

(2019) 07 UK CK 0022

In the Uttarakhand High Court

Case No : Special Appeal No. 634 Of 2019

Janta Inter College Sultanpur And Another

APPELLANT

Vs

Director, Secondary Education Directorate And Others

RESPONDENT

Date of Decision : 01-07-2019

Acts Referred:

Citation : (2019) 07 UK CK 0022

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Parikshit Saini, Anil Dabral, B.S. Parihar

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. This appeal is preferred against the order passed by the learned Single Judge in Writ Petition (S/S) No. 1179 of 2019 dated 23.05.2019. The appellants herein are respondents 3 and 4 in the writ petition. The third respondent-writ petitioner invoked the jurisdiction of this Court contending that his services were terminated without obtaining prior approval of the competent authority; and it was a case of victimization of a non-teaching staff at the hands of the management. It is evident, from the order under appeal, that appellants-respondents 3 and 4 were represented by counsel before the learned Single Judge. While granting four weeks' time for a counter affidavit to be filed, and for the matter to be listed in the first week of July, 2019, the learned Single Judge observed that, considering the submissions advanced on behalf of the learned counsel for the parties, the effect and operation of the order dated 07.05.2019 shall remain stayed till then. Aggrieved thereby, the present appeal.

2. While fairly stating that the statutory provisions require approval of the competent authority to be obtained before giving effect to the order of termination of an employee, Mr. Parikshit Saini, learned counsel for the appellants-respondents 3 and 4, would place reliance on the judgment of the

Supreme Court, in T.M.A. Pai Foundation and others Vs. State of Karnataka and others : (2002) 8 SCC 481, more particularly paragraph no. 161 in relation to question 5(c), to submit that, while it is open to the Government to constitute a Tribunal and till it is so constituted for a Tribunal to be presided over by a Judicial Officer of the rank of District Judge, approval of the authority, prescribed under the Uttarakhand Education Act for termination of the services of an employee in a minority educational institution, need not be obtained in the light of the law declared by the Supreme Court.

3. In Paragraph no. 161 of the judgment in T.M.A. Pai Foundation and others Vs. State of Karnataka and others : (2002) 8 SCC 481, in so far as it related to question no. 5(c), the Supreme Court opined that, for redressing the grievances of employees of aided and unaided institutions, who are subjected to punishment or termination from service, a mechanism should be evolved; in its opinion, appropriate Tribunals could be constituted, and till then such tribunals could be presided over by a Judicial Officer of the rank of District Judge; the State, or other controlling authorities, however, could always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution; and Regulations could be framed governing service conditions for teaching and other staff for whom aid was provided by the State, without interfering with the overall administrative control of the management over the staff.

4. In the present case, the prescription is by way of plenary legislation. While an attempt is made to contend that such a provision interferes with the overall administrative control of the management over the staff, we must bear in mind that the order under appeal is an ad-interim order passed even before a counter affidavit was called upon to be filed by the respondents. While we may not be understood to have held that, in no case would an appeal lie against an ad-interim order passed by the learned Single Judge, this Court would, ordinarily, refrain from interference in appellate proceedings, since the appellants can always avail the remedy of filing a petition, seeking vacation of the said interim order, before the learned Single Judge.

5. Mr. Parikshit Saini, learned counsel for the appellants-respondents 3 and 4, would contend that, despite elaborate submissions being put forth, the order under appeal does not record his contentions that the writ petition is not maintainable. The law declared by the Supreme Court, in State of Maharashtra Vs. Ramdas Shrinivas Nayak and another : (1982) 2 SCC 463, requires a Division Bench not to go into such questions, for the remedy available to the person, who invokes its jurisdiction, is to seek review before the learned Single Judge, and to bring it to his notice that there is an error in the order passed by him, and that the facts and contentions put forth have not been noted in the order passed by him.

6. Since the appellants-respondents 3 and 4 can as well file a petition, seeking

vacation of the ad-interim order, before the learned Single Judge, we see no reason to exercise discretion to entertain this intra-Court appeal. Leaving it open to the appellants-respondents 3 and 4, to file a petition seeking vacation of the ad-interim order, the Special Appeal fails and is, accordingly, dismissed. No costs.