

Umakant Misra Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Jul-23-1998

Reported in : 1998(2)AWC1586

Judge : I.P. Vasishth, J.

Acts : Uttar Pradesh Intermediate Education Act, 1921; Uttar Pradesh Intermediate Education Regulations 1921 - Regulation 3(1); Code of Code of Civil Procedure (CPC), 1908 - Order 39, Rules 2, 2(2) and 3

Appeal No. : W.P. No. 1920 (M/S) of 1997

Appellant : Umakant Misra

Respondent : State of U.P. and Others

Advocate for Def. : Nirmal Tewari, Adv.

Advocate for Pet/Ap. : S.K. Kalia, Adv.

Judgement :

I.P. Vasishth, J.

1. The petitioner prays for a writ of ceniorari quashing the civil court proceedings in Suit No. 42 of 1997 pending before the civil Judge. Hawaii (Junior Division), Lucknow along with a mandamus calling upon the respondent No. 3 to decide his

service appeal.

2. The gist of the matter is that the petitioner and private respondent no. 6 were working as lecturers in the Institution run and managed by respondent No. 5 in the name and style of Rashtriya Udyog Ashram Inter College, Matlyari, Chinhat, Lucknow. There was a seniority dispute between the two which was settled by the managing committee vide its order dated 17.1.1998 contained in Annexure-7 in favour of private respondent No. 6. Feeling aggrieved against it, the petitioner filed a service appeal under Regulation 3 (1) (f) of the regulations framed under the U. P. Intermediate Education Act, 1921 and as the appeal was still pending, the private respondent filed the aforesaid civil suit seeking declaration and permanent injunction against the petitioner and the managing committee on the validity of the order dated 17.1.1998 contained in Annexure-7. He also prayed for a permanent injunction restraining the defendants from interfering with his 'possession'. On 24.1.1997, the civil court passed an ex parte order for maintenance of status-quo. It also issued notices to the defendants (Including the writ petitioner) impleaded in the suit.

3. The petitioner's grouse is that even though respondent No. 3 was not a party to the aforesaid suit proceedings and was rather called upon to discharge his statutory obligations while dealing with his service appeal, yet he was sitting tight over the papers on the pretext that at a later stage, he had also been Impleaded as a party to the suit proceedings. The contention, of course, was also to the extent of attributing mala fides to the private respondent No. 6 in dragging the matter to the civil court. In spite of the fact that the management had already decided the matter in his favour and it was he alone (writ petitioner) who could be aggrieved by that arrangement giving rise to the service appeal as mentioned hereinbefore.

4. In all fairness to him, learned counsel for the private respondent contested the very maintainability of the writ petition by submitting that since the matter was already pending adjudication before a competent civil court, therefore, it would not be a proper proposition for the writ court to Intervene. Under the normal circumstances, his objection required serious consideration but the peculiarity of the situation here is that the impugned stay order passed by the learned Civil

Judge has a tendency of restraining the private respondent No. 3 from discharging his statutory obligation. There is no gain-saying that petitioner's appeal is a permissible statutory action because the regulations themselves have been framed under an enactment. It appears that the implications of Section 41 of the Specific Relief Act governing proviso to Rule 2 (2) of Order XXXIX, C.P.C. as adopted by Allahabad amendment in the C.P.C. were not brought to the notice of the learned Civil Judge. Similarly, he also appears to have lost sight of the provisions of Order XXXIX, Rule 3, C.P.C. which obligated him to record reasons indicating the urgency before granting an ex parte Interim order.

5. Be that as it may, since the matter is already engaging the attention of a competent civil court, therefore, without making any comments of the type which could prejudice the rights of the parties in the ensuing trial, this Court disposes of the petition finally with the observation that the Impugned civil court order would not debar the respondent No. 3 from discharging his own statutory obligations while dealing with the service appeal of the petitioner, it is rather expected of him to dispose of the appeal expeditiously, say within a month or two so as to put an end to the unnecessary bickering between the two seemingly responsible academicians.