
(2010) 11 AHC CK 0180

In the Allahabad High Court

Case No : Special Appeal Defective No. 1011 of 2010

C/M, Azad Memorial Inter College and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-11-2010

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 5

Citation : (2011) 2 ADJ 541

Hon'ble Judges : Ferdino Inacio Rebello, C.J;Amreshwar Pratap Sahi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Sri Rajesh Yadav, learned Counsel for the appellants, Sri Shekhar Srivastava, learned Counsel for respondent No. 4 and the learned Standing Counsel for the State-respondents.

2. The appellant-Committee of Management of Azad Memorial Inter College has come in appeal against the summary dismissal of Civil Misc. Writ Petition No. 11143 of 2010 arising out of recovery proceedings in the execution of an award made by the Labour Court. The award was passed on 10.1.2008. The same was assailed in Civil Misc. Writ Petition No. 55068 of 2009 in which an interim order was passed to the effect that "the operation of the award shall remain stayed to the extent of 25% of back wages of the awarded amount." It appears that the appellants failed to make the payment as directed under the said interim order, as a result whereof, the recovery proceedings were commenced. The said action was challenged by the appellants in the writ petition, which has given rise to the present appeal.

3. Learned Counsel for the respondents has raised a preliminary objection to the maintainability of this appeal by relying upon a Division Bench judgment of this Court in Vajara Yojna Seed Farm and Others Vs. Presiding Officer, Labour Court II and Another, , to contend that against an order pursuant to an award of the

Industrial Tribunal/Labour Court, a special appeal would not be maintainable under Chapter VIII Rule 5 of the Allahabad High Court Rules. He further submits that the appellants having not complied with the interim order granted by the High Court, could not have even otherwise assailed the recovery proceedings on merit.

4. Learned Counsel for the appellants submits that the entire proceedings were without jurisdiction and there was no liability on the part of the Committee of Management to satisfy the award made by the Labour Court, as the award was made against M/s Azad Memorial Inter College and not against the Committee of Management.

5. Having heard learned Counsel for the parties, we are satisfied that on both counts the appeal deserves to be dismissed.

6. Coming to the second ground, as advanced by the learned Counsel for the appellants, it is evident that the award was made against the Management of the Institution. That was subject matter of Writ Petition No. 55068 of 2009 and it is as a consequence of the interim order passed by the High Court, that the recovery proceedings have been undertaken by the respondents. In this view of the matter, on merit, it was not open to the appellants to have proceeded against the said recovery proceedings unless any order was passed modifying the order of the Court passed on 26.10.2009. In this view of the matter, the writ petition moved by the appellants was liable to be rejected.

7. Insofar as the question of maintainability of appeal is concerned, the preliminary objection raised by the respondents also deserves to be upheld in view of the law laid down in Vajara Yojna Seen Farm (supra).

8. Accordingly, the appeal lacks merit and is hereby dismissed.

Order on Delay Condonation Application:

9. This is an application for condoning the delay in filing the appeal.

10. Considering the cause shown in the affidavit filed in support of the delay condonation application, the delay in filing the appeal is condoned. Application stands allowed. Office to register the appeal.