

v(

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1243 OF 2008
(@ S.L.P.(C)No.6241 / 2006)

EDUCATION OF FICER (PRIMARY), OSMANABAD

...Appellant

VERSUS

MOHAMMED & ORS.

...Respondents

ORDER

Leave granted.

Heard learned counsel for the parties.

This appeal is directed against the final judgment and order dated 30th

September, 2005, passed by the High Court of Judicature at Bombay, Bench at Aurangabad in Writ Petition No.1188 of 2004. In the impugned order ultimately the Division Bench of the High Court passed the following order:

"In the result, the writ petition is allowed. The impugned order dated 30.9.2002 passed by the Respondent No.2 is quashed and set aside. We direct the Respondent No.4 to absorb the Petitioner as an excess employee under Rule 26 of the M.E. P. S. Act in any other recognized and aided private school. The absorption shall be granted within a period of three months from today, failing which, on expiry of three months, the Education Officer shall start releasing salary in favour of the Petitioner."

We have carefully examined this order of the High Court. It appears from the records that the order of the School Tribunal was an ex-parte order in which the present appellant was not a party. It is also an admitted position that an application for recall of that ex-parte order passed by the School Tribunal has already been filed at the instance of the appellant, which has not yet been decided.

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If that application is allowed and the order is recalled, there cannot be any dispute that the right that has been accrued to the present respondent shall automatically come to an end. On the other hand, if the application is rejected the respondent would be entitled to all benefits arising out of the said order.

That being the position, we dispose of this appeal by directing the School Tribunal to decide the said application for recall positively within three months from the date of supply of a copy of this order before the School Tribunal, without being influenced by any of the observations made by the High Court or any observation made by us in this order, and without granting unnecessary adjournment to either of the parties.

The appeal is disposed of accordingly with no order as to costs.

.....J .
(TARUN CHATTERJEE)

.....J .
(H.S. B E D I)

NE W DE L H I ,
Febru a ry 1 2, 2 0 0 8 .
IT E M NO.3

COUR T NO.9

S E C T I O N IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).6 2 4 1 / 2 0 0 6

(From the judgement and order dated 3 0 / 0 9 / 2 0 0 5 in W P No. 1 1 8 8 / 2 0 0 4 & the judgment and order dt.1 9. 0 1 . 2 0 0 6 in RA No. 1 2 5 7 8 / 2 0 0 5 in W P No.1 1 8 8 of 2 0 0 4 of The HIGH C O U R T O F B O M B A Y AT A U R A N G A B A D)

E D U C A T I O N O F F I C E R (P R I M A R Y) , O S M A N A B A D

Petitioner(s)

V E R S U S

M O H A M M E D & O R S .

Respondent(s)

(With appln(s) for c/delay in filing S L P and exemption from filing c/c of the impugned Judgment and exemption from filing O.T. and permission to file additional documents and with prayer for interim relief and office report)
(For Final Disposal)

Date: 1 2 / 0 2 / 2 0 0 8 This Petition was called on for hearing today.

C O R A M :

H O N ' B L E M R . J U S T I C E T A R U N C H A T T E R J E E
H O N ' B L E M R . J U S T I C E H . S . B E D I

For Petitioner(s) Mr.Uday B.Dube, Adv.
Mr. Kuldip Singh,Adv.

For Respondent(s) Mr. C.G. Solshe,Adv.
Mr. Vinesh C. Solshe, Adv.

Mr. Sudhan shu S. Chaudhari, Adv.
Mr. Naresh Ku m a r ,Adv.

UPON hearing counsel the Court made the following

O R D E R

Delay condoned. Leave granted.

Heard learned counsel for the parties.

The appeal is disposed of with no order as to costs, in terms of signed order placed on the file.

(A.D. Shar m a) (Phoolan Wati Arora)

Court Master Court Master

(Signed non- reportable Order is placed on the file)