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C.A.No. 3022 OF 1999
ITEM No.113

Court No. 1

SECTION IV

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

Civil Appeal No. 3022 of 1999

Gyanmandir Mahavidhyalaya Samity

...Appellant(s)

vs.

Udailal Jaroli & Anr.

...Respondent(s)

(with prayer for interim relief)

Date: 16/03/2004 This/These matter(s) was/were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE S.H. KAPADIA

For Appellant (s)Mr. K N Bhat, Sr. Adv.
Mr. Arun Francis, Adv.
Ms. Sweety Manchanda, Adv.
Mr. P H Parekh, Adv.

For Respondent (s)Mr. B K Satija, Adv.

Mr. S K Agnihotri, Adv. (NP)

UPON hearing counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.
There shall be no order as to costs.

(D.P. WALIA) (JANKI BHATIA)
COURT MASTER COURT MASTER

(Signed Order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3022 OF 1999

Gyanmandir Mahavidhyalaya Samity... Appellant

vs.

Udailal Jaroli & Anr.... Respondents

O R D E R

Respondent No.1 herein was the Principal of an Institution run by the appellant herein. He is said to have committed certain acts of misconduct, which having come to the notice of the appellant, a disciplinary proceeding was initiated against him wherein he was found guilty. Pursuant thereto and in furtherance thereof, he was dismissed from service. Aggrieved thereagainst, an appeal was preferred by the said respondent before the State Government which remained pending for a considerable period of time. In the meanwhile, the respondent filed a writ petition before the High Court. Although the said appeal was disposed of by the State Government on or about 21st November, 1984, the same was not brought to the notice of the High Court and by reason of an order dated 23rd November, 1984 the State Government was directed to dispose of the appeal preferred by the respondent. On a mistaken belief that a fresh order is required to be passed by it, the appeal of the respondent was taken up for hearing again by the State Government which was partly allowed, in terms whereof the respondent was not granted the arrears of salary while the order of dismissal was set aside. Both the parties herein preferred respective writ petitions being aggrieved by and dissatisfied therewith. A Single Judge of the High Court while allowing the writ petition preferred by the appellant, dismissed the one preferred by the respondent. A special leave petition was filed by the respondent herein against the said order, whereupon this Court disposed of the matter ex parte by an order dated 25.1.1988 observing:

"Special leave granted. Appeal is heard. We are informed that the appellant has made an application before the State Government for setting aside the ex parte order dated 21.11.1984. The State Government shall dispose of that application, if such an application is pending before it. We express no opinion on the merits of the case. Appeal disposed of accordingly."

It is not in dispute that in fact no appeal was pending before the State Government at the relevant point of time, but purported to be on the strength of the aforesaid order of this Court the respondent filed a fresh appeal before the Chief Minister whereupon a direction was made that the appeal be heard by the appropriate authority. The said appeal was allowed. Aggrieved thereby, the appellant filed a writ petition before the High Court. The said writ petition was allowed by a learned Single Judge, inter alia, holding that this Court in its order dated 25.1.1988 did not give any fresh opportunity to the respondent to file a separate appeal. The respondent preferred a letters patent appeal against the said judgment. The Division bench of the High Court by reason of the impugned judgment directed the matter to be heard afresh upon remission thereof stating:

"The writ Court had propounded a strange logic that as the Supreme Court order passed in SLP No.10062/86 dated 25.1.88 perceived Appellate Authority's appeal could not be re-heard by the Government. Less said about it the better, because any touching of contours of Supreme Court order may compound the error. Suffice it to say that an ex parte order is an order passed in the absence of the other party even though on merits. Viewed thus, it cannot be gains that Apex Court had directed Appellate Authority to consider Appellant's application for setting aside "ex parte order dated 21.11.84" if it was pending before it. As such the Authority had no choice but to accord consideration to any such pending application, though it was open for it to accept it or reject it. All this notwithstanding, it is generally hazardous and unsafe and transgressed boundaries of propriety to interpret terms of Superior Court order and to lend mea

ning to it. If such order is capable of two views and is liable to clarification, it is for the Superior Court to clarify it and to bring out its real impact. Considering all this, we feel convinced, that writ Court ought not to have taken upon itself to interpret the Supreme Court order to allow writ petition of Respondent no. 2. Mr. Maheshwari's last minutes submission that appellant deserved no indulgence because of his involvement in scandalous activities and because of grave misconduct, which was unbecoming of a Principal of an educational Institution and his reliance on the Supreme Court judgment in this regard was wide off the mark because we are not called upon in this appeal to examine the merit of Appellant's dismissal from service which had remained untouched and unconsidered throughout. This submission may have held good if the validity of the such dismissal was under scrutiny. But in the present case as noticed above, the controversy had unfortunately dragged on side issues."

Consequent upon the said findings, the appeal was allowed in part by directing :

"Writ Court order dated 7.4.95 passed in M.P. No. 450/94 is set aside. The matter is remanded to the writ Court for re-consideration of M.P. No. 450/94 on merit of issues involved related to validity of Appellant's dismissal from service. Registrar to post the matter before appropriate Bench for disposal as case no. 1 in the week commencing 24th August, 98."

It is against the said judgment of the Division Bench, the appellant is in appeal before us. The short question that arises for consideration is : Whether in pursuance of the observation made by this Court while disposing of the appeal on 25.1.1988, it was open to the respondent herein to file a fresh representation which was required to be decided by the appellate authority ?

Upon hearing the learned counsel for the parties, we are of the opinion that the approach of the Division Bench of the High Court was not correct. If the order passed by the State Government attained finality, in absence of any order by a court having jurisdiction setting aside the order, another appeal at the instance of the respondent before the State Government was not maintainable. It has not been shown before us that the State Government while exercising its appellate power from a decision of the disciplinary authority has the requisite jurisdiction to review its earlier order. The jurisdiction of the State Government having been derived from the statute, the State is obliged to confine its jurisdiction within the four corners thereof. If it had no jurisdiction to entertain a fresh appeal despite the fact that an order passed by it as an appellate authority attained finality, the order passed on the basis of an illegal proceeding would be coram non iudice. In that view of the matter, the High Court could consider the order of this Court dated 25.1.1988 and interpret the same.

From a perusal of the order dated 25.1.1988 passed by this Court, it appears that it was stated before the Court that some application filed by the respondent was pending before the State Government for setting aside the ex parte order dated 21.11.1984 and the same was not being decided. It further appears that in pursuance of that statement, the Court directed the State Government to dispose of the application. This Court did not give any liberty to the respondent herein to file a fresh application or appeal before the State Government. In that view of the matter, the State Government had no jurisdiction to entertain a fresh application/appeal filed by the respondent and decide the same on merits. We are further of the view that since the matter had already been decided, there was nothing more left to be decided in the case and, therefore, the Division Bench committed a manifest error in setting aside the order and judgment and remanding the matter back to the Single Judge. In our view, the order of remand passed by the Division Bench of the High Court was totally unjustified and unwarranted.

For the aforesaid reasons, the order and judgment under challenge is set aside. The appeal is allowed. There shall be no order as to costs.

.....CJI (V.N.KHARE)

.....J
(S.B. SINHA)

.....J
(S.H. KAPADIA)

New Delhi;
March 16, 2004.