

(2010) 09 AHC CK 0426
In the Allahabad High Court

Ram Tirath Katiyar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-09-2010

Acts Referred:

Citation : (2010) 09 AHC CK 0426

Hon'ble Judges : Ferdino I. Rebello, C.J;A.P. Sahi, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. This special appeal is directed against an interim order dated 13.8.2010 passed by the learned Single Judge in Civil Misc. Writ Petition No. 48511 of 2010.

2. Heard learned Counsel for the parties.

3. The appellant herein earlier was petitioner in Civil Misc. Writ Petition No. 28016 of 2010. Admittedly, respondent No. 5 in the select list prepared was at serial No. 1 and the appellant was at serial No. 2. Pursuant to their selection, respondent No. 5 was issued letter of appointment on 16.3.2010. That came to be challenged before this Court in the aforesaid writ petition. This Court by order dated 18.5.2010, directed the appellant herein to make a representation before respondent No. 2 therein, who shall pass a reasoned and speaking order within four weeks thereafter, after affording opportunity of hearing to respondent No. 6 therein. It was further made clear that the order selecting respondent No. 6 therein, would be subject to the order passed by respondent No. 2 in that petition.

4. It appears that in spite of the order appointing respondent No. 5, the Management did not allow him to join. According to the appellant herein, respondent No. 5 voluntarily informed the Management by letter dated 22.6.2010 that he was not willing to join and in these circumstances, the appellant came to be appointed. Respondent No. 5 disputes the said letter on several grounds.

5. Learned Single Judge, after considering all aspects has been pleased to stay the appointment of the appellant herein.

6. At the hearing of this appeal, learned Counsel for the appellant draws our attention to a judgement in the case of Executive Director, West Bengal Power Development Corporation Ltd. Vs. Sri Ardhendu Sekhar Bala and Others, to contend that once a person joined the post, stay order ought not to have been granted.

7. The judgment of Ardhendu Sekhar Bala (supra) is not applicable in the instant case since the fact of that case is distinguishable. It is not a case for the proposition that at any point of time, appointment of a person cannot be stayed, if record otherwise justifies. In the instant case, admittedly, respondent No. 5 was at serial No. 1 and had been selected. The grievance made by the writ petitioner (appellant herein) regarding qualifications of respondent No. 5, is under consideration before the U.P. Secondary Education Service Selection Board, Allahabad (in short "the Board"). Apart from that, the very letter based upon which, the Management held that respondent No. 5 had no right, was the subject matter of investigation by the competent authority. In these circumstances, there was no question for the appellant herein being appointed.

8. In the light of that, we are not inclined to interfere with the order of the learned Single Judge. However, we direct the Board to comply with the directions issued in Civil Misc. Writ Petition No. 28016 of 2010, not later than four weeks from today and file a compliance report before this Court. We make it clear that if the compliance report is not filed within the said time, suo moto action for contempt might have to be drawn. We further make it clear that the Board will pass orders after hearing all the affected persons.

9. The appeal stands disposed of, accordingly.

10. Appeal is disposed of.

11. For orders, see order of date passed on separate sheets.