

(1994) 05 SC CK 0085

In the Supreme Court Of India

Case No : Civil Appeal No. 4586 Of 1994

State of U.P. and Another

APPELLANT

Vs

Vishwanath Prasad (Dr)

RESPONDENT

Date of Decision : 19-05-1994

Acts Referred:

Citation : (1994) 2 SCC 444 Supp

Hon'ble Judges : M. N. Venkatachaliah, C.J;S. Mohan, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. WE have heard learned counsel on both sides. Delay condoned. Special leave granted.

2. The respondent was at the relevant point of time and continues to be the Principal of B.R.D. Medical College, Gorakhpur. By an order dated 12/10/1993, the State government sought to place him under suspension in anticipation of an inquiry into certain charges of misconduct against him. The High court, in the writ petition moved by the respondent, has stayed the order of suspension. The relevant part of the order reads :

"The counsel for the petitioner has vehemently contended before us that the petitioner has been placed under suspension only just to keep him out of the office on the frivolous and malicious charges and there is no material to bring the case under the mischief of "misconduct". After hearing the counsel for the parties and after careful perusal of the record, without expressing any final opinion of the merits of the submission made by the counsel for the petitioner, we are of the view that the petitioner has made out a prima facie case for grant of interim order in his favour. We, therefore, suspend the operation of the impugned orders dated 12/10/1993 contained in Annexures 6 and 7 to the writ petition and also restrain the respondent from interfering in the petitioner's functioning as Principal of the B.R.D. Medical College, Gorakhpur till further

orders of this court."

3. SHRI Yogeshwar Prasad, learned Senior Counsel for the appellants says that there is no reasoning at all in the order as to how the High court felt persuaded to interfere with an order of suspension of a government servant, and that, at all events, the last sentence of the above excerpted portion of the order to the extent it implies that the respondent would be immune even from any transfer, would amount to the impermissible situation of the respondent being in a much better position after suspension than what he was prior to it.

4. SHRI Dhingra, learned counsel for the respondent, strenuously urged that the High court on a perusal of the records apparently felt satisfied about the prima facie case as to the mala fides of the order of suspension and it would not be appropriate for this court to interfere in exercise of its extraordinary jurisdiction under Article 136 of the Constitution.

5. ON a consideration of the matter, we are of the opinion that we should accept the submission of Shri Dhingra. While we leave the order of stay made by the High court undisturbed, we may, however, observe that if a charge-sheet is served on the respondent and that thereafter the government is of the opinion that during the disciplinary inquiry the respondent should be kept on suspension, it would be open to the government to do so, subject, however, to the right of the respondent to move the High court in the same writ petition or in any other proceedings for any relief that he may consider himself entitled to in that behalf.

6. WE, however, delete the last portion of the order of the High court which says "and also restrain the respondent from interfering in the petitioner's functioning as Principal of the B.R.D. Medical College, Gorakhpur till further orders of this court" as that observation might otherwise curtail even the power of transfer of the government as employer.

7. The appeal is disposed of in the above terms.