

(2008) 09 AHC CK 0184

In the Allahabad High Court

Case No : Special Appeal No.1140 of 2008 (with Special Appeal Nos. 1137/08, 1099/08 and 1145/08)

Ashutosh Shrotriya and others

APPELLANT

Vs

Vice-Chancellor, Dr.B.R.Ambedkar University and others, etc.

RESPONDENT

Date of Decision : 15-09-2008

Acts Referred:

Allahabad High Court Rules, 1952 — Chapter 8, 5

Citation : (2008) 09 AHC CK 0184

Hon'ble Judges : V.M.Sahai, J and Pankaj Mithal, J

Final Decision : Dismissed

Judgement

1. We have heard learned counsel for the parties.
2. The short question that arises for consideration in these appeals is whether when a writ petition is heard by a learned single Judge and he calls for counter and rejoinder affidavits, but he does not pass any order on the stay application either granting a stay order or refusing the stay order, then, whether the order amounts to refusal of interim order to the petitioner either temporarily or impliedly amounting to a judgment within the meaning of Chapter VIII Rule 5 of the Rules of the Court, 1952.
3. The learned counsel for the appellants have urged that the actual position in the Court is that in a petition in which counter and rejoinder affidavits are called by the Court and the petition is directed to be listed, then, it becomes a herculean task to get the case listed or to get the petition taken up for consideration of stay application as every Court is overburdened with work. Therefore, at the very first stage when the petition is argued as a fresh case the learned single Judge who hears the fresh petition may either grant a stay order or reject the stay application.
4. The learned counsel for the appellants have urged that if an order adversely affects the valuable right of the party either temporarily or impliedly by refusing

to grant an interim relief such order shall be having trappings of a judgment and the special appeal shall be maintainable under Chapter VIII Rule 5 of the Rules of the Court.

5. The learned counsel for the appellants have placed reliance of the Division Bench decision of this court in AS (Degree College) Association and another v. Vice Chancellor, CCSU, Meerut and others (2007) 1 UPLBEC 533 wherein before the Division Bench the following order was under challenge :

"Sri Anurag Khanna has accepted notice for respondents No.1 and 2 Sri Prabhakar Awasthi for Respondent No. 3 and the learned Standing Counsel for respondent No. 4. They pray for and are granted two weeks time to file counter affidavit. The petitioner shall have a week thereafter to file rejoinder affidavit. List in the week commencing 4.12.2006.

The application for interim relief shall be considered on the next date."

6. Against this order the special appeal was entertained and describing this order as an order of refusal of interim relief the Division Bench allowed the appeal by granting a stay order under the facts and circumstances of the case.

7. The Division Bench in AS (Degree College) Association case had held that the party was entitled for an interim order without prejudice to the rights and contention of the parties in the writ petition when the matter was taken up for hearing by the learned single judge.

8. On the other hand, Shri R.N. Singh learned senior counsel assisted by Dr. H.N. Tripathi has placed before us two decisions of the Division Benches of this Court.

9. Before one of the division bench in special appeal No. 1041 of 2008 Smt. Asha Devi vs. State of U.P. and others decided on 26.8.2008, the order of learned single Judge dated 14.8.2008 which was under challenge is extracted below:

"Learned Standing Counsel has accepted notice on behalf of respondent Nos. 1 to 4. He is granted three weeks time to file counter affidavit. Rejoinder affidavit may be filed within one week thereafter.

List after one month."

10. In another Special Appeal No. 887 of 2008 Committee of Management v. State of U.P. and others decided on 31.7.2008 the order of learned single judge dated 8.7.2008 which was challenged in Special Appeal is extracted below:

"Sri G.K. Singh is granted ten days time to file counter affidavit. List immediately after ten days".

11. In both the cases relied by Shri R.N. Singh though the appeal was dismissed as not maintainable by treating the impugned orders not to be judgments within the meaning of Chapter VIII Rule 5 of the Rules of the Court but without any reasoned discussion on the subject.

12. Since there is a conflict between the decisions of AS (Degree College) Association (supra) on one hand and Smt. Asha Devi (supra) and Committee of Management (supra) on the other, and secondly, as an important question of law of public importance has arisen as to whether an order which adversely affects the valuable right of the party by temporary or implied refusal of interim relief shall have trapping of the judgment or not, therefore, in the interest of justice the follow up questions arises which we refer to be decided by larger Bench of this Court:

(1) Whether when a writ petition is heard by a learned single Judge and he calls for counter and rejoinder affidavits, but he does not pass any order on the stay application either granting a stay order or refusing the stay order, then, whether the order amounts to refusal of interim order to the petitioner either temporarily or impliedly amounting to a judgment within the meaning of Chapter VIII Rule 5 of the Rules of the Court, 1952?

(2) Whether an order which adversely affects the valuable right of the party by temporary or implied refusal of interim relief shall have trapping of the judgment or not?

13. Office is directed to place the record before Hon''ble the Chief Justice for constituting the larger bench at the earliest.