

(2009) 12 AHC CK 0121

In the Allahabad High Court

Case No : Special Appeal (Defective) No. 1284 of 2009

State of U.P.and Others

APPELLANT

Vs

Durga Prasad Tiwari and Others

RESPONDENT

Date of Decision : 01-12-2009

Acts Referred:

Allahabad High Court Rules, 1952 — Chapter 8, 5

Citation : (2009) 12 AHC CK 0121

Hon'ble Judges : C.K.Prasad, CJ and Pankaj Mithal, J

Final Decision : Allowed

Judgement

1. Respondents appellants, aggrieved by order dated 15.06.2009 passed by learned Single Judge in Civil Misc. Writ Petition No. 29950 of 2009, have preferred this appeal under Rule 5 Chapter VIII of the Allahabad High Court Rules, 1952.

2. Short facts giving rise to the present appeal are that the process for filling up the vacancies of Safai Karmis in the district of Deoria was initiated. However, before any appointment could be made, the District Magistrate, Deoria submitted his report dated 21.05.2009 for cancellation of the selection process. The Commissioner of Gorakhpur Division by order dated 28.05.2009 cancelled the entire selection process. In the light thereof, the District Magistrate issued order dated 02.06.2009 for holding de novo selection for filling up the vacancies of Safai Karmis. Writ petitioner respondents (hereinafter referred to as the "respondents"), aggrieved by the same, preferred the writ petition and by the order impugned, the learned Single Judge has stayed the operation of orders dated 21.05.2009, 28.05.2009 and 02.06.2009.

3. Mr. Zafar Nayyar, Additional Advocate General, appearing on behalf of the respondents appellants (hereinafter referred to as the "appellants"), submits that as the entire selection process was stinking, it was decided to cancel the same and start de novo selection. He submits that in the facts and circumstances of the case, the learned Single Judge ought not to have stayed the operation of

the orders impugned in the writ petition.

4. Mr. Girijesh Tiwari, appearing on behalf of the respondents, submits that the order impugned, being an interim order, is not fit to be interfered by this Court in this appeal.

5. We are not inclined to go into the submission of the learned Additional Advocate General that the entire selection process is stinking, as the same is required to be decided in the writ petition. True it is that this Court ordinarily does not interfere with an interim order. However, it is not a rule of law that in no case, interim order can be interfered by this Court. Here, in the present case, whether the selection process was carried out in accordance with law or vitiated on any account is yet to be adjudicated and in that view of the matter, we are of the opinion that the learned Single Judge erred in granting the interim order.

6. We are of the opinion that fresh selection process may go on but that will be subject to the decision in the writ petition.

7. We have been told that counter and rejoinder affidavits in the writ petition have already been filed.

8. As the order passed in the writ petition shall have bearing on a large number of persons, we deem it expedient that the learned Single Judge, in seisin of the matter, makes endeavour to dispose of the writ petition expeditiously.

In the result, appeal is allowed and the impugned order of the learned Single Judge is set aside with the observation aforesaid.

(Appeal allowed)