

(1993) 11 SC CK 0014

In the Supreme Court Of India

Case No : Spl. Leave Petition (Civil) No. 9573 of 1993

Shiv Shankar and Others

APPELLANT

Vs

Board of Directors, U.P.S.R.T.C. and Another

RESPONDENT

Date of Decision : 15-11-1993

Acts Referred:

Citation : (1996) 1 LLJ 12 : (1995) 2 SCC 726 Supp

Hon'ble Judges : S. Ratnavel Pandian, J; R. M. Sahai, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Leave granted

2. This appeal is directed against order dated March 24, 1993 passed by the Division Bench of the Allahabad High Court in a special appeal under rules of the Court upholding the order dated January 11, 1992 passed by the learned Single Judge dismissing Writ Petition No. 24200 of 1988 as not pressed.

3. The writ petition was filed for a direction to the State Road Transport Corporation to absorb the appellants as conductors as they were placed in a select list prepared by a duly constituted Selection Committee. The grievance of the appellants was that the Corporation was acting arbitrarily and appointing persons by practising pick and choose. It appears after exchange of affidavits the Division Bench while issuing notice on the writ petition passed following interim order:

The respondents are directed to absorb the petitioners to the posts of conductors within a period of three months from the date of production of a certified copy of this order.

4. The order was complied with. And the appellants were absorbed. It is stated in the special leave petition, filed in this Court, that when the writ petitions came up for hearing the Court felt that notices may be issued to all the 291 persons

who had been appointed by the Corporation. But the counsel for the appellants did not inform nor he filed any application for impleadment and when the petition came up for final hearing on January 22, 1992 the learned Counsel, without any instruction, presumably, because the petitioners had been absorbed made a statement which resulted in dismissal of the writ petition. The order is extracted below:

Learned counsel does not want to press this petition. In view of the Court's order dated May 4, 1990 this petition has become infructuous. The petition is dismissed as infructuous.

It is claimed that when petitioners came to know of the order they engaged another counsel and filed an application for recalling of the order. But it was dismissed and the special appeal filed against it also failed. In consequence of dismissal of the writ petition and special appeal the Corporation issued notice to the appellants on May 24, 1993. It reads as under:

In pursuance of the interim order passed by the High Court on May 4, 1990 in the above writ petition, you had been taken in the service on the post of conductor. But now since the High Court, by its order dated January 22, 1992, has dismissed the writ petition, the interim order has automatically, become null and void.

Faced with this situation the appellants filed the appeal in this Court.

5. We have heard learned Counsel for parties. We do not propose to enter into merits of the matter as we are satisfied that the case shall have to be sent back to the High Court for deciding it in accordance with law, But we consider it necessary to observe that the piquant situation arose because of the order dated May 4, 1990 passed by the High Court. Although that order is not under challenge but the Division Bench which issued notice purported to grant by way of interim order a relief to the petitioners which could not have been granted to them without adjudication on merits. The direction by the High Court to absorb within a period of three months amounted to disposal of the writ petition and yet the High Court had issued notice only. Once the affidavits were exchanged it would have been appropriate for the High Court to decide the dispute. The issue of notice at this stage unless there were other necessary parties to be heard was not of any purpose. Be that as it may, once the High Court issued directions to the respondent to absorb the petitioners they had no option but to comply with the order. And once they were absorbed then the counsel could not be blamed for making a statement that the petition may be dismissed. At the same time once the petition was dismissed without any adjudication on merits the effect of dismissal was that interim order stood merged in the final order and the order of absorption stood nullified. This anomalous situation was brought into effect as a result of the interim order granted by the High Court. An interim order is granted by the court to protect the right of interest of a party approaching the court till the claim is adjudicated finally. It is temporary in nature and is made in the

meantime. But the order of the High Court directing the respondents to absorb the appellants could not be termed as interim order. Such order could be granted only by way of final adjudication as a result of decision on merits.

6. However, to do justice between the parties we set aside the order passed by the Division Bench and the learned Single Judge and remit the matter to the learned Single Judge of the High Court to decide the writ petition of the appellants on merits in accordance with law. We may also make it clear that in case the appellants are not working or they have been ceased then they shall not be entitled to work till the matter is finally disposed of by the High Court.

7. The appeal is disposed of accordingly. Parties shall bear their own costs.