.SIRPURKAR ]

New Delhi,  
January 23, 2008