

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.13098/2003

(From the judgement and order dated 04/09/2002 in DBCSA 601/94
of The HIGH COURT OF RAJASTHAN AT JAIPUR)

DAYA RAM

Petitioner (s)

VERSUS

JAIPUR VIDYUT VITRAN NIGAM LTD. & ANR.

Respondent (s)

(With prayer for interim relief & office report)

Date : 09/01/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DORAISWAMY RAJU
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Petitioner (s)Mr. Sanjeev Anand,Adv.

For Respondent (s)Mr. Sushil Kumar Jain,Adv.
Mr. AP Dhamija, Adv.UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeal is partly allowed in terms of the signed order. No costs.

(D.L.Chugh) (Vijay Aggarwal)
Court Master Court Master

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.134 OF 2004
(Arising out of SLP(C) No.13098 of 2003)

DAYA RAMAppellant(s)

versus

JAIPUR VIDYUT VITRAN NIGAM LTD. & ANR.

Respondent(s)

O R D E R

Leave granted.

The above appeal has been filed challenging the order dated 4.9.2002 in D.B. Civil Special Appeal (Writ) No.601 of 1994 of a Division Bench of the Rajasthan High Court, Jaipur Bench whereunder the High Court while dismissing the appeal filed by the appellant with costs of Rs.5,000/-, directed the refund of the amount of salary, allowances, perks and other benefits which he received during the period he worked with the Board even after his superannuation w.e.f. 30.4.1995, under the court's order, within the time stipulated therein. The grievance with which the appellant approached the High Court was with reference to the actual date of birth whether it was 16.4.1937 as originally given by him or 1.10.1947 as he sought to assert subsequently at the fag end of his service career. Though the learned Single Judge rightly rejected the writ petition, unfortunately, the Division Bench not only entertained the appeal but granted interim orders and yet kept the appeal without disposing of the same till 4.9.2002, when it came to be finally disposed of. This was rendered possible, apparently on account of the indifference on the part of the Board in not moving for early disposal or challenging the interim order which enabled the appellant to continue in service. The case of the appellant before the High Court ultimately could not succeed, and the appellant was rightly indicted also for the clever game played by him by mulcting him with costs. The case on hand is an indicator for courts to be more cautious and circumspect in granting interim orders which normally should be after a careful balancing of rights and equities of parties and not to grant the same for the mere asking or for the reason that the main matter is pending.

When the special leave petition came up for admission on 21.7.2003 this Court issued notice confined to a limited aspect and dismissed the SLP in respect of other claims as could be seen from the order passed on that date, as under:

"Issue notice.

The notice in this case is confined to the direction with reference to the refund of the amount of salary, allowances and perks and other benefits received by the petitioner during the period he worked and rendered services under the orders of the Court. In all other respects, relating the age and date of birth, the special leave petition shall stand dismissed. Interim stay till then."

The respondents have entered appearance and have filed counter affidavit.

Heard the learned counsel for the parties.

The learned counsel for the respondent Board strenuously contended that in view of the unscrupulous stand adopted by the appellant at the fag end of his career the High Court could not be said to have committed any error so as to call for interference, with its order in directing the refund of the salary, allowances and perks which the appellant received during the period of service to which he was not entitled to be in service on account of the original and actual date of birth given and inasmuch as the appellant was able to continue in service only under the orders of the court, there was nothing wrong for the court to have issued such directions. In the alternate the learned counsel also submitted that at least a portion of the salary could be ordered to be refunded though not in entirety. Learned counsel for the appellant contended that since he actually served and the benefit of his services were availed of by the Board the direction to refund should not have been made and, therefore, to that extent relief has to be accorded to the appellant.

We have carefully considered the submissions of learned counsel appearing on either side. In our view, inasmuch as the respondent Board had availed of the benefits of the services rendered by the appellant though under the orders of the court even after the date of superannuation, but for which he would not have been able to continue in service it could not be said that either quantitatively or qualitatively the service rendered by him differed to deny him the benefits of remuneration for the same. Unscrupulous, though the appellant might have been, the Division Bench not only granted orders of stay but the Board also seems to have been indifferent in challenging it or getting the appeal disposed of expeditiously. In that view of the matter that the appellant alone could not be found fault with and denied the remuneration for his services, during the period when he served under orders of court. There is also no justification for that reason to even allow only part payment of remuneration for the period during which he served the respondent Board under the orders of the court. Consequently the interest of justice, in our view, would also be better served by allowing the appellant to retain only

y the salary, allowances and perks that have been actually received by the appellant during the period of service rendered by him under the orders of court only by making it clear and directing that such service cannot be taken advantage of for any other purposes, including the determination or quantification of pension and or any other benefits whatsoever. The appeal shall stand partly allowed only to the extent indicated above and we reaffirm the earlier order of dismissal in respect of other reliefs claimed. No costs.

.....J.
(DORAISWAMY RAJU)

.....J.
(ARIJIT PASAYAT)
New Delhi,
January 09, 2004